

Registration No: C157191

IRISH COLLECTIVE ASSET-MANAGEMENT VEHICLES ACT 2015

CITADEL EQUITY FUND (IRELAND) ICAV

INSTRUMENT OF INCORPORATION

(as amended by Ordinary Resolution dated 26 October 2016)

Arthur Cox
Earlsfort Centre
Earlsfort Terrace
Dublin 2
Ireland

IRISH COLLECTIVE ASSET-MANAGEMENT VEHICLES ACT 2015

INSTRUMENT OF INCORPORATION

of

CITADEL EQUITY FUND (IRELAND) ICAV

PART A

1. The name of the ICAV is **CITADEL EQUITY FUND (IRELAND) ICAV**.
2. The ICAV is an Irish collective asset-management vehicle established pursuant to the ICAV Act, the sole object of which is the collective investment of its funds in property and giving Members the benefit of the results of the management of its funds.
3. For the purposes of achieving the sole object in Clause 2 above, the ICAV shall have, subject to applicable law, full and unlimited capacity to carry on and undertake any business or activity, do any act or enter into any transaction and, for such purposes, shall have full rights, powers and privileges and shall have the following powers:
 - (1) to carry on the business of an Irish collective asset-management vehicle and to invest the funds of the ICAV in or otherwise acquire, hold and deal in securities and investments of every kind;
 - (2) to acquire and hold either in the name of the ICAV, or in that of any nominee, shares, stocks, debentures, debenture stock, bonds, loans, notes, obligations, securities and financial derivative instruments issued or guaranteed by any company wherever incorporated or carrying on business and debenture stock, bonds, loans, notes, obligations and securities issued or guaranteed by any government, sovereign ruler, commissioners, public body or authority supreme, dependent, municipal, local or otherwise in any part of the world;
 - (3) to acquire any such shares, stock, debentures, debenture stock, bonds, loans, notes, obligations, securities or financial derivative instruments by original subscription, contract, tender, purchase, exchange, underwriting, participation in syndicates or otherwise, and whether or not fully paid up, and whether or not payment is to be made at the time of issue or on a delayed delivery basis and to subscribe for the same, subject to such terms and conditions (if any) as may be thought fit;
 - (4) to employ, utilise or invest in financial derivative instruments and techniques of all kinds for investment and efficient portfolio management purposes and, in particular and without prejudice to the generality of the foregoing, to enter into, accept, issue and otherwise deal with sale and repurchase agreements, futures contracts, options, securities lending agreements, short sales agreements, when-issued, delayed delivery and forward commitment agreements, foreign currency spot and forward rate exchange contracts, forward rate agreements, swaps, collars, floors and caps and other foreign exchange or interest rate hedging and investment arrangements;
 - (5) to exercise and enforce all rights and powers conferred by or incidental to the ownership of any such shares, stock obligations or other securities;

- (6) to sell or dispose of the undertaking of the ICAV or any part thereof for such consideration as the ICAV may think fit and, in particular, for shares, debentures, or securities of any other company;
- (7) to make, draw, accept, endorse, issue, discount, and otherwise deal with promissory notes, bills of exchange, cheques, letters of credit, and other notes;
- (8) to acquire by purchase, exchange, lease, fee farm grant or otherwise, either for an estate in fee simple or for any less estate or other estate or interest, whether immediate or reversionary, and whether vested or contingent, any lands, tenements or hereditaments of any tenure, whether subject or not to any charges or encumbrances which are essential for the direct pursuit of its business;
- (9) to undertake the office of administrator, committee, manager, secretary, registrar, attorney, delegate, substitute or treasurer and to perform and discharge the duties and functions incident thereto;
- (10) to facilitate and encourage the creation, issue or conversion of debentures, debenture stock, bonds, obligations, shares, stocks and securities, and to act as trustees in connection with any such securities and to take part in the conversion of business concerns and undertakings into companies;
- (11) to constitute any trusts with a view to the issue of preferred and deferred or any other special stocks or securities based on or representing any shares, stocks or other assets specifically appropriated for the purposes of any such trust, and to settle and regulate, and if thought fit, to undertake and execute any such trusts, and to issue, dispose of or hold any such preferred, deferred or other special stocks or securities;
- (12) to enter into partnership or into any arrangement for sharing profits, union of interest, joint venture, reciprocal concession, cooperation or otherwise with any company carrying on, or engaged in, any business or transaction which the ICAV is authorised to carry on or engage in, or any business or transaction capable of being conducted so as directly or indirectly to benefit the ICAV and to take or otherwise acquire and hold shares or stock in or securities of any such company, to assist any such company, and to sell, hold, or otherwise deal with such shares, stock or securities;
- (13) to promote any company for the purpose of acquiring all or any of the property or liabilities of the ICAV, or of undertaking any business or operations which may appear likely to assist or benefit the ICAV or to enhance the value of or render more profitable any property, assets or business of the ICAV, or for any other purpose which may seem directly or indirectly calculated to benefit the ICAV and to establish subsidiary companies for any of the foregoing purposes;
- (14) to accumulate capital for any of the purposes of the ICAV, and to appropriate any of the ICAV's assets to specific purposes, either conditionally or unconditionally and to admit any class or section of those who have any dealings with the ICAV to any share in the profits thereof or in the profits of any particular branch of the ICAV's business, or to any other special rights, privileges, advantages or benefits;
- (15) to enter into any arrangements with any government or authority, supreme, municipal, local or otherwise, or company that may seem conducive to the ICAV's objects or any of them, and to obtain from any such government, authority or company, any charters, contracts, decrees, rights, privileges and concessions, and to

carry out, exercise and comply with any such arrangements, charters, contracts, decrees, rights, privileges and concessions;

- (16) to borrow or raise or secure the payment of money in such manner as the ICAV shall think fit, and, in particular (but without prejudice to the generality of the foregoing), by the issue of debentures, debenture stocks, bonds, obligations, loans, notes and securities of all kinds, either perpetual or terminable and either capable of repurchase or otherwise and to secure the repayment of any money borrowed, raised or owing by trust deed, mortgage, charge, or lien upon the whole or any part of the ICAV's undertaking, property or assets (whether present or future) including its uncalled capital, and also by a similar trust deed, mortgage, charge or lien to secure and guarantee the performance by the ICAV of any obligation or liability it may undertake;
- (17) to guarantee, support or secure, whether by personal covenant or by mortgaging or charging all or any part of the undertaking, property and assets (both present and future) and uncalled capital of the ICAV, or by indemnity or undertaking, or by any one or more of such methods, the performance of the obligations of, and the repayment or payment of the principal amounts of and premiums, interest and dividends on any security, indebtedness or obligations of the ICAV;
- (18) to the extent permitted by law, originate or participate in the origination of loans and engage in operations arising from such activity;
- (19) to create, maintain, invest and deal with any reserve or sinking funds for repurchase of obligations of the ICAV, or for any other purpose of the ICAV;
- (20) to distribute either upon a distribution of assets or division of profits among the Members of the ICAV in kind any property of the ICAV, and, in particular, any shares, debentures or securities of other companies belonging to the ICAV or of which the ICAV may have the power of disposing;
- (21) to remunerate any person, firm or company rendering services to the ICAV, whether by cash payment or by the allotment of shares or securities of the ICAV credited as paid up in full or in part or otherwise;
- (22) to procure the ICAV to be registered or recognised in any foreign country, dependency or place;
- (23) to the extent permitted by law to obtain and hold, either alone or jointly with any person or company, insurance cover in respect of any risk of the ICAV, its directors, officers, employees and agents;
- (24) to pay all or any expenses of, incidental to, or incurred in connection with, the formation and incorporation of the ICAV and the raising of its share and loan capital, or to contract with any person or company to pay the same, and (subject in the case of shares to the provisions of any statute for the time being in force) to pay commissions to brokers and others for underwriting, placing, selling or guaranteeing the subscription of any shares, debentures or securities of the ICAV;
- (25) to do all or any of the above things in any part of the world, whether as principals, agents, contractors, trustees or otherwise, and either by or through trustees, agents, subcontractors or otherwise and either alone or in partnership or conjunction with any

person or company, and to contract for the carrying on of any operation connected with the ICAV's business by any person or company;

- (26) to amalgamate the ICAV with any other collective investment scheme (the "**Transferee Fund**"), subject to the requirements of the Central Bank, and in doing so to dispose of the assets of the ICAV to the Transferee Fund in consideration for the issue of shares in the Transferee Fund to the Members *pro rata* to their shareholding in the ICAV; and
- (27) to do all such other things as may be deemed incidental or conducive to the attainment of the above objects or any of them.

Each of the powers of the ICAV (whether enumerated or not) is to be interpreted and exercised as ancillary to the main object but separate from and ranking equally to any other power.

It is hereby declared that in the construction of this Clause the word "company" shall be deemed to include any person or partnership or other body of persons, whether incorporated or not incorporated, and whether domiciled in Ireland or elsewhere, and words denoting the singular number only shall include the plural number and vice versa and the intention is that the powers specified in each paragraph of this Clause shall, except where otherwise expressed in such paragraph, be in no way restricted by reference to or inference from the terms of any other paragraph or the name of the ICAV.

- 4. The liability of the Members is limited to the amount, if any, unpaid on the shares respectively held by them subject and without prejudice to any other liability to which a Member may be subject as provided by or under the ICAV Act.
- 5. The issued share capital of the ICAV shall be not less than the currency equivalent of US\$2.00 represented by two shares of no par value and the maximum issued share capital of the ICAV shall be not more than 500 billion shares of no par value. The share capital of the ICAV shall be at all times equal to the value for the time being of the issued share capital of the ICAV. The actual value of the paid up share capital of the ICAV shall be at all times equal to the value of the assets of the ICAV after the deduction of its liabilities, which shall be valued in accordance with Clauses 15 and 16 of Part B.

PART B

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1. DEFINITIONS

- (a) The following words shall bear the meanings set opposite to them unless inconsistent with the subject or context:

“Accounting Period”	subject to the Directors’ authority to extend any Accounting Period, the period beginning immediately after the end of the preceding Accounting Period and ending as of the end of the first to occur of: (A) the next calendar month; (B) the next Dealing Day; (C) the day on which the ICAV terminates, is wound-up or otherwise dissolved; or (D) any day which the Directors may designate;
“address”	includes any number or address used for the purposes of communication by way of electronic mail or other Electronic Communications;
“Administrator”	any person, firm or corporation appointed (from time to time) in accordance with the Rules to provide administration services to the ICAV and any Subsidiary;
“Advanced Electronic Signature”	has the meaning given to it in the Electronic Commerce Act, 2000;
“Affiliate”	with respect to a specified Person, any Person that directly or indirectly (including through one or more intermediaries) controls, is controlled by, or is under common control with, such specified Person. For purposes of this definition, a Person acting as general partner of, manager of, portfolio manager of and/or in a materially similar capacity with respect to a Person shall be treated as controlling such Person;
“AIF”	an alternative investment fund within the meaning of AIFMD;
“AIFM”	an alternative investment fund manager within the meaning of AIFMD;
“AIFMD”	Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers;
“AIFMD Regulations”	the European Union (Alternative Investment Fund Managers) Regulations 2013 (Statutory Instrument No. 257 of 2013);
“AIF Rulebook”	the AIF Rulebook issued by the Central Bank;
“Annual Report”	a report prepared in accordance with Clause 32 hereof;
“Associated Company”	any corporation which in relation to the person concerned (being a corporation) is a holding company or a subsidiary of any such holding company of a corporation (or a subsidiary of a corporation) at least one-fifth of the issued equity share capital of which is beneficially owned by the person concerned or an associate thereof under the preceding part of this definition. Where the person

	concerned is an individual or firm or other unincorporated body the expression “Associated Company” shall mean and include any corporation directly or indirectly controlled by such person;
“ Auditor ”	the auditor for the time being of the ICAV;
“ Base Currency ”	the base currency of the ICAV as may be specified in the Prospectus;
“ Board ”	the board of Directors of the ICAV including any committee of the Board;
“ Business Day ”	a business day as defined in the Prospectus;
“ Central Bank ”	the Central Bank of Ireland or any successor regulatory authority with responsibility for the authorisation and supervision of the ICAV;
“ Citadel Intellectual Property ”	any and all Trademarks and Intellectual Property owned and/or developed by or for the Portfolio Manager and/or its Affiliates.
“ Claim ”	any action, suit, demand, investigation, claim or proceeding;
“ class ” or “ Class ”	any class of shares from time to time created by the ICAV, details of which shall be set out in the Prospectus. The Prospectus may provide that a class be designated as a “Series” or “series”;
“ Class Currency ”	the currency of denomination of a class;
“ Clear Days ”	in relation to the period of a notice, that period excluding the day on which the notice is given or deemed to be given and the day for which it is given or on which it is to take effect;
“ Commission ”	such amount or amounts payable on the issue or repurchase of shares in the ICAV as may be specified in the Prospectus (including, without limitation, any anti-dilution levy, subscription or repurchase charge) and which may be deducted from the subscription or repurchase monies;
“ Companies Act ”	the Companies Act 2014;
“ Dealing Day ”	such day or days as the Directors from time to time may determine in respect of the ICAV as defined in the Prospectus, provided that in the event of a change in a Dealing Day, reasonable notice thereof shall be given by the ICAV to each Member;
“ Depositary ”	any person, firm or corporation appointed, from time to time, in accordance with the Rules to provide depositary services to the ICAV and any Subsidiary;
“ Depositary Agreement ”	any agreement for the time being subsisting between the ICAV and any Depositary relating to the appointment and duties of such Depositary;

“Derivatives”	physical and financial derivatives instruments which may include, without limitation, futures, forwards, options, swaps, swaptions, contracts for differences, and other derivative instruments;
“Director”	any director of the ICAV for the time being;
“Duties and Charges”	all stamp and other duties, taxes, governmental charges, valuation fees, property management fees, agents fees, brokerage fees, bank charges, transfer fees, registration fees and other charges whether in respect of the constitution or increase of the assets or the creation, exchange, sale, purchase or transfer of shares or the purchase or proposed purchase of Investment Instruments or otherwise which may have become or will become payable in respect of or prior to or upon the occasion of any transaction, dealing or valuation, but not including Commission payable on the issue and/or repurchase of shares;
“Electronic Communication”	has the meaning given to that expression in the Electronic Commerce Act, 2000;
“Electronic Proxy Scheme”	any scheme established by the ICAV whereby electronic means may be used by Members to appoint a proxy;
“Electronic Signature”	has the meaning given to that expression in the Electronic Commerce Act, 2000;
“EU”	the European Union;
“€”	the Euro, the lawful currency of certain countries forming part of the EU from time to time;
“Fiscal Period”	a fiscal period of the ICAV ending on such date as may be determined by the Directors from time to time;
“ICAV”	Citadel Equity Fund (Ireland) ICAV, an Irish collective asset-management vehicle incorporated under the ICAV Act;
“ICAV Act”	the Irish Collective Asset-management Vehicles Act 2015, as may be amended, supplemented or replaced from time to time, including any regulations made thereunder and any conditions imposed thereunder by the Central Bank;
“Initial Offer Period”	the period during which shares of any class are offered by the ICAV for purchase or subscription at the Initial Offer Price as defined in the Prospectus;
“Initial Offer Price”	the price at which any shares of any class are first offered for purchase or subscription as set out in the Prospectus;
“Instrument of Incorporation”	this document, as may be amended or modified from time to time in accordance with the rules set out herein;
“Intellectual Property”	any and all: (i) patents and patent applications (including continuations, continuations-in-part, divisionals, re-examinations,

renewals, reissues, and extensions thereof); (ii) inventions and discoveries (whether patentable or not and whether reduced to practice or not); (iii) copyrights, works of authorship, database rights, and moral rights; (iv) industrial designs; (v) computer software (including source code, executable code, data, databases, documentation, records, files and all media on which any of the foregoing is recorded); (vi) trade secrets and other confidential information (including developments, improvements, concepts, ideas, discoveries, know-how, proprietary information, algorithms, code, designs, trading strategies, investment strategies, trading systems, investment systems, business plans, investment research, methods, processes, formulae, drawings, schematics, specifications, blueprints, flow charts, models, prototypes, techniques, testing procedures and test results, information relating to customers and counterparties, and customer lists); (vii) all other proprietary or intellectual property rights under any laws or international conventions, throughout the world; and (viii) any registrations and applications for registration of any of the foregoing, including all renewals, reissues and extensions thereof. Notwithstanding the foregoing, Intellectual Property shall not include Trademarks.

“Investment Instruments”	the investment positions held by or on behalf of the ICAV including all associated rights and obligations;
“in writing”	written, printed, lithographed, photographed, telexed, telefaxed or represented by any other substitute for writing or partly one and partly another;
“Law”	the laws, rules and/or regulations promulgated by any governmental or public authority or any regulatory or self-regulatory organisation, including laws, rules and/or regulations relating to taxation, fees, levies and other impositions by or obligations due to any of the foregoing, as well as any formal or official interpretation thereof by any such authority or organisation, in each case (unless the context otherwise requires) applicable to the ICAV;
“Member”	a person who is registered as the holder of shares in the Register of Members;
“Member State”	a member state of the EU;
“MiFID”	Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EC
“Minimum Holding”	a holding of shares in the ICAV or any Class the value of which by reference to the repurchase price or the number of shares is not less than the minimum amount, if any, as set out in the Prospectus and/or as may be determined by the Directors from time to time, subject to any minimum holding prescribed by the Central Bank from time to time;

“Minimum Initial Investment”	such minimum initial investment amount as may be determined by the Directors from time to time and set out in the Prospectus, provided that it shall not be less than the minimum subscription amount prescribed by the Central Bank from time to time;
“Month”	a calendar month;
“Net Asset Value”	the amount determined for any particular Valuation Day pursuant to Clauses 15 and 16 hereof;
“Officer”	any Director of the ICAV or the Secretary;
“Ordinary Resolution”	an ordinary resolution of the ICAV or of any Class, as appropriate, passed in accordance with the ICAV Act;
“Person”	an individual, corporation, trust, association, unincorporated organisation, government (or agency or political subdivision thereof), limited liability company, joint venture, partnership or other entity;
“Portfolio Manager”	Citadel Advisors LLC or such other person as may be appointed in accordance with the Rules to provide portfolio management services to the ICAV and any Subsidiary from time to time;
“Preliminary Expenses”	the preliminary expenses incurred in the establishment of the ICAV, the obtaining by the ICAV of a registration order and authorisation from the Central Bank under the ICAV Act, the registration of the ICAV with any other regulatory authority and each offer of shares to the public (including the costs of preparing and publishing the Prospectus and translating the Prospectus into other languages, if applicable) and may include any costs or expenses (whether incurred directly by the ICAV or not) incurred in connection with any subsequent application for a listing or quotation of any of the shares in the ICAV on a stock exchange or regulated market;
“Prospectus”	a prospectus from time to time issued by the ICAV, including any supplement thereto, designed to be read and construed together with and to form part of the prospectus;
“Qualifying Investor”	<p>(a) a Member who:</p> <p style="margin-left: 40px;">(i) is a professional client within the meaning of Annex II of MiFID; or</p> <p style="margin-left: 40px;">(ii) receives an appraisal from an EU credit institution, a MiFID firm or a UCITS management company that the investor has the appropriate expertise, experience and knowledge to adequately understand the investment in the ICAV; or</p> <p style="margin-left: 40px;">(iii) certifies that they are an informed investor by providing the following:</p> <p style="margin-left: 80px;">(A) confirmation (in writing) that the investor has such knowledge of and experience in financial and business matters as would enable the investor to properly evaluate the</p>

merits and risks of the prospective investment; or

(B) confirmation (in writing) that the investor's business involves, whether for its own account or the account of others, the management, acquisition or disposal of property of the same kind as the property of the scheme;

(Within the EU, Qualifying Investor AIFs may only be marketed to professional investors as defined in AIFMD unless the Member State in question permits, under the laws of that Member State, AIFs to be sold to other categories of investors and this permission encompasses investors set out in categories (ii) and (iii) above.)

and

(b) who certifies in writing to the ICAV that they meet the minimum criteria and that they are aware of the risk involved in the proposed investment and the fact that inherent in such investments is the potential to lose all of the sum invested,

or

(c) who is a "Knowledgeable Investor" with an exemption from the minimum subscription requirement and qualifying investor criteria, as set out in Chapter 2 of the Central Bank's AIF Rulebook, or such higher amount as may be specified in the Prospectus and in respect of whom the following conditions shall have been satisfied:

(i) the investor is a company appointed to provide investment management or advisory services to the ICAV;

(ii) the investor is a Director or is a director of a company appointed to provide investment management or advisory services to the ICAV; or

(iii) the investor is an employee of the ICAV or an employee of a company appointed to provide investment management or advisory services to the ICAV, where the employee is directly involved in the investment activities of the ICAV or is a senior employee of the company and has experience in the provision of investment management services; and

in the case of investment by investors referred to at (i), (ii) and (iii) above, who certifies in writing to the ICAV that:

(A) he is availing of the exemption from the minimum subscription requirement of €100,000 on the basis that he is a "Knowledgeable Investor" as defined above;

(B) he is aware that the ICAV is normally marketed solely to Qualifying Investors who are normally subject to a minimum subscription requirement of €100,000;

(C) he is aware of the risk involved in the proposed investment;

and

(D) he is aware that inherent in such investment is the potential to lose all of the sum invested;

and, in the case of investors at (iii) above, provided further that the ICAV is satisfied that the investor satisfies the conditions at (iii) above;

“Qualifying Investor AIF”	an alternative investment fund authorised by the Central Bank which may be marketed to investors who meet the criteria set out in the Qualifying Investor AIF chapter of the Central Bank’s AIF Rulebook;
“Register of Directors’ Holdings”	the register in which the Directors’ holdings are listed;
“Register of Members”	the register in which are listed the names of Members of the ICAV;
“Rules”	any rules or conditions from time to time made by the Central Bank pursuant to Section 27 of the ICAV Act, the AIFMD Regulations and/or the Central Bank (Supervision and Enforcement) Act 2013;
“Secretary”	any person, firm or corporation appointed by the Directors to perform the duties of the secretary of the ICAV and who may be one of the Directors;
“share” or “shares”	any class of share or shares in the ICAV representing an interest in the ICAV;
“Signed”	includes a signature or representation of a signature affixed by mechanical or other means;
“Special Resolution”	a special resolution of the ICAV or of any Class, as appropriate, passed in accordance with the ICAV Act;
“Subscriber Shares”	the shares which the subscribers to the Instrument of Incorporation agree to subscribe for as more particularly hereinafter set forth after their names;
“Subsidiary”	any subsidiary within the meaning of Section 2 of the ICAV Act;
“Third Country”	a country other than a Member State;
“Trademark”	any and all trademarks, service marks, slogans, logos, trade names, corporate names, trade dress, Internet domain names, URLs, brand names and other source indicators, including registrations and applications for registration of any of the foregoing, and all renewals, reissues and extensions thereof;
“UCITS”	an undertaking for collective investment in transferable securities established pursuant to the European Communities (Undertakings for Collective Investment in Transferable Securities) Regulations 2011,

as amended, or any further amendment thereto for the time being in force, or, in the case of UCITS established in a member state of the EU other than Ireland, the law in that member state that transposes the Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations, and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS), as amended by Directive 2014/91/EU of the European Parliament and of the Council of 23 July 2014 amending Directive 2009/65/EC on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) as regards depositary functions, remuneration policies and sanctions;

- “**UK**” the United Kingdom of Great Britain and Northern Ireland;
- “**US\$**” the U.S. dollar, the lawful currency of the United States of America;
- “**Valuation Day**” such day or days as the Directors may from time to time determine provided that:
- (i) a Valuation Day shall be on such Business Days as shall be set out in the Prospectus or such other Business Days as shall be determined by the Directors and notified to Members;
 - (ii) in the event of any change in a Valuation Day reasonable notice thereof shall be given by the Directors to each Member;
 - (iii) the assets of the ICAV shall be valued on each Valuation Day; and
 - (iv) there shall be at least one Valuation Day per year;
- “**Valuation Point**” such time as the Directors from time to time may determine as provided for in the Prospectus.
- (b) Reference to enactments and to articles and sections of enactments shall include reference to any modifications or re-enactments thereof for the time being in force.
- (c) Unless repugnant to the context:
- (i) words importing the singular number shall include the plural number and *vice versa*;
 - (ii) words importing the masculine gender only shall include the feminine gender;
 - (iii) words importing persons only shall include companies or associations or bodies of persons, whether corporate or not;
 - (iv) the word “may” shall be construed as permissive and the word “shall” shall be construed as imperative;

- (v) expressions in this Instrument of Incorporation referring to writing shall be construed, unless the contrary intention appears, as including references to printing, lithography, photography and any other modes of representing or reproducing words in a visible form provided, however, that it shall not include writing in electronic form except as provided in this Instrument of Incorporation and/or where it constitutes writing in electronic form sent to the ICAV, the ICAV has agreed to its receipt in such form. Expressions in this Instrument of Incorporation referring to execution of any document shall include any mode of execution under seal or under hand or any mode of Electronic Signature as shall be approved by the Directors. Expressions in this Instrument of Incorporation referring to receipt of any Electronic Communication shall, unless the contrary intention appears, be limited to receipt in such manner as the ICAV has agreed to;
- (vi) any reference to a Law shall mean such Law as currently in effect, including any amendment, modification or supplement thereto, as well as any successor Law enacted, subsequent to the date hereof;
- (vii) unless the contrary intention appears, the use of the word “address” in this Instrument of Incorporation in relation to Electronic Communications includes any number or address used for the purpose of such communications; and
- (viii) unless otherwise expressly stated to the contrary herein, any reference to any Clause or Sub-Clause or Schedule in Part B of this Instrument of Incorporation is to a Clause or Sub-Clause or Schedule (as the case may be) of this Part B of this Instrument of Incorporation.

2. **PRELIMINARY**

- (a) Subject to the provisions of the ICAV Act, the business of the ICAV shall be commenced as soon after the incorporation of the ICAV as the Directors think fit.
- (b) The Preliminary Expenses shall be payable by the ICAV unless discharged by any other party, and if payable by the ICAV, any amount so payable may be carried forward in the accounts of the ICAV and amortised in such manner and over such a period as the Directors may at any time and from time to time determine to lengthen or shorten.
- (c) The ICAV shall also bear the following fees and expenses, save to the extent that such fees and expenses may be waived or otherwise discharged by any other person and not recovered from the ICAV:
 - (i) all taxes and expenses which may be incurred in connection with the acquisition and disposal of the assets of the ICAV;
 - (ii) all taxes which may be payable on the assets, income and expenses chargeable to the ICAV;
 - (iii) all brokerage, bank and other charges incurred by the ICAV in relation to its business transactions;
 - (iv) all fees and expenses due to the Auditor, the AIFM, the Depositary, the Administrator, any Portfolio Manager or adviser, any sub-custodian of the

ICAV, the legal advisers to the ICAV, any valuer, dealer, sales intermediary, distributor, paying agent, local representative or other supplier of services to the ICAV;

- (v) all expenses incurred in connection with publication and supply of information to the Members and, in particular, without prejudice to the generality of the foregoing, the cost of preparing, printing and distributing the Annual Report, any report to the Central Bank or any other regulatory authority, any other report and any Prospectus and all costs (if any) incurred in translating any of the foregoing into any languages other than English and the costs of publishing quotations of prices and notices in the financial press and the costs of obtaining a rating for the shares of the ICAV from a rating agency and all stationery, printing and postage costs in connection with the preparation and distribution of cheques, warrants, tax certificates and statements;
 - (vi) all expenses incurred in the registration of the ICAV with any government agencies or regulatory authority in any jurisdiction where registration is available or necessary and in having the shares of the ICAV listed or dealt on any stock exchange or any regulated market and in having the shares of the ICAV rated by any rating agency;
 - (vii) all expenses arising in respect of legal or administrative proceedings;
 - (viii) all expenses incurred in connection with the establishment, operation and management of the ICAV, including, without limitation to the generality of the foregoing, all Directors' fees and costs, all costs incurred in organising Directors' and Members' meetings and in obtaining proxies in relation to such meetings, all insurance premiums and association membership dues and all non-recurring and extraordinary items of expenditure as may arise;
 - (ix) all expenses incurred in the liquidation, winding-up or termination of the ICAV; and
 - (x) any other similar expenses related to the ICAV, as the Directors reasonably determine.
- (d) At the absolute discretion of the Directors and in accordance with the requirements of the Central Bank, fees and expenses may be charged first against current income, then should this not suffice, against realised capital gains and, if need be, against assets. Notwithstanding the above, the fees and expenses of the ICAV (or a portion thereof) may be charged to capital where this policy is disclosed in the Prospectus.

3. **DEPOSITARY, ADMINISTRATOR, PORTFOLIO MANAGER AND AIFM**

- (a) The ICAV shall forthwith after its incorporation and before the issue of any shares (other than the Subscriber Shares) appoint:
 - (i) a person, firm or corporation to act as Depositary and shall entrust the assets of the ICAV to the Depositary for safe keeping;
 - (ii) a person, firm or corporation to act as Administrator of the ICAV; and

- (iii) a person, firm or corporation to act as AIFM of the ICAV (which may be the same entity as the Portfolio Manager), provided that the ICAV may determine that it shall be an internally-managed AIF, in which case the ICAV shall be the AIFM.

The ICAV may also appoint a person, firm or corporation to act as Portfolio Manager. The Directors may entrust to and confer upon the Depositary, the Administrator, the AIFM and the Portfolio Manager so appointed any of the powers, duties, discretions and/or functions exercisable by them as Directors, upon such terms and conditions, including the right to remuneration payable by the ICAV, and, subject to Law and the requirements of the Central Bank, with such powers of delegation and such restrictions as they think fit.

- (b) The terms of appointment of any Depositary may authorise such Depositary to appoint (with powers of sub-delegation) sub-custodians, nominees, agents or delegates at the expense of the Depositary or otherwise and to delegate any of its functions and duties to any person or persons so appointed, provided that such appointment shall first have been notified to the ICAV and is in accordance with the requirements of the Central Bank and provided further that any such appointment insofar as it relates to an appointment in relation to the assets of the ICAV shall terminate forthwith on termination of the appointment of the Depositary.
- (c) The terms of appointment of any Administrator may authorise such service providers, subject to the approval of the Central Bank, to appoint one or more administrators, transfer agents or other agents at their own expense and to delegate any of their functions and duties to any person or persons so appointed, provided that such appointment or appointments shall first have been approved by the ICAV and provided further that any such appointment shall terminate forthwith on termination of the appointment of the Administrator.
- (d) With the approval of the Central Bank, the appointment of the AIFM may be terminated and a replacement AIFM may be appointed and the terms of appointment of an AIFM from time to time may be varied and the ICAV may authorise such AIFM to appoint one or more Portfolio Managers, investment advisers or other agents, delegates or service providers and to delegate any of its functions and duties to any person or persons so appointed, provided that such appointment or appointments shall first have been approved by the ICAV and are otherwise in accordance with the AIFMD Regulations and the Rules and provided further that any such appointment shall terminate forthwith on termination of the appointment of the AIFM. Where the ICAV appoints a Portfolio Manager, the foregoing provisions shall apply *mutatis mutandis*.
- (e) The terms of appointment of an AIFM will require that the AIFM make available such information as may be required pursuant to the AIFMD Regulations to be made available to prospective Members. The maximum annual fee payable to the AIFM and/or the Portfolio Manager out of the assets of the ICAV shall not be increased without the approval of more than 50 per cent of the votes cast by the holders of shares in the ICAV or the relevant share class at a general meeting, or, in either case, by all of the Members of the ICAV or share class by way of a written resolution, or by such other means of approval as may be agreed with the Central Bank and in accordance with the requirements of the Central Bank.
- (f) The appointment of the Depositary, the Administrator, the AIFM and the Portfolio Manager shall in each case be subject to the approval of the Central Bank and the

agreements appointing the Depositary, the Administrator, the AIFM and the Portfolio Manager in each case shall be in accordance with the requirements of the Central Bank. The Central Bank may at its discretion have the power to replace the Depositary and/or the AIFM with another Depositary and/or AIFM, as the case may be, at any time. Replacement of the Depositary and/or the AIFM is subject to the prior approval of the Central Bank. Replacement of the Administrator and/or the Portfolio Manager must be undertaken in accordance with the requirements of the Central Bank.

- (g) In the event of the Depositary desiring to retire or being removed from office the ICAV shall use its reasonable endeavours to find a corporation willing to act as Depositary who must be approved by the Central Bank to act as Depositary and upon so doing the ICAV shall appoint such corporation to be Depositary in place of the former Depositary. The Depositary Agreement shall provide that the Depositary may not retire or be removed from office until the ICAV appoints a replacement Depositary or until the authorisation of the ICAV by the Central Bank has been revoked.
- (h) If within a period of ninety (90) days from the date on which the Depositary notifies the ICAV of its desire to retire, or from the date the notice of termination of the Depositary under the Depositary Agreement is served, or from the date on which the Depositary ceases to be approved by the Central Bank, no replacement Depositary shall have been appointed, the Directors may resolve to repurchase all of the shares in issue or the Secretary, at the request of the Directors, shall forthwith convene an extraordinary general meeting of the ICAV at which there shall be proposed a resolution to wind up the ICAV and if a resolution is passed to wind up the ICAV in accordance with Part 11 of the Companies Act, as modified by the ICAV Act, the liquidator shall distribute the assets of the ICAV in accordance with the provisions of Clause 35 hereof but in any event the appointment of the Depositary shall not be terminated until the authorisation of the ICAV has been revoked by the Central Bank.
- (i) In the event of the AIFM desiring to retire or being removed from office or ceasing to be authorised as an AIFM, the ICAV shall use reasonable endeavours to find an entity willing to act as AIFM who must be authorised to act as AIFM and upon doing so the ICAV shall, subject to and in accordance with Law and the Rules, appoint such entity to be AIFM in place of the former AIFM.
- (j) If within a period of ninety (90) days (or such other reasonable period as may be determined by the Directors) from the date on which the AIFM notifies the ICAV of its desire to retire, or from the date the notice of termination of the AIFM under the AIFM Agreement is served, or from the date on which the AIFM ceases to be approved to act as such, no replacement AIFM shall have been appointed and the ICAV is not capable of acting as an internally-managed AIF, the Directors may resolve to repurchase all of the shares in issue and/or the Secretary, at the request of the Directors, shall forthwith convene an extraordinary general meeting of the ICAV, at which there shall be proposed a resolution to wind up the ICAV and if a resolution is passed to wind up the ICAV in accordance with Part 11 of the Companies Act, as modified by the ICAV Act, the assets of the ICAV shall be distributed in accordance with the provisions of Clause 35 hereof.
- (k) The ICAV or the AIFM on behalf of the ICAV may use the services of a prime broker, the terms of which shall be set out in a written contract. Such contract may provide for the possibility of the transfer and re-use of the assets of the ICAV.

- (1) The ICAV may appoint any person, firm or company, including, without limitation, the AIFM, the Portfolio Manager, as an authorised signatory of the ICAV (the “Authorised Signatory”) and, in connection therewith, the Authorised Signatory may be granted the power and authority to execute and deliver for and in the name of the ICAV any contracts, agreements, certificates, applications and other documents and instruments as are determined by the Authorised Signatory to be necessary, appropriate or advisable to carry out the Authorised Signatory’s functions under any agreement with the ICAV for and in the name of the ICAV.

4. **SHARE CAPITAL**

- (a) The paid up share capital of the ICAV shall at all times be equal to the Net Asset Value of the ICAV as determined in accordance with Clauses 15 and 16 hereof.
- (b) The issued share capital of the ICAV shall not be less than the currency equivalent of US\$2.00 represented by two shares of no par value and the maximum issued share capital of the ICAV shall not be more than 500 billion shares of no par value.
- (c) The Directors are hereby generally and unconditionally authorised to exercise all the powers of the ICAV to allot or issue shares in the ICAV pursuant to section 38 of the ICAV Act. The maximum amount of shares which may be allotted or issued under the authority hereby conferred shall be 500 billion shares of no par value, provided, however, that any shares which have been repurchased shall be deemed never to have been issued for the purpose of calculating the maximum amount of shares which may be issued.
- (d) The Directors may delegate to the Administrator or to any duly authorised Officer or other person, the duties of accepting the subscription for, receiving payment for and allotting or issuing new shares.
- (e) The Directors in their absolute discretion may refuse to accept any application for shares in the ICAV or may accept any application in whole or in part.
- (f) No person shall be recognised by the ICAV as holding any shares on trust and the ICAV shall not be bound by or recognise (even when having notice thereof) any equitable, contingent, future or partial interest in any shares or (except only as otherwise provided herein or as by law may be required) any other right in respect of any share, except an absolute right of title thereto in the registered holder.
- (g) At any time after the issue of shares, and subject to applicable law, the ICAV shall be entitled to repurchase the Subscriber Shares or to procure the transfer of the Subscriber Shares to any person who may be a qualified holder of shares in accordance with Clause 12 hereof. To give effect to any transfer of Subscriber Shares pursuant to this Sub-Clause, the Member in question shall execute such powers of attorney or other authorisations as are required so that the transfer will be effective as if it had been executed by the holder of, or person entitled to transmission to, the Subscriber Shares.

5. **CLASSES OF SHARES**

- (a) The ICAV may be comprised of one or more classes of shares. The Directors from time to time may issue one or more separate classes or series of shares on such terms as the Directors may resolve in accordance with the requirements of the Central Bank. The ICAV may establish classes which may be differentiated on the basis of Class

Currency, underlying assets, subscription/repurchase procedures, distribution policies, charging structure, hedging policies, voting rights or other criteria disclosed in the Prospectus. The creation of further classes in the ICAV must be effected in accordance with the requirements of the Central Bank.

- (b) Shares may be issued with such voting rights and rights to participate in or receive profits or income arising from the acquisition, holding, management or disposal of assets of the ICAV as the Directors from time to time may determine and set forth in the Prospectus. The Directors may restrict the voting rights attaching to any class of shares. In particular, and without prejudice to the generality of the foregoing, the Directors may issue one or more classes of shares the voting rights of which shall be restricted on the basis that the holders shall be precluded from voting in respect of any Ordinary Resolution and any Special Resolution **PROVIDED THAT** any such resolution shall not become effective unless the holders have been provided with a certain number of days' notice of the date on which the particular resolution is to be effected as is set forth in the Prospectus. The decision to subscribe for any class of shares in respect of which the voting rights are restricted is made solely by the investor.
- (c) The assets of the ICAV shall belong exclusively to the ICAV and no Member shall have any interest in the assets of the ICAV.
- (d) Where permitted in the circumstances described in the Prospectus, the Directors are hereby authorised from time to time to re-designate any existing class of shares in the ICAV and merge such class of shares with any other class of shares in the ICAV, **PROVIDED THAT** Members in such class or classes are first notified by the ICAV and given the opportunity to have the shares repurchased, except where the Directors re-designate shares in issue in order to facilitate the creation of an additional class of shares. With the prior consent of the Directors, Members may convert shares in one class of shares into shares of another class in the ICAV in accordance with the provisions of Clause 10 hereof.
- (e) For the purpose of enabling shares of one class to be re-designated or converted into shares of another class, the ICAV may take such action as may be necessary to vary or abrogate the rights attached to shares of one class to be converted so that such rights are replaced by the rights attached to the other class into which the shares of the original class are to be converted.

6. **ISSUE OF DEBENTURES**

- (a) The ICAV may borrow or raise or secure the payment of money in such manner as the ICAV shall think fit, and, in particular (but without prejudice to the generality of the foregoing), by the issue of debentures, debenture stocks, bonds, obligations, loans, notes and securities of all kinds, either perpetual or terminable and either capable of repurchase or otherwise (for the purpose of this Clause 6, each a "**debenture**") and to secure the repayment of any money borrowed, raised or owing by trust deed, mortgage, charge, or lien upon the whole or any part of the ICAV's undertaking, property or assets (whether present or future) including its uncalled capital, and also by a similar trust deed, mortgage, charge or lien to secure and guarantee the performance by the ICAV of any obligation or liability it may undertake.
- (b) The instrument of transfer of a debenture shall be signed by or on behalf of the transferor and need not be signed by the transferee. The Directors may decline to register any transfer of debentures at their absolute discretion. Without limitation the

Directors may decline to register any transfer of debentures unless the instrument of transfer is deposited at the registered office of the ICAV or at such other place as the Directors may reasonably require, with such other evidence as the Directors may reasonably require to show the right of the transferor to make the transfer.

7. CONFIRMATIONS OF OWNERSHIP AND REGISTERS

- (a) A Member shall have his title to shares evidenced by having his name, address and the number of shares held by him entered in the Register of Members which shall be maintained in the manner required by law. In order for Members to be entered in the Register of Members, the Members must have applied for or acquired shares (other than Subscriber Shares) to the value of not less than the minimum subscription amount as set out in the Rules and must certify that they meet the Qualifying Investor criteria as set out in the Rules and certify that they are aware of the risks involved in the proposed investment and that inherent in such investment is the potential to lose all of the sum invested.
- (b) A Member whose name appears in the Register of Members at the Member's request shall be entitled to be issued with a written confirmation of ownership representing the number of shares held by him. Share certificates shall not be issued. To be entered on the Register of Members, Members must be Qualifying Investors except to the extent the shares are Subscriber Shares.
- (c) If a written confirmation of ownership is damaged or defaced or alleged to have been lost, stolen or destroyed, a new written confirmation of ownership representing the same shares may be issued to the Member upon request subject to delivery up of the old written confirmation of ownership or (if alleged to have been lost, stolen or destroyed) on compliance with such conditions as to evidence and indemnity and the payment of exceptional out-of-pocket expenses of the ICAV in connection with the request as the Directors may think fit.
- (d) The Register of Members may be kept on magnetic tape or in accordance with some other mechanical or electronic system, provided that legible evidence can be produced therefrom to satisfy the requirements of applicable law and of this Instrument of Incorporation.
- (e) The Directors shall cause to be entered in the Register of Members, in addition to the particulars required to be so entered by law, the following particulars:
 - (i) the name and address of each Member (save that in the case of joint holders, the address of the first named holder only need be entered), a statement of the shares of each class held by him distinguishing each share by its number so long as the share has a number, the class (if any) to which the share belongs and of any amount paid or agreed to be considered as paid on such shares;
 - (ii) the date on which each person was entered in the Register of Members as a Member; and
 - (iii) the date on which any person ceased to be a Member;

PROVIDED THAT no notice of any trust, express, implied or constructive, shall be entered on the Register of Members.

- (f)
 - (i) The Register of Members shall be kept in such manner as to show at all times the Members of the ICAV for the time being and the shares respectively held by them.
 - (ii) The Register of Members shall be open to inspection by the Members and any other Person entitled to inspect it under the ICAV Act at the registered office of the ICAV during normal business hours in Ireland or at an alternative place determined by the Directors as being the place where the Register of Members is kept, provided that such alternative place shall be in Ireland. Each Member shall be entitled to inspect only the entry in the Register of Members relating to that Member.
 - (iii) The ICAV may close the Register of Members for any time or times not exceeding, in total, thirty (30) days in each calendar year.
- (g) The ICAV shall keep the Register of Directors' Holdings in accordance with the provisions of the ICAV Act showing, in relation to each Director and the Secretary of the ICAV, the number, description and amount of any shares in or debentures of:
 - (i) the ICAV; or
 - (ii) any other body corporate which is the ICAV's subsidiary or holding company, or a subsidiary of the ICAV's holding company,

which are held by, or in trust for, him or her, his or her spouse or any child of his or hers of which he or she has any right to become the holder (whether on payment or not).

- (h) The Register of Directors' Holdings shall be kept at the same office as the Register of Members is kept, and shall be open to inspection during normal business hours in Ireland (subject to such reasonable restrictions as the Directors may determine or as the ICAV may in general meeting impose, so that not less than two (2) hours in each day be allowed for inspection) by any Member or holder of debentures of the ICAV. The Register of Directors' Holdings shall also be produced at the commencement of the ICAV's annual general meeting (if any) and shall remain open and accessible during the continuance of the meeting to any person attending the meeting.
- (i) The Directors shall not be bound to register more than four persons as the joint holders of any share or shares. In the case of a share held jointly by several persons, the Directors shall not be bound to issue therefor more than one written confirmation of ownership and the issue of a written confirmation of ownership for a share to the first named of several joint holders shall be sufficient delivery to all.
- (j) Where two or more persons are registered as the holders of any shares they shall be deemed to hold the same as joint holders, subject to the following provisions:
 - (i) the joint holders of any shares shall be liable, severally, as well as jointly, in respect of all payments which ought to be made in respect of such shares;
 - (ii) any one of such joint holders may give effectual receipts for any dividend, bonus or return of capital payable to such joint holders;
 - (iii) only the first-named of the joint holders of a share shall be entitled to delivery of the written confirmation of ownership relating to such share or to

receive notices from the ICAV to attend general meetings of the ICAV. Any written confirmation of ownership delivered to the first-named of joint holders shall be effective delivery to all, and any notice given to the first-named of joint holders shall be deemed notice given to all the joint holders;

- (iv) the vote of the first-named of joint holders who tenders a vote whether in person or by proxy shall be accepted to the exclusion of the votes of the other joint holders; and
 - (v) for the purpose of the provisions of this Clause, the first-named shall be determined by the order in which the names of the joint holders stand in the Register of Members.
- (k) The ICAV shall not issue bearer certificates, either to first time subscribers in the ICAV or to existing Members in respect of shares already held by such Members.
- (l) The Directors shall also be entitled to charge a Member such fee as the Directors from time to time may determine in respect of the cost of confirmations of ownership.

8. DEALING DAYS

All issues and repurchases of shares shall be effected or made with effect from any Dealing Day provided that the ICAV may allot shares on a Dealing Day on the basis that the shares shall be issued on receipt of cleared funds from the subscriber for shares and in the event that the ICAV does not receive payment in respect of such allotment within the period specified in the Prospectus or within such other period as may be determined by the Directors, such allotment shall be deemed to be cancelled.

9. ISSUE OF SHARES

- (a) Subject as hereinafter provided with effect from any Dealing Day on receipt by the ICAV of the following:
- (i) a subscription agreement or any other application for shares in such form as the ICAV from time to time may determine;
 - (ii) such declarations as to the applicant's status, residence and otherwise as the ICAV from time to time may require;
 - (iii) certification from the applicant that the applicant is a Qualifying Investor and is aware of the risks of investing in the shares; and
 - (iv) payment for the shares within a reasonable time and in such manner as the ICAV from time to time may specify in the Prospectus, provided that if the ICAV receives payment for the shares in a currency other than the Base Currency or relevant Class Currency, the ICAV may convert or arrange for the conversion of the monies received into the Base Currency or relevant Class Currency and shall be entitled to deduct therefrom all expenses incurred in the conversion;

the ICAV may issue such shares in such classes from time to time created by the ICAV at the relevant Initial Offer Price or at the Net Asset Value for each such share then obtaining unless otherwise specified in the Prospectus (or, at the absolute discretion of the ICAV in the case of (iv) above at the Net Asset Value for each such

share on the Dealing Day immediately following the conversion of the monies received into the Base Currency, less Commission or other charge payable, if any) or may allot such shares pending receipt of cleared funds, provided that if cleared funds representing the subscription monies are not received by the ICAV, within such period as the Directors may determine, the Directors may cancel any allotment of shares in respect thereof. The Directors may decline to accept any application for the allotment or issue of shares in whole or in part and may cease to offer shares in the ICAV for allotment or issue for a definite period or otherwise. The ICAV shall not issue shares, or if issued, shall cancel such shares unless the equivalent of the Initial Offer Price or the Net Asset Value per share, as applicable, is paid into the assets of the ICAV within a reasonable time specified in the Prospectus. Shares will be issued on a forward pricing basis, meaning that the deadline for subscription applications shall precede the Valuation Point as more particularly set out in the Prospectus.

- (b) The ICAV shall, subject to the absolute discretion of the Directors, be entitled to receive securities or other investments from an applicant for shares and to sell, dispose of or otherwise convert such securities or investments into cash and to apply such cash (net of any expenses incurred in the conversion) for the purchase of shares in the ICAV in accordance with the provisions hereof.
- (c) Unless otherwise determined by the Directors, no issue of shares shall be made in respect of an application which would result in the applicant holding less than the Minimum Holding, if any.
- (d) The Directors shall be entitled to issue fractional shares (hereinafter called “**Fractional Shares**”) where the subscription monies received by the ICAV are insufficient to purchase an integral number of shares, provided, however, that Fractional Shares shall not carry any voting rights and provided further that the Net Asset Value of a Fractional Share of any class of shares shall be adjusted by the amount which such Fractional Share bears to an integral share of that class of shares at the time of issue and any dividend payable on such Fractional Shares shall be adjusted in like manner.
- (e) Where provided for in the Prospectus, certain Members may obtain preferential treatment from time to time. The ICAV and the AIFM will each seek to ensure the fair treatment of Members by adhering to the requirements of this Instrument of Incorporation, the Prospectus and any policies and procedures adopted by the ICAV or the AIFM in relation to the fair treatment of Members. The preferential treatment may apply to any type of Member (including Members who have legal or economic links with the ICAV or the AIFM) and may relate to fees, information rights, repurchase rights or other matters. Information on the preferential treatment shall be made available to investors in the Prospectus or by any other means subject to the requirements of the AIFMD Regulations.

10. **CONVERSION OF SHARES**

Where provided for in, and subject to the terms of, the Prospectus and as hereinafter provided a holder of shares in any Class (the “**Original Shares**”) may, with the prior consent of the Directors, from time to time convert all or any portion of such shares (“**Conversion**”) having such minimum value at the time of conversion as may be determined by the Directors from time to time into shares of another Class (the “**New Shares**”) either existing or agreed to be brought into existence on terms hereinafter appearing:

- (i) Conversion may be exercisable by the said holder (hereinafter called the “**Applicant**”) giving a notice (hereinafter called the “**Conversion Notice**”) to the Administrator in such form as the Administrator may require provided that the shareholding satisfies the Minimum Holding or Minimum Initial Investment criteria, as applicable, and provided that the original application is received within the time limits set out in the Prospectus, and shall be accompanied by such evidence of ownership, succession or assignment satisfactory to the Directors together with unmatured dividend coupons;
- (ii) the Conversion of shares comprised in a Conversion Notice which is delivered to the Administrator following the deadline specified in the Prospectus for a Dealing Day shall be made on the Dealing Day next following the receipt of the Conversion Notice;
- (iii) Conversion of the Original Shares comprised in the Conversion Notice shall be effected by the repurchase of such Original Shares (save that the repurchase monies shall not be released to the Applicant) and the issue of New Shares, such repurchase and issue taking place on the Dealing Day referred to in paragraph (ii) of this Clause;
- (iv) the number of New Shares to be issued on Conversion shall be determined by the Directors in accordance (or as nearly as may be in accordance) with the following formula:

$$NS = \frac{A \times (B - [TC]) \times C}{D}$$

where:

NS = the number of New Shares which will be issued;

A = the number of Original Shares to be converted;

B = the repurchase price of the Original Shares to be converted;

C = the currency conversion factor (if any) as determined by the Directors;

D = the issue price of the New Shares on the relevant Valuation Day;
and

TC = the transaction charge incurred in connection with the proposed transaction, which shall not in any event exceed 5 per cent of the Net Asset Value per share.

If NS is not an integral number of shares the Directors reserve the right to issue fractional New Shares or to issue whole New Shares only and to return the remaining redemption proceeds to the Member seeking to convert the shares.

- (v) upon Conversion, the ICAV shall cause assets or cash representing the value of NS as defined in (iv) above to be allocated to the class of shares comprising the New Shares.

11. **PRICE PER SHARE**

- (a) The Initial Offer Price per share at which the shares of any class shall be allotted or issued and the Commission payable on the Initial Offer Price and the Initial Offer Period shall be determined by the Directors. The ICAV may only offer shares at a fixed price after the close of the Initial Offer Period where the ICAV has confirmed to the Central Bank that existing Members will not be prejudiced.
- (b) The price of any share following the Initial Offer Period in respect of such share shall be the applicable Net Asset Value of such share as determined in accordance with Clauses 15 and 16 adjusted in such manner as may be provided for in the Prospectus to cover any Commission or other charge payable. Where provided for in the Prospectus, in calculating the subscription price per share the Directors may on any Dealing Day when there are net subscriptions adjust the subscription price by adding an anti-dilution levy to cover dealing costs and to preserve the value of the underlying assets of the ICAV.
- (c) Where provided for in, and subject to the terms of, the Prospectus, the Directors may require an applicant for shares to pay to the ICAV in addition to the price per share such Duties and Charges and/or Commission in respect of the shares as the Directors from time to time may determine.
- (d) The Directors in respect of any Dealing Day may issue shares on terms providing for settlement to be made by the vesting in the ICAV of any Investment Instruments for the time being held or which may be held hereunder and would qualify as Investment Instruments of the ICAV in accordance with the investment objectives, policies and restrictions of the ICAV and in connection therewith the following provisions shall apply:
 - (i) the Directors shall be satisfied that the terms of any such exchange shall not be such as are likely to result in any material prejudice to the Members;
 - (ii) the number of shares to be issued shall be not more than the number which would have been issued for settlement in cash as hereinbefore provided on the basis that the amount of such cash was an amount equal to the value of the Investment Instruments to be so vested in the ICAV as determined by the Directors on the relevant Dealing Day;
 - (iii) no shares shall be issued until the Investment Instruments shall have been vested in the Depositary or otherwise vested in or on behalf of the ICAV to the Depositary's satisfaction;
 - (iv) any Duties and Charges or Commission arising in connection with the vesting of such Investment Instruments in the ICAV shall be paid by the person to whom the shares are to be issued; and
 - (v) the Depositary shall be satisfied that the terms on which the shares are issued shall not be such as are likely to result in any material prejudice to the existing Members.
- (e) No shares shall be issued for which the determination of the Net Asset Value is suspended pursuant to Clause 15.

12. QUALIFIED HOLDERS

- (a) The Directors shall have power (but shall not be under any duty) to impose such restrictions (other than a restriction on transfer which is not expressly referred to in this Instrument of Incorporation) as they may think necessary for the purpose of ensuring that no shares in the ICAV are acquired or held by any person as described in Clause 12(d).
- (b) The Directors may upon an application for shares or on a transfer or transmission of shares or at any other time and from time to time require such evidence or declarations to be furnished to them in connection with the matters stated in Clauses 12(a) and (e) as they shall in their absolute discretion deem sufficient.
- (c) If a person becomes aware that he is holding or owning shares in contravention of Clause 12 he shall forthwith in writing request the ICAV to repurchase such shares in accordance with Clause 13 or shall, subject to approval by the Board transfer such shares to a person duly qualified to hold the same unless he has already received a notice under Clause 12(d).
- (d) If it shall come to the notice of the Directors or if the Directors shall have reason to believe that any shares are owned directly or beneficially by:
 - (i) any person in breach of any law or requirement of any country or governmental authority or by virtue of which such person is not qualified to hold such shares;
 - (ii) any person or persons in circumstances which, (whether directly or indirectly affecting such person or persons and whether taken alone or in conjunction with any other person or persons whether connected or not, or any other circumstances appearing to the Directors to be relevant) in the opinion of the Directors, might result in the ICAV or the Members as a whole incurring any liability to taxation or suffering regulatory, legal, pecuniary, tax or material administrative disadvantage which the ICAV or the Members as a whole might not otherwise have suffered or incurred;
 - (iii) any person who does not supply any of the information or declarations required hereunder within seven (7) days of a request to do so being sent by the Directors;
 - (iv) any person who is not a Qualifying Investor;
 - (v) any person who subscribes for or acquires shares representing less than the Minimum Holding or Minimum Initial Investment, as applicable; or
 - (vi) any other person in the circumstances provided for in the Prospectus,the Directors shall be entitled to give notice (in such form as the Directors deem appropriate) to such person or persons requiring him or them to transfer such shares to a person who is qualified or entitled to own the same or to request in writing the repurchase of such shares in accordance with Clause 13.
- (e) If any person upon whom such a notice is served as aforesaid does not within thirty (30) days of the date of such notice transfer such shares or request in writing the ICAV to repurchase the shares he shall be deemed forthwith upon the expiration of

thirty (30) days to have so requested the repurchase of all of his shares which are the subject of such notice whereupon he shall be bound to deliver the confirmation of ownership in respect of the shares to the ICAV forthwith and the Directors shall be entitled to appoint any person to execute such documents as may be required for the purposes of the repurchase. The deemed request to repurchase the shares may not be withdrawn, notwithstanding that repurchase may have been suspended pursuant to Clause 15.

- (f) Subject to any requisite official consents first having been obtained, settlement shall be effected by depositing the repurchase monies or proceeds of sale in a bank for payment to the person entitled upon such consents being obtained and, if relevant, against production of such evidence of ownership as the Directors may require representing the shares previously held by such person, together with the repurchase request duly signed. Upon deposit of such repurchase monies as aforesaid such person shall have no further interest in such shares or any of them or any claim in respect thereof except the right to claim without recourse to the ICAV the repurchase monies so deposited (without interest) upon such consents being obtained and against the production of the said evidence of ownership with the repurchase request duly signed.

13. **REPURCHASE OF SHARES**

The following provisions shall apply in respect of the repurchase of Shares:

- (a) The ICAV may repurchase its own outstanding fully paid shares at any time in accordance with the rules and procedures set out herein and in the Prospectus. Except as may be approved by the Central Bank and subject to such requirements as may be imposed by the Central Bank under the ICAV Act or any other enactment, a Member may at any time irrevocably request the ICAV to repurchase all or any part of his shares in the ICAV and such request shall be in such form and shall be made in such manner and shall be received by such time as may be set out in the Prospectus or otherwise determined by the ICAV from time to time, provided that such repurchase facilities are provided to Members on at least a quarterly basis or with such other frequency as may be permitted by the Central Bank.
- (b) A request for repurchase of shares shall be in such form as the ICAV shall prescribe, shall be irrevocable and, unless otherwise provided for in the Prospectus, shall be filed by a Member in written form at the registered office of the ICAV, or at the office of the person or entity from time to time designated by the ICAV as its agent for the repurchase of shares, and, at the request of the ICAV shall be accompanied by the confirmation of ownership (duly endorsed by the Member) or by proper evidence of succession or assignment satisfactory to the ICAV together with unmatured dividend coupons, if applicable. Shares shall be repurchased at a forward pricing basis, meaning that the deadline for receipt of repurchase requests shall precede the Valuation Point.
- (c) On receipt of a request for repurchase of shares duly completed the ICAV shall repurchase the shares as requested on the Dealing Day on which the repurchase request is effective subject to any suspension of this repurchase obligation pursuant to Clause 15 hereof. Shares in the capital of the ICAV which are repurchased by the ICAV shall be cancelled and the issued share capital of the ICAV reduced accordingly.
- (d) The repurchase price per share shall be the applicable Net Asset Value for such share on the Dealing Day on which the repurchase request is effective, subject to such

adjustments in respect of Commission or other charge as may be set out in the Prospectus or as provided for herein. The maximum charge (if any) shall be set out in the Prospectus. Where provided for in the Prospectus, in calculating the repurchase price per share the Directors may on any Dealing Day when there are net repurchases adjust the repurchase price by deducting an anti-dilution levy to cover dealing costs and to preserve the value of the underlying assets of the ICAV.

- (e) Payment to a Member under this Clause may at the discretion of the Board, but subject to the terms of the Prospectus, be made in the Base Currency or the relevant Class Currency or in any other freely convertible currency at the rate of exchange for conversion on the date of payment (provided, always, that any currency or exchange rate risk and/or any hedging costs or expenses shall be borne by the relevant Member) and shall be dispatched within the period specified in the Prospectus which shall not exceed ninety (90) days (or such other number of days as may be permitted by the Central Bank) following acceptance of the repurchase request as provided for in Clause 13(a) above.
- (f) On a repurchase of part only of the shares held by any Member, at the request of the Member, the Directors shall procure that a revised confirmation of ownership shall be issued free of charge for the balance of such shares.
- (g) In the event that a repurchase of part only of a Member's holding of shares leaves the Member holding less than the Minimum Holding the Directors may, if they think fit, require that the ICAV repurchases the whole of that Member's holding.
- (h) At the absolute discretion of the Directors and with the approval of the relevant Member, the ICAV may satisfy any application for repurchase of shares by the transfer to the Member of assets of the ICAV *in specie*, **PROVIDED THAT** the ICAV shall transfer to the Member that proportion of the assets of the ICAV which is then equivalent in value to the shareholding of the Member then requesting the repurchase of shares, but adjusted as the Directors may determine to reflect the liabilities of the ICAV **PROVIDED ALWAYS THAT** the nature of the assets and the type of assets to be transferred to each Member shall be determined by the Directors on such basis as the Directors in their absolute discretion shall deem equitable and not materially prejudicial to the interests of the remaining Members, and such allocation shall be subject to the approval of the Depositary. For the foregoing purposes the value of assets shall be determined on the same basis as used in calculating the Net Asset Value. If a Member so requests, the ICAV shall arrange to dispose of the Investment Instruments on behalf of the Member. The price obtained by the ICAV may be different from the price at which the Investment Instruments were valued when determining the Net Asset Value and the Portfolio Manager, the external valuer (if any), the Portfolio Manager and the ICAV shall not be liable for any difference arising. The transaction costs incurred in the sale of any assets pursuant to this Clause 13(h) shall be payable by the relevant Member.
- (i) At the absolute discretion of the Directors, the ICAV may satisfy any application for repurchase of shares by a Member which represents five (5) per cent or more of the Net Asset Value of the ICAV by the transfer to the Member of assets of the ICAV *in specie* **PROVIDED ALWAYS THAT** the nature of the assets and the type of assets to be transferred to each Member shall be determined by the Directors on such basis as the Directors in their absolute discretion shall deem equitable and not prejudicial to the interests of the remaining Members and which shall be approved by the Depositary and for the foregoing purposes the value of the assets shall be determined on the same basis as used in calculating the Net Asset Value. If a Member so

requests the ICAV shall arrange to dispose of the Investment Instruments on behalf of the Member. The price obtained by the ICAV may be different from the price at which the Investment Instruments were valued when determining the Net Asset Value and the Portfolio Manager, the external valuer (if any), the Portfolio Manager and the ICAV shall not be liable for any difference arising. The transaction costs incurred in the sale of any assets pursuant to this Clause 13(i) shall be payable by the relevant Member.

- (j) In the event that the ICAV is required to deduct, withhold or account for tax on shares held by a Member (whether upon a repurchase of shares, a transfer of shares or otherwise) or upon the payment of a distribution to a Member (whether in cash or otherwise), or in any other circumstances in which a taxation liability arises, the Directors shall be entitled to arrange for the repurchase and cancellation of such number of the shares of such Member as are sufficient after the deduction of any repurchase charges to discharge any such tax liability and the Directors may decline to register a transferee as a Member until such time as they receive from the transferee such declarations as to residency or status as they may require. The Depositary shall ensure that the repurchase proceeds are held for the purpose of discharging any applicable tax liability as aforesaid.
- (k) Where the ICAV receives a request for the repurchase of shares from any Member in respect of which the ICAV is required to account for, deduct or withhold tax, the ICAV shall be entitled to deduct from the proceeds of the repurchase such amount of tax as the ICAV is required to account for, deduct or withhold and shall arrange to discharge the amount of tax due.
- (l) In the event that the ICAV is required to deduct, withhold or account for tax on shares held by a Member (whether upon a repurchase of shares, a transfer of shares or otherwise) or upon the payment of a distribution to a Member (whether in cash or otherwise), or in any other circumstances in which a taxation liability arises, the Directors shall be entitled to arrange for the repurchase and cancellation of such number of the Shares of such Member as are sufficient after the deduction of any repurchase charges to discharge any such tax liability and the Directors may decline to register a transferee as a Member until such time as they receive from the transferee such declarations as to residency or status as they may require. The Depositary shall ensure that the repurchase proceeds are held for the purpose of discharging any applicable tax liability as aforesaid.
- (m) In the event that a Member fails to provide information, representations, certificates or forms (or undertake any actions) requested by the ICAV or its delegates which is reasonably required to facilitate the ICAV's compliance with any applicable tax laws or regulations in any jurisdiction, the ICAV shall have full authority to: (i) cause a transfer of such Member's shares to a person or entity selected by the ICAV for any consideration that can be obtained for such shares; (ii) compulsorily repurchase the shares held by the Member and cause such Member to withdraw as a Member for an amount determined by the ICAV; (iii) assign the shares to an alternative investment vehicle or new parallel company formed at the expense of the Member (and whose expenses the Member will bear on an ongoing basis); or (iv) take any other steps as the ICAV determines in its absolute discretion are necessary or appropriate to mitigate the consequences for the ICAV, the other Members and the ICAV's delegates of the ICAV's failure to comply with any applicable tax laws or regulations in any jurisdiction resulting from the Member's failure to provide such information, representations, certificates or forms (or undertake any actions) requested by the ICAV. If the ICAV determines, at its absolute discretion, to allow a Member to retain

its shares, despite the fact that the Member has not provided the information, representations, certificates or forms (or undertaken any actions) requested by the ICAV or its delegates, it is possible that a withholding tax might be imposed in respect of certain of the ICAV's income, and, to the extent that such income is attributable to the Member, or in respect of, or distributions to, such Member, the ICAV shall have the right to cause the Member to bear the economic burden of such tax by specially allocating such tax to the shares held by the Member and/or or by withholding any such tax from distributions to such Member.

- (n) In the event that the amount payable to a Member on a repurchase is exceeded by the cost of dispatching, transmitting, effecting or otherwise making such payments to the Member, the ICAV shall be entitled to retain such repurchase proceeds for the benefit of all of the remaining Members provided that in no event shall the value of such repurchase proceeds exceed €20.00 (or its foreign currency equivalent) for any Member.
- (o) Where provided for in the Prospectus, the ICAV may compulsorily repurchase shares as may be necessary to implement the equalisation of performance fees payable by Members or make distributions to Members.

14. **TOTAL REPURCHASE**

- (a) With the sanction of an Ordinary Resolution of the Members of the ICAV or a Class, the ICAV may repurchase all of the shares of the ICAV or of the relevant Class.
- (b) All of the shares of the ICAV or Class may be repurchased by the ICAV if so determined by the Directors provided that notice of not less than fourteen (14) days or such longer period as may be specified in the Prospectus has been given to the holders of shares in the ICAV or the relevant Class.
- (c) If all of the shares in the ICAV or a Class are to be repurchased as aforesaid the ICAV, with the approval of the Members of the ICAV or Class, as the case may be, by Ordinary Resolution, or with the consent of any Member, may divide amongst the Members or any individual Member who so consents *in specie* all or part of the assets of the ICAV or Class according to the value of the shares then held by each Member as determined in accordance with Clause 15 hereof.
- (d) If all of the shares are to be repurchased as aforesaid and the whole or any part of the business or property of the ICAV or Class or any of the assets of the ICAV is proposed to be transferred or sold to another company (hereinafter called the “**Transferee**”) the ICAV may, with the sanction of a Special Resolution conferring either a general authority on the Directors or an authority in respect of any particular arrangement, receive in compensation or part compensation for the transfer or sale, shares, units, policies or other like interests or property in or of the Transferee for distribution among the Members, or may enter into any other arrangement whereby any Member may *in lieu* of receiving cash or property, or in addition thereto, participate in the profits of, or receive, any other benefit from the Transferee.
- (e) Where a repurchase of shares pursuant to Clauses 14 (a), (b) or (c) would result in the number of Members falling below two or would result in the issued share capital of the ICAV falling below such minimum amount as the ICAV may be obliged to maintain pursuant to applicable law, the ICAV may defer the repurchase of such shares, the repurchase of which would result in such number or amount not being satisfied, until the ICAV is wound up or until the ICAV procures the issue of

sufficient shares to ensure that the aforesaid number and amount are satisfied. The ICAV shall be entitled to select the shares for such deferred repurchase in such manner as it may deem to be fair and reasonable and as may be approved by the Depositary.

- (f) If all of the shares in the ICAV are to be repurchased, the assets available for distribution (after satisfaction of creditors' claims) shall be distributed *pro rata* to the holders of the shares in proportion to the Net Asset Value of the shares held in the ICAV. With the authority of an Ordinary Resolution of the Members or with the consent of any Member, the ICAV may make distributions *in specie* to Members or to any individual Member who so consents. At the request of any Member, the ICAV shall arrange the sale of such assets at the expense of such Member and without any liability on the part of the ICAV, the Administrator, the Portfolio Manager or the AIFM if the proceeds of sale of any asset are less than the value of the assets at the time at which it was distributed *in specie*. The transaction costs incurred in the disposal of such assets shall be borne by the Members. The Subscriber Shares do not entitle the holders to participate in the dividends or net assets of the ICAV.

15. DETERMINATION OF NET ASSET VALUE

- (a) The ICAV shall determine the Net Asset Value of the ICAV and each class at each Valuation Point. The Net Asset Value shall be expressed in the Base Currency as a per share figure for the issue of shares and for the repurchase of shares respectively as appropriate and shall be determined in accordance with this Clause 15 and the Prospectus. Subject to Clause 15(b), the Net Asset Value of the ICAV is calculated by deducting the total liabilities of the ICAV from the total assets of the ICAV and dividing this by the number of shares of the ICAV outstanding as of the Valuation Point. Total assets include the value of all Investment Instruments held, the sum of any cash and accrued interest. Total liabilities comprise all liabilities including any borrowings, accrued expenses and any contingencies for which reserves are determined to be required. Members shall be informed of the Net Asset Value calculation(s) applicable to them in the manner provided for in the Prospectus or as otherwise determined by the Directors.
- (b) The Net Asset Value of each class of the ICAV shall be determined by calculating the amount of the Net Asset Value of the ICAV attributable to each class. The amount of the Net Asset Value of the ICAV attributable to a class of shall be determined by establishing the number of shares in issue in the class by allocating relevant Class Expenses (as defined below) and fees to the class and making appropriate adjustments to take account of accrued distributions which may be payable out of each class, if applicable, and apportioning the Net Asset Value of the ICAV accordingly. The Net Asset Value per share of a class shall be calculated by dividing the Net Asset Value of the class by the number of shares in issue in that class. Class Expenses or fees or charges not attributable to a particular class may be allocated amongst the classes based on their respective Net Asset Value or any other reasonable basis having taken into account the nature of the fees and charges. Class Expenses and fees relating specifically to a class will be charged to that class. In the event that classes are issued which are priced in a currency other than the Base Currency, currency conversion costs will be borne by that class.

“**Class Expenses**” means the fees, expenses and costs of registering a class in any jurisdiction or with any stock exchange, regulated market or settlement system and all other fees, expenses and costs arising from such registration and such further fees, expenses and costs, howsoever arising, in respect of a class, as may be disclosed in

the Prospectus. The costs of converting currency and the costs and gains/losses of the class specific hedging transactions (if any) are borne solely by the relevant class.

- (c) The Directors may, but shall have no obligation to, extend an Accounting Period if the Portfolio Manager determines that, as of the scheduled end (the “**Scheduled End**”) of such Accounting Period, it is not reasonably practicable to accurately determine the Net Asset Value of the ICAV. Any Accounting Period extended as provided above shall end as of the end of the next succeeding calendar month-end unless further extended as provided above.
- (d) The Portfolio Manager may, but shall have no obligation to, either: (A) delay the payment of part or all of any distribution or repurchase proceeds; (B) postpone the distribution date with respect to any declared but unpaid distribution then scheduled to be effective, or postpone the Dealing Day with respect to any repurchase then scheduled to be effective if, in either case, the Portfolio Manager determines that: (i) market conditions are such that Investment Instruments held by the ICAV or by a Subsidiary can be valued but cannot be readily sold, redeemed or otherwise liquidated in an orderly and/or timely manner, (ii) distributing cash in order to satisfy such distribution or repurchase or not postponing such distribution date or Dealing Day would materially adversely affect the interests of the continuing Members taken as a whole, or (iii) permitting such distribution or repurchase would violate any law applicable to the ICAV or any Subsidiary, or cause a breach or violation, or give rise to an event permitting termination or material modification, of the terms of any outstanding obligations, loan agreement, committed credit facility or other agreement binding upon the ICAV or any Subsidiary. A distribution date or Dealing Day postponed pursuant to (B) above shall be postponed until further notice. Shares that would otherwise have been cancelled with effect from a scheduled distribution date or Dealing Day which is postponed shall continue to participate in the profits and losses of the ICAV until the rescheduled distribution date or Dealing Day. A distribution date or Dealing Day which was to have been effective as of the Scheduled End of an Accounting Period that has been extended pursuant to the terms hereof shall be postponed until the end of such Accounting Period so extended.
- (e) A suspension of repurchases may be made at any time prior to the payment of the repurchase monies and the removal of, or the amendment to, the Member’s holding in the Register of Members. A suspension of subscriptions may be made at any time prior to the entry of the details of the relevant shares on the Register of Members.
- (f) Any such suspension shall be notified to the Members if, in the opinion of the ICAV, such suspension is likely to continue for a period exceeding fourteen (14) days and any such suspension shall be notified immediately and in any event within the same Business Day to the Central Bank.

16. VALUATION OF ASSETS

- (a) The Net Asset Value of the ICAV shall be calculated in accordance with the provisions of this Clause and the Prospectus and such calculation shall be carried out for each Valuation Day. Members shall be informed of the valuations(s) of Investment Instruments attributable to their shares in the manner provided for in the Prospectus.
- (b) For the purposes of determining the Net Asset Value, the Investment Instruments of the ICAV shall be valued at their respective Fair Market Values, as defined below.

- (i) All tangible assets (such as accounts receivable which arise in the ordinary course of business) other than Investment Instruments shall be assigned such value as the Portfolio Manager may determine.
- (ii) Any Claim that may be resolved in favour of the ICAV shall have no value until such time as such Claim has been resolved and any related settlement, judgment or award is reasonably assured to be received by the ICAV.
- (iii) Debt obligations of the ICAV (including margin debt, bank loans and other forms of borrowings) and their related interest rate hedges shall be valued as the Portfolio Manager may determine.
- (iv) All liabilities the valuation of which is not otherwise provided for herein shall be assigned such values as the Portfolio Manager may determine.
- (v) The Portfolio Manager may record as a liability such sums as it may determine (“**Reserves**”) for: (i) unknown or unfixed liabilities and/or contingencies (including a Claim for which the ICAV is potentially liable, irrespective of whether such liability is reasonably assured); and/or (ii) for any other reason. When released, a Reserve shall be allocated among the shares in issue on a *pro rata* basis.
- (vi) No value shall be placed on the goodwill or any other intangible asset of the ICAV. No value shall be placed on the ICAV’s right to use any Citadel Intellectual Property.
- (vii) No value shall be placed on any “going concern” value of the ICAV.
- (viii) “**Fair Market Value**” means, for an Investment Instrument, its fair market value as determined by the Portfolio Manager. When determining the Fair Market Value of an Investment Instrument, the Portfolio Manager shall generally apply the following principles and methodologies in accordance with U.S. Generally Accepted Accounting Principles or other accounting standards adopted by the ICAV. At the time of determination, Investment Instruments are attributed to different sub-portfolios, each such sub-portfolio (“**Sub-Portfolio**”) generally being so classified on the basis of the investment strategy employed and the primary geographical nexus of trading. In valuing the Investment Instruments attributable to each Sub-Portfolio, the Portfolio Manager will value such Investment Instruments as of the market close (as determined by the Portfolio Manager) for such Sub-Portfolio. This valuation procedure will be followed, irrespective of whether part or all of the Investment Instruments in the Sub-Portfolio continue to trade after the market close. Fair Market Value shall be determined based on the valuations in effect as of the close of business on each date of determination, which valuations shall be next revised for each Sub-Portfolio as of the close of business on the next succeeding Business Day. Notwithstanding anything in this Instrument of Incorporation to the contrary, the Portfolio Manager may value (or revalue as the case may be) any and all Investment Instruments after the close of business if the Portfolio Manager believes that doing so is necessary in order to better reflect fair market value, giving consideration to a natural disaster, act of war or terrorism or similar extraordinary event (but excluding idiosyncratic firm- or industry-specific developments) that the Portfolio Manager determines has or may have a material impact on the Net

Asset Value of the ICAV, even though such event occurs after the close of business but prior to the end of the Accounting Period in question.

- (A) Investment Instruments which are regularly traded on an organised facility (such as an exchange, ECN or any other form of electronic trading network) shall be valued at their closing price, as disseminated by such organised facility. If an Investment Instrument is traded on more than one organised facility, the Portfolio Manager shall determine the organised facility to be referenced for valuing such Investment Instrument.
- (B) When valuing an Investment Instrument which is not regularly traded on an organised facility, the Portfolio Manager may use: (i) prices published or disseminated by third parties, including membership organisations in which the ICAV is a member; (ii) prices (either in the form of actual quotations for the day in question or an indicative end of day price) obtained from dealers who trade such Investment Instrument; and/or (iii) such other analysis and information as the Portfolio Manager may determine. The Portfolio Manager may value such Investment Instrument at the mean of its closing bid and offer price (as determined by the Portfolio Manager), if such information can be readily calculated, obtained or otherwise ascertained (as determined by the Portfolio Manager).
- (C) When valuing an Investment Instrument that is a Derivative (which is not regularly traded on an organised facility), the Portfolio Manager may use: (i) valuation models for such Derivative (including both proprietary models and third party models); (ii) prices published or disseminated by third parties, including membership organisations in which the ICAV is a member; (iii) prices (either in the form of actual quotations for the day in question or an indicative end of day price) obtained either from the counterparty to such Derivative or from other dealers in similar Derivatives; (iv) prices for similar Derivatives that are regularly traded on an organised facility; and/or (v) such other analysis and information as the Portfolio Manager may determine. The Portfolio Manager may value such Derivative at the mean of its closing bid and offer price (as determined by the Portfolio Manager), if such information can be readily calculated, obtained or otherwise ascertained (as determined by the Portfolio Manager).
- (D) When valuing Investment Instruments that are, from time to time, traded as a paired or combination position, the Portfolio Manager may use: (i) the pricing relationships between such Investment Instruments as quoted by market participants or deemed from an indicative end of day price; (ii) valuation models for such Investment Instruments (including both proprietary models and third party models); and/or (iii) such other analysis and information as the Portfolio Manager may determine. Convertible securities also may be valued at their conversion value, as adjusted for any cost which would be incurred in the event of conversion.
- (E) When valuing repurchase agreements and reverse repurchase agreements, the Portfolio Manager currently values such agreements

at face value plus accrued interest, but may in the future use: (i) a point between the bid and ask prices of such agreements as obtained from or confirmed by dealers or pricing services; (ii) interpolated repurchase yield rate curves, subject to corroboration by third party quotes from time to time; or (iii) valuation models (including both proprietary and third party models).

- (F) In the event that the ICAV acquires Investment Instruments in a portfolio transaction, for up to the first 90 days after such acquisition, as determined by the Portfolio Manager, the Fair Market Value of such Investment Instruments may be adjusted to reflect the amount which the Portfolio Manager determines could be realised upon an immediate sale of such Investment Instrument as an entirety (such determination to reflect all purchase, sale and other changes in the portfolio from the date of acquisition through the date of determination). The Portfolio Manager may determine to record such adjustments to fair value in the aggregate. Thereafter, the Investment Instruments acquired in such portfolio transaction shall be valued as otherwise set forth in this definition of “Fair Market Value”.
 - (G) When valuing all other Investment Instruments, the Portfolio Manager may use: (i) valuation models for such Investment Instruments (including both proprietary models and third party models); (ii) prices provided by dealers in such Investment Instruments; and/or (iii) such other analysis and information as the Portfolio Manager may determine.
 - (H) The Portfolio Manager may determine (but is under no obligation to do so), from time to time, to engage a third party it believes to be qualified to value any Investment Instrument: (i) for which no ready market exists; (ii) for which uncertainty as to valuation may be material for purposes of determining Net Asset Value; and/or (iii) for any other reason determined by the Portfolio Manager. The Portfolio Manager shall be absolutely protected in relying upon the valuation provided by such third party. In the event that the Portfolio Manager is provided with a range of potential valuations by such third party, the Portfolio Manager may select the valuation to be used from within such range.
 - (I) In determining the Fair Market Value of Investment Instruments in the Base Currency, the Portfolio Manager shall convert the value of Investment Instruments not held in the Base Currency into the Base Currency at such currency exchange rates as the Portfolio Manager may determine.
 - (J) The Portfolio Manager may determine to use a different value for any Investment Instrument than set out above if the Portfolio Manager determines that doing so would better reflect fair market value.
- (c) Subject to the terms of the Prospectus, in calculating the Net Asset Value of the assets:
- (i) every share allotted by the ICAV shall be deemed to be in issue and the assets shall be deemed to include not only the relevant cash and property in the

hands of the Depositary but also the amount of any cash or other property to be received in respect of shares allotted;

- (ii) where Investment Instruments have been agreed to be purchased or sold but such purchase or sale has not been completed such Investment Instruments shall be included or excluded and the gross purchase or net sale consideration excluded or included as the case may require as if such purchase or sale had been duly completed;
- (iii) where notice of a repurchase of shares has been given to the Depositary but such cancellation has not been completed the shares to be cancelled shall be deemed not to be in issue and the value of the assets shall be reduced by the amount payable to the Members upon such cancellation;
- (iv) where any amount in one currency is required to be converted into another currency the Portfolio Manager may effect such conversion using such rates as the Portfolio Manager shall determine at the relevant time except where otherwise specifically provided herein;
- (v) there shall be deducted from the assets the total amount of any actual or estimated liabilities properly payable out of capital including outstanding borrowings (if any) but excluding liabilities taken into account under subparagraph (ii) above and any estimated liability for tax on unrealised capital gains;
- (vi) there shall be deducted from the assets such sum in respect of tax (if any) on net capital gains realised during the current Accounting Period prior to the valuation being made as in the estimate of the Portfolio Manager will become payable;
- (vii) there shall be added to the assets a sum representing any interest or dividends accrued but not received and a sum representing unamortised expenses;
- (viii) there shall be added to the assets the amount (if any) available for distribution in respect of the last preceding Accounting Period but in respect of which no distribution has been declared and any unauthorised expenses;
- (ix) there shall be deducted from the assets the total amount (whether actual or estimated by the Portfolio Manager) of any other liabilities properly payable including accrued interest on borrowings (if any); and
- (x) the value of the assets shall be rounded upwards or downwards as appropriate to the nearest two decimal places or such other number of decimal places as the Directors may decide and as may be disclosed in the Prospectus.

17. **TRANSFER AND TRANSMISSION OF SHARES**

- (a) Transfers are only permitted where provided for in the Prospectus.
- (b) All transfers of shares shall be effected by a transfer in writing in any usual or common form and every form of transfer shall state the full name and address of the transferor and transferee.

- (c) The instrument of transfer of a share shall be signed by or on behalf of the transferor and need not be signed by the transferee. The transferor shall be deemed to remain the holder of the share until the name of the transferee is entered in the Register of Members in respect thereof.
- (d) A transfer of shares may not be registered if in consequence of such transfer the transferor or the transferee would hold a number of shares less than the Minimum Holding or would result in a contravention of this Instrument of Incorporation or would produce a result inconsistent with any provision of the Prospectus. Only investors who certify that they are Qualifying Investors and that they are aware of the risks involved in the proposed investment and that inherent in such investment is the potential to lose all of the sum invested shall be entered on the Register of Members as a Member.
- (e) The Directors may decline to register any transfer of shares at their sole discretion and as more particularly set out in the Prospectus. Without limitation, the Directors may decline to register any transfer of shares unless the instrument of transfer relates only to one class of shares and is deposited at the registered office of the ICAV or at such other place as the Directors may reasonably require, with such other evidence as the Directors may reasonably require to show the right of the transferor to make the transfer.
- (f) If the Directors decline to register a transfer of any share they shall, within two (2) months of the date on which the transfer was lodged with the ICAV, send to the transferee written notice of the refusal, where permitted to do so by applicable law.
- (g) The registration of any transfers may be suspended at such times and for such periods as the Directors from time to time may determine, **PROVIDED ALWAYS** that such registration of transfers shall not be suspended for more than thirty (30) days in any calendar year.
- (h) All instruments of transfer which shall be registered shall be retained by the ICAV subject to Clause 37, but any instrument of transfer which the Directors may decline to register shall (except in the case of fraud or where such is not permitted by applicable law) be returned to the person depositing the same.
- (i) In the case of the death of a Member, the survivors or survivor where the deceased was a joint holder, and the executors or administrators of the deceased where he was a sole or surviving holder, shall be the only person recognised by the ICAV as having title to his interest in the shares, but nothing in this Clause shall release the estate of the deceased holder whether sole or joint from any liability in respect of any share solely or jointly held by him.
- (j) Any guardian of an infant Member and any guardian or other legal representative of a Member under legal disability and any person entitled to a share in consequence of the death, insolvency or bankruptcy of a Member shall, upon producing such evidence of his title as the Directors may require, have the right either to be registered himself as the holder of the share or to make such transfer thereof as the deceased or bankrupt Member could have made, but the Directors shall, in either case, have the same right to refuse or suspend registration as they would have had in the case of a transfer of the share by the infant or by the deceased, insolvent or bankrupt Member before the death, insolvency or bankruptcy of the Member under legal disability before such disability.

- (k) A person so becoming entitled to a share in consequence of the death, insolvency or bankruptcy of a Member shall have the right to receive and may give a discharge for all monies payable or other advantages due on or in respect of the share, but he shall not be entitled to receive notice of or to attend or vote at meetings of the ICAV, nor save as aforesaid, to any of the rights or privileges of a Member unless and until he shall be registered as a Member in respect of the share **PROVIDED ALWAYS THAT** the Directors may at any time give notice requiring any such person to elect either to be registered himself or to transfer the share and if the notice is not complied with within ninety (90) days the Directors may thereafter withhold all moneys payable or other advantages due in respect of the share until the requirements of the notice have been complied with.

18. **INVESTMENT OBJECTIVES**

The Prospectus shall, where appropriate, set out details of the size, portfolio structure and investment strategies and objectives of the ICAV. Under the current Rules, the ICAV is deemed to be a collective investment scheme for marketing solely to Qualifying Investors. Consequently the minimum subscription will be the amount prescribed by the Central Bank from time to time and which, at the date of this Instrument of Incorporation, is €100,000 or its equivalent amount in any other currencies (other than in the case of Knowledgeable Investors).

19. **GENERAL MEETINGS**

- (a) All general meetings of the ICAV shall be held in Ireland.
- (b) Subject to Clause 19(c), the ICAV shall in each year hold a general meeting as its annual general meeting in addition to any other meeting in that year. Subject to Clause 19(c), not more than fifteen (15) months shall elapse between the date of one annual general meeting of the ICAV and that of the next **PROVIDED THAT** if the ICAV holds its first annual general meeting within eighteen (18) months after the date on which the registration order made by the Central Bank in respect of the ICAV comes into effect, the ICAV need not hold any other meeting as its annual general meeting in the year of its incorporation or in the following year. Subject to Clause 19(c), subsequent annual general meetings shall be held once in each year as determined by the Directors from time to time at such time and place in Ireland as may be determined by the Directors.
- (c) The Directors may elect to dispense with the holding of an annual general meeting by giving sixty (60) days' written notice to the Members. An election under this Clause has effect for the year in which it is made and subsequent years, but does not affect any liability already incurred by reason of default in holding an annual general meeting. Where an election under this Clause has effect for a year:
 - (i) one or more Members holding, or together holding, not less than 10 per cent of the voting rights in the ICAV; or
 - (ii) the Auditor,may require the ICAV to hold an annual general meeting in that year by giving notice in writing to the ICAV in the previous year or at least one month before the end of that year and the ICAV shall hold the required meeting.

- (d) All general meetings (other than annual general meetings) shall be called extraordinary general meetings.
- (e) The Directors may call an extraordinary general meeting whenever they think fit and extraordinary general meetings shall be convened on such requisition, or in default may be convened by such requisitionists, and in such manner as provided by the ICAV Act.

20. NOTICE OF GENERAL MEETINGS

- (a) At least fourteen (14) Clear Days' notice specifying the place, the day and the hour of the meeting, and in the case of special business the general nature of such business (and in the case of an annual general meeting specifying the meeting as such) shall be given in the manner hereinafter mentioned to such persons as are under the provisions hereof or the conditions of issue of the shares held by them entitled to receive notices from the ICAV.
- (b) The Directors, the AIFM and the Auditor shall each be entitled to receive notice of, and attend and speak at, any general meeting of the ICAV.
- (c) In each notice calling a meeting of the ICAV, there shall appear with reasonable prominence a statement that a Member entitled to attend and vote is entitled to appoint one or more proxies to attend and vote instead of him and that a proxy need not also be a Member.
- (d) The accidental omission to give notice to, or the non-receipt of notice by, any person entitled to receive notice shall not invalidate the proceedings at any general meeting.

21. PROCEEDINGS AT GENERAL MEETINGS

- (a) All business that is transacted at an extraordinary general meeting and all business that is transacted at an annual general meeting, with the exception of the election of Directors in the place of those retiring, the reappointment of the retiring Auditor and the fixing of the remuneration of the Auditor, shall be deemed special.
- (b) No business shall be transacted at any general meeting unless a quorum is present. Two Members present either in person or by proxy shall be a quorum for a general meeting provided that, in the event that there is only one Member in a Class, the quorum shall be one Member present in person or by proxy at the meeting. The quorum at any adjourned meeting shall be one Member present in person or by proxy and entitled to vote. A representative of a corporation authorised pursuant to Clause 22(m) to be present at any meeting of the ICAV shall be deemed to be a Member for the purpose of a quorum.
- (c) If within half an hour from the time appointed for a meeting a quorum is not present, the meeting, if convened on the requisition of or by Members, shall be dissolved. In any other case it shall stand adjourned to the same day in the next week, at the same time and place or to such other day and at such other time and place as the Directors may determine.
- (d) The chairman or, if absent, the deputy chairman of the ICAV, or failing him, some other Director nominated by the Directors shall preside as chairman at every general meeting of the ICAV, but if at any meeting neither the chairman nor the deputy chairman nor any other Director is present within fifteen (15) minutes after the time

appointed for holding the meeting, or if none of them are willing to act as chairman, the Directors present shall choose some Director present to be chairman, or if no Directors are present, or if all the Directors present decline to take the chair, the Members present shall choose some Member present to be chairman.

- (e) The chairman may, with the consent of any meeting at which a quorum is present (and shall if so directed by the meeting), adjourn the meeting from time to time and from place to place but no business shall be transacted at any adjourned meeting except business which might lawfully have been transacted at the meeting from which the adjournment took place. When a meeting is adjourned for fourteen (14) days or more ten (10) days' notice at the least specifying the place, the day and the hour of the adjourned meeting, shall be given as in the case of the original meeting but it shall not be necessary to specify in such notice the nature of the business to be transacted at the adjourned meeting. Save as aforesaid, it shall not be necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.
- (f) At any general meeting, a resolution put to the vote of the meeting shall be decided on a show of hands unless before or upon the declaration of the result of the show of hands a poll is demanded by the chairman or by five (5) Members or by any Members present representing at least ten (10) per cent of the shares in issue having the right to vote at the meeting. Unless a poll is so demanded, a declaration by the chairman that a resolution has been carried, or carried unanimously, or by a particular majority, or lost, or not carried by a particular majority, and an entry to that effect in the book containing the minutes of the proceedings of the ICAV shall be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against such resolution.
- (g) If a poll is duly demanded, it shall be taken in such manner and at such place as the chairman may direct (including the use of ballot or voting papers or tickets) and the result of a poll shall be deemed to be the resolution of the meeting at which the poll was demanded.
- (h) The chairman may, in the event of a poll, appoint scrutineers and may adjourn the meeting to some place and time fixed by him for the purpose of declaring the result of the poll.
- (i) In the case of an equality of votes, whether on a show of hands or on a poll, the chairman of the meeting at which the show of hands takes place or at which the poll is demanded shall have a second or casting vote.
- (j) A poll demanded on the election of a chairman and a poll demanded on a question of adjournment shall be taken forthwith. A poll demanded on any other question shall be taken at such time and place as the chairman directs not being more than thirty (30) days from the date of the meeting or adjourned meeting at which the poll was demanded.
- (k) The demand for a poll shall not prevent the continuance of a meeting for the transaction of any business other than the question on which the poll has been demanded.
- (l) A demand for a poll may be withdrawn and no notice need be given of a poll not taken immediately.

- (m) If at any time the share capital is divided into different classes of shares, the rights attached to any class (unless otherwise provided by the terms of issue of the shares of that class or unless otherwise provided herein) may, whether or not the ICAV is being wound up, be varied at the absolute discretion of the Directors with the consent in writing of all of the holders of shares in that class or the approval of three-fourths of the holders of shares in that class, by value, represented or present and voting at a separate general meeting of the holders of the shares of that class, to which the provisions of this Instrument of Incorporation relating to general meetings shall *mutatis mutandis* apply.
- (n) Subject to the provisions of the ICAV Act and except where otherwise prescribed by the ICAV Act, a resolution in writing signed by all of the Members for the time being entitled to attend and vote on such resolution at a general meeting (or being bodies corporate by their duly authorised representative) shall be as valid and effective for all purposes as if the resolution had been passed at a general meeting duly convened and held, and may consist of several documents in like form each signed by one or more persons, and if described as a Special Resolution shall be deemed to be a Special Resolution within the meaning of the ICAV Act. Any such resolution shall be served on the ICAV.

22. VOTES OF MEMBERS

- (a) On a show of hands every Member who is present shall have one vote.
- (b) On a poll every Member present in person or by proxy shall be entitled to one vote in respect of each share held by him.
- (c) In the case of joint holders of a share, the vote of the senior who tenders a vote, whether in person or by proxy, shall be accepted to the exclusion of the votes of the other joint holders, and for this purpose seniority shall be determined by the order in which the names stand in the Register of Members in respect of the shares.
- (d) No objection shall be raised to the qualification of any voter except at the meeting or adjourned meeting at which the vote objected to is given or tendered, and every vote not disallowed at such meeting shall be valid for all purposes. Any such objection made in due time shall be referred to the chairman of the meeting, whose decision shall be final and conclusive.
- (e) On a poll, votes may be given either personally or by proxy.
- (f) On a poll, a Member entitled to more than one vote need not, if he votes, use all his votes or cast all the votes he uses in the same way.
- (g) The instrument appointing a proxy shall be in writing under the hand of the appointor or of his attorney duly authorised in writing, or if the appointor is a corporation, either under its common seal or under the hand of an officer or attorney so authorised. The appointment of a proxy by electronic means shall be effective only in such form as the Directors may approve. An instrument of proxy shall be in any usual form or in such form as the Directors may approve **PROVIDED ALWAYS THAT** such form shall give the holder the choice of authorising his/her proxy to vote for or against each resolution.
- (h) Any person (whether a Member or not) may be appointed to act as a proxy. A Member may appoint more than one proxy to attend on the same occasion.

- (i) The instrument appointing a proxy and the power of attorney or other authority (if any) under which it is signed or a notarially certified copy of such power or authority, shall be deposited at the registered office of the ICAV or at such other place as is specified for that purpose in the notice of meeting or in the instrument of proxy issued by the ICAV not later than the deadline for receipt of proxies set out in the notice of meeting and if the aforesaid conditions are not complied with the instrument of proxy shall not be treated as valid. Where the appointment of a proxy and any authority under which it is signed is to be received by the ICAV in electronic form, it may also be received where an address has been specified by the ICAV for the purpose of receiving Electronic Communications:
- (i) in the notice convening the meeting; or
 - (ii) in any appointment of proxy sent out by the ICAV in relation to the meeting; or
 - (iii) in any invitation contained in an Electronic Communication to appoint a proxy issued by the ICAV in relation to the meeting.
- (j) No instrument appointing a proxy shall be valid after the expiration of twelve (12) months from the date named in it as the date of its execution, except at an adjourned meeting or on a poll demanded at a meeting or an adjourned meeting in cases where the meeting was originally held within twelve (12) months from such date.
- (k) The Directors may at the expense of the ICAV send, by post or otherwise, to the Members instruments of proxy (with or without prepaid postage for their return) for use at any general meeting or at any meeting of any class of Members, either in blank or nominating in the alternative any one or more of the Directors or any other persons as proxy. If for the purpose of any meeting invitations to appoint as proxy a person or one of a number of persons specified in the invitations are issued at the expense of the ICAV, such invitations shall be issued to all (and not to some only) of the Members entitled to be sent a notice of the meeting and to vote thereat by proxy.
- (l) A vote given in accordance with the terms of an instrument of proxy shall be valid notwithstanding the death or insanity of the principal or the revocation of the instrument of proxy, or of the authority under which the instrument of proxy was executed, or the transfer of the shares in respect of which the instrument of proxy is given, provided that no intimation in writing of such death, insanity, revocation or transfer shall have been received by the ICAV at the registered office of the ICAV, before the commencement of the meeting or adjourned meeting at which the instrument of proxy is used.
- (m) Any body corporate which is a Member may authorise by resolution of its directors or other governing body such person as it thinks fit to act as its representative at any meeting of the ICAV and the person so authorised shall be entitled to exercise the same powers on behalf of the body corporate which he represents as that body corporate could exercise if it were an individual Member and such body corporate shall for the purposes of these presents be deemed to be present in person at any such meeting if a person so authorised is present thereat.
- (n) The provisions of Clauses 19, 20, 21 and 22 shall apply *mutatis mutandis* to meetings of each class or series of Members.

23. **DIRECTORS**

- (a) The number of the Directors shall not be less than two or, unless otherwise determined by the ICAV by Ordinary Resolution, more than twelve. The first Directors shall be appointed by the subscribers herein.
- (b) A Director need not be a Member.
- (c) The Directors shall have power at any time and from time to time to appoint any person to be a Director, either to fill a casual vacancy or as an addition to the existing Directors.
- (d) Subject to the prohibition on tax-free payments to Directors contained in the ICAV Act, the Directors shall be entitled to such remuneration in relation to the performance of their duties as the Directors may from time to time determine. The Directors and any alternate Directors may also be paid all travelling, hotel and other expenses properly incurred by them in attending and returning from meetings of the Directors or any committee of the Directors or general meetings or any meetings in connection with the business of the ICAV.
- (e) The ICAV shall not make any payment to a Director by way of compensation for loss of office, or as consideration for or in connection with retirement for loss of office, or as consideration for or in connection with retirement from office, unless the following conditions are first satisfied:
 - (i) that particulars relating to the proposed payment (including its amount) are disclosed to the Members; and
 - (ii) that the proposal is approved by resolution of the ICAV in general meeting.
- (f) The Directors may, in addition to such remuneration as is referred to in Clause 23(d) hereof grant special remuneration to any Director who, being called upon, shall perform any special or extra services to or at the request of the ICAV.
- (g) The ICAV at any general meeting at which a Director retires or is removed shall fill the vacated office by electing a Director unless the ICAV shall determine to reduce the number of Directors.
- (h) The office of a Director shall be vacated by a Director in any of the following events, namely:
 - (i) if he resigns his office by notice in writing signed by him and left at the registered office of the ICAV;
 - (ii) if he becomes bankrupt or makes any arrangement or composition with his creditors generally;
 - (iii) if he becomes of unsound mind;
 - (iv) if he ceases to be a Director by virtue of, or becomes prohibited from being a Director by reason of an order made under the provisions of any law or enactment; or
 - (v) if he is removed from office by an Ordinary Resolution.

- (i) At least ten (10) days previous notice in writing shall be given to the ICAV of the intention of any Member or Members to propose any person other than a retiring Director for election to the office of Director and such notice shall be accompanied by notice in writing signed by the person to be proposed confirming his willingness to be appointed **PROVIDED ALWAYS THAT** if the Members present at a general meeting unanimously consent, the chairman of such meeting may waive the said notices and submit to the meeting the name of any person so nominated, provided such person confirms in writing his willingness to be appointed and **PROVIDED FURTHER THAT** the nomination of any person other than a retiring Director for election as Director may be made only by a Director or by such Member or Members holding in the aggregate shares representing not less than ten (10) per cent of the Net Asset Value of the ICAV on the Dealing Day preceding the date of nomination.
- (j) At a general meeting a motion for the appointment of two or more persons as Directors by a single resolution shall not be made unless a resolution that it shall be so made has been first agreed to by the meeting without any vote being given against it.
- (k) Any Director may at any time by instrument in writing (whether in electronic form or otherwise in writing) under his hand and deposited at the registered office, or delivered at a meeting of the Directors, appoint any Director or other person to be his alternate Director and may in like manner at any time terminate such appointment.
- (l) The appointment of an alternate Director shall determine if his appointer ceases to be a Director or on the happening of any such event which if he were a Director would cause him to vacate such office.
- (m) An alternate Director shall be entitled to receive notices of meetings of the Directors and shall be entitled to attend and vote as a Director at any such meeting at which the Director appointing him is not personally present and generally at such meeting to perform all functions of his appointor as a Director and for the purposes of the proceedings at such meeting the provisions hereof shall apply as if he (instead of his appointor) were a Director. If he himself shall be a Director, or shall attend any such meeting as an alternate for more than one Director, his voting rights shall be cumulative, provided, however, that he shall count as one for the purposes of determining a quorum. If his appointor is for the time being temporarily unable to act, his signature to any resolution in writing of the Directors or any other document executed on behalf of the ICAV shall be as effective as the signature of his appointor. To such extent as the Directors may from time to time determine in relation to any committee of the Directors, the foregoing provisions of this paragraph shall also apply *mutatis mutandis* to any meeting of any such committee of which his appointer is a member. An alternate Director shall not (save as aforesaid or as otherwise herein provided) have power to act as a Director nor shall he be deemed to be a Director.
- (n) An alternate Director shall be entitled to contract and be interested in and benefit from contracts or arrangements or transactions and to be repaid expenses and to be indemnified to the same extent *mutatis mutandis* as if he were a Director but he shall not be entitled to receive from the ICAV in respect of his appointment as alternate Director any remuneration except only such part (if any) of the remuneration otherwise payable to his appointor as such appointor may by notice in writing to the ICAV from time to time direct.

24. **DIRECTORS, OFFICES AND INTERESTS**

- (a) The Directors may appoint one or more of their body to the office of managing Director or joint managing Director or to any other executive office under the ICAV (including, where considered appropriate, the office of chairman) on such terms and for such period as they may determine and, without prejudice to the terms of any contract entered into in any particular case, may revoke any such appointment at any time.
- (b) A Director holding any such executive office shall receive such remuneration, whether in addition to, or in substitution for, his ordinary remuneration, as a Director and whether by way of salary, commission, participation in profits or otherwise or partly in one way and partly in another, as the Directors may determine.
- (c) The appointment of any Director to the office of chairman or managing or joint managing Director shall determine automatically if he ceases to be a Director but without prejudice to any claim for damages for breach of any contract of service between him and the ICAV.
- (d) The appointment of any Director to any other executive office shall not determine automatically if he ceases from any cause to be a Director unless the contract or resolution under which he holds office shall expressly state otherwise, in which event such determination shall be without prejudice to any claim for damages for breach of any contract of service between him and the ICAV.
- (e) A Director may hold any other office or place of profit under the ICAV (except that of Auditor) in conjunction with his office of Director, and may act in a professional capacity to the ICAV, on such terms as to remuneration and otherwise as the Directors may arrange.
- (f) Subject to the provisions of the ICAV Act, and provided that he has disclosed to the Directors the nature and extent of any material direct or indirect interest of his, a Director notwithstanding his office:
 - (i) may be a party to, or otherwise interested in, any transaction or arrangement with the ICAV or in which the ICAV is interested; and
 - (ii) shall not be accountable, by reason of his office, to the ICAV for any benefit which he derives from any such office or employment or from any such transaction or arrangement or from any interest in any such body corporate and no such transaction or arrangement shall be liable to be avoided on the ground of any such interest or benefit.
- (g) No Director or intending Director shall be disqualified by his office from contracting with the ICAV either as vendor, purchaser or otherwise, nor shall any such contract or any contract or arrangement entered into by or on behalf of the other ICAV in which any Director shall be in any way interested be avoided nor shall any Director so contracting or being so interested be liable to account to the ICAV for any profit realised by any such contract or arrangement by reason of such Director holding that office or of the fiduciary relationship thereby established. The nature of a Director's interest must be declared by him at the meeting of the Directors at which the question of entering into the contract or arrangement is first taken into consideration, or if the Director was not at the date of that meeting interested in the proposed contract or arrangement at the next meeting of the Directors held after he became so interested,

and in a case where the Director becomes interested in a contract or arrangement after it is made, at the first meeting of the Directors held after he becomes so interested.

- (h) A copy of every declaration made and notice given under this Clause shall be entered within three (3) days after the making or giving thereof in a book kept for this purpose. Such book shall be open for inspection without charge by any Director, Secretary, Auditor or Member at the registered office of the ICAV and shall be produced at every general meeting of the ICAV and at any meeting of the Directors if any Director so requests in sufficient time to enable the book to be available at the meeting.
- (i) For the purposes of this Clause:
 - (i) a general notice given to the Directors by a Director to the effect that he is a member of a specified Irish collective asset management vehicle or a specified company or firm and is to be regarded as interested in any contract which may, after the date of the notice, be made with that Irish collective asset management vehicle, company or firm, or he is to be regarded as interested in any contract which may after the date of the notice be made with a specified person who is connected with him within the meaning of section 77 of the ICAV Act shall be deemed to be a sufficient declaration of interest in relation to any such contract **PROVIDED HOWEVER** that no such notice shall be of effect unless either it is given at a meeting of the Directors or the Director takes reasonable steps to secure that it is brought up and read at the next meeting of the Directors after it is given;
 - (ii) an interest of which a Director has no knowledge and of which it is unreasonable to expect him to have knowledge shall not be treated as an interest of his; and
 - (iii) a Director shall not be required to declare his interest where that interest cannot reasonably be regarded as likely to give rise to a conflict with the interests of the ICAV.
- (j) Save as otherwise provided by this Instrument of Incorporation, a Director shall not vote at a meeting of the Directors or a committee of Directors on any resolution concerning a matter in which he has, directly or indirectly, an interest which is material or a duty which conflicts or may conflict with the interests of the ICAV. Unless otherwise resolved by the Directors, a Director shall not be counted in the quorum present at a meeting in relation to any such resolution on which he is not entitled to vote.
- (k) A Director shall be entitled (in the absence of some other material interest than is indicated below) to vote (and be counted in the quorum) in respect of any resolution concerning any of the following matters, namely:
 - (i) the giving of any security, guarantee or indemnity to him in respect of money lent by him to the ICAV or any of its Subsidiaries or Associated Companies or obligations incurred by him at the request of or for the benefit of the ICAV or any of its Subsidiaries or Associated Companies;
 - (ii) the giving of any security, guarantee or indemnity to a third party in respect of a debt or obligation of the ICAV or any of its Subsidiaries or Associated

Companies for which he himself has assumed responsibility in whole or in part under a guarantee or indemnity or by the giving of security;

- (iii) any proposal concerning any offer of shares or other securities of or by the ICAV or any of its Subsidiaries or Associated Companies for subscription, purchase or exchange in which offer he is or is to be interested as a participant in the underwriting or sub-underwriting thereof; or
 - (iv) any proposal concerning any other ICAV, body corporate, company, trust, partnership or other body of persons in which he is or is to be interested, directly or indirectly and whether as an officer, shareholder, employee or otherwise.
- (l) Where proposals are under consideration concerning the appointment (including fixing or varying the terms of appointment) of two or more Directors to offices or employments with the ICAV such proposals may be divided and considered in relation to each Director separately and in such case each of the Directors concerned (if not otherwise debarred from voting) shall be entitled to vote (and be counted in the quorum) in respect of each resolution, except that concerning his own appointment.
 - (m) If a question arises at a meeting of Directors or of a committee of Directors as to the materiality of a Director's interest or as to the right of any Director to vote and such question is not resolved by his voluntarily agreeing to abstain from voting, such question may be referred, before the conclusion of the meeting, to the chairman of the meeting and his ruling in relation to any Director other than himself shall be final and conclusive.
 - (n) For the purpose of this Clause, an interest of a person who is the spouse or a minor child of a Director shall be treated as an interest of the Director and, in relation to an alternate Director, an interest of his appointor shall be treated as an interest of the alternate Director.
 - (o) The ICAV by Ordinary Resolution may suspend or relax the provisions of this Clause to any extent or ratify any transaction not duly authorised by reason of a contravention of this Clause.

25. **POWERS OF DIRECTORS**

- (a) The business of the ICAV shall be managed by the Directors, who may exercise all such powers of the ICAV as are not by the ICAV Act, by the Rules or hereby required to be exercised by the ICAV in general meeting, subject, nevertheless, to the provisions of the ICAV Act, to the Rules and to the regulations herein contained being not inconsistent with the aforesaid regulations as may be prescribed by the ICAV in general meeting, but no regulations made by the ICAV in general meeting shall invalidate any prior act of the Directors which would have been valid if such regulations had not been made. The general powers given by this Clause shall not be limited or restricted by any special authority or power given to the Directors by this or any other Clause.
- (b) All cheques, promissory notes, drafts, bills of exchange and other negotiable or transferable instruments drawn on the ICAV, and all other receipts for moneys paid to the ICAV shall be signed, drawn, accepted, endorsed or otherwise executed, as the case may be, in such manner as the Directors from time to time shall by resolution determine.

- (c) Subject to the limits and conditions set forth in the AIFMD Regulations and in the Prospectus and subject to the provisions of this Instrument of Incorporation, the Directors may exercise all the powers of the ICAV to invest the ICAV's assets. The Directors may exercise all the powers of the ICAV to invest all or any funds of the ICAV as authorised by this Instrument of Incorporation and may establish Subsidiaries in the circumstances specified by the Central Bank and subject to the conditions imposed by the Central Bank, including restrictions on the Subsidiary acting other than under the control of the ICAV and restrictions on any person or entity other than the ICAV holding shares in the Subsidiary.
- (d) The Directors may authorise the repurchase of shares in connection with any equalisation arrangements concerning the calculation of performance fees as set out in the Prospectus.

26. **BORROWING AND INVESTMENT POWERS**

Subject to the limits and conditions set forth in the ICAV Act and in the Prospectus or otherwise laid down by the Central Bank and subject to the provisions of this Instrument of Incorporation (including, without limitation, Clause 27(j) hereof), the Directors may exercise all the powers of the ICAV to make and dispose of Investment Instruments, grant guarantees, borrow money, to mortgage or charge its undertaking, property, or any part thereof.

27. **PROCEEDINGS OF DIRECTORS**

- (a) The Directors may meet together for the dispatch of business, adjourn and otherwise regulate their meetings as they think fit. Questions arising at any meeting shall be determined by a majority of votes. In the case of an equality of votes, the chairman shall have a second or casting vote. A Director may, and the Secretary on the requisition of a Director shall, at any time summon a meeting of the Directors.
- (b) The quorum necessary for the transaction of business of the Directors may be fixed by the Directors and, unless so fixed at any other number, shall be two.
- (c) The continuing Directors or a sole continuing Director may act notwithstanding any vacancies in their number but, if and so long as the number of Directors is reduced below the minimum number fixed by or in accordance with the provisions hereof, the continuing Directors or Director may act for the purpose of filling vacancies in their number or of summoning general meetings of the ICAV, but not for any other purpose. If there be no Directors or Director able or willing to act, then any two Members may summon a general meeting for the purpose of appointing Directors.
- (d) The Directors may from time to time elect or remove a chairman and, if they think fit, a deputy chairman and determine the period for which they respectively are to hold office.
- (e) The chairman or, failing him, the deputy chairman shall preside at all meetings of the Directors, but if there be no chairman or deputy chairman, or if at any meeting the chairman or deputy chairman be not present within five (5) minutes after the time appointed for holding the same, the Directors present may choose one of their number to be chairman of the meeting.
- (f) A resolution in writing (in electronic form or otherwise) signed (whether by Electronic Signature, Advanced Electronic Signature or otherwise approved by the Directors) by all the Directors for the time being entitled to receive notice of a

meeting of the Directors and to vote thereat shall be as valid and effectual as a resolution passed at a meeting of the Directors duly convened and may consist of several documents in the like form each signed by one or more of the Directors and for the purposes of the foregoing, signature by any alternate Director shall be as effective as the signature of the Director by whom he is appointed.

- (g) A meeting of the Directors for the time being at which a quorum is present shall be competent to exercise all powers and discretions for the time being exercisable by the Directors.
- (h) The Directors may delegate any of their powers to committees consisting of such of their members as they think fit. The meetings and proceedings of any such committee shall conform to the requirements as to quorum imposed under the provisions of Clause 27(b) and shall be governed by the provisions hereof regulating the meetings and proceedings of the Directors so far as the same are applicable and are not superseded by any regulations imposed on them by the Directors.
- (i) The Directors may, whether by standing resolution or otherwise, delegate their powers relating to the issue and repurchase of shares and the calculation of the Net Asset Value of the shares, the declaration of dividends and all management and administrative duties in relation to the ICAV to the Administrator, the AIFM or to any duly authorised Officer or other person subject to such terms and conditions as the Directors in their absolute discretion may resolve.
- (j) The Directors may delegate their powers relating to the management of the ICAV's assets to the AIFM, the Portfolio Manager or its or their sub-delegates or to any duly authorised Officer or other person, subject to such terms and conditions as the Directors in their absolute discretion may resolve.
- (k) All acts done by any meeting of Directors, or of a committee of Directors or by any person authorised by the Directors shall, notwithstanding it be afterwards discovered that there was some defect in the appointment or authorisation of any such Directors or person acting as aforesaid, or that they or any of them were disqualified, or had vacated office, or were not entitled to vote, be as valid as if every such person had been duly appointed, and was qualified and had continued to be a Director and had been entitled to vote.
- (l) The Directors shall cause minutes to be made of:
 - (i) all appointments of officers made by the Directors;
 - (ii) the names of the Directors present at each meeting of the Directors and of any committee of Directors; and
 - (iii) all resolutions and proceedings of all general meetings of the ICAV and of the Directors and of committees of Directors.
- (m) Any such minutes as are referred to in Clause 27(l) hereof, if purporting to be signed by the chairman of the meeting at which the proceedings took place, or by the chairman of the next succeeding meeting, shall, until the contrary be proved, be conclusive evidence of the proceedings.
- (n) Any Director may participate in a meeting of the Directors or any committee of the Directors by means of a conference telephone or other telecommunication equipment

by means of which all persons participating in the meeting can hear each other speak and such participation in a meeting shall constitute presence in person at the meeting.

28. **SECRETARY**

The Secretary shall be appointed by the Directors for such term, at such remuneration and on such conditions as they think fit and may be removed by the Directors. Anything required or authorised to be done by the Secretary may, if the office is vacant or there is for any other reason no Secretary capable of acting, be done by any assistant or deputy secretary or if there is no assistant or deputy secretary capable of acting, by any officer of the ICAV authorised generally or specially in that behalf by the Directors **PROVIDED THAT** any provisions hereof requiring or authorising anything to be done by a Director and the Secretary shall not be satisfied by its being done by or to the same person acting both as Director and as, or in the place of, the Secretary.

29. **THE SEAL AND AUTHORISED SIGNATORIES**

- (a) The ICAV shall not be required to have a common seal, but may, at the absolute discretion of the Directors, provide itself with a common seal. Documents shall have the same effect as if executed under the common seal of the ICAV if executed by the ICAV and signed on behalf of the ICAV in accordance with the requirements of the ICAV Act.
- (b) To the extent that the ICAV has a common seal, the name of the ICAV shall be engraved on the seal in legible characters and the Directors shall provide for the safe custody of the seal of the ICAV.
- (c) The Directors may from time to time as they think fit appoint one or more persons as authorised signatories of the ICAV for the purposes of signing and/or executing documents and for such other purposes as are provided for in the resolution, power of attorney, authorised signatory list or other authorisation granted by the Directors.

30. **DIVIDENDS**

- (a) The Directors may from time to time as they think fit pay such dividends on shares of the ICAV as appear to the Directors to be justified, subject to any policy statement and procedures in relation to dividends set forth in the Prospectus.
- (b) Subject to any policy statement and procedures in relation to dividends set forth in the Prospectus, the amount available for distribution in respect of any class of shares in any Fiscal Period shall be a sum equal to the aggregate of the net income received by the ICAV in respect of any class of shares (whether in the form of dividends, interest or otherwise and including realised and unrealised capital gains less realised and unrealised capital losses during the Fiscal Period) calculated in accordance with the following:
 - (i) addition or deduction of a sum by way of adjustment to allow for the effect of sales or repurchases, cum or ex-dividend;
 - (ii) addition of a sum representing any interest or dividend or other income accrued but not received by the ICAV at the end of the Fiscal Period and deduction of a sum representing (to the extent that an adjustment by way of addition has been made in respect of any previous Fiscal Period) interest or dividends or other income accrued at the end of the previous Fiscal Period;

- (iii) addition of the amount (if any) available for distribution in respect of the last preceding Fiscal Period but not distributed in respect thereof;
 - (iv) addition of a sum representing the estimated or actual repayment of tax resulting from any claims in respect of corporation tax relief or double taxation relief or otherwise;
 - (v) deduction of the amount of any tax or other estimated or actual liability properly payable out of the income of the ICAV;
 - (vi) deduction of a sum representing participation in income paid upon the cancellation of shares during the Fiscal Period;
 - (vii) deduction of such sum as the ICAV may think appropriate in respect of any of the expenses provided in Clause 2 hereof **PROVIDED ALWAYS THAT** the ICAV shall not be responsible for any error in any estimates of corporation tax repayments or double taxation relief expected by way of taxation or of income receivable and, if the same shall not prove in all respects correct, the Directors shall ensure that any consequent deficiency or surplus shall be adjusted in the Fiscal Period in which a further or final settlement is made of such tax repayment or liability or claim to relief or the amount of any such estimated income receivable is determined, and no adjustment shall be made to any dividend previously declared; and
 - (viii) deduction of any amounts declared as a distribution but not yet distributed.
- (c) The Directors may also declare such dividends on the shares or on any class of shares from the capital attributable to the relevant class provided appropriate disclosure is made in the Prospectus in accordance with the requirements of the Central Bank.
 - (d) Where provided for in the Prospectus, the Directors may distribute in kind among Members of a class by way of dividend or otherwise any of the assets of the relevant class.
 - (e) Shares shall qualify for dividends in such manner as may be determined by the Directors.
 - (f) Any declaration of a dividend by the Directors on any class of shares may specify that the same shall be payable to the persons registered as the Members at the close of business on a particular date, and thereupon the dividend shall be payable to them in accordance with their respective holdings so registered, but without prejudice to the rights *inter se* in respect of such dividend, of transferors and transferees of shares.
 - (g) The ICAV may transmit any dividend or other amount payable in respect of any share by wire transfer or other electronic means or by cheque or warrant sent by ordinary post to the registered address of the Member, or, in the case of joint holders, to the person whose name and address appears first on the Register of Members and shall not be responsible for any loss arising in respect of such transmission.
 - (h) No dividend or other amount payable to any holder of shares shall bear interest against the ICAV. All unclaimed dividends and other amounts payable as aforesaid may be invested or otherwise made use of for the benefit of the ICAV until claimed. Payment by the ICAV of any unclaimed dividend or other amount payable in respect of a share into a separate interest bearing account shall not constitute the ICAV a

trustee in respect thereof. Any dividend unclaimed after six (6) years from the date when it first became payable shall be forfeited automatically, without the necessity for any declaration or other action by the ICAV.

- (i) In the event that the amount payable to a Member as a dividend is exceeded by the cost of dispatching, transmitting, effecting or otherwise making such payments to the Member, the ICAV shall be entitled to retain such dividends for the benefit of the relevant Member until such time as the amount payable to the Member is not exceeded by the cost of dispatching, transmitting, effecting or otherwise making such payments to the Member. Payment by the ICAV of any retained dividend into a separate account shall not constitute the ICAV a trustee in respect thereof.
- (j) At the option of any Members, the Directors may apply all dividends declared on the shares of any class held by such Member in the issue of additional shares of that class in the ICAV to that Member at the Net Asset Value obtaining when such dividends are declared and on such terms as the Directors from time to time may resolve, provided, however, that any Member shall be entitled to elect to receive a cash dividend in respect of the shares held by that Member.
- (k) The Directors may provide at their absolute discretion that Members will be entitled to elect to receive *in lieu* of any dividend (or part thereof) an issue of additional shares of the same class as those in respect of which the dividend is declared in the ICAV credited as fully paid. In any such case the following provisions shall apply:
 - (i) the number of additional shares (including any fractional entitlement) to be issued *in lieu* of any amount of dividend shall be equal in value to the amount of such dividend at the date the dividend was declared;
 - (ii) the dividend (or that part of the dividend in respect of which a right of election has been accorded) shall not be payable on shares in respect of which the share election has been duly exercised (the “**Elected Shares**”), and *in lieu* thereof additional shares shall be issued to the holders of the Elected Shares on the basis determined as aforesaid and for such purpose the Directors shall capitalise a sum equal to the aggregate value of the dividends in respect of which elections have been made and apply the same in paying up in full the appropriate amount of unissued shares;
 - (iii) the additional shares so issued shall rank *pari passu* in all respects with the fully paid shares then in issue save only as regards participation in the relevant dividend (or share election *in lieu*);
 - (iv) the Directors may do all acts and things considered necessary or expedient to give effect to any such capitalisation, with full power to the Directors to make such provision as they think fit in the case of shares becoming distributable in fractions so that fractional entitlements are disregarded or rounded up or the benefit of fractional entitlements accrues to the ICAV; and
 - (v) the Directors may on any occasion determine that rights of election shall not be made available to any Member with registered addresses in any territory where in the absence of a registration statement or other special formalities the circulation of an offer of rights of election would or might be unlawful, and in such event the provisions aforesaid shall be read and construed subject to such determination.

- (1) Where the ICAV proposes to pay a distribution to a Member, it shall be entitled to deduct from the distribution such amount as may be necessary to discharge the ICAV's liability to tax in respect of such distribution and shall arrange to discharge the amount of tax due.

31. **UNTRACED MEMBERS**

- (a) The ICAV shall be entitled to repurchase any share of a Member or any share to which a person is entitled by transmission and to forfeit any dividend which is declared and remains unpaid for a period of six (6) years if and provided that:
 - (i) for a period of six (6) years no cheque or confirmation of ownership of shares sent by the ICAV through the post in a pre-paid letter addressed to the Member or to the person entitled by transmission to the share at his address on the Register of Members or the last known address given by the Member or the person entitled by transmission to which cheques or confirmations of ownership of shares are to be sent has been cashed or acknowledged and no communication has been received by the ICAV from the Member or the persons entitled by transmission (provided that during such six (6) year period at least three dividends shall have become payable in respect of such share);
 - (ii) at the expiration of the said period of six (6) years by notice sent by pre-paid letter addressed to the Member or to the person entitled by transmission to the share at his address on the Register of Members or to the last known address given by the Member or the person entitled by transmission or by advertisement in a national daily newspaper published in Ireland or in a newspaper circulating in the area in which the address referred to in Clause 31(a)(i) is located the ICAV has given notice of its intention to repurchase such share;
 - (iii) during the period of three (3) months after the date of the advertisement and prior to the exercise of the power of repurchase the ICAV has not received any communication from the Member or person entitled by transmission; and
 - (iv) if the shares are quoted on a stock exchange the ICAV has first given notice in writing to the appropriate section of such stock exchange of its intention to repurchase such share, if it is required to do so under the rules of such stock exchange.
- (b) The ICAV shall account to the Member or to the person entitled to such share for the net proceeds of such repurchase by carrying all moneys in respect thereof to a separate interest bearing account which shall be a permanent debt of the ICAV and the ICAV shall be deemed to be a debtor and not a trustee in respect thereof for such Member or other person.

32. **ACCOUNTS**

- (a) The Directors shall cause to be kept such books of account as are necessary in relation to the conduct of the ICAV's business and as are required by the ICAV Act.
- (b) The books of account shall be kept at the registered office, or at such other place or places as the Directors shall think fit, and shall at all reasonable times be open to

inspection by the Directors, the Secretary and by those persons entitled pursuant to the ICAV Act to inspect the accounting records of the ICAV.

- (c) The ICAV's financial statements shall be prepared in accordance with such general accepted accounting practice in Ireland, international financial reporting standards or an alternative body of accounting standards as the Directors may determine in accordance with the ICAV Act.
- (d) A balance sheet, including every document required by law to be annexed to it, and a profit and loss account of the ICAV shall be made out as at the end of each financial year of the ICAV as determined by the Directors from time to time and shall be audited by the Auditor, and such balance sheet shall contain a general summary of the assets and liabilities of the ICAV. The balance sheet shall be accompanied by a report of the Directors as to the state and condition of the ICAV, and the amount (if any) which they have carried or propose to carry to reserve, together with a profit and loss account. The balance sheet of the ICAV and the report of the Directors and the profit and loss account shall be signed on behalf of the Directors by at least two of the Directors. An Auditor's report shall be attached to the balance sheet of the ICAV.
- (e) Once at least in every year the Directors shall cause to be prepared an Annual Report relating to the management of the ICAV. The Annual Report shall include the balance sheet and profit and loss account duly audited by the Auditor and the Directors' report and the Auditor's report as provided for in Clause 32(d) and shall be in a form approved by the Central Bank and shall contain such information required by it. There shall be attached to such Annual Report such additional information and reports as the Central Bank may specify.
- (f) A copy of the Annual Report including the balance sheet (including every document required by law to be annexed thereto) together with a copy of the Directors' report and the Auditor's report shall be sent by the ICAV (by post or where a Member so elects, by electronic mail or any other means of Electronic Communication, provided that in the case of those documents sent by electronic mail or any other means of Electronic Communication, such documents shall be sent to the address of the recipient notified to the ICAV by the recipient for such purposes or shall be made available on the website of the ICAV) to the Members and to every person entitled under the ICAV Act to receive them and if any of the shares are quoted on any stock exchange, the required number of copies of these documents shall be forwarded at the same time to such stock exchange.
- (g) The Auditor's certificate appended to the Annual Report and statement referred to therein shall declare that the accounts or statement attached respectively thereto (as the case may be) have been examined together with the books and records of the ICAV in relation thereto and that the Auditor has obtained all the information and explanations they have required and the Auditor shall report whether the accounts are in their opinion properly drawn up in accordance with such books and records and present a true and fair view of the state of affairs of the ICAV and whether the accounts are in their opinion properly drawn up in accordance with the provisions hereof.
- (h) The information required by Regulation 24 (if applicable) of the AIFMD Regulations shall be disclosed by way of a report to Members or other means permitted under, and at the frequency required by, the AIFMD Regulations.

33. **AUDIT**

- (a) The appointment and removal of Auditor and the determination of eligibility for appointment as Auditor to the ICAV shall be governed by the provisions of the ICAV Act.
- (b) Subject to Clause 33(d), the ICAV shall, at each annual general meeting, appoint Auditor to hold office from the conclusion of that meeting until the conclusion of the next annual general meeting in accordance with the ICAV Act.
- (c) The first Auditor shall be appointed by the Directors at any time before the first general meeting and shall hold office until the conclusion of that meeting.
- (d) In the event that the ICAV does not hold an annual general meeting, the Directors shall appoint the Auditor.
- (e) On the date on which the holding of an annual general meeting is dispensed with in accordance with Clause 19(c), any Auditor appointed in accordance with Clause 33(c) or by the ICAV in accordance with Clause 33(b) cease to hold office and the Directors shall immediately reappoint the Auditor or appoint a new Auditor.
- (f) The Directors, or the ICAV in general meeting, may fill a casual vacancy in the office of Auditor. While a vacancy in the office of Auditor continues, any surviving or continuing Auditor may continue to act.
- (g) A person, other than the retiring Auditor, shall not be capable of being appointed Auditor at an annual general meeting unless notice of an intention to nominate that person to the office of Auditor has been given by a Member to the ICAV not less than twenty eight (28) days before the annual general meeting and the Directors shall send a copy of any such notice to the retiring Auditor and the proposed replacement Auditor and shall give notice thereof and of any representations made by the retiring Auditor to the ICAV and its Members in accordance with Section 133 of the ICAV Act.
- (h) The remuneration of the Auditor appointed by the ICAV in general meeting shall be approved by the ICAV in general meeting or in such manner as the ICAV in general meeting may determine. The remuneration of the Auditor appointed by the Directors shall be approved by the Directors or the Central Bank.
- (i) The Auditor shall examine such books, accounts and vouchers as may be necessary for the performance of their duties.
- (j) The report of the Auditor to the Members on the audited accounts of the ICAV shall state whether in the Auditor's opinion the balance sheet and profit and loss account in their opinion give a true and fair view of the state of the ICAV's affairs and of its profit and loss for the period in question.
- (k) The ICAV shall furnish the Auditor with a list of all books kept by the ICAV and at all reasonable times shall afford to the Auditor the right of access to the books and accounts and vouchers of the ICAV. The Auditor shall be entitled to require from the Officers and employees of the ICAV such information and explanation as may be necessary for the performance of their duties.

- (1) The Auditor shall be entitled to attend any general meeting of the ICAV at which any accounts which have been examined or reported on by them are to be laid before the ICAV and to make any statement or explanations they may desire with respect to the accounts and notice of every such meeting shall be given to the Auditor in the manner prescribed for the Members.

34. NOTICES

- (a) Any notice or other document required to be given to, delivered, served upon or sent to a Member pursuant to this Instrument of Incorporation and/or the applicable law may be given to, delivered, served or sent to any Member by the ICAV by any of the following means:
 - (i) personally;
 - (ii) by sending it through the post (by airmail where applicable) in a pre-paid letter addressed to the Member at the Member's address as appearing in the Register of Members;
 - (iii) by sending it by courier to or leaving it at the Member's address appearing on the Register of Members;
 - (iv) subject to such Member's consent to Electronic Communications, by the ICAV sending it by email or other electronic means, in each case to an address or number supplied by such Member; or
 - (v) subject to such Member's consent to the use of the website, by publication of an electronic record of it on a website and notification of such publication (which shall include the address of the website and the place on the website where the document may be found).
- (b) Any notice or other document shall be deemed to have been given to, delivered, served upon or sent to any Member by the ICAV:
 - (i) if sent by personal delivery, at the time of delivery;
 - (ii) if sent by post, forty-eight (48) hours after it was put in the post;
 - (iii) if sent by courier, twenty-four (24) hours after sending;
 - (iv) if sent by email or other electronic means, twelve (12) hours after sending; or
 - (v) if published as an electronic record on a website, twelve (12) hours after it has been published;

and in proving such service or delivery, it shall be sufficient to prove that the notice or document was properly addressed and stamped and put in the post or sent by courier, email or by electronic means, or published on a website, as the case may be, in accordance with this Instrument of Incorporation.

- (c) Any requirement in this Instrument of Incorporation for the consent of a Member with regard to Electronic Communications and the use of a website shall be deemed to have been satisfied where the Member subscribes for or holds shares in the ICAV as the Member is bound by this Instrument of Incorporation as if they had been signed by such Member. The Member may at any time revoke such consent by

requesting the ICAV to communicate with that Member in documented form; provided however, that this requirement to communicate in documented form shall not take effect until thirty (30) days after written notice of the requirement is received by the ICAV.

- (d) In the case of joint holders of a share, service or delivery of any notice or other document on or to one of the joint holders shall for all purposes be deemed sufficient service on delivery to all joint holders.
- (e) Any notice or document sent by post to or left at the registered address of a Member or, with the consent of a Member, sent in electronic form by electronic means or by the use of a website, shall notwithstanding that such Member be then dead or bankrupt and whether or not the ICAV or the Administrator has notice of his death or bankruptcy be deemed to have been duly served or sent and such service shall be deemed a sufficient service on receipt by all persons interested (whether jointly with or as claiming through or under him) in the shares concerned and such notice shall be deemed to have been received by the Member twenty-four (24) hours after the time of posting or sending by electronic means.
- (f) The ICAV may establish an Electronic Proxy Scheme. Any Electronic Proxy Scheme shall require a Member appointing a proxy to complete a specified electronic form of proxy which shall be either signed by the Member using an Electronic Signature or completed using another form of electronic authentication or password in accordance with the requirements of the Electronic Commerce Act, 2000 or any other applicable law or regulation.

35. **WINDING UP AND TERMINATION**

- (a) All of the shares in the ICAV or all of the shares in a Class may be repurchased by the ICAV in the following circumstances:
 - (i) a majority of votes cast at a general meeting of the ICAV or the relevant Class, as appropriate, approves the repurchase of the shares;
 - (ii) if so determined by the Directors, provided that not less than fourteen (14) days' written notice, or such longer period as may be specified in the Prospectus, has been given to the holders of the shares of the ICAV or the class, as appropriate, that all of the shares of the ICAV or the class, as the case may be, shall be repurchased by the ICAV;
 - (iii) if no replacement Depositary shall have been appointed during the period of ninety (90) days commencing on the date the Depositary or any replacement thereof shall have notified the ICAV of its desire to retire as Depositary or shall have ceased to be approved by the Central Bank;
 - (iv) if no replacement AIFM shall have been appointed during the period of ninety (90) days commencing on the date the AIFM or any replacement thereof shall have notified the ICAV of its desire to retire as AIFM or shall have ceased to be approved by the Central Bank; or
 - (v) such other circumstances as may be set out in the Prospectus.
- (b) Where a repurchase of shares would result in the number of shareholders falling below two or such other minimum number stipulated by statute or where a repurchase

of shares would result in the issued share capital of the ICAV falling below such minimum amount as the ICAV may be obliged to maintain pursuant to applicable law, the ICAV may defer the repurchase of the minimum number of shares sufficient to ensure compliance with applicable law. The repurchase of such shares will be deferred until the ICAV is wound up or until the ICAV procures the issue of sufficient shares to ensure that the repurchase can be effected. The ICAV shall be entitled to select the shares for deferred repurchase in such manner as it may deem to be fair and reasonable and as may be approved by the Depositary.

- (c) If the ICAV shall be wound up or dissolved the liquidator shall apply the assets of the ICAV in satisfaction of creditors' claims in such manner and order as he thinks fit.
- (d) The assets of the ICAV available for distribution (after satisfaction of creditors' claims) amongst the Members shall be distributed *pro rata* to the holders of the shares of each class in the ICAV and shall be *pro rata* to the number of shares in that class held by them.
- (e) The assets available for distribution among the Members shall then be applied in the following priority:
 - (i) first, in the payment to the Members of each class of a sum in the relevant Class Currency or in any other currency selected by the liquidator as nearly as possible equal (at a rate of exchange reasonably determined by the liquidator) to the Net Asset Value of the shares of such class held by such holders respectively as at the date of commencement of the winding up provided that there are sufficient assets available in the ICAV to enable such payment to be made;
 - (ii) second, in the payment to the holders of the Subscriber Shares of sums up to the amount paid thereon (plus any interest accrued) out of the assets of the ICAV remaining after any recourse thereto under paragraph (i) above; and
 - (iii) third, in the payment to the Members of any balance then remaining in the ICAV, such payment being made in proportion to the value of each class and in proportion to the Net Asset Value per share.
- (f) If the ICAV shall be wound up or dissolved (whether the liquidation is voluntary, under supervision or by the Court) the liquidator may with the authority of an Ordinary Resolution of the ICAV or with the consent of any Member, divide among the Members *pro rata* to the value of their shareholdings in the ICAV (as determined in accordance with Clause 15 herein) *in specie* the whole or any part of the assets of the ICAV or may make distributions *in specie* to any individual Member who so consents whether or not the assets shall consist of property of a single kind and may for such purposes value any class or classes of property in accordance with the valuation provisions in Clause 16. If a Member so requests, the ICAV shall arrange to dispose of the Investment Instruments on behalf of the Member at the expense of such Member. The price obtained by the ICAV may be different from the price at which the Investment Instruments were valued when determining the Net Asset Value and none of the ICAV, the Administrator, the AIFM, the external valuer and/or the Portfolio Manager shall be liable for any difference arising. The liquidator may, with the like authority, vest any part of the assets in trustees upon such trusts for the benefit of Members as the liquidator shall think fit, and the liquidation of the ICAV may be closed and the ICAV dissolved, but not so that any Member shall be compelled to accept any asset in respect of which there is a liability. The Subscriber

Shares do not entitle the holders to participate in the dividends or net assets of the ICAV.

36. **INDEMNITY**

- (a) (i) Subject and without prejudice to Section 190 of the Act, and to the fullest extent permitted by Law, every Director, Officer, member of a committee duly constituted under this Instrument of Incorporation and any liquidator, manager or trustee for the time being acting in relation to the affairs of the ICAV and their heirs, executors and/or administrators (“**Indemnified Persons**”), in his capacity as such, shall be indemnified out of the funds of the ICAV against all liabilities, loss, damage or expense (including liabilities under contract, tort, statute and/or any other Law and all reasonable legal and other costs and expenses properly payable) incurred or suffered by him as such Indemnified Person or in any way in the discharge of his duties in such capacity, unless the same shall happen through his own wilful default or actual fraud. The indemnity contained in this Clause 36(a) shall also extend to any Person acting in any office or trust in the reasonable belief that he has been so elected or appointed to such office or trust notwithstanding any defect in such election or appointment. The indemnity contained in this Clause 36(a) shall not extend to any matter which would render it void under Law.
- (ii) Subject and without prejudice to Section 190 of the Act, and to the fullest extent permitted by Law, every Indemnified Person shall be indemnified out of the funds of the ICAV against all liabilities incurred by him in his role as an Indemnified Person in defending any Claim in which judgment is given in his favour, or in which he is acquitted, or in connection with any application under the Act in which relief from liability is granted to him by the court.
- (iii) Subject and without prejudice to Section 190 of the Act, and to the fullest extent permitted by Law, no Indemnified Person shall be liable for: (A) the acts, receipts, neglects or defaults of any other Indemnified Person; (B) any loss or damage arising from the bankruptcy, insolvency or tortious act of any Person having control, possession or custody of any ICAV property; (C) any tax imposed on the ICAV in any jurisdiction; or (D) any loss, damage or misfortune whatsoever which shall happen in the execution of the duties of his respective office or in relation thereto, unless the same shall happen through his own wilful default or actual fraud.
- (iv) To the extent that any Indemnified Person is entitled to claim an indemnity pursuant to this Clause 36(a) in respect of amounts paid or discharged by him, the relevant indemnity shall take effect as an obligation of the ICAV to reimburse the Person making such payment or effecting such discharge.
- (v) Subject and without prejudice to Section 190 of the Act, and to the fullest extent permitted by Law, each Member and the ICAV agree to waive any claim or right of action he or it may at any time have, whether individually or by or in the right of the ICAV, against any Indemnified Person on account of any action taken by such Indemnified Person or the failure of such Indemnified Person to take any action in the performance of his duties with or for the ICAV; provided, however, that such waiver shall not apply to any claims or rights of action arising out of the wilful default or actual fraud of such Indemnified Person or to recover any gain, personal profit or advantage to which such Indemnified Person is not legally entitled.

- (vi) Subject and without prejudice to Section 190 of the Act, and to the fullest extent permitted by Law, expenses incurred in defending any civil or criminal action or proceeding for which indemnification is required pursuant to this Clause 36(a) shall be paid by the ICAV in advance of the final disposition of such action or proceeding upon receipt of an undertaking by or on behalf of the Indemnified Person to repay such amount if any allegation of wilful default or actual fraud is proved against the Indemnified Person.
 - (vii) It being the policy of the Company that indemnification of the persons specified in this Clause 36 (a) shall be made to the fullest extent permitted by law, the indemnification provided by this Clause 36(a) shall not be deemed exclusive (a) of any other rights to which those seeking indemnification or advancement of expenses may be entitled under these articles, any agreement, any insurance purchased by the ICAV, vote of members or disinterested directors, or pursuant to the direction (however embodied) of any court of competent jurisdiction, or otherwise, both as to action in his or her official capacity and as to action in another capacity while holding such office, or (b) of the power of the ICAV to indemnify any person who is or was an employee or agent of the ICAV or of another company, joint venture, trust or other enterprise which he or she is serving or has served at the request of the ICAV, to the same extent and in the same situations and subject to the same determinations as are hereinabove set forth. As used in this Clause 36(a), references to the “ICAV” include all constituent companies and/or Irish collective asset-management vehicles in a scheme of arrangement, consolidation or merger in which the ICAV or a predecessor to the ICAV by scheme of arrangement, consolidation or merger was involved. The indemnification provided by this Clause 36(a) shall continue as to a person who has ceased to be an Indemnified Person and shall inure to the benefit of their heirs, executors, and administrators.
 - (viii) The Directors shall have the power to purchase and maintain for any officer, including any Director, or any employee of the ICAV insurance against all or any liabilities, loss, damage or expense (including liabilities under contract, tort, statute and/or any other Law and all reasonable legal and other costs and expenses properly payable) incurred or suffered by him as such an officer or employee or in any way in the discharge of his duties in such capacity, including (without limitation) any liability which by virtue of any enactment or rule of law would otherwise attach to him in respect of any negligence, default, breach of duty or breach of trust of which he may be guilty in relation to the ICAV.
- (b) The ICAV may indemnify the AIFM, any Portfolio Manager, Administrator, adviser, service provider, delegate and any agent of the ICAV and any directors, officers, managers, partners, members, shareholders, principals, investment professionals, employees, advisors, consultants, representatives or other agents and related persons and legal representatives of the foregoing to the extent permitted by Law and the provisions of the agreement providing for such indemnity.
 - (c) The Depositary shall be entitled to such indemnity from the ICAV upon such terms and subject to such conditions and exceptions and with such entitlement to have recourse to the assets of the ICAV with a view to meeting and discharging the costs thereof as shall be permitted by law and provided under its agreement with the ICAV, provided that no such indemnity shall arise as a result of any liability that the Depositary assumes in the Depositary Agreement.

- (d) The ICAV, the AIFM, the Portfolio Manager, the Administrator and the Depositary shall each be entitled to rely absolutely on any declaration received from a Member or his agent as to the residence or otherwise of such Member and shall not incur liability in respect of any action taken or thing suffered by any of them in good faith in reliance upon any paper or document believed to be genuine and to have been sealed or signed by the proper parties nor be in any way liable for any forged or unauthorised signature on or any common seal affixed to any such document or for acting on or giving effect to any such forged or unauthorised signature or common seal but shall be entitled, though not bound, to require the signature of any person to be verified by a banker, broker or other responsible person or otherwise authenticated to its or their satisfaction.
- (e) The ICAV, the AIFM, the Portfolio Manager, the Administrator and the Depositary shall each incur no liability to the Members for complying with any present or future law or regulation made pursuant thereto, or any decree, order or judgment of any court, or any request, announcement or similar action (whether of binding legal effect or not) which may be taken or made by any person or body acting with or purporting to exercise the authority of any government (whether legally or otherwise). If for any reason it becomes impossible or impracticable to carry out any of the provisions hereof none of the ICAV, the AIFM, the Portfolio Manager, the Administrator or the Depositary shall be under any liability therefor or thereby. This Clause shall not, however, exempt the ICAV, the AIFM, the Portfolio Manager, the Administrator or the Depositary from any liability any of them may incur as a result of a failure to adhere to their obligations as set out in the agreements governing their appointment or any liability incurred as a result of any fraud on the part of the ICAV, the AIFM, the Portfolio Manager, the Administrator or the Depositary.
- (f) For the avoidance of doubt no Director shall be liable for the acts or omissions of any other Director.
- (g) Where the law of a Third Country requires that certain financial instruments are held in custody by a local entity and there are no local entities that satisfy the requirements specified in Regulation 22(11)(b)(iv)(II) of the AIFMD Regulations, the Depositary may discharge itself of liability provided that the conditions of Regulation 22(14) of the AIFMD Regulations are met.

37. **DESTRUCTION OF DOCUMENTS**

- (a) The ICAV may destroy:
 - (i) any dividend mandate or share allotment request form or any variation or cancellation thereof or any notification of change of name or address at any time after the expiry of two (2) years from the date such mandate, request, variation, cancellation or notification was recorded by the ICAV;
 - (ii) any instrument of transfer of shares which has been registered at any time after the expiry of six (6) years from the date of registration thereof; and
 - (iii) any other document on the basis of which an entry in the Register of Members is made at any time after the expiry of ten (10) years from the date an entry in the Register of Members was first made in respect of it;

and it shall conclusively be presumed in favour of the ICAV that every instrument of transfer so destroyed was a valid and effective instrument duly and properly

registered and that every other document hereinbefore mentioned so destroyed was a valid and effective document in accordance with the recorded particulars thereof in the books or records of the ICAV **PROVIDED ALWAYS THAT:**

- (i) the foregoing provisions of this Clause shall apply only to the destruction of a document in good faith and without express notice to the ICAV that the preservation of such document was relevant to a claim;
- (iv) nothing contained in this Clause shall be construed as imposing upon the ICAV any liability in respect of the destruction of any such document earlier than as aforesaid or in any case where the conditions of proviso (i) above are not fulfilled; and
- (v) references in this Clause to the destruction of any document includes references to its disposal in any manner.

38. SEVERABILITY

If any term, provision, covenant or restriction of this Instrument of Incorporation is held by a court of competent jurisdiction or other authority to be invalid, void, unenforceable or against its regulatory policy, the remainder of the terms, provisions, covenants and restrictions of this Instrument of Incorporation shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

39. ALTERATION TO INSTRUMENT OF INCORPORATION

- (a) No alteration to the Instrument of Incorporation and no change in the name of the ICAV shall be made without obtaining the approval of the Central Bank.
- (b) No alteration to the Instrument of Incorporation shall be made unless:
 - (i) the alteration has been approved by Ordinary Resolution; or
 - (ii) the Depositary has certified in writing that the amendment does not:
 - (A) prejudice the interests of the Members; and
 - (B) relate to any such matter as may be specified by the Central Bank as one in the case of which an alteration may be made only if approved by the Members.
- (c) For the purposes of Clause 39(b), a change in the name of the ICAV does not constitute an alteration to the Instrument of Incorporation.

WE, the several persons whose names, addresses and descriptions are subscribed, wish to be formed into an ICAV in pursuance of this Instrument of Incorporation, and we agree to take the number of shares in the capital of the ICAV set opposite our respective names

**Names, addresses and descriptions
of Subscribers**

Number of Shares

For and on behalf of Attleborough Limited
Arthur Cox Building
Earlsfort Terrace
Dublin 2
Ireland

One

Body Corporate

For and on behalf of Fand Limited
Arthur Cox Building
Earlsfort Terrace
Dublin 2
Ireland

One

Body Corporate

Dated: 4 August 2016

Witness to the above signatures:

Louise O'Leary
Arthur Cox Building
Earlsfort Terrace
Dublin 2
Ireland

IRISH COLLECTIVE ASSET-MANAGEMENT VEHICLES ACT 2015

INSTRUMENT OF INCORPORATION

OF

CITADEL EQUITY FUND (IRELAND) ICAV

(as amended by Ordinary Resolution dated 26 October 2016)

**Arthur Cox
Earlsfort Centre
Earlsfort Terrace
Dublin 2
Ireland**