

***CONFIDENTIAL***

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**Instrument of Incorporation**

**of**

**BAIN CAPITAL SPECIAL SITUATIONS EUROPE ICAV**

**An Irish Collective Asset-Management Vehicle and an umbrella fund with segregated liability  
between its Sub-Funds**

**Registration Number: C173109**

**As amended by Ordinary Resolution dated September 29, 2017**

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**INSTRUMENT OF INCORPORATION  
OF  
BAIN CAPITAL SPECIAL SITUATIONS EUROPE ICAV**

**ARTICLE 1  
GENERAL PROVISIONS**

Section 1.01 Definitions. For purposes of this Instrument, the following terms shall have the respective meanings set forth below.

**“75% Resolution”** means (i) a resolution passed by not less than seventy-five per cent (75%) of the votes cast by all Shareholders of the ICAV, or of a Sub-Fund, or of a Class, as applicable, who are entitled to vote in a general meeting of the ICAV, or of the relevant Sub-Fund, or of the relevant Class, or (ii) a resolution in writing signed by all Shareholders entitled to vote thereon.

**“Act”** means the Irish Collective Asset-management Vehicles Act 2015 including any regulations made thereunder by ministerial order and any conditions that may from time to time be imposed thereunder by the Central Bank whether by notice or otherwise affecting the ICAV.

**“Administrative Expenses”** has the meaning given to such term in Section 5.10(a).

**“Administrator”** means the entity appointed and for the time being acting as administrator of each Sub-Fund in accordance with the requirements of the AIFMD Regulations, as set out in the Prospectus.

**“Advisers Act”** means the U.S. Investment Advisers Act of 1940, as amended from time to time.

**“Advisory Board”** has the meaning set forth in Section 18.03(a).

**“Advisory Board Indemnified Person”** means any member of the Advisory Board, the Shareholder that such Advisory Board member represents and any director, officer, employee or trustee of such Shareholder.

**“Advisory Fee”** has the meaning set forth in Section 2.04.

**“Advisory Fee Expense”** for each Fee Shareholder means, for a Fiscal Period, an amount deducted from such Fee Shareholder’s Book Capital Account in accordance with Section 2.04 or called by the AIFM from Shareholders pursuant to Article 5 to pay the Advisory Fee.

**“Affiliate”** of any Person means any other Person that, directly or indirectly through one or more intermediaries, controls, is controlled by or is under common control with such Person; provided that portfolio companies (and portfolio companies of any Related Funds), the ICAV, Parallel Vehicles, Feeder Vehicles, Alternative Investment Vehicles and Related Funds shall be deemed not to be “Affiliates” of Bain Capital, the AIFM, the Portfolio Manager and the Fund. The term **“control”** means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting Securities, by contract or otherwise.

**“AIF”** means an alternative investment fund as defined in the AIFMD Regulations.

**“AIF Rulebook”** means the Central Bank’s rulebook in relation to AIFs as may be amended, consolidated or substituted from time to time.

“**AIFM**” means an alternative investment fund manager as defined in the AIFMD Regulations, which at the date of this Instrument means Bain Capital Investments (Europe) Limited, or such successor entity as may be appointed by the Board in accordance with the requirements of the Central Bank, and where the context so permits, the delegates of such entity duly appointed from time to time.

“**AIFM Agreement**” means the AIFM Agreement between the ICAV and the AIFM, as it may be amended or restated from time to time.

“**AIFM Directive**” means Directive 2011/61/EU as may be amended, supplemented or replaced and including the Commission Delegated Regulation (EU) No. 231/2013, as may be amended from time to time, and any further implementing regulations in respect thereof.

“**AIFM Group**” means the AIFM, the Portfolio Manager, the Special Shareholder, their respective Affiliates, subsidiaries and successors and current and certain former officers, employees, members and partners, and entities, the majority of the economic interests in which are owned by one or more of them.

“**AIFM Indemnified Person**” means the Special Shareholder, the AIFM, the Directors, the Portfolio Manager, any subadvisor engaged by the AIFM or the Portfolio Manager, any general partner, special limited partner, investment manager or subadvisor of a Parallel Vehicle, the AIFM or the Portfolio Manager, any of their respective Affiliates, any current or former officer, director, member, employee, stockholder, partner, agent, controlling person, representative or independent contractor of the Fund, the AIFM, the Portfolio Manager, any subadvisor engaged by the Board, the AIFM or the Portfolio Manager, any general partner, special limited partner, investment manager or subadvisor of any Parallel Vehicle or any of their respective affiliates or any person serving or who has at the request of the Fund as a director, officer, employee, partner, member, trustee, agent or independent contractor of another partnership, limited liability company, corporation, joint venture, trust or other enterprise.

“**AIFMD Regulations**” means the European Union (Alternative Investment Fund Managers) Regulations (S.I. No. 257 of 2013).

“**Alternative Investment Vehicle**” has the meaning set forth in Section 9.01.

“**Authorized Representative**” has the meaning set forth in Section 18.04(a).

“**Available Commitment**” means, with respect to any Shareholder at any time, such Shareholder’s Capital Commitment and Recyclable Capital that has not yet been reinvested, reduced by such Shareholder’s aggregate Capital Contributions made or called for contribution pursuant to an outstanding Contribution Notice (including, for the avoidance of doubt, capital contributions made or called for contribution to an Alternative Investment Vehicle pursuant to Section 9.01).

“**Bad Actor Shareholder**” means a Shareholder that, as determined by the AIFM in its sole discretion, would cause the disqualification of the ICAV or any of its Affiliates from using Rule 506 of Regulation D under the Securities Act due to such Shareholder being or becoming subject to a disqualification event described in Rule 506(d)(1)(i) – (viii) of Regulation D of the Securities Act if such Shareholder (or any of its direct or indirect beneficial owners on a look-through basis) were to beneficially own 20% or more of the Shares of the relevant Sub-Fund (excluding any Shares that are Non-Voting Shares).

**“Bain Capital”** means the AIFM, the Portfolio Manager, their predecessors, and, where the context permits, their wholly-owned subsidiaries and Affiliates excluding, for the avoidance of doubt, the portfolio companies managed by any of the foregoing.

**“Bain Investment Commitment”** has the meaning set forth in Section 5.01(a).

**“Bain Investment Person”** means the AIFM, the Special Shareholder, the Portfolio Manager and their respective Affiliates and the respective current and former employees, partners and members of the foregoing entities, and accounts or trusts established for the benefit of such persons or their families.

**“Base Currency”** means in relation to each Sub-Fund, such currency as is specified in the Prospectus.

**“BHC Act”** has the meaning set forth in Section 17.01(a).

**“BHC Shareholder”** has the meaning set forth in Section 17.01(a).

**“Board”** means the Directors for the time being of the ICAV or any of them, acting as the board of directors of the ICAV.

**“Book Capital Account”** means in the case of any Shareholder the account established and maintained by the Administrator in the books and records of the relevant Sub-Fund that corresponds to the Series of Shares held by that Shareholder pursuant to Article 4.

**“Business Day”** means any day except a Saturday, Sunday or other day on which commercial banks in Ireland or Boston, Massachusetts are required or authorized by law to close.

**“Capital Commitment”** means, with respect to any Shareholder at any time, the amount specified in such Shareholder’s Subscription Agreement as such Shareholder’s accepted capital commitment to the relevant Sub-Fund at the time such Shareholder was admitted to the Sub-Fund (as adjusted in accordance with this Instrument), which shall at times be at least the Minimum Commitment Amount.

**“Capital Contribution”** means, with respect to any Shareholder, all cash contributions made by such Shareholder to the relevant Sub-Fund under this Instrument (including any amount deemed to constitute a Capital Contribution) other than (a) cash contributions that are returned to a Shareholder pursuant to Section 5.02(d), (b) cash contributions that are returned to a Shareholder pursuant to Section 5.07(b)(ii), Section 5.07(d) or Section 17.03(c) in respect of amounts contributed by another Shareholder to the ICAV, (c) cash paid by a Shareholder to the ICAV with respect to interest on a Default Amount pursuant to Section 5.06(a), (d) any Subsequent Closing Additional Amounts paid by a Shareholder to the ICAV in connection with a Subsequent Closing Commitment pursuant to Section 5.07(b)(ii), (e) any additional amount paid by a Sanctioned Shareholder pursuant to Section 17.03(c), (f) taxes paid by a Shareholder pursuant to Section 7.01(d) and (g) distributions that are returned by such Shareholder to the ICAV pursuant to Section 7.06(a) or Section 7.06(b).

**“Carried Interest”** means Net Profit allocated to the Special Shareholder (in its capacity as a special Shareholder) pursuant to Section 6.02(a)(ii) and Section 6.02(a)(iii) less Net Loss allocated to the Special Shareholder pursuant to Section 6.02(b)(ii) and Section 6.02(b)(iii), excluding, for the avoidance of doubt, (a) any distribution that the Special Shareholder has elected not to receive pursuant to Section 7.04 until the Special Shareholder actually receives such distribution and (b) Carried Interest reallocated



away from the Special Shareholder as part of Reallocation pursuant to Section 14.01 or an obligation to return distributions pursuant to Section 7.04.

**“Carry Waiver Shareholders”** means those Shareholders who hold Classes of Shares that are not subject to the Carried Interest.

**“Central Bank”** means the Central Bank of Ireland or any successor regulatory authority with responsibility for authorizing and supervising the ICAV and each Sub-Fund.

**“Class”** means any Class of Shares (including where the context so requires or permits, any Series of any Class) issued by the ICAV in respect of any Sub-Fund, details of which are set forth in the Prospectus.

**“Class Account”** means a separate account in the books and records of a Sub-Fund in respect of a specific Class of Shares.

**“Clear Days”** means in relation to the period of a notice, that period excluding the day when 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.

**“Code”** means the U.S. Internal Revenue Code of 1986, as amended from time to time.

**“Commitment Percentage”** means, with respect to any Shareholder at any time, the percentage derived by dividing such Shareholder’s Capital Commitment at such time by the aggregate Capital Commitments to the relevant Sub-Fund at such time.

**“Confidential Information”** has the meaning set forth in Section 18.04(a).

**“Contribution Date”** means the date indicated in a Contribution Notice as the date on which Capital Contributions or other required payments are due or in the event of a deemed Capital Contribution, the date on which such Capital Contribution is deemed by the AIFM to have occurred.

**“Contribution Notices”** has the meaning set forth in Section 5.02(a).

**“Credit Facility”** has the meaning set forth in Section 2.06(a).

**“CRS”** means the Standard for Automatic Exchange of Financial Account Information approved on 15 July 2014 by the Council of the Organisation for Economic Cooperation and Development, also known as the Common Reporting Standard, and any bilateral or multilateral competent authority agreements, intergovernmental agreements and treaties facilitating the implementation thereof and any law implementing the Common Reporting Standard as implemented in Ireland.

**“Default”** means any failure of a Shareholder to make all or a portion of its required Capital Contribution or other payment to the relevant Sub-Fund on the applicable Contribution Date, unless such Shareholder is an Excluded Shareholder with respect to such Capital Contribution or such Shareholder is a Sanctioned Shareholder.

**“Default Amount”** has the meaning set forth in Section 5.06(a).

**“Defaulting Shareholder”** means, at any time, a Shareholder who, at or prior to such time, has (a) (i) failed to make a Capital Contribution or other payment within 5 calendar days of receiving notice of such Default pursuant to Section 5.06(a), (ii) attempted to Transfer all or any part of its Share not in

accordance with this Instrument or (iii) willfully and materially breached this Instrument or its Subscription Agreement, and (b) is declared a “Defaulting Shareholder” by the AIFM in its sole discretion.

“**Depository**” means the entity appointed and for the time being acting as depository of all the Investments of each Sub-Fund in accordance with the requirements of the AIFMD Regulations, as set out in the Prospectus.

“**Director**” means, as of any date of determination, any individual who is appointed as a director of the Board.

“**Dissolution Event**” has the meaning set forth in Section 13.02.

“**Drawdown**” means a drawdown of Capital Contributions pursuant to a Contribution Notice in accordance with Section 5.02.

“**ERISA**” means the U.S. Employee Retirement Income Security Act of 1974, as amended from time to time.

“**ERISA Shareholder**” means any Shareholder that (a)(i) is an employee benefit plan which is subject to the provisions of Part 4 of Subtitle B of Title I of ERISA, (ii) is a plan as defined in Section 4975 of the Code, or (iii) is an entity that is deemed to hold the assets of a plan described in (i) or (ii) under applicable law, and (b) has identified itself as a plan or entity described in its Subscription Agreement.

“**Exchange Act**” means the U.S. Securities Exchange Act of 1934, as amended from time to time.

“**Excluded Shareholder**” means, with respect to any Investment, any Shareholder that is excluded pursuant to Section 5.05(a) from making all or a portion of its Capital Contribution that would otherwise be required in respect of such Investment.

“**Fair Market Value**” means the AIFM’s good faith determination in accordance with the AIFM’s valuation policy of the fair value of an asset or liability, as of a valuation date.

“**FATCA**” means sections 1471 to 1474 of the U.S. Internal Revenue Code of 1986 or any associated regulations or other official guidance; any intergovernmental agreement, treaty, regulation, guidance or other agreement between the Government of Ireland (or any Irish government body) and the United States, United Kingdom or any other jurisdiction (including any government bodies in such jurisdiction), entered into in order to comply with, facilitate, supplement, implement or give effect to such legislation, regulations or guidance; and any legislation, regulations or guidance in Ireland that give effect to the matters outlined in this paragraphs.

“**Fee Shareholders**” means those Shareholders who hold Classes of Shares that are subject to Advisory Fees.

“**Fee Waiver Shareholders**” means those Shareholders who hold Classes of Shares that are not subject to Advisory Fees.

“**Feeder Vehicles**” means any Shareholder that is an investment vehicle formed by the AIFM or its Affiliates for the purpose of investing all of its assets (other than cash pending subscription, redemption and payment of expenses) in a Sub-Fund (or in any Alternative Investment Vehicle).

**“Final Closing Date”** means the latest date that a Sub-Fund or its Parallel Vehicle holds a closing to admit additional Shareholders; provided that, unless otherwise approved by either the Advisory Board or an Ordinary Resolution of the relevant Sub-Fund, the Final Closing Date shall occur no later than 12 months after the First Closing Date.

**“First Closing Date”** means the earliest date on which the ICAV or a Parallel Vehicle holds a closing to admit Shareholders other than the Subscribers.

**“Fiscal Period”** means a calendar quarter and any shorter fiscal period determined by the AIFM.

**“Fiscal Year”** means (a) the period commencing on the incorporation of the ICAV and ending on the last day of the calendar year that includes the First Closing Date, (b) each calendar year thereafter prior to the calendar year that includes the day on which the final liquidating distribution is made pursuant to Section 13.04, and (c) the short period, if any, commencing on the first day of the calendar year immediately following the last such full calendar year and ending on the day on which the final liquidating distribution is made pursuant to Section 13.04, in each case, unless otherwise required by law or as determined by the AIFM in its discretion.

**“Follow-On Investment”** means, with respect to any Investment previously made, any further Investment in or relating to such Investment, as determined by the AIFM in its discretion. For the avoidance of doubt, any further funding obligation that was agreed as part of the prior Investment shall not constitute a Follow-On Investment.

**“Forfeited Default Balance”** has the meaning set forth in Section 5.06(b)(iv).

**“Fund”** means the ICAV, together with any Parallel Vehicles and Feeder Vehicles.

**“Fund Expenses”** has the meaning set forth in Section 5.09(a).

**“Fund Investors”** means the Shareholders and the limited partners, shareholders and/or equivalent investors of any Parallel Vehicle.

**“Gross Negligence”** means conduct determined to be gross negligence in accordance with Delaware law.

**“ICAV”** means Bain Capital Special Situations Europe ICAV and/or, where the context so permits or requires herein, any Sub-Fund thereof.

**“Indemnification Obligations”** has the meaning set forth in Section 12.01(g).

**“Indemnified Person”** means each AIFM Indemnified Person and each Advisory Board Indemnified Person.

**“Instrument”** means this Instrument of Incorporation, as amended from time to time.

**“Investment”** means an investment of any type held (including any debt investment), directly or indirectly, by a Sub-Fund from time to time.

**“Investment Company Act”** means the U.S. Investment Company Act of 1940, as amended from time to time.

**“Investment Period”** means the period commencing on the First Closing Date and ending on the close of business on the fourth anniversary of the Final Closing Date, as such period may be extended or terminated earlier pursuant to Section 5.03(b) or Section 5.04(a).

**“Investment Proceeds”** means all amounts received by the ICAV in connection with an Investment (other than a Short-Term Investment) or the value, as determined in accordance with Section 8.01, of any property distributed in kind.

**“IRS”** means the U.S. Internal Revenue Service.

**“Key Manager”** means each of Jonathan Lavine, Jonathan DeSimone, Tim Barns, Jeff Robinson, Michael A. Ewald, Alon Avner, Jeffrey Hawkins and any other individual designated by the AIFM as a Key Manager and approved by the Advisory Board.

**“Key Manager Event”** means the existence of circumstances prior to the expiration or termination of the Investment Period under which fewer than three Key Managers are active participants in the AIFM or the Portfolio Manager.

**“Key Manager Suspension Period”** means the period commencing on the date on which a Key Manager Event occurs and ending on the date on which an Ordinary Resolution approves the termination of such period.

**“Lender”** has the meaning set forth in Section 2.06(a).

**“Leverage Limitation”** has the meaning set forth in Section 2.02(t).

**“Minimum Commitment Amount”** means such amount (if any) as the Board may from time to time determine as the minimum Capital Commitment required by each Shareholder for Shares of each Class in a Sub-Fund as is specified in the Prospectus, provided that the Board shall not accept applications for Shares from any Qualifying Investor unless the applicant’s initial Capital Commitment to the ICAV as a whole is equal to or greater than the minimum amount required by the Central Bank for the ICAV to maintain qualifying investor alternative investment fund status (which at the date of this Instrument is €100,000, or its foreign currency equivalent).

**“Miscellaneous Income”** and **“Miscellaneous Expense”** means, respectively, (a) positive amounts other than Regular Profit, New Issue Profit, New Issue Credit or Forfeited Default Balance apportioned pursuant to Section 6.01(a) and (b) negative amounts other than Regular Loss, New Issue Loss, New Issue Charge, Advisory Fee Expense, Non-Reimbursable Expense and Forfeited Default Balance forfeited.

**“Net Asset Value”** means the net asset value of a Sub-Fund, or of any Class, or of any Series, or of any Share, that shall be calculated as at each Valuation Point by valuing the Investments of any Sub-Fund or attributable to any Class or Share in accordance with the Prospectus.

**“Net Profit”** and **“Net Loss”** for a Fiscal Period allocated to a Shareholder mean, respectively, the positive or negative amount that results from subtracting the sum of all Regular Loss, New Issue Loss and New Issue Charge apportioned to such Shareholder for such Fiscal Period from the sum of all Regular Profit, New Issue Profit and New Issue Credit.

**“New Issue”** means an equity Security owned by the ICAV that was purchased in a “new issue”, as defined in Financial Industry Regulatory Authority (FINRA) Rule 5130 or any offering regulated by

any subsequent similar or successor statute or regulation governing the purchase or sale of Securities by brokers and dealers.

**“New Issue Credit”** and **“New Issue Charge”** for a Fiscal Period mean, respectively, positive and negative amounts the absolute value of which equals interest (calculated at the debit interest rate charged by a prime broker of the ICAV identified by the AIFM) for such Fiscal Period on the product of (a) the ICAV’s equity interest in the acquisition cost of all New Issues held by the ICAV determined on a quarterly basis, multiplied by (b) a fraction, the numerator of which is the sum of the Book Capital Accounts of the non-New Issue Shareholders as of the opening of business on the first Business Day of such Fiscal Period (adjusted to take into account any Capital Contributions, distributions, withdrawals or expense (including Advisory Fee Expense and Non-Reimbursable Expense) as of such date) and the denominator of which is the sum of the Book Capital Accounts of all Shareholders as of such date (adjusted to take into account any Capital Contributions, distributions, withdrawals or expense (including Advisory Fee Expense and Non-Reimbursable Expense) as of such date).

**“New Issue Profit”** and **“New Issue Loss”** mean, respectively, (a) income and gains (including unrealized gains) with respect to a New Issue, and (b) losses and deductions (including unrealized losses and an allocable share of the ICAV’s expenses determined in the discretion of the AIFM) with respect to a New Issue. New Issue Profit and New Issue Loss do not include the New Issue Credit or New Issue Charge.

**“New Issue Shareholder”** means a Shareholder that is not prohibited under FINRA Rule 5130 or FINRA Rule 5131 (or any similar or successor statute or regulation) and in each case, the AIFM’s policies and procedures with respect to the allocation of New Issues from participating in the performance of New Issues.

**“Non-Reimbursable Expense”** means those expenses of the ICAV designated as such by the AIFM, from time to time in accordance with Section 5.08.

**“Non-Voting Shares”** has the meaning set forth in Section 17.01(a).

**“OFAC”** means the Office of Foreign Assets Control of the U.S. Department of the Treasury.

**“Offering Expenses”** means all expenses of organizing and establishing the Board, the ICAV, any Parallel Vehicles and any Feeder Vehicle, the Special Shareholder or their respective Affiliates, and the offering of Shares in the ICAV, any Parallel Vehicles and any such Feeder Vehicle (including legal and accounting expenses, filing fees and expenses, travel, meals, entertainment, accommodation and related expenses, printing costs or any other expenses incurred with respect to the offering of Shares).

**“Ordinary Resolution”** means (i) a simple majority of the votes cast by all Shareholders of the ICAV, or of a Sub-Fund, or of a Class, as applicable, who are entitled to vote in a general meeting of the ICAV, or of the relevant Sub-Fund, or of the relevant Class, or (ii) a resolution in writing signed by all Shareholders entitled to vote thereon.

**“Parallel Vehicle”** has the meaning set forth in Section 2.09.

**“Parallel Vehicle Board”** means the board of directors, general partner, manager or other equivalent governing entity or body of each Parallel Vehicle, in each case in its capacity as such.

**“Person”** means any individual, partnership, corporation, limited liability company, trust or other entity.

**“Portfolio Manager”** means a portfolio manager appointed by the ICAV and/or the AIFM to provide investment management and/or advisory services directly or indirectly to the ICAV, as set out in the Prospectus, which at the date of this Instrument means Bain Capital, LP or such successor entity as may be appointed by the ICAV and/or the AIFM in accordance with the requirements of the Central Bank.

**“Preferred Return”** has the meaning set forth in Section 6.02(a)(i).

**“Prime Rate”** means the rate of interest per annum published from time to time in *The Wall Street Journal* as the “Prime Rate” at such time.

**“Proceeding”** means any action, claim, suit, investigation, audit or proceeding by or before any court, arbitrator, governmental body or other agency.

**“Prospectus”** means the prospectus issued from time to time by the ICAV as same may be amended, supplemented, consolidated, substituted or otherwise modified from time to time.

**“Qualifying Investor”** has the meaning required by the AIF Rulebook, which at the date of this Instrument means an investor who has certified in writing to the ICAV that it is: (a) a professional client within the meaning of Annex II of MiFID; or (b) an investor who 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 (c) an investor who certifies it is an informed investor by providing the following: (i) 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 merits and risks of the prospective investment; or (ii) 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; and it is aware of the risk involved in the proposed investment and that inherent in such investment is the potential to lose all of the sum invested.

Within the EEA, a Sub-Fund may only be marketed to professional investors as defined in the AIFM Directive unless the EEA member state in question permits, under the laws of that EEA member state, the Sub-Fund to be sold to other categories of investors and this permission encompasses investors set out in categories (b) and (c) above.

**“Realization”** means, as determined by the Board or the AIFM, any sale, exchange, transfer, refinance, permanent write-off, write down for valuation purposes (but only to the extent of such write-down) or other realization or disposition of all or any portion of any Investment, including a distribution in kind to the Shareholders pursuant to Section 7.05. **“Realized”** shall be interpreted accordingly.

**“Recyclable Capital”** has the meaning set forth in Section 5.02(e).

**“Register”** means the register of Shareholders to be kept as required by the Act.

**“Regular Profit”** and **“Regular Loss”** for a Fiscal Period mean, respectively, the net amount of all realized and unrealized interest income, dividends, capital gains, interest expense and capital losses and other similar items of investment income of the relevant Sub-Fund, determined without regard to the performance of any New Issues.

**“Related Funds”** means other funds or accounts managed or advised by Affiliates of the AIFM.

**“Sanctioned Shareholder”** means any Shareholder subject to sanctions under any Sanctions Laws and Regulations, for the period of time that such Shareholder is subject to such sanctions.

**“Sanctions Laws and Regulations”** means (a) any U.S. sanctions laws and regulations imposed or administered by OFAC and (b) any other trade, economic, military or other sanctions laws or regulations imposed by the United Nations or any governmental or regulatory authority of the United States, the European Union, or individual member states of the European Union.

**“Secretary”** has the meaning set forth in Section 2.03(c).

**“Securities”** means securities of every kind and nature and rights and options with respect thereto, including stock, notes, bonds, evidences of indebtedness and other business interests of every type, including interests in any entity.

**“Securities Act”** means the U.S. Securities Act of 1933, as amended from time to time, and the rules and regulations of the U.S. Securities and Exchange Commission promulgated thereunder.

**“Series”** means in relation to each Class of Shares, a series of that Class.

**“Servicing Company”** means a subsidiary or Affiliate of the AIFM established to source, service, provide asset management advice, reporting, due diligence and / or other services for the Fund and certain other Related Funds, as well as their portfolio companies and / or investments.

**“Servicing Fee”** means the servicing fee charged to the ICAV, its holding companies and/or its investments by the Servicing Company.

**“Share”** means a participating Share of no par value in the capital of the ICAV designated in a Sub-Fund and Class, issued in accordance with this Instrument and with the rights and obligations provided for hereunder, and includes, where the context so requires or permits, a share or equivalent equity interest of any Feeder Vehicle.

**“Shareholder”** means, at any time, any Person whose name is entered in the Register as the holder of a Share, in such Person’s capacity as a Shareholder, including any Feeder Vehicles and excluding the Special Shareholder, unless the context requires differently.

**“Short-Term Investments”** has the meaning set forth in Section 3.02.

**“Side Letter”** has the meaning set forth in Section 18.12.

**“Single Investment Limit”** has the meaning set forth in Section 3.01(a).

**“Special Resolution”** means (i) a resolution passed by not less than sixty-six and two-thirds per cent (66-2/3%) of the votes cast by all Shareholders of the ICAV, or of a Sub-Fund, or of a Class, as applicable, who are entitled to vote in a general meeting of the ICAV, or of the relevant Sub-Fund, or of the relevant Class, or (ii) a resolution in writing signed by all Shareholders entitled to vote thereon.

**“Special Shareholder”** means Bain Capital Special Situations Europe Partners, L.P or such other Shareholder as the Board may determine from time to time.

**“State”** means the Republic of Ireland.

**“Sub-Fund”** means a portfolio of assets constituted as a sub-fund of the ICAV which is invested in accordance with the investment objective and policies as set out in the Prospectus and to which all liabilities, income and expenditure attributable or allocated to such sub-fund shall be applied and charged. Any reference to **“the Sub-Fund”** herein means each Sub-Fund of the ICAV individually and **“Sub-Funds”** means all or some of the sub-funds currently existing as the context requires and any additional sub-funds as may be established by the ICAV from time to time with the prior approval of the Central Bank.

**“Subscriber”** means any two or more persons, associated for any lawful purpose, who have prepared or caused to be prepared this Instrument in respect of the ICAV.

**“Subscriber Share”** means a non-participating Share in the capital of the ICAV issued to one or more Subscribers in accordance with this Instrument and with the rights provided for under this Instrument.

**“Subscription Agreement”** means the subscription agreement (including the investor questionnaire and any attachments thereto) executed by each prospective Shareholder in connection with its subscription for Shares and its related materials.

**“Subsequent Closing Additional Amounts”** has the meaning set forth in Section 5.07(b)(ii).

**“Subsequent Closing Commitment”** has the meaning set forth in Section 5.07(a).

**“Subsequent Closing Contribution”** has the meaning set forth in Section 5.07(b)(i).

**“Subsequent Closing Date”** has the meaning set forth in Section 5.07(b).

**“Subsequent Closing Shareholder”** has the meaning set forth in Section 5.07(a).

**“Substituted Shareholder”** has the meaning set forth in Section 15.02.

**“Successor AIFM”** has the meaning set forth in **Error! Reference source not found..**

**“Successor Special Shareholder”** has the meaning set forth in **Error! Reference source not found..**

**“Tax Distribution”** has the meaning set forth in Section 7.03.

**“Tax Matters Representative”** has the meaning set forth in Section 10.03.

**“Tax Percentage”** means the rate, for any Fiscal Year, that the AIFM determines is necessary to reflect (a) the highest marginal U.S federal income tax rates applicable to individuals, (b) the highest combined marginal local and state income tax rates applicable to any member or former member of the Special Shareholder who is an individual, assuming that, to the extent appropriate, such local and state taxes are deductible in computing taxable income for U.S. federal income tax purposes, and (c) the Medicare Contribution tax on net investment income. In computing the Tax Percentage, the AIFM may take into account any additional taxes or special rates, including the alternative minimum tax rates and rules, relating to the types of income and gain included in ICAV taxable income for such Fiscal Year in the Tax Percentage in proportion to each applicable type of income and gain of the ICAV and such other assumptions as the AIFM reasonably determines.



**“Temporary Investment Proceeds”** means any cash or other proceeds received by the ICAV from Short-Term Investments.

**“Total Available Amount”** has the meaning set forth in Section 14.01.

**“Total Return”** means with respect to a Shareholder, cumulative Net Profits plus cumulative Miscellaneous Income minus the sum of (a) Miscellaneous Expense, (b) Non-Reimbursable Expense and (c) Advisory Fee Expense (including fees and expenses accrued for in the current Fiscal Period), in each case allocated to such Shareholder.

**“Transfers”** has the meaning set forth in Section 15.01(b).

**“U.S. Treasury Regulations”** means the regulations, proposed regulations and temporary regulations promulgated under the Code from time to time and, in each case, any successor regulations thereto.

**“Upper Tier Indemnitor”** means any of the Board, the AIFM or any of their respective Affiliates other than the ICAV or an Investment.

**“Valuation Point”** has the meaning set forth in Section 8.01.

Section 1.02 ICAV Name. The name of the ICAV is “Bain Capital Special Situations Europe ICAV” or such other name as the Board may from time to time designate in accordance with the requirements of the Central Bank. The Board will notify Shareholders in writing of any change to the name of the ICAV.

Section 1.03 Office; Registered Agent. The ICAV’s registered agent for service of process on the ICAV and the address of the ICAV’s registered office in Ireland shall be 32 Molesworth Street, Dublin 2, or such other agent or office in Ireland as the Board may from time to time designate. The ICAV may have such other place or places of business within or without the Republic of Ireland as may be designated by the Board.

Section 1.04 Object of the ICAV. The ICAV is a body corporate of a type known as an Irish Collective Asset-management Vehicle, having as its sole object the collective investment of its funds in property and giving members the benefit of the results of the management of its funds. In pursuit of this object, the ICAV shall (a) identify potential Investments, (b) to acquire, hold and / or Realize Investments and (c) to invest, pending utilization or disbursement of funds, such funds in accordance with the terms of this Instrument. The ICAV shall have the power to do any and all acts necessary, appropriate, desirable, incidental or convenient to or for the furtherance of the purposes described in this Section 1.04, including any and all of the powers that may be exercised on behalf of the ICAV by the AIFM pursuant to this Instrument and the AIFM Agreement. The ICAV is hereby authorized to execute, deliver and perform, and the Board, on its own behalf or on behalf of the ICAV, is hereby authorized to execute and deliver a Subscription Agreement with each Shareholder, the AIFM Agreement, any Side Letter and all documents, agreements, or certificates contemplated thereby or related thereto, all without any further act, vote or approval of any other Person notwithstanding any other provision of this Instrument. The foregoing authorization shall not be deemed a restriction on the powers of the AIFM or Board to enter into other agreements on behalf of the ICAV.

Section 1.05 Subscribers; Appointment of Initial Board. Two Subscriber Shares have been issued to the Subscribers at an issue price of €1 per Share, solely for the purposes of the incorporation of the ICAV and to enable the ICAV to seek authorization under the Act from the Central Bank. The

Subscriber Shares may be redeemed by the ICAV at any time after the authorization of the ICAV by the Central Bank at the fixed price of €1. The Subscribers have also appointed the initial Board, which will be authorized to operate the ICAV as an Irish Collective Asset-Management Vehicle under and pursuant to the Act following its authorization by the Central Bank.

Section 1.06 First Closing. On the First Closing Date of the ICAV, upon execution (directly or by power of attorney) of a Subscription Agreement, dated the First Closing Date of the ICAV, such Person is hereby admitted to the ICAV as a Shareholder of the ICAV. The First Closing Date of a Sub-Fund will occur at the time that Sub-Fund or any Feeder Vehicle first accepts Capital Commitments for Shares from applicants unaffiliated with Bain Capital. Shares of the relevant Class will be issued at a fixed price of U.S. \$100 or €100, as the case may be, and thereafter such issued Shares will fluctuate in accordance with the Net Asset Value of the relevant Class, calculated in accordance with the Prospectus.

Section 1.07 Special Shareholder. The Board may establish a separate Class of Shares in each Sub-Fund to be held by the Special Shareholder entitling it to the rights of the Special Shareholder as set out herein and in the Prospectus.

Section 1.08 Structure of the ICAV, its Sub-Funds and Classes. The ICAV is an AIF established as an umbrella fund comprising separate Sub-Funds with segregated liability, each of which may be comprised of one or more Classes (and in turn of one or more Series) and each of which shall be closed-ended save for such limited liquidity features as may be detailed in the Prospectus. The Board may from time to time establish, with the prior approval of the Central Bank, additional Sub-Funds and/or in accordance with the requirements of the Central Bank, and on prior notification to the Central Bank, may designate additional Classes and issue Shares in such Sub-Funds or Classes. Subject to the requirements of the Central Bank, the Board may, in its absolute discretion, differentiate between the Shares in any Class or Sub-Fund including, without limitation, as to the fees payable in respect thereof, assets allocated thereto, subscription/redemption and dealing procedures, distribution policy, currency denomination, voting rights, return of capital, use of techniques and instruments (including derivatives) and as to whether the Shares have preferred, deferred or other special rights, privileges or restrictions attached thereto. The rights conferred on the Shareholders of the Shares of any Class issued with preferred or other rights shall not, unless otherwise expressly provided by this Instrument or the terms of the issue of the Shares of that Class, be deemed to be varied by the creation or issue of additional Shares ranking *pari passu* therewith or subordinate thereto.

Section 1.09 Allocation between Sub-Funds. The assets and liabilities of the ICAV shall be allocated to each Sub-Fund in the following manner:

(a) for each Sub-Fund, the ICAV shall keep separate records in which all transactions relating to the relevant Sub-Fund shall be recorded and to which the proceeds from the issue of Shares in each Sub-Fund and the assets and liabilities and income and expenditure attributable to each Sub-Fund shall be applied subject to the provisions of this item;

(b) where the ICAV incurs a liability which relates to any asset of a particular Sub-Fund or to any action taken in connection with an asset of a particular Sub-Fund, such liability shall be allocated to that Sub-Fund;

(c) in circumstances in which an asset or liability is not clearly attributable to a particular Sub-Fund or is attributable to the ICAV as a whole, the AIFM shall have the discretion to determine the basis upon which assets or liabilities shall be allocated between the Sub-Funds and from time to time, subject to the approval of the Depositary, to vary such allocations save where the asset or liability is allocated between all Sub-Funds pro rata to their Net Asset Value at the time of allocation; and

(d) where hedging strategies are used in relation to a Sub-Fund or Class, the Investments used to implement such strategies shall be deemed to be assets or liabilities (as the case may be) of the relevant Sub-Fund as a whole but the gains/losses on and the costs of the relevant Investments will accrue solely to the relevant Class;

provided always that the liabilities of or attributable to a Sub-Fund shall be discharged solely out of the assets of that Sub-Fund and the assets of or attributable to a Sub-Fund shall not be applied in satisfaction of any liability incurred on behalf of or attributable to any other Sub-Fund.

This Section shall apply to the assets and liabilities attributable to any Class or Series *mutatis mutandis*.

## ARTICLE 2 MANAGEMENT AND OPERATIONS OF THE ICAV

### Section 2.01 Management Generally.

(a) *Management.* The business of the ICAV shall be managed by the Board and the Board has authority to exercise all the powers, authorities and discretions expressed in the Act or by this Instrument to be vested in an Irish Collective Asset-management Vehicle, whether relating to the management of the business or not, as are not required by the Act, the AIFMD Regulations, or by this Instrument to be exercised by the ICAV in general meeting but subject to any directions (not being inconsistent with the Prospectus, the Act, the AIFMD Regulations or this Instrument) as the Shareholders in a general meeting may by Ordinary Resolution, Special Resolution or 75% Resolution give. No alteration of this Instrument shall invalidate any prior act of the Board that would have been valid if that alteration had not been made. No resolution made by the ICAV in general meeting or by a Shareholder shall invalidate any prior act of the Board that would have been valid if such resolution had not been made. The powers given by this section shall not be limited by any special power given to the Board by this Instrument and a meeting of the Board at which a quorum is present may exercise all powers exercisable by the Board. The Shareholders shall, except as provided under the Act and this Instrument, have no part in the conduct of the business or the management or control of the ICAV and shall have no authority or right in their capacities as Shareholders to act on behalf of the ICAV in connection with any matter.

(b) *Delegation.* Without prejudice to the generality of the last preceding section, the Board, exercising reasonable care and subject to the requirements of the Central Bank and other applicable law, may delegate to any Person or Persons (including the AIFM), all or any of the powers, rights, privileges, duties and discretion vested in it in this Article 2, and such delegation may be made upon such terms and conditions as the Board shall determine. In particular, any power, authority or duty granted to the Board hereunder (including the power and authority set forth in Section 2.02) may be exercised instead by the AIFM as the Board's delegate, to the extent permitted by applicable law and subject to the requirements of the Central Bank.

Section 2.02 Authority of the Board. The Board shall have the power on behalf of and in the name of the ICAV to carry out the sole object of the ICAV in accordance with, and subject to the limitations contained in, this Instrument (in addition to all powers implied at law) and to perform all acts which it may deem necessary, appropriate, desirable, incidental or convenient or in connection therewith, including the power to:

(a) seek and maintain authorization of the ICAV pursuant to the Act as an Irish collective asset-management vehicle;

(b) appoint an external AIFM to the ICAV, in accordance with the requirements of the Central Bank and applicable law;

(c) establish one or more Sub-Funds, and direct the formulation of investment objectives, policies and strategies for each Sub-Fund, together with such other features as shall be disclosed in the Prospectus;

(d) identify and evaluate investment opportunities for each Sub-Fund;

(e) acquire, structure, hold, manage, own, sell, transfer, convey, assign, exchange, pledge, grant options with or on, Realize, or otherwise deal in any Investment, Short-Term Investment or other asset or instrument made or held by a Sub-Fund;

(f) subject to Section 3.01, Section 5.03 and Section 5.04 and to the extent permitted by the Prospectus, to invest and reinvest the assets of a Sub-Fund in interests in, including without limitation, bank loans, public and Rule 144A debt securities, mezzanine investments, equity securities, whether public or private, non-performing debt obligations, hedging transactions, derivatives transactions, short-sale transactions and other issuers of structured products and other investments in business organizations, domestic or foreign, including businesses the Securities of which have no established market and may be restricted with respect to transfer and including in transactions originated by the ICAV, the AIFM or the Portfolio Manager;

(g) possess, sell, exchange, lend, pledge, mortgage, transfer, hypothecate, write options on, lease and otherwise deal in any or all of the Securities or other assets of a Sub-Fund, and to purchase and sell foreign currencies, and enter into contracts for the purchase or sale of foreign currencies at a future date, all with the ultimate objective of seeking to preserve, improve or enhance the value of the relevant Sub-Fund;

(h) vote, give assent and otherwise to exercise all rights, powers, privileges and other incidents of ownership or possession with respect to the Securities or other assets of a Sub-Fund; and to execute and deliver proxies or powers of attorney to such person or persons as the Board shall deem proper, granting to such person or persons such power and discretion with relation to Securities or other assets as the Board shall deem proper;

(i) exercise powers and rights which in any manner arise out of ownership of Securities, including without limitation subscription rights, on behalf of the relevant Sub-Fund;

(j) hold any security or other assets in a form not indicating any particular owner, whether in bearer, unregistered or other negotiable form, or (subject to the requirements of the Central Bank and the AIFM Directive) in the name of the ICAV or in the name of the Depositary or of a responsible sub-custodian or other depositary or a nominee or nominees;

(k) consent to, participate in or initiate any plan for the reorganization, consolidation or merger of any corporation or issuer, any security of which is or was held by a Sub-Fund; to consent to any contract, lease, mortgage, purchase or sale of property by such a corporation or issuer, and to pay calls or subscriptions with respect to any security held by a Sub-Fund;

(l) join with other security holders in acting through a committee, depositary, voting trustee or otherwise, and in that connection to deposit any security with, or transfer any security to, any such committee, depositary or trustee, and to delegate to them such power and authority with relation to any security (whether or not so deposited or transferred) as the Board shall deem proper, and to agree to

pay, and to pay, such portion of the expenses and compensation of such committee, depositary or trustee as the Board shall deem proper;

(m) institute, prosecute, defend, settle, compromise or otherwise adjust all claims (including but not limited to claims for taxes) and litigation arising out of the conduct of the affairs of a Sub-Fund or in the enforcement of obligations due it, including all rights of appeal;

(n) form subsidiary vehicles in accordance with the requirements of the Central Bank, including partnerships, limited liability companies, corporations or other appropriate entities through which a Sub-Fund may hold or advise one or more Investments or incur borrowings;

(o) open accounts with banks, brokerage firms or other financial institutions, and deposit, maintain and withdraw funds in the name of the relevant Sub-Fund and draw checks or other orders for the payment of moneys as well as to endorse, accept or guarantee the payment of any notes, drafts or other obligations of any person;

(p) employ and entrust the assets of the ICAV and each Sub-Fund to the Depositary for safekeeping in accordance with the Act and the AIFMD Regulations, and authorize such Depositary to employ sub-custodians and agents and to deposit all or any part of such assets in a system or systems for the central handling of Securities;

(q) transfer any assets of the ICAV or any Sub-Fund to a third party, including but not limited to any prime broker, which third party may reuse such assets, in accordance with applicable law and the requirements of the Central Bank;

(r) cause the ICAV to enter into, execute, amend, supplement, acknowledge and deliver the AIFM Agreement without any further act, approval or vote of any Person;

(s) enter into, execute, amend, supplement, acknowledge and deliver any and all other contracts, agreements or other instruments as the Board shall determine to be appropriate in furtherance of the object of the ICAV, including entering into acquisition agreements to make or dispose of all or any portion of any Investment which may include such representations, warranties, covenants, indemnities and guarantees as the Board deems necessary or advisable;

(t) borrow money, issue (or guarantee) evidences of indebtedness and obtain lines of credit, loan commitments and letters of credit for the account of a Sub-Fund or (subject to the requirements of the Central Bank) any Person in which a Sub-Fund has a direct ownership interest, including a Credit Facility, repurchase agreement, swap or other structured or derivative product or similar credit transaction, and secure the same by mortgage, pledge, assignment, charge or other lien or security interest on any assets of the relevant Sub-Fund (including the Investments, the obligations of the Shareholders to make Capital Contributions and other required payments to the Sub-Fund, the right to deliver Contribution Notices and the Sub-Fund's right, title and interest in and to the Available Commitments); provided, the aggregate amount of borrowings outstanding at any time by the Fund (other than any borrowings used to fund Investments in anticipation of Capital Contributions being called from the Shareholders) shall not exceed an amount equal to 100% of the aggregate Capital Commitments (the "**Leverage Limitation**") at such time (it being understood, for the avoidance of doubt, that borrowings by investment vehicles of the Fund shall not be included in calculating, nor subject to, the Leverage Limitation);

(u) purchase and pay for insurance policies that the Board considers necessary or appropriate for the conduct of the business of the ICAV and each Sub-Fund, including pursuant to

Section 12.01(i) including, without limitation, insurance policies covering any Person individually against all claims and liabilities of every nature arising by reason of being, or holding, having held, or having agreed to hold office as, a Director, officer, member of the Advisory Board, employee, agent, investment advisor or manager, or independent contractor of the ICAV, or being, serving, having served, or having agreed to serve at the request of the ICAV as a member, partner, director, trustee, officer, employee, agent or independent contractor of another partnership, limited liability company, corporation, joint venture, trust or other enterprise, or by reason of any action alleged to have been taken or omitted by any such Person in any of the foregoing capacities, including any action taken or omitted that may be determined to constitute negligence, whether or not in the case of insurance the ICAV would have the power to indemnify such person against such liability;

(v) bring and defend actions and Proceedings at law or in equity and before any governmental, administrative or other regulatory agency, body or commission;

(w) subject to Section 2.07(b), employ, on behalf of the ICAV, any and all financial advisers, underwriters, attorneys, accountants, consultants, appraisers, sourcing or operating partners, independent contractors or other agents (including without limitation, brokers, auditors, counsel, consultants or managers or specialists in any field of endeavor whatsoever), on such terms and for such compensation as the Board or the AIFM may determine (including providing customary indemnification in connection with the services provided), whether or not such Person may be an Affiliate of the Board, the AIFM or a Shareholder, or may also be otherwise employed by any such Affiliate, and terminate such employment;

(x) incur expenses and other obligations, and make payments on behalf of a Sub-Fund, including payment of expenses and other obligations with respect to any services performed on behalf of a Sub-Fund or pursuant to this Section 2.02;

(y) register or qualify the ICAV or any Sub-Fund under any applicable U.S. federal or state or non-U.S. laws, or to obtain exemptions under such laws, if such registration, qualification or exemption is deemed necessary or desirable by the Board;

(z) establish reasonable reserves for contingencies and for any other ICAV purpose in accordance with this Instrument;

(aa) in accordance with this Instrument, make distributions to the Shareholders in cash or otherwise;

(bb) exercise powers and rights which in any manner arise out of ownership of Securities on behalf of a Sub-Fund;

(cc) grant indemnities of every description, and to undertake obligations of every description;

(dd) subject to Section 11.01(d), determine the accounting methods and conventions to be used in the preparation of any accounting or financial records of each Sub-Fund and make other applicable accounting and financial determinations;

(ee) prepare and cause to be prepared reports, statements and other information for distribution to the Shareholders;

(ff) make or, if applicable, cause the Tax Matters Representative to make such agreements, elections, filings and determinations under any applicable U.S. federal, state, local or non-U.S. tax laws as to any matter, as the Board may determine;

(gg) pay all withholding and other taxes, assessments and other impositions, directly or indirectly, applicable to the assets and / or income of each Sub-Fund, and withhold amounts with respect thereto from funds otherwise distributable to the Shareholders;

(hh) maintain records and accounts of all operations and expenditures of the ICAV and each Sub-Fund;

(ii) convene meetings of the Advisory Board for any purpose;

(jj) effect the dissolution of the ICAV in accordance with Article 13;

(kk) form Alternative Investment Vehicles pursuant to Section 9.01 (and any board of directors, general partner or other managing entity thereof) and, subject to Article 9, cause some or all of the Shareholders to make investments through one or more Alternative Investment Vehicles;

(ll) enter into any hedging transaction (including hedging for interest rate, currency and other appropriate risks) as the Board shall determine to be necessary or desirable to further the object of the ICAV;

(mm) enter into joint ventures, general or limited partnerships and any other combinations or associations;

(nn) procure the ICAV and/or any Sub-Fund to be registered or recognized in any part of the world outside Ireland;

(oo) appoint one or more independent representatives from time to time to act as agent for the ICAV and the Shareholders (and each Shareholder by entering into a Subscription Agreement shall thereby consent to such appointments) to act for and on behalf of the ICAV and the Shareholders with the power to receive delivery, from time to time, of any custodial statements, account statements, ICAV financial statements, notices and/or other information otherwise required to be provided to Shareholders under any custody or similar law or rule under the Advisers Act (or determined by the Portfolio Manager to be necessary or appropriate for its compliance with the Advisers Act), to review such information and to take such further actions in connection with its role as an “independent representative” under the Advisers Act as such representative determines is necessary or appropriate or as the AIFM or the Portfolio Manager and such representative may mutually agree; and

(pp) act for and on behalf of the ICAV and each Sub-Fund in all matters incidental to the foregoing, and take any and all other actions which are determined by the Board to be necessary, convenient, conducive, ancillary or incidental to the conducting of the ICAV’s business.

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

#### Section 2.03 Appointment of Service Providers.

(a) *AIFM.*

(i) In accordance with the AIFMD Regulations, the ICAV shall appoint an external entity pursuant to an AIFM Agreement to act as the AIFM of the ICAV and each Sub-Fund, with responsibility for portfolio management and risk management and/or such other relevant functions set out in the AIFM Directive, upon such terms and conditions, including the ability to sub-delegate to portfolio managers and including such right to remuneration and indemnification from the assets of the ICAV (including without limitation the Advisory Fee) as the Board may from time to time (with the agreement of the said AIFM) determine. The AIFM shall be responsible for making available all information required by the AIFMD Regulations to prospective Shareholders.

(ii) The AIFM Agreement shall govern the circumstances under which the AIFM may be replaced and/or shall retire. In the event of the AIFM desiring to retire or the Board desiring to remove the AIFM, the Board shall use best endeavors to find an entity qualified and willing to act as a replacement alternative investment fund manager and, upon so doing, the Board shall appoint such entity to be AIFM in place of the former AIFM. The appointment of a new AIFM shall be approved by the Central Bank. The Central Bank may replace the AIFM with another alternative investment fund manager in accordance with the requirements of the AIF Rulebook.

(b) *Depositary.*

(i) The Board shall, subject to the prior approval of the Central Bank, appoint a Depositary who shall be responsible for the safe custody of all the Investments of each Sub-Fund; shall perform its duties required of a depositary as prescribed by the AIFMD Regulations; and shall perform such other duties on such terms as the Board may from time to time (with the agreement of the Depositary) determine. The Depositary appointed shall be approved by the Central Bank to act as depositary pursuant to the AIFMD Regulations.

(ii) The Depositary may, where the law of a third country requires that certain 'financial instruments' (as that term is defined in the AIFMD Regulations) are held in custody by a local entity and there are no local entities that satisfy the requirements specified in regulation 22, paragraph (11)(b)(iv), sub clause (II) of the AIFMD Regulations, discharge itself of liability provided that the following conditions are met: (i) the Shareholders of the relevant Sub-Fund have been duly informed of that discharge and of the circumstances justifying the discharge prior to their investment; (ii) the ICAV instructed the Depositary to delegate the custody of such financial instruments to a local entity; (iii) the written contract between the Depositary and the ICAV expressly allows such a discharge; and (iv) there is a written contract between the Depositary and the third party that expressly transfers the liability of the Depositary to that local entity and makes it possible for the ICAV to make a claim against that local entity in respect of the loss of financial instruments or for the depositary to make such a claim on their behalf.

(iii) The ICAV may in accordance with the requirements of the Central Bank appoint one or more entities to act as prime broker of the assets of one or more Sub-Funds and to perform such other duties upon such terms and conditions including the right to remuneration payable by the ICAV as the Board may from time to time (with the agreement of the said prime broker) determine. The ICAV may authorise the Depositary to transfer assets of the relevant Sub-Fund to a sub-custodian, agent, nominee or settlement system or outside of the custodial network to a prime broker, which assets the prime broker may (where provided for in the prime brokerage agreement) pledge, lend, rehypothecate or otherwise reuse for its own purposes. Without prejudice to any other section of this Instrument, the ICAV may charge, or instruct the Depositary



to charge, assets of the relevant Sub-Fund in favour of the relevant prime broker in order to secure the relevant Sub-Fund's obligations towards the prime broker.

(iv) In the event of the Depositary desiring to retire or the ICAV desiring to remove the Depositary from office, the Board shall use its reasonable endeavors to find an entity (being a depositary approved for the purpose by the Central Bank) willing to act as depositary and subject to the prior approval of the Central Bank, the Board shall appoint such entity to be Depositary in place of the former Depositary. The Depositary may not retire or be removed from office until the Board shall have found an entity willing to act as Depositary and such entity shall have been appointed Depositary in place of the former Depositary.

(v) If within a period of up to six months from the date on which (a) the Depositary notifies the ICAV of its desire to retire and has not withdrawn notice of its intention to so retire; (b) the appointment of the Depositary is terminated by the ICAV, or (c) the Depositary ceases to be qualified as a depositary approved by the Central Bank, and no new Depositary approved for the purpose by the Central Bank has been appointed, the Board shall instruct the Secretary to forthwith convene an extraordinary general meeting of the ICAV at which there shall be proposed to consider a resolution to wind up the ICAV in accordance with this Instrument. Notwithstanding anything set out in this Instrument, the Depositary will remain in office until the appointment of a successor depositary or authorization of the ICAV has been revoked by the Central Bank.

(vi) Notwithstanding the above, the Central Bank at any time may replace the existing Depositary with another Depositary in accordance with the provisions of the AIF Rulebook.

(c) *Secretary.* The Board shall appoint a secretary of the ICAV (the “**Secretary**”) for such term, at such remuneration and on such conditions as it may think fit and any Secretary so appointed may be removed by them. The Secretary may be one of the Directors. The Directors may appoint joint secretaries and reference to “Secretary” in this Instrument shall be construed accordingly. Anything required or authorized by the Act or this Instrument to be done by, or given to, the Secretary may be done by or given to any assistant or acting secretary readily available and capable of acting by or to any officer of the ICAV authorized generally or specially in that behalf by the Board, if the office is vacant or there is for any other reason no Secretary readily available and capable of acting, provided that any provision of the Act or this Instrument requiring or authorizing a thing to be done by or to a Director and the Secretary shall not be satisfied by its being done by or to the same person acting both as a Director and as, or in the place of, the Secretary.

(d) *Other Service Providers.* The ICAV may appoint one or more other service providers for such purposes and to perform such other duties as the Board in its discretion consider necessary or beneficial, upon such terms and conditions including the right to remuneration and indemnification from the assets of the ICAV as the Board may from time to time determine. The appointment of a service provider shall be in accordance with any applicable requirements of the Central Bank.

Section 2.04 Advisory Fee. In consideration for the management services rendered pursuant to the AIFM Agreement, the ICAV, directly or indirectly through a subsidiary of the ICAV, shall pay to the AIFM an advisory fee (the “**Advisory Fee**”) pursuant to and in accordance with the terms and conditions of the AIFM Agreement and as set out in the Prospectus, and the Book Capital Account of each Fee Shareholder shall be reduced by an amount equal to such Fee Shareholder's Advisory Fee Expense, as calculated pursuant to the AIFM Agreement. For purposes of calculating each Fee

Shareholder's Advisory Fee Expense for a given Fiscal Period, such Fiscal Period shall be assumed to be a calendar quarter, with appropriate adjustments to be made for any Fiscal Period which is in fact shorter than a calendar quarter. In the event that the ICAV determines to end a Fiscal Period before the end of the related calendar quarter, the Advisory Fee paid at the outset of such calendar quarter shall not be recalculated. The Advisory Fee may not be increased without (i) the prior approval of at least 75% of the votes cast in respect of a meeting, duly convened and held, of the Class (or Classes) of Shareholders affected by the Advisory Fee increase; or (ii) the prior written approval of all Shareholders affected by the Advisory Fee increase.

Section 2.05 *Status under ERISA.* The Board currently expects that the assets of the ICAV will not constitute "plan assets" for the purposes of ERISA or Section 4975 of the Code because investment in the ICAV by investors subject to Title I of ERISA or Section 4975 of the Code, or entities whose assets are treated as "plan assets" of any such entities is not expected to be "significant". However, the Board in its discretion may decide not to restrict investment by employee benefit plan investors and operate the ICAV as a "venture capital operating company" or, instead, to allow the assets of the ICAV to constitute "plan assets."

Section 2.06 Borrowings by the ICAV.

(a) *Credit Facility.* The ICAV may enter into one or more credit facilities or other debt instruments to incur any indebtedness (including notes, Securities, guarantees, repurchase agreements, swaps and other structured or derivative products and similar credit transactions) (each, a "**Credit Facility**") with one or more banks, syndicates of banks or other lenders or other financial investors (collectively, the "**Lenders**") from time to time, and to execute any related documents, instruments or agreements contemplated thereby or related thereto, in order to facilitate a Sub-Fund's operations, including (i) to enable the ICAV or a Sub-Fund to pay Fund Expenses (including the Advisory Fee), (ii) to facilitate the acquisition or Realization of Investments or other permitted investment or hedging activities of a Sub-Fund, (iii) for the benefit of Investments of a Sub-Fund, (iv) to make advances and distributions, including Tax Distributions to the Special Shareholder in respect of the Carried Interest pursuant to Section 7.03 or advances of indemnification payments pursuant to Section 12.01(c) or to make distributions to the Shareholders in accordance with the distribution priorities set forth in Section 6.01(a), (v) for any other purpose for which a Contribution Notice could be issued, and (vi) for other permitted ICAV purposes.

(b) *Security for Credit Facility.* Any Credit Facility may be secured by (i) the assets of the relevant Sub-Fund (including Available Commitments), (ii) an assignment and / or pledge of, or lien, encumbrance, charge or other security interest on, the obligations of the Shareholders (including any supporting obligations thereof, such as any letters of credit, guarantees or collateral security provided by any Person to the relevant Sub-Fund or to the Board or the AIFM on behalf of the relevant Sub-Fund to secure such obligations of any Shareholder to the relevant Sub-Fund) to make Capital Contributions and other required payments to the Sub-Fund, (iii) the right to deliver Contribution Notices, (iv) the relevant Sub-Fund's right, title and interest in and to the Available Commitments, (v) any other properties or assets of the Sub-Fund (including (x) any account into which Shareholders are directed to make Capital Contributions and (y) Investments and any and all rights and remedies related thereto) and (vi) any other rights or remedies of the ICAV, the Board or the AIFM hereunder or under the Subscription Agreements; provided that the AIFM may elect not to pledge or assign the obligations of certain Shareholders to make Capital Contributions and other required payments to the relevant Sub-Fund, or require that certain Shareholders provide other credit support. In connection with any such Credit Facility, the Lender may be permitted to deliver Contribution Notices and require that all such Capital Contributions shall be payable to an account of the relevant Sub-Fund pledged to or for the benefit of the Lender. In addition, until such time as all Credit Facilities have been terminated and all loans and advances outstanding

thereunder have been paid in full, and in addition to any restrictions imposed by this Instrument, each Shareholder by entering into a Subscription Agreement may be restricted from pledging, collaterally assigning, granting a security interest in or charge or lien on, or otherwise encumbering such Shareholder's interest in the ICAV. The ICAV may participate in and borrow funds under a Credit Facility together with one or more Parallel Vehicles on a joint and several basis and any such obligations may be cross-collateralized. Any claim that a Shareholder has against the relevant Sub-Fund and / or the ICAV shall be subordinated to any payment or other amount due under any Credit Facility that is secured by an assignment and / or pledge of, or lien, encumbrance, charge or other security interest on, the obligations of the Shareholders to make Capital Contributions or other required payments to the ICAV. All rights that may be granted to a Lender pursuant to this Instrument shall apply to such Lender's agents and other representatives and to the successors and assigns of such Lender and its agents and other representatives.

(c) *Credit Facility Confirmations.* In connection with any Credit Facility obtained by the ICAV or a Sub-Fund, each Shareholder by entering into a Subscription Agreement shall agree (i) notwithstanding anything to the contrary contained in this Instrument, to honor Contribution Notices issued by the credit provider as if issued by the AIFM in the case of a default on the Credit Facility by the ICAV, (ii) to confirm, from time to time, the terms of its Capital Commitment to the credit provider and to execute or obtain such other documents or provide such financial information as may be reasonably necessary to obtain and retain such Credit Facility, (iii) solely for purposes of enforcing any rights, claims or remedies any credit provider may have pursuant to this Section 2.06(c), to confirm that each credit provider shall be deemed to be an intended third party beneficiary of this Instrument, (iv) to confirm that any claim it may have against the ICAV or another Shareholder in the ICAV shall be subordinate to any claim that the credit provider has against the ICAV or such Shareholder in the case of default under the Credit Facility, (v) that it shall not pledge, hypothecate or otherwise encumber its interest or its rights in the Instrument until such time as the Credit Facility has been terminated and all loans and advances outstanding thereunder have been paid in full and (vi) that a Contribution Notice given by a credit provider to a Shareholder shall be deemed to be duly given in respect of any information relevant thereto (including such Shareholder's address and its share of the total amount of Capital Contributions requested to be made) to the extent that such Contribution Notice accurately reflects such information as most recently furnished to the credit provider by or on behalf of the ICAV.

(d) *Capital Contributions.* To the extent that the ICAV or a Sub-Fund has outstanding obligations under a Credit Facility secured by the Available Commitments of the Shareholders hereunder, each Shareholder by entering into a Subscription Agreement shall agree that: (i) it shall be obligated to fund any portion of its Available Commitment without any defense, counterclaim or offset of any kind (including any defense available under bankruptcy law); provided that such agreement to fund shall not act as a waiver of any claim that such Shareholder may have against any other Shareholder or the ICAV and (ii) it shall, unless instructed otherwise by the AIFM and the credit provider, make all Capital Contributions by wire transfer of immediately available funds to a collateral account that has been pledged as security for such Credit Facility.

(e) *Lender Rights.* In the event that, as a result of any such pledge, mortgage, assignment, transfer or grant of security interest, a Shareholder makes a payment directly to a credit provider as required pursuant thereto, such payment shall be deemed to be a Capital Contribution of such Shareholder to the ICAV. Any rights of a credit provider hereunder shall also be for the benefit of and may be exercised by, any agent or trustee thereof and any successors and assigns thereof.

(f) *Agreements with Lenders.* Each Shareholder by entering into a Subscription Agreement shall understand, acknowledge and agree that, in connection with any Credit Facility, the ICAV may agree with the Lenders that it will not take any of the following actions without the prior

written consent of the Lenders: (i) amending, modifying, supplementing, canceling, terminating, reducing or suspending any of the Shareholders', the Board's or the AIFM's obligations under this Instrument or any Subscription Agreement, to the fullest extent permitted by law; (ii) amending, modifying, supplementing, canceling or terminating the AIFM Agreement; (iii) winding up the ICAV, to the fullest extent permitted by law; or (iv) permitting any release, reduction, waiver, excusal, discharge, extension of notice period or other time for payment of, exoneration or other compromise of, funding of Capital Contributions for the purpose of repaying any obligations under any Credit Facility. Each Shareholder by entering into a Subscription Agreement shall understand, acknowledge and agree, in connection with any Credit Facility, that the ICAV may, without the prior written consent of such Shareholder modify the terms of any Credit Facility.

(g) *Affiliate Lending.* Each of the AIFM, the Portfolio Manager or any of their Affiliates may, but shall not be obligated to, advance its own funds and act as the Lender to the ICAV, or any entity through which an Investment is held by the ICAV on terms determined by the AIFM in good faith to be comparable to the terms applicable to Lenders as provided in this Section 2.06. Such advances shall bear interest at a rate no less favorable to the ICAV than could be obtained by the ICAV in arm's-length transactions with an unaffiliated third party credit provider.

#### Section 2.07 Other Activities.

(a) *Unrelated Activities.* The members of the AIFM Group may have business interests and engage in or have financial, investment and professional activities and / or interests in addition to those related to the ICAV, which interests and activities may be similar to or different from those of the ICAV, and no such activity shall constitute a breach of any duty owed by any such Person to the Shareholders or the ICAV. In conducting such business activities, the members of the AIFM Group will, except as specifically provided to the contrary in this Instrument, be under no duty or obligation to make business opportunities available to the ICAV. In furtherance thereof, members of the AIFM Group, may, from time to time, serve on the boards of directors of portfolio companies and provide management, consulting and other services to portfolio companies or other investment vehicles in which a Sub-Fund has made, or proposes to make, an Investment and may receive fees for, and be reimbursed for expenses incurred in connection with, such activities and services from portfolio companies or other investment vehicles and from other Persons other than the ICAV. No such activity or service shall be performed by any member of the AIFM Group as an agent of the ICAV and the ICAV shall have no obligation to compensate any member of the AIFM Group for such activities or services. Except as set forth in the AIFM Agreement and the Prospectus, with respect to amounts that offset the Advisory Fee, no member of the AIFM Group shall be required to remit any fees or other amounts received in connection with such activities or services to the ICAV.

(b) *Conflict Transactions.* Without limiting the generality of Section 2.07(a), each Shareholder by entering into a Subscription Agreement shall acknowledge and agree that in addition to transactions specifically contemplated by this Instrument, to the extent permitted by applicable law, each member of the AIFM Group and each Related Fund may acquire Investments or obtain services from, borrow money or obtain a Credit Facility from, sell Investments or provide services to, or otherwise enter into any transaction with, the ICAV, any Shareholder, any Investment, or any Affiliate of any of the foregoing Persons; provided that with respect to any such transaction between the ICAV or any Investment, on the one hand, and a member of the AIFM Group, on the other hand, such transaction shall be on terms no less favorable to the ICAV or such Investment than the terms that would be obtained by the ICAV or such Investment on an arm's-length basis and subject to the requirements of the Central Bank, it being understood that if the Board or the AIFM consults with the Advisory Board with respect to a matter giving rise to a conflict of interest, and if the Advisory Board waives such conflict of interest or the Board or the AIFM acts in a manner, or pursuant to standards or procedures, approved by the

Advisory Board with respect to such conflict of interest, then none of the Board, the AIFM or any of their Affiliates shall have any liability to the Fund or any Fund Investor for actions in respect of such matter taken in good faith by them, including actions in the pursuit of their own interests, and will be deemed to have satisfied their fiduciary duties related thereto and acted in good faith to the fullest extent permitted by law.

#### Section 2.08 Shareholder Removal of the AIFM.

(a) *Removal.* Within 90 days after notification that the AIFM, the Portfolio Manager or any Key Manager is convicted of fraud, embezzlement or a similar felony or a court of competent jurisdiction has determined (other than on an injunctive basis) that such person has committed willful misconduct that had, or is reasonably expected to have, a materially adverse effect on the ICAV unless, in the case of a Key Manager, such Key Manager ceases to be an active employee of the AIFM or the Portfolio Manager, as applicable, within 60 days following such conviction, the Fund Investors may remove the AIFM by delivering written notice to the Board of the decision of an Ordinary Resolution of Fund Investors to remove the AIFM and, subject to Section 2.08(b), appoint a successor AIFM (a “**Successor AIFM**”) and a successor special Shareholder (a “**Successor Special Shareholder**”). Additionally, within 90 days after notification that a court of competent jurisdiction has determined that the AIFM, the Portfolio Manager or any Key Manager has committed Gross Negligence that had, or is reasonably expected to have, a materially adverse effect on the ICAV, unless, in the case of a Key Manager, such Key Manager ceases to be an active employee of the AIFM or the Portfolio Manager within 60 days following such conviction and the ICAV is made whole for any direct losses caused by such Key Manager’s Gross Negligence, the Shareholders may remove the AIFM as AIFM of the ICAV by delivering written notice to the Board of the decision of a Special Resolution of Shareholders, voting as a single class, to remove the AIFM and, subject to Section 2.08(b), appoint a Successor AIFM. Any Successor AIFM shall be authorized for the purpose of making all necessary filings under the Act to give effect to the removal of the AIFM and appointment of the Successor AIFM and the Successor Special Shareholder.

(b) *Effect of Removal.* If the AIFM is removed as the AIFM pursuant to **Error! Reference source not found.**, it shall cease to be the alternative investment fund manager of the ICAV for all purposes of this Instrument and the Act (including for all purposes of Section 5.01) with effect from the approval of its replacement by the Central Bank, and the Special Shareholder shall become a special Shareholder without voting rights but with the right to exculpation and indemnification and the Special Shareholder shall retain the right to receive all allocations and distributions, including Carried Interest, with respect to investments made prior to the effective date of the removal of the AIFM that either would have had the right to receive as the AIFM and/or the Special Shareholder (with such allocations and distributions to be made at the same time as they would have been had the AIFM remained AIFM of the ICAV). Any Successor AIFM will act in good faith in determining allocations, and making distributions, of Carried Interest to the Special Shareholder. The removed Special Shareholder will not pay any Advisory Fee and no Carried Interest, as the case may be, shall be distributed to the Successor Special Shareholder with respect to such redeemed Special Shareholder’s Shares in the ICAV. Other than the Special Shareholder’s obligations pursuant to Article 14, or any other Bain Investment Person’s obligations pursuant to Section 7.06 as a Shareholder, the Special Shareholder shall not have any further obligation to contribute capital to the ICAV.

(c) *Consent of Removed AIFM.* Notwithstanding anything to the contrary in this Instrument, following the removal of the AIFM as AIFM of the ICAV, no action with respect to the removed AIFM other than actions described in this Section 2.08 may be taken without the consent of the removed AIFM, if such action would adversely affect the rights of or economic benefits to such removed AIFM, the Special Shareholder or any Affiliates or employees of the AIFM under this Instrument. The

ICAV will execute and deliver such documents and take such actions as may be reasonably requested by the removed AIFM to confirm the ICAV's obligations under Article 12 with respect to any Person who was an Indemnified Person prior to the removal of the AIFM. The removed AIFM will cooperate with the Successor AIFM to deliver such records and other information relating to the ICAV as may be reasonably requested by the Successor AIFM.

(d) *Change of Name upon Removal.* Effective upon removal of Bain Capital Investments (Europe) Limited as AIFM of the ICAV, the Successor AIFM shall procure the change of name of the ICAV to a name not including the word "Bain" or "Bain Capital."

Section 2.09 Parallel Vehicles. At any time prior to the Final Closing Date, the AIFM may designate in its discretion one or more investment vehicles established by the AIFM or its Affiliates to make all or a category of Investments alongside the ICAV in respect of a Sub-Fund (each, a "**Parallel Vehicle**" and collectively, the "**Parallel Vehicles**"), and any general partner or other managing entity thereof, to invest on a side-by-side basis with the ICAV in respect of a Sub-Fund. To the extent practicable, subject to legal, tax, regulatory, policy or other considerations particular to one or more of the ICAV in respect of a Sub-Fund, any Parallel Vehicle, and their respective investors, the AIFM expects to manage the ICAV in respect of a Sub-Fund and any Parallel Vehicle in a substantially similar manner.

(a) *Parallel Investment.* Subject to legal, tax, regulatory, structuring, compliance, policy, investment-specific or other considerations particular to one or more of the relevant Sub-Fund, any Parallel Vehicle and their respective investors or other beneficial owners or to an Investment, (i) all Investments made by the Sub-Fund and a Parallel Vehicle shall be made in the same class or type of Securities (although such Investments may be held through entities with different tax or other attributes), and (ii) all Investments and Realizations of Investments made by the Sub-Fund and any Parallel Vehicle in the same Securities shall generally be made, to the extent feasible, at the same time, on the same terms and *pro rata* based on aggregate Capital Commitments of the Sub-Fund and the aggregate capital commitments to the Parallel Vehicles at the time of such Investment or, if prior to the Final Closing Date, based on the AIFM's reasonable expectation as to aggregate Capital Commitments of the Sub-Fund and the aggregate capital commitments to the Parallel Vehicles as of the Final Closing Date.

(b) *Rebalancing.* In connection with the Final Closing Date or at one or more times prior thereto, the AIFM and the Parallel Vehicle Boards, in their discretion and subject to legal, tax, regulatory, structuring, accounting, administrative and / or other considerations, may elect to rebalance Investments that have been made, or are anticipated to be made, by the relevant Sub-Fund and the Parallel Vehicles on a side-by-side basis among the Sub-Fund and the Parallel Vehicles, including by way of transferring portions of Investments between the Sub-Fund and one or more Parallel Vehicles, as necessary so that Investments are allocated among the Sub-Fund and the Parallel Vehicles generally in proportion to the aggregate Capital Commitments of the Sub-Fund and the aggregate capital commitments of such Parallel Vehicles at the time of such Investment or, if prior to the Final Closing Date, based on the AIFM's reasonable expectation as to aggregate Capital Commitments of the Sub-Fund and the aggregate capital commitments to the Parallel Vehicles as of the Final Closing Date. Any such rebalancing may be effected directly or indirectly (including through one or more subsidiaries of the relevant Sub-Fund and / or the Parallel Vehicles), and will generally be in exchange for the costs of the Investments plus (i) in the case of Investments acquired using borrowings, the amount of any interest accrued with respect to such borrowings and (ii) in the case of Investments acquired using Capital Contributions, simple interest at a per annum rate of 8% (compounded annually). Notwithstanding the foregoing provisions of this Section 2.09(b) the AIFM may determine not to rebalance any such Investments among the Sub-Fund and such Parallel Vehicles based on legal, tax, regulatory, administrative and / or other considerations including due to differences in investment strategies or investment limitations applicable to one or much of such Parallel Vehicles or a material change in the

value of an Investment prior to the establishment of such Parallel Vehicle. Any amounts received by a Sub-Fund in connection with any such rebalancing will be allocated to its Shareholders in accordance with their participation in the applicable Investments.

### ARTICLE 3 INVESTMENTS

#### Section 3.01 Investment Limitations.

(a) *Single Investment Limit.* Without the prior approval of the Advisory Board, the Sub-Funds shall not at any time invest more than 15% of the aggregate assets (including Available Commitments) of the Sub-Funds in any one Investment; provided, that the Sub-Funds may invest up to 20% of their aggregate assets in each of up to two portfolios of Investments (the “**Single Investment Limit**”); provided, further, that prior to the Final Closing Date, the Single Investment Limit will be calculated based on the greater of aggregate assets and €1 billion. The Single Investment Limit will be applied at the time the relevant Investment is made and giving effect to the relevant currency exchange rates. For the avoidance of doubt, in the event of a Follow-On Investment, amounts invested in the prior investment will be aggregated (as of the date of such Follow-On Investment) for purposes of these restrictions. The AIFM and the Portfolio Manager will not be deemed to have breached the Single Investment Limit with respect to any Investment made prior to the Final Closing Date based on the expected aggregate Capital Commitments to the Sub-Funds if, after the Final Closing Date, the specified percentage of the aggregate Capital Commitments to the Sub-Funds is no longer exceeded. For purposes of the Single Investment Limit (i) Investments in partially or wholly owned subsidiaries of the ICAV established in respect of the Sub-Funds that are formed for the purpose of the making of an Investment in one or more portfolios shall be disregarded, (ii) Investments held by subsidiaries referred to in clause (i) shall be treated as being owned by the ICAV in respect of the Sub-Funds on a pass-through basis, and (iii) the Sub-Funds’ exposure to an Investment will be calculated by netting the relevant long positions held by the ICAV against the relevant short positions held by the ICAV.

(b) *Irish Regulatory Investment Restrictions.* The following Central Bank mandatory investment restrictions apply to the ICAV:

- (i) If a Sub-Fund invests in shares/units/interests of a collective investment scheme managed by the AIFM or an affiliate of the AIFM, the AIFM or the relevant affiliate must waive any preliminary charge/redemption charges which it is entitled to charge for its own account in relation to the acquisition of such shares/units/interests;
- (ii) Where a commission is received by the ICAV, the AIFM or an affiliate of the AIFM by virtue of a Sub-Fund’s investment in another collective investment scheme, such commission must be paid into the property of the relevant Sub-Fund;
- (iii) The ICAV in respect of a Sub-Fund may not grant loans or act as a guarantor on behalf of third parties (this is without prejudice to the ability of the Sub-Fund to acquire debt securities or loans; it also will not prevent the Sub-Fund from acquiring securities or loans which are not fully paid or from entering into bridge financing arrangements where the financing extended to the Sub-Fund is backed by sufficient legally binding commitments to discharge the financing within a time period determined by the AIFM and at least simultaneously triggering

obligations on Fund Investors to make Capital Contributions which they have committed to make at the time the bridge financing is entered into); and

- (iv) The ICAV in respect of a Sub-Fund shall not raise capital from the public through the issue of debt securities.

The limits set out above shall apply at the time of the purchase of the investment and continue to apply thereafter. If these limits are subsequently exceeded for reasons beyond the control of the AIFM, or as a result of the exercise of subscription rights, the AIFM must record such matters and adopt as a priority objective the remedying of that situation, taking due account of the interests of the Shareholders.

Section 3.02 Short-Term Investment of Funds. Subject to legal, tax, regulatory or other similar considerations or a determination by the AIFM in its sole discretion as to the amount of cash required in connection with the conduct of a Sub-Fund's business, the AIFM or the Portfolio Manager shall invest all cash held by a Sub-Fund in interest-bearing instruments or accounts selected by the AIFM or the Portfolio Manager in its sole discretion ("**Short-Term Investments**"), including (a) any direct obligations of, or obligations which are guaranteed by, the United States of America or other governmental authority or instrumentality of any member countries of the European Union, (b) certificates of deposit, time deposits, demand deposits and bankers acceptances or similar instruments of banks, trust companies or similar institutions with aggregate capital, surplus, and undivided profits of at least €250,000,000, (c) commercial paper or finance company paper which is rated not less than prime-one or A-1 or their equivalents by Moody's Investor Service, Inc. or Standard & Poor's Ratings Services or their successors, (d) any repurchase agreement secured by any one or more of the foregoing, (e) money market funds and (f) similar liquid Securities intended to provide for the preservation of principal. Cash held by a Sub-Fund includes all amounts being held by such Sub-Fund for future investment in Investments, payment of Fund Expenses, distribution to the Shareholders or as reserves for potential liabilities and obligations.

Section 3.03 [Intentionally Omitted].

Section 3.04 Allocation of Investment Opportunities.

(a) *Allocations of Investment Opportunities.* Affiliates of the AIFM or the Portfolio Manager may source investment opportunities that would be appropriate for a Sub-Fund, but such Affiliates of the AIFM or the Portfolio Manager will be under no obligation or fiduciary or other duty to make such investment opportunities available to the Sub-Fund. In that regard, investment opportunities may be made available to Related Funds or to Affiliates of the Board, the Portfolio Manager, the AIFM or any member of the AIFM Group prior to, or instead of, being made available to the Sub-Fund.

(b) *Investment with Related Funds.* To the extent any Related Fund has an investment strategy, objective or guidelines that overlap with those of a Sub-Fund, subject to any requirements of the governing instruments of such other Related Funds, investment opportunities that fall within such common strategy, objectives or guidelines will be allocated among the Sub-Fund and such Related Funds in a manner that the AIFM or the Portfolio Manager and the applicable adviser of such Related Funds, as well as the Board and the applicable general partners of such Related Funds, believe in their sole discretion to be appropriate, taking into account such factors they believe to be relevant in connection with the investment strategies of the Sub-Fund and such other Related Fund, including conflicts of interest.

(c) *Co-investments.* The AIFM may, in its sole discretion, give certain Persons (other than the AIFM, its Affiliates and its employees), including Shareholders or other third parties, an



opportunity to co-invest in particular Investments alongside a Sub-Fund if it determines that such allocation for co-investment generally is in the best interest of the Sub-Fund. The terms of any such co-investment shall be negotiated by the AIFM and the potential co-investor on a case-by-case basis.

(d) *Allocation of Investment Opportunities.* Additional investment opportunities may arise in or with respect to existing Investments of a Sub-Fund, including Follow-On Investments. To the extent that the AIFM determines, in its sole discretion, that it is desirable for all or any portion of such an investment opportunity to be purchased by third parties, including Shareholders, Related Funds, strategic partners, other investors or Persons acting as finders or brokers of transactions, such opportunity need not be made available to the Sub-Fund.

#### ARTICLE 4 BOOK CAPITAL ACCOUNTS

Section 4.01 Book Capital Account. A separate Book Capital Account shall be maintained for each Shareholder which corresponds to the Series of Shares held by such Shareholder. Each Book Capital Account shall be:

(a) increased by (i) all amounts of Regular Profit, New Issue Credit, New Issue Profit, Miscellaneous Income and Forfeited Default Balance allocated to the Shares held by such Shareholder pursuant to Article 6 and (ii) the amount of any Capital Contributions made by such Shareholder pursuant to Article 5; and

(b) decreased by (i) all amounts of Regular Loss, New Issue Charge, New Issue Loss, Miscellaneous Expense and Non-Reimbursable Expense allocated to the Shares held by such Shareholder pursuant to Article 6, (ii) all amounts of Advisory Fee Expense borne by the Shares held by such Shareholder pursuant to Section 5.02(b) and amounts deducted pursuant to Section 5.02(c), (iii) any Forfeited Default Balance forfeited by such Shareholder and (iv) the amount of cash and the Fair Market Value of property distributed to, or withdrawn by, such Shareholder pursuant to Article 7, Article 13 and Article 14.

Section 4.02 Certain Losses. Each Shareholder by entering into a Subscription Agreement shall agree that in the event the relevant Sub-Fund incurs any liability or loss of any kind (including liabilities incurred by the Sub-Fund in connection with the sale of any Securities) on account of or in connection with any matter or transaction occurring or state of affairs existing during the time such Shareholder was a Shareholder and which the AIFM determines, in its sole discretion, should be borne by the persons who were Shareholders at the time the relevant matter or transaction occurred or state of affairs existed, the AIFM may deduct from such Shareholder's Book Capital Account such Shareholder's proportionate share of such liability or loss. Such proportionate share of liability or loss shall be determined according to this Instrument as it existed at the time such state of affairs, matter or transaction arose or occurred.

#### ARTICLE 5 CAPITAL CONTRIBUTIONS, DRAWDOWN PROCEDURES, EXCLUSION AND DEFAULT PROCEDURES, ETC.

Section 5.01 Capital Commitments of Shareholders.

(a) *Bain Investment Commitment.* The Bain Investment Persons have made a commitment to invest in the ICAV (the "**Bain Investment Commitment**").

(b) *Shareholder Capital Commitment.* The Capital Commitment of each Shareholder (including the Bain Investment Persons) shall be set forth in each such Shareholder's Subscription Agreement, and shall at all times be at least the Minimum Commitment Amount.

(c) *Special Shareholder.* The Special Shareholder shall make a Capital Commitment for a specific Class of Shares of each Sub-Fund as a special Shareholder equal to at least 0.1% of the aggregate Capital Commitments of all Shareholders in the relevant Sub-Fund, entitling it to the rights of a special shareholder with respect to Carried Interest as set out herein. On each Subsequent Closing Date, the Special Shareholder shall increase the amount of its commitment so that it at all times is an amount that is equal to at least 0.1% of the aggregate Capital Commitments of all the Shareholders (including the Bain Investment Commitment). The Special Shareholder shall also be entitled to make a Capital Commitment as a Shareholder (including pursuant to Section 5.01(a)), and if it makes such a Capital Commitment as a Shareholder it will be entitled to a return on such Capital Commitment. If the AIFM is removed as AIFM of the ICAV for any reason, the Special Shareholder will be released from any further obligations to fund its Capital Commitment, but may at its election participate in Follow-On Investments related to existing Investments in which it participated.

#### Section 5.02 Contribution Procedures.

(a) *Contribution Notices.* Each Shareholder shall make Capital Contributions in such amounts and at such times as the AIFM shall specify in notices ("**Contribution Notices**") delivered from time to time to such Shareholder. The AIFM shall ensure that the Contribution Date is at least 10 Business Days from and including the date of delivery of the Contribution Notice. If the AIFM determines that it is necessary or desirable to increase the required Capital Contributions to be made by any Shareholder in connection with any Contribution Notice that has been delivered, the AIFM shall deliver an additional Contribution Notice to such Shareholder amending the original Contribution Notice and specifying the amount of such increase. The AIFM shall use commercially reasonable efforts to ensure that the Contribution Date with respect to the amount of such increase shall be at least 5 calendar days after the date such Contribution Notice is issued. All Capital Contributions shall be paid to the account specified in the Subscription Agreement in immediately available funds in the designated currency of the relevant Class by 5:00 p.m. (Irish time) on or before the date specified in the applicable Contribution Notice.

(b) *Amount of Contributions.* Contribution Notices shall be issued *pro rata* among the Shareholders of each Sub-Fund based on Capital Commitments, with appropriate adjustments to reflect any Default, Excluded Shareholder, differences in any Advisory Fees payable, the termination or sanction of any Shareholder or other considerations in the AIFM's reasonable discretion. Each Shareholder shall be required to make Capital Contributions in respect of Contribution Notices up to the amount of such Shareholder's Available Commitment at such time. In consideration for each Capital Contribution, each Shareholder will be issued additional Shares of the relevant Class (or Series of the relevant Class, as applicable) at a fixed price of U.S. \$100 or €100, as the case may be, and thereafter such issued Shares will fluctuate in accordance with the Net Asset Value of the relevant Class, calculated in accordance with the Prospectus.

(c) *Use of Investment Proceeds to Fund Contributions.* In addition to Recyclable Capital, the AIFM may satisfy any amount to be contributed by a Shareholder pursuant to Section 5.02(a) from Investment Proceeds, Temporary Investment Proceeds or any other funds or other assets of the relevant Sub-Fund that are distributable to such Shareholder pursuant to the terms of this Instrument. Except with respect to amounts which are Recyclable Capital, which will not result in a reduction of such Shareholder's Available Commitment, each Shareholder's Available Commitment will, at such time as

reasonably determined by the AIFM, be reduced by any such retained amounts used for paying Fund Expenses and other purposes.

(d) *Recall of Returns of Contributed Capital.* Each Sub-Fund (x) may return to its Shareholders the portion of any Capital Contributions made to the Sub-Fund by the Shareholders that has not been invested or used to pay or provide reserves for current or future Fund Expenses, or that the AIFM has determined are not otherwise advisable to retain for the Sub-Fund's ordinary working capital purposes and (y) shall return to the Shareholders Subsequent Closing Contributions distributed to a Shareholder pursuant to Section 5.07(c)(i), and Capital Contributions returned to a Shareholder as part of the rebalancing of Investments among the Sub-Fund and the Parallel Vehicles pursuant to Section 5.07(d). In addition, each Sub-Fund may from time to time temporarily return to its Shareholders all or any part of Capital Contributions made to the Sub-Fund representing Capital Contributions recovered from Short-Term Investments (but not, for the avoidance of doubt, Investment Proceeds which are invested in Short-Term Investments pending distribution to the Shareholders). All Capital Contributions temporarily returned to the Shareholders pursuant to this Section 5.02(d) shall be treated as having been contributed to the Sub-Fund for all purposes until the time such amounts are returned.

(e) *Reinvestment.* In the AIFM's discretion, a Sub-Fund may retain amounts received without reducing the Shareholders' Available Commitments to (i) make new Investments during the Investment Period and (ii) pay Fund Expenses (including the Advisory Fee), repay borrowings, fund existing investment commitments or investments which were otherwise in process as of the end of the Investment Period, make Follow-On Investments and for any other proper purpose of the Sub-Fund at any time. In addition, any distributions made by a Sub-Fund (i) of Subsequent Closing Contributions and (ii) up to the amount of Capital Contributions made in respect of Fund Expenses plus Capital Contributions made in respect of Investments, will be added to Available Commitments and may therefore be subject to recall ("**Recyclable Capital**"); provided that the Sub-Fund may not reinvest Recyclable Capital to fund any Investment (including, for the avoidance of doubt, any Follow-On Investment) if the AIFM is prohibited from issuing a Contribution Notice to make such Investment by Section 5.03(a) or Section 5.04(a). Amounts of Recyclable Capital reinvested or reused prior to being distributed shall be deemed for all purposes of this Instrument and the AIFM Agreement to have been distributed to the Shareholders and simultaneously recontributed by the Shareholders to the Sub-Fund. Investment Proceeds comprising Recyclable Capital which are distributed to the Shareholders and which have not yet been recontributed shall be added to the amount of Available Commitments of the Shareholders and will remain available to be contributed to the Sub-Fund in accordance with this Article 5.

#### Section 5.03 Investment Period.

(a) *Permitted Drawdowns.* Prior to the termination of the Investment Period, Contribution Notices may be issued for any permitted purpose of the relevant Sub-Fund. After the termination of the Investment Period, Contribution Notices shall only be issued to (i) provide for Fund Expenses, any Indemnification Obligations of the Sub-Fund pursuant to Article 12, as provided in Section 7.06(b) hereof, the repayment of any amounts owed under the Credit Facility or other borrowings of the Sub-Fund and the other liabilities, obligations and expenses of the Sub-Fund; (ii) fund then existing investment commitments or investments which were substantially in process as of the end of the Investment Period; or (iii) make Follow-On Investments; provided that total Capital Contributions invested after the expiration of the Investment Period in Follow-On Investments (excluding Capital Contributions in respect of amounts committed to or reserved for investments made prior to the end of the Investment Period or which were otherwise in process as of the end of the Investment Period) held by the Sub-Fund at any time, without the consent of the Advisory Board, may not exceed an amount equal to 10% of aggregate Capital Commitments.

(b) *Termination of the Investment Period.* The Investment Period may be terminated by (x) the AIFM at any time if the AIFM determines in its reasonable discretion that any applicable law or regulation makes it necessary or advisable to terminate the Investment Period.

#### Section 5.04 Key Manager Event.

(a) *Drawdowns During Key Manager Suspension Period.* The AIFM will give prompt written notice to the Fund Investors of the occurrence of a Key Manager Event. No Shareholder will be required to make any Capital Contributions during any Key Manager Suspension Period other than to (i) provide for the liabilities, obligations and expenses of the ICAV (including the Advisory Fee, Fund Expenses, any Indemnification Obligations of the ICAV pursuant to Article 12, as provided in Section 7.06(b) hereof and any amounts owed under the Credit Facility or other borrowings of the ICAV), (ii) fund then existing investment commitments or Investments which were substantially in process as of the commencement of such Key Manager Suspension Period and (iii) make investments approved by the Advisory Board.

(b) *Additional Key Managers.* After the Final Closing Date, the AIFM may, regardless of whether a Key Manager Event has occurred, propose an individual to replace a Key Manager or to become an additional Key Manager. Any such proposed replacement or additional Key Manager after the Final Closing Date shall be presented to the Advisory Board. Upon any approval by the Advisory Board, any individual so approved shall be considered a Key Manager (either in lieu of the applicable replaced Person who was formerly a Key Manager or as an additional Key Manager, as applicable) for purposes of this Instrument. If such approval occurs during a Key Manager Suspension Period and a Key Manager Event is no longer occurring, the Investment Period shall resume and be extended automatically, without the consent of any Shareholders or the Advisory Board, by the number of days for which such Key Manager Suspension Period occurred and was continuing.

#### Section 5.05 Exclusion.

(a) *Exclusion.* In the event that a Sub-Fund makes an investment with respect to which the AIFM reasonably determines that (i) a violation by any Shareholder (or any of its Affiliates) of any law, order, decree, rule, regulation, judgment of any court or governmental agency, investment policy or similar constraint, in each case, applicable to such Shareholder (or any of its Affiliates), could result from such Shareholder's participation (or in the case of an exclusion from part but not all of its participation, the part of its participation in question) in such Investment, (ii) a conflict of interest between such Shareholder (or any of its Affiliates) and the Sub-Fund could result from such Shareholder's participation, (iii) a significant delay, material regulatory burden, extraordinary expense (including a material tax burden) or other material adverse effect on the Sub-Fund or any Investment or prospective Investment, including the ability of the Sub-Fund to consummate a prospective Investment, could result from such Shareholder's participation (or in the case of an exclusion from part but not all of its participation, the part of its participation in question) in such Investment, or (iv) such Shareholder's participation (or in the case of an exclusion from part but not all of its participation, the part of its participation in question) in such Investment could cause a violation of any law, order, decree, rule, regulation or judgment of any court or governmental agency to which any Investment, the Sub-Fund, any Parallel Vehicle, the AIFM, the Portfolio Manager, Bain Capital or any Fund Investor is subject, then, the AIFM may in its sole discretion: (x) reduce or eliminate the interest of such Shareholder in such Investment and the income, profits, losses and liabilities therefrom (including distributions with respect thereto) and correspondingly increase the interests of the other Shareholders in such Investment, (y) increase the interest of such Shareholder in future Investments and such Shareholder's interest in the income, profits, losses and liabilities therefrom (including distributions with respect thereto) and correspondingly decrease the interests of the other Shareholders in such Investments and / or (z) decline

to call for a Capital Contribution from such Shareholder with respect to such Investment, in which case such Shareholder shall not have an interest in such Investment or the income, profits, losses and liabilities therefrom (including distributions with respect thereto). All determinations necessary to reflect the operation of this Section 5.05 and not otherwise explicitly provided for in this Section 5.05 shall be made on an equitable basis as determined by the AIFM in good faith, whose decision thereon shall be final and binding on all Shareholders. Determinations by the AIFM pursuant to this Section 5.05(a) may be made on its own initiative or after considering the request of any Shareholder, including any supporting legal analysis or other documentation submitted by such Shareholder.

(b) *Action upon Exclusion.* If any Shareholder or other Fund Investor is excluded from making all or a portion of any required Capital Contribution in respect of any Investment pursuant to Section 5.05(a) or an analogous provision of the organizational or governing documents of any Parallel Vehicle or Feeder Vehicle, the AIFM may take any or all of the following actions with respect to the amount that is excluded and remains to be funded:

(i) increase the required Capital Contribution of each Shareholder or Fund Investor who is not an Excluded Shareholder;

(ii) obtain the agreement of one or more Shareholders, other Fund Investors or the Special Shareholder or any of its Affiliates to increase their (or its) respective Capital Contributions and / or Capital Commitment;

(iii) increase the participation of one or more side-by-side participating vehicles or accounts (including any Related Fund or the Bain Investment Persons) in the relevant Investments;

(iv) obtain the agreement of any third party or parties or any Related Funds to participate in the relevant Investment with respect to the amount that remains to be funded;

(v) cause the relevant Sub-Fund to borrow funds in accordance with Section 2.06; or

(vi) take any other action available by law or equity as the AIFM in good faith deems prudent.

#### Section 5.06 Default by Shareholders.

(a) *Default.* Each Shareholder by entering into a Subscription Agreement shall agree that payment of its required Capital Contributions and other payments to the relevant Sub-Fund when due is of the essence, that any Default by any Shareholder would cause injury to the Sub-Fund and to the Board, the AIFM and the other Shareholders and that the amount of damages caused by any such injury would be extremely difficult to calculate. Accordingly, if at any time a Shareholder shall Default, the AIFM may, in its sole discretion, on behalf of the ICAV and in addition to any other recourse the AIFM or the ICAV may have against the Shareholder who has defaulted, borrow the amount of such Default from any party (including from Bain Capital) and charge interest and borrowing expenses (including where Bain Capital serves as the lender) to the Defaulting Shareholder on the amount of such Default (the “**Default Amount**”), which interest shall accrue, commencing on the applicable Contribution Date until the date such amount is paid to the Sub-Fund at a rate equal to the lesser of (i) the Prime Rate plus 2% per annum and (ii) the maximum rate permitted by applicable law; provided that where Bain Capital provides such loan to the Defaulting Shareholder, the interest paid to Bain Capital shall equal Bain Capital’s cost of capital on its credit facility and the balance of such interest shall be distributed to the non-defaulting

Shareholders *pro rata* based on their Book Capital Accounts, which amounts shall be considered Temporary Investment Proceeds and shall neither increase the Available Commitments of the receiving Shareholders nor be considered in calculating the Shareholder's Preferred Return or the Special Shareholder's Carried Interest.

(b) *Additional Remedies.* Upon the occurrence of any Default, the AIFM shall promptly notify the Shareholder who has committed such Default of the occurrence of such Default. If a Default by a Shareholder is not cured by such Shareholder within 5 calendar days after such notice of Default is sent, then the AIFM may, in its sole discretion, declare such Shareholder to be a Defaulting Shareholder and apply any or all of the remedies available by law or in equity against the Defaulting Shareholder, including:

(i) cause the Defaulting Shareholder to forfeit all or any portion of distributions made or to be made to the Defaulting Shareholder from the relevant Sub-Fund;

(ii) cause the Defaulting Shareholder to forfeit its right to participate in any Investments made after such Default;

(iii) cause a forced sale of the Defaulting Shareholder's Shares (which sale may be executed at the sole discretion of the AIFM through a qualified matching service or otherwise) to any Person who agrees to cure the default (including any Shareholder and any Affiliate of the Portfolio Manager or the AIFM) for an amount equal to the lesser of (x) the Fair Market Value of the Shares, (y) the financial statement value of the Shares, and (z) the net proceeds received from the sale of the Shares;

(iv) cause the forfeiture of 40% of the Defaulting Shareholder's Book Capital Account balance (the "**Forfeited Default Balance**") as liquidated damages (such forfeited balance to be re-allocated among the other Shareholders as further described in clause (vii) below) and, after giving effect to such forfeiture, terminate the right of the Defaulting Shareholder to receive further allocations of net income to its Book Capital Account (while continuing to receive allocations of net loss) and distributions or make withdrawals; provided that upon the final liquidation of the relevant Sub-Fund, the Defaulting Shareholder will be entitled, at such time as declared by the AIFM, to receive, without interest, an amount equal to the lesser of (x) the balance of the Defaulting Shareholder's capital account (adjusted for unrealized gains and losses) at the time of the Default and after giving effect to such forfeiture, and (y) the amount of Capital Contributions of the Defaulting Shareholder reduced by the total distributions of Investment Proceeds and Temporary Investment Proceeds to the Defaulting Shareholder and any Advisory Fees owed with respect to the Defaulting Shareholder;

(v) reduce or cancel the Available Commitment of the Defaulting Shareholder on such terms as the AIFM determines;

(vi) institute Proceedings to recover the Default Amount and the expenses of collection, including attorneys' fees; and / or

(vii) freeze a *pro rata* portion of some or all of the Investments in which a Defaulting Shareholder participates, and a payment received by a Defaulting Shareholder under clause (iv) above will not include any portion of the Defaulting Shareholder's Book Capital Account that is attributable to such Investments. Such amounts will be paid to the Defaulting Shareholder following the end of the Fiscal Year in which the related Investment is Realized.

Unless the Available Commitment of any Defaulting Shareholder is decreased to zero pursuant to Section 5.06(b)(v), a Default by such Defaulting Shareholder shall not relieve such Shareholder of its obligation to make Capital Contributions subsequent to such Default. Notwithstanding the foregoing, a Defaulting Shareholder shall remain obligated to return distributions to the Fund pursuant to Section 7.06(b).

(c) *Defaulting Shareholder Rights.* To the extent determined appropriate by the AIFM, any Defaulting Shareholder shall (i) cease to have the right, pursuant to this Instrument and the Act, to obtain information regarding the ICAV and its affairs, other than the information furnished to such Shareholder pursuant to Article 10 to enable the Shareholder to prepare any applicable tax returns (subject to the AIFM's rights pursuant to Section 18.04(d)), (ii) not be entitled to vote, and such Defaulting Shareholder's Capital Commitment shall be disregarded in connection with any vote or approval, of the Shareholders sought under this Instrument except in connection with a vote or approval of the Shareholders pursuant to Section 18.01(a)(i) or as required by applicable law, (iii) cease to have the right to attend meetings of the ICAV and (iv) if the Defaulting Shareholder has appointed a member of the Advisory Board, such member may in the AIFM's sole discretion be removed from the Advisory Board.

(d) *Additional Actions.* Upon the occurrence of any Default in connection with any Drawdown, the AIFM may take any or all of the following actions with respect to the amount in Default that remains to be funded:

(i) increase the required Capital Contributions of each of the Shareholders or other Fund Investors that are not Defaulting Shareholders or defaulting Fund Investors;

(ii) obtain the agreement of one or more Shareholders or other Fund Investors to increase their respective Capital Commitments up to the amount of the Defaulting Shareholder's Available Commitment;

(iii) seek commitments of capital from additional investors (which may include existing Fund Investors) up to the amount of the Defaulting Shareholder's Available Commitment, in which case such additional investors shall be admitted as Shareholders and be deemed to have a Capital Commitment equal to the Defaulting Shareholder's Available Commitment;

(iv) increase the participation of one or more side-by-side participating vehicles or accounts (including any Related Funds or the Bain Investment Persons) in the relevant Investments;

(v) obtain the agreement of any third party or parties or any Related Funds to participate in the relevant Investment with respect to the amount that remains to be funded;

(vi) cause the ICAV to borrow funds in accordance with Section 2.06; or

(vii) take any other action that the AIFM in good faith deems prudent.

(e) *Updated Contribution Notices.* If the AIFM elects to take the action specified in Section 5.06(d)(i) with respect to any portion of the Default Amount, the AIFM will deliver updated Contribution Notices to each other Shareholder *pro rata* based on its Commitment Percentage.

(f) *Cumulative Remedies.* No right, power or remedy conferred upon the AIFM in this Section 5.06(f) shall be exclusive, and each such right, power or remedy shall be cumulative and in

addition to every other right, power or remedy whether conferred in this Section 5.06(f) or now or hereafter available at law or in equity or by statute or otherwise. The AIFM may waive any of the remedies in this Section 5.06(f) with respect to any Defaulting Shareholder. To the fullest extent permitted by law, no course of dealing between the AIFM and any Defaulting Shareholder and no failure to exercise, or delay in exercising, any right, power or remedy conferred in this Section 5.06(f) now or hereafter existing at law or in equity or by statute or otherwise shall operate as a waiver or otherwise prejudice any such right, power or remedy. In addition to the foregoing, the Board or the AIFM may institute a lawsuit against any Defaulting Shareholder for specific performance of its obligations to make Capital Contributions and to collect any overdue amounts hereunder, with interest on such overdue amounts calculated at the rate specified in Section 5.06(a).

(g) *Default by Feeder Vehicle Investor.* In the event that an investor of any Feeder Vehicle is in default of its obligations to such Feeder Vehicle, the Board or the AIFM may allow such Feeder Vehicle to be treated as a Defaulting Shareholder with respect to that portion of its Capital Contribution corresponding to the amount by which such Feeder Vehicle investor has defaulted.

#### Section 5.07 Subsequent Closings; Increase of Capital Commitments.

(a) *Admission to a Sub-Fund.* At any time on or prior to the Final Closing Date, the Board may cause a Sub-Fund to admit additional Shareholders (each such Shareholder, a “**Subsequent Closing Shareholder**”) or to allow any existing Shareholder to increase its original Capital Commitment (in which case such existing Shareholder shall be treated as a Subsequent Closing Shareholder with respect to the increased portion of its Capital Commitment). Any Person to be admitted to a Sub-Fund as a Subsequent Closing Shareholder shall be admitted upon their execution (directly or by power of attorney) of a Subscription Agreement. Neither the admission of any Subsequent Closing Shareholder to a Sub-Fund nor the increase in the original Capital Commitment of any existing Shareholder (in either case, a “**Subsequent Closing Commitment**”) prior to the Final Closing Date pursuant to this Section 5.07 shall require the approval of any other Shareholder; provided that, without the consent of the Advisory Board or an Ordinary Resolution, a Sub-Fund shall not accept Capital Commitments in an amount that would cause aggregate Capital Commitments to the ICAV (excluding the Special Shareholder, the AIFM, the Portfolio Manager and their respective employees, Affiliates and related persons) to exceed €1.25 billion (excluding the Bain Investment Commitment). On each Subsequent Closing, Shares of the relevant Class will be issued at a fixed price of U.S. \$100 or €100, as the case may be, and thereafter such issued Shares will fluctuate in accordance with the Net Asset Value of the relevant Class, calculated in accordance with the Prospectus.

(b) *Payment of Subsequent Closing Amounts.* Any Shareholder admitted to a Sub-Fund on any closing date other than the First Closing Date (each, a “**Subsequent Closing Date**”) shall:

(i) make a Capital Contribution in an amount equal to the aggregate amount of Capital Contributions that would have been made by such Subsequent Closing Shareholder had such Subsequent Closing Shareholder been admitted to the Sub-Fund on the First Closing Date with such Subsequent Closing Commitment (the “**Subsequent Closing Contributions**”); and

(ii) pay to the Sub-Fund an additional amount (and not as a Capital Contribution, and accordingly such amounts will not reduce the Subsequent Closing Shareholder’s Available Commitment or increase its capital account) equal to 8% per annum (“**Subsequent Closing Additional Amounts**”) applied to the amounts required to be contributed under clause (i) above, as if such amounts had been loaned by the Sub-Fund to such Subsequent Closing Shareholder on the date (or dates) that such amount would have become due under



Section 5.02 had such Subsequent Closing Shareholder been admitted to the Sub-Fund on the First Closing Date with such Subsequent Closing Commitment.

(c) *Distributions of Subsequent Closing Amounts.* Amounts contributed by a Subsequent Closing Shareholder shall either be (i) distributed or (ii) held by the Sub-Fund to be applied against subsequent Contribution Notices of the existing Shareholders, as follows:

(i) Subsequent Closing Contributions made by a Subsequent Closing Shareholder pursuant to Section 5.07(b)(i) shall be distributed to or applied against subsequent Contribution Notices of the Shareholders admitted to the Sub-Fund prior to the applicable Subsequent Closing Date *pro rata* based on their Book Capital Accounts and to the extent such amounts are distributed, the Available Commitment of each Shareholder shall be increased accordingly and such returned Capital Contributions shall not be considered as having been contributed or distributed in calculating the Shareholders' Preferred Return or the Special Shareholder's Carried Interest. After giving effect to any Capital Contribution by a Subsequent Closing Shareholder pursuant to Section 5.07(b)(i), the Available Commitment and Capital Contributions of each Shareholder shall reflect the amount of Capital Contributions each Shareholder (including each Subsequent Closing Shareholder) would have made under the terms of this Instrument had all Shareholders (including Subsequent Closing Shareholders) been admitted on the First Closing Date.

(ii) Any Subsequent Closing Additional Amount paid by a Subsequent Closing Shareholder under Section 5.07(b)(i) shall be distributed to or applied against subsequent Contribution Notices of the Shareholders admitted to the Sub-Fund prior to the applicable Subsequent Closing Date *pro rata* based on their Book Capital Accounts, and to the extent such amounts are distributed, such amounts shall be considered Temporary Investment Proceeds and shall neither increase the Available Commitments of the receiving Shareholders nor be considered in calculating the Shareholders' Preferred Return or the Special Shareholder's Carried Interest.

(d) *Allocation of Subsequent Closing Amounts upon Rebalancing.* In connection with the admission of a Subsequent Closing Shareholder to a Sub-Fund or the acceptance of a Subsequent Closing Shareholder's Subsequent Closing Commitment, the Sub-Fund and the Parallel Vehicles may, in the sole discretion of the AIFM and the Parallel Vehicle Boards, elect to rebalance Investments as described in Section 2.09(b). The transfer of any portion of any Investment among a Sub-Fund and the Parallel Vehicles in accordance with Section 2.09(b) may result in (i) amounts funded by Subsequent Closing Shareholders pursuant to Section 5.07(a) being paid to one or more Parallel Vehicles, and (ii) Shareholders receiving amounts attributable to a payment by one or more Parallel Vehicles pursuant to Section 2.09(b). Any amounts received by a Sub-Fund may be distributed to the Shareholders in such proportions as the AIFM reasonably determines is fair and equitable to compensate them for the time value of their contributions used to make such Investments. Such returned Capital Contributions shall not be considered as having been contributed or distributed in calculating the Shareholders' Preferred Return or the Special Shareholder's Carried Interest.

(e) *Admission of Investors to Parallel Vehicles.* To the extent reasonably practicable, at any time, the AIFM may (i) permit a Shareholder's Shares to be partly or fully redeemed and, in connection therewith, (x) cause such Person to be admitted as an investor of a Parallel Vehicle with an equivalent interest in, and commitment to, such Parallel Vehicle and (y) make a distribution in kind to such Person of its share of each Investment, concurrently with a contribution in kind of such Investments to the Parallel Vehicle to which such Person will be admitted or (ii) cause an investor's interest in a Parallel Vehicle to be reduced and, in connection therewith, (x) cause such Person to be

admitted as a Shareholder, with an equivalent interest in, and commitment to, a Sub-Fund and (y) make a distribution in kind to such Shareholder of its share of each investment made by such Parallel Vehicle, concurrently with a contribution in kind of such investments to the relevant Sub-Fund.

(f) *Certain Adjustments.* The AIFM may in its discretion make appropriate adjustments in connection with the admission of Subsequent Closing Shareholders to a Sub-Fund or the admission of an investor to a Parallel Vehicle, in each case, at any time after the First Closing Date (including adjustments to take into account Realizations prior to such admission or increase) such that, subject to legal, tax, regulatory, policy or other considerations, the Subsequent Closing Shareholders and such investors of a Parallel Vehicle will be treated as if admitted to the Sub-Fund or such Parallel Vehicle, as applicable, at the First Closing Date.

Section 5.08 Management Expenses. The AIFM and the Portfolio Manager shall each be responsible for and pay their own normal operating expenses, including (a) salaries and employee benefit expenses of employees and related overhead (including rent, utilities, office expenses, travel expenses not related to an existing or potential Investment or constituting Offering Expenses and other similar items) and (b) all fees and expenses incurred in connection with the AIFM's and the Portfolio Manager's compliance with any applicable ongoing regulatory requirements, excluding in each case those requirements that are imposed as a result of the organization or operation of the ICAV and its Sub-Funds and certain material and other expenses described in Section 5.09. The ICAV (or the relevant Sub-Fund) may pay any such expenses of the AIFM and / or Portfolio Manager (which shall be allocated among the relevant Shareholders in accordance with Article 6), in which case Advisory Fees in subsequent Fiscal Periods shall be reduced until the total of all such reductions of Advisory Fees equals the Non-Reimbursable Expenses paid by the ICAV or the relevant Sub-Fund. Any such reduction in Advisory Fees shall reduce the Advisory Fee Expense to be borne by the Fee Shareholders in accordance with Section 2.04.

Section 5.09 Fund Expenses.

(a) The ICAV shall be responsible for and shall pay all Fund Expenses. As used herein, the term "**Fund Expenses**" means all expenses or obligations of the ICAV and each Sub-Fund or, except as otherwise provided herein, any Feeder Vehicle, including expenses incurred by the Board, the AIFM or the Portfolio Manager on behalf of the ICAV or any Feeder Vehicle, or otherwise incurred by the Board, the AIFM or the Portfolio Manager in connection with this Instrument or the governing documents of any Feeder Vehicle (other than expenses of the AIFM pursuant to Section 5.08 and the Prospectus). Fund Expenses shall include:

(i) all out-of-pocket expenses incurred in connection with the organizing, establishing and offering of the Fund and the Special Shareholder (including legal and accounting expenses, filing fees and expenses, travel, meals, entertainment, accommodation and related expenses, printing costs or any other expenses incurred with respect to the offering);

(ii) all investment-related expenses (including any such expenses incurred in connection with potential investments, whether or not completed), including: expenses relating to identifying, discovering, sourcing, developing (including any retainers, success and finder's fees and other compensation paid to contractors, senior advisors and sourcing and operating partners), evaluating, valuing, researching, investigating, structuring (including rating agency fees and expenses), diligencing, monitoring, maintaining, servicing, purchasing, making, holding, acquiring, registering (including notary and "gestoria" costs), selling (or potentially selling), refinancing (including any brokerage, borrowing and financing fees or expenses) or restructuring Investments (whether or not completed, including broken deal and reverse break-up fees,

liquidated damages, forfeited deposits, reverse termination fees or similar payments); all lodging, travel, transportation (including the use of charter, first class or business travel and taxis and car rentals and any other transportation), meals, entertainment and related expenses (including any of these incurred by an investment team or other member of the Board, the AIFM, the Portfolio Manager or their Affiliates whether or not traveling) incurred in connection with the Fund's affairs, including travel-related expenses in connection with evaluating, making and monitoring Investments; professional costs and expenses (including legal, compliance, tax, financial, accounting, actuarial, valuation, advisory and consulting/experts (including consultants or experts for industry-specific matters, due diligence, reference checks, sourcing or introductions and other similar costs)); brokerage commissions, hedging costs, expenses relating to short sales, prime brokerage fees, custodial expenses, clearing and settlement charges, private placement fees, syndication fees, solicitation fees, arranger fees, sales commissions, pricing and valuation fees (including appraisal fees), underwriting commissions and discounts, investment banking fees, advisory fees, and bank charges, and custodial, trustee, transfer agent, recordkeeping and other administrative costs; fees of servicers of any Investment (including without limitation servicers of pools of loans and arrangements providing for profits or other incentive-based compensation); and salaries, bonuses and fringe benefits payable to employees of the AIFM, the Portfolio Manager or their Affiliates who are retained to provide operational support (including servicing) to the Fund or its investments and portions of rent, utilities, information technology, other real-estate related expenses and other similar items and related overhead expenses associated with the retention of such employees;

(iii) all expenses of the Fund incurred in connection with the ongoing operation and administration of the Fund, including: any legal, tax, auditing, accounting and consulting fees;

(iv) all costs and expenses incurred in connection with financings (including financing fees, legal fees and expenses, agent fees and other fees and expenses incurred in connection therewith);

(v) all fees and expenses associated with the Fund's audits and financial statements (including fees and expenses associated with preparing tax information, returns and elections), including fees and expenses associated with preparing, filing or distributing tax information, returns or elections and complying with any tax audit, investigation, settlement or review; expenses incurred in connection with the preparation and maintenance of the Fund's books and records and account holder diligence; expenses incurred in connection with the preparation and delivery of wires and distributions, financial and other reports, circulars, forms, notices, valuations, investment summaries and other information (including courier and delivery expenses), including the cost of auditing reports; expenses incurred as tax matters partner in connection with the Fund; and expenses incurred in connection with the dissolution and liquidation of the Fund;

(vi) expenses and fees of the Board, the AIFM, the Portfolio Manager, the Administrator, the Depositary and any other service provider;

(vii) all fees, costs and expenses incurred in connection with litigating or owning any Investments of the Fund (including servicing fees, including master servicing, primary servicing, special servicing, asset or property Advisory Fees, and the fees and expenses of any individual hired to manage, service or dispose of any assets) or litigation related to the Fund; legal fees incurred in servicing loans and financings, advisory fees (including income-

based repayments, receivership costs and similar fees and costs), value-added taxes and taxes incurred in connection with Investments

(viii) all research and data expenses (including news and quotation subscriptions, market research, costs of attending conferences and travel-related expenses), information technology expenses (including technology service providers) and expenses related to acquiring, developing, implementing or maintaining related software/hardware (including phone and information charges) and total logistic control expenses;

(ix) all fees, expenses and costs in connection with any government and/or regulatory filings related to the Fund or the offering of Shares in the Fund (including regulatory filings of the AIFM, the Portfolio Manager and their Affiliates relating to the Fund, including without limitation Form PF and any AIFM Directive filings, but not, for the avoidance of doubt, filings solely related to the operation of the AIFM or the Portfolio Manager generally), and the costs of maintaining the Fund in compliance with all applicable laws;

(x) all fees, costs and expenses of registration, qualification or exemption of the Fund under any law or regulation, and any legal or regulatory compliance with any law or regulation, and related reports, disclosures, licenses, registrations or notifications; and all fees, costs and expenses related to any governmental inquiries, investigations or Proceedings relating to the Fund, including any judgments, settlements or fines;

(xi) all expenses related to Advisory Board meetings (including travel, accommodation, meal, entertainment or similar expenses), other out-of-pocket expenses of the Advisory Board (including costs and expenses of any legal counsel or other advisors retained by the Advisory Board) and costs and expenses incurred in relation to obtaining consents or approvals of the Fund Investors or the Advisory Board;

(xii) any costs, losses, damages or other expenses relating to any warranties or indemnities given by the Fund in relation to any Investments, including where a claim has been made in respect of such warranties or indemnities;

(xiii) all costs of all subsidiaries, Alternative Investment Vehicles, other Irish collective asset-management vehicles, real estate operating companies, special purpose vehicles and other vehicles through which the Fund makes, holds or proposes to make or hold investments, including costs associated with establishing, managing and administering such entities (including board of director expenses, corporate governance and secretarial expenses, fees and expenses associated with accounting, tax and financial services, reporting and cash handling fees and expenses, fees and expenses incurred in connection with audits and regulatory compliance, such as FATCA and Central Bank reporting), maintaining a permanent residence in certain jurisdictions (such as rent for office space, related overhead, board of directors expenses and employee salaries and benefits), and winding up and dissolving such entities;

(xiv) all costs and expenses incurred in connection with the preparation of amendments to the Instrument, Prospectus, Subscription Agreement, AIFM Agreement or other documentation of the Fund;

(xv) all costs and expenses incurred in connection with or incidental to the incurrence or refinancing of any Credit Facility or other indebtedness, loan servicing (assets and liabilities), guarantees by, letters of credit or other obligations of the Fund, including interest

owed on any loans advanced to the Fund by Affiliates of the AIFM or the Portfolio Manager (including the Directors);

(xvi) the Advisory Fee;

(xvii) costs and expenses of administering Side Letters entered into with Fund Investors (including the process of distributing and implementing applicable elections pursuant to any “most-favored nations” clauses in Side Letters);

(xviii) all out-of-pocket expenses incurred in connection with the collection of amounts due to the Fund from any Person;

(xix) all expenses incurred in connection with the obtaining and maintaining of insurance policies by or on behalf of investments of the Fund, the Fund, the AIFM, the Board, the Portfolio Manager and their affiliates and the Advisory Board with respect to the Fund, such as director and officer insurance, error and omission insurance, property damage insurance, block insurance on loans, insurance on environmental risks, warranty and indemnity insurance, financial institution bond and key person coverage, including pursuant to Section 12.01(i);

(xx) subject to Section 15.03, all costs and expenses incurred in connection with a Transfer of a Shareholder’s Shares in the relevant Sub-Fund or any Feeder Vehicle or the withdrawal or termination of a Shareholder (but only to the extent not paid by the applicable purchaser or Fund Investor, assignee, pledgee or transferee, as the case may be);

(xxi) all costs and expenses associated with a Defaulting Shareholder (but only to the extent not paid by the applicable Defaulting Shareholder);

(xxii) any taxes, or any expenses, penalties, liabilities or government charges directly or indirectly imposed or required to be paid or withheld by the Fund, the Special Shareholder, the AIFM or the Portfolio Manager or any Affiliate thereof with respect to the Fund or any Fund Investor, including any interest, additions to tax, penalties or related expenses and expenses in connection with tax Proceedings and any other tax related expenses with respect to the Fund or any Fund Investor, which are not allocated to one or more Shareholders (including pursuant to Section 7.01(d));

(xxiii) all expenses incurred in connection with any Proceeding involving the Fund (including the cost of any investigation, prosecution, defense and preparation) or any Investment and the amount of any judgment or settlement paid in connection therewith;

(xxiv) all fees, costs and expenses incurred in connection with litigating or owning any Investments of the Fund, including legal fees incurred in servicing loans and financings, advisory fees (including income-based repayments, receivership costs and similar fees and costs), value-added taxes and taxes incurred in connection with Investments;

(xxv) all fees, costs and expenses incurred in connection with litigating or owning any Investments of the Fund, including legal fees incurred in servicing loans and financings, advisory fees (including income-based repayments, receivership costs and similar fees and costs), value-added taxes and taxes incurred in connection with investments;

(xxvi) any other extraordinary expenses of the Fund;

(xxvii) all Indemnification Obligations and any other indemnity, contribution, or reimbursement obligations of the Fund with respect to any Person, whether payable in connection with a Proceeding involving the Fund or otherwise; and

(xxviii) the Servicing Fee.

(b) For the avoidance of doubt, the foregoing fees, costs and expenses will be considered Fund Expenses whether incurred directly by the ICAV, a Feeder Vehicle, the Board, the AIFM, the Portfolio Manager, the Depositary, the Administrator or any of their Affiliates, or by an Advisory Board member (or the Shareholder such Advisory Board member represents) on behalf of the ICAV, including allocable portions of salaries, bonuses, fringe benefits or other fees paid to such staff or consultants engaged by any of the foregoing, the fees and expenses associated with recruiting and training such staff and consultants and portions of rent, utilities, information technology, other real-estate related expenses and other similar items and related overhead expenses associated with the provision of such services by staff or consultants.

(c) The ICAV will bear all of the foregoing fees, costs and expenses, including Fund Expenses, whether performed by internal staff of the AIFM or the Portfolio Manager, Affiliates of or entities established by the AIFM or the Portfolio Manager or by third parties, including allocable portions of salaries, bonuses, fringe benefits or other fees paid to such staff or consultants engaged by any of the foregoing and the fees and expenses associated with recruiting and training such staff and consultants and portions of rent, utilities, information technology, other real-estate related expenses and other similar items and related overhead expenses associated with the provision of such services by such members of the AIFM, staff or consultants. In that regard, the ICAV expects to pay for loan servicing activities performed by an Affiliate of the AIFM at such rates as are reasonably determined by the AIFM and such Affiliates.

(d) Where a Fund Expense is considered by the AIFM to be attributable to one or more specific Sub-Funds, the Fund Expense will be charged to such specific Sub-Funds in such proportion as the AIFM in its discretion deems fair and equitable. Where a Fund Expense is not considered by the AIFM to be attributable to any one or more specific Sub-Funds, the expense will be allocated by the AIFM in such manner and on such basis as the AIFM in its discretion deems fair and equitable.

Section 5.10 Allocation of Expenses. *Allocations Among the ICAV and the Parallel Vehicles.* Except as specifically set forth in this Instrument and subject to Section 5.09(a)(xv):

(i) the ICAV in respect of the relevant Sub-Fund and each Parallel Vehicle shall to the extent practicable (subject to legal, regulatory, tax or other considerations particular to one or more of the ICAV, any Sub-Fund and any Parallel Vehicle) share, *pro rata* on the basis of their respective aggregate Capital Commitments, all Fund Expenses related to the organization, offering, administration, management, operation, dissolution and wind up of the ICAV, any Sub-Fund, any Feeder Vehicle formed by the AIFM or its Affiliate and any Parallel Vehicles (collectively, “**Administrative Expenses**”); provided that (x) any Administrative Expenses may be allocated on another basis if the AIFM reasonably determines that such other basis is more equitable, (y) any Administrative Expenses that relate solely to the ICAV, a Sub-Fund, a Feeder Vehicle or a Parallel Vehicle may, in the AIFM’s discretion, be allocated only to the ICAV, such Sub-Fund, such Feeder Vehicle or such Parallel Vehicle, as applicable, and (z) the ICAV and any Parallel Vehicles shall each bear the Advisory Fee owed by its Shareholders;

(ii) the ICAV and each Parallel Vehicle shall to the extent practicable (subject to legal, regulatory, tax or other considerations particular to one or more of the ICAV, any Sub-Fund and any Parallel Vehicles) share any investment-related fees and expenses (including where such fees and expenses constitute Fund Expenses) *pro rata* in accordance with the amount each has invested or committed to invest (or would have invested or committed to invest in the case of an investment that is not consummated) in such Investment; provided that a Parallel Vehicle will not share any investment-related fees and expenses in the case of an investment that is not consummated that such Parallel Vehicle would not have participated in due to legal, tax, regulatory, policy or other considerations particular to one or more of the ICAV, such Sub-Fund, such Parallel Vehicle, and their respective investors, if it were consummated provided, further that any such fees and expenses may be allocated on another basis if the AIFM reasonably determines that such other basis is more equitable, including, without limitation, that the AIFM may (but is not obligated to) determine that expenses incurred by the ICAV in respect of a Feeder Vehicle be specifically allocated to be borne by such Feeder Vehicle.

(b) *Allocation of Expenses Among Co-investors.* Subject to Section 5.10(a)(ii), the appropriate allocation of investment-related fees and expenses among the ICAV, any Sub-Fund, any Parallel Vehicles, other Related Funds and any other Persons that may invest or co-invest with the Fund in one or more investments will be determined by the AIFM and the other applicable general partners (or similar governing entities) of the Parallel Vehicles, Related Funds and other entities that invest in the applicable investments alongside the ICAV in good faith, including with respect to investments that are not consummated; provided that if a co-investor that was expected to participate in an investment did not agree to bear expenses incurred before such co-investor committed to participate in such investment, the ICAV and the Parallel Vehicles may bear such co-investor's portion of such expenses.

#### Section 5.11 Sources of Funds for Funding of Fund Expenses.

(a) The Shareholders by entering into the Subscription Agreement shall acknowledge and agree that Fund Expenses shall be funded by or for the account of the Shareholders through any one or more of the following sources of funds of the ICAV, as determined by the AIFM in its sole discretion:

- (i) Capital Contributions by the Shareholders;
- (ii) using amounts that may otherwise have been distributed to the Shareholders, including Investment Proceeds and Temporary Investment Proceeds;
- (iii) reserves set aside pursuant to Section 3.02;
- (iv) subject to Section 2.02(t), amounts borrowed by the ICAV; or
- (v) returns of distributions by the Shareholders pursuant to Section 7.06(b).

(b) *Exclusion of Feeder Vehicle Investors.* In the event that an investor of any Feeder Vehicle is excluded from any capital contribution to such Feeder Vehicle, the AIFM may allow such Feeder Vehicle to be treated as an Excluded Shareholder with respect to that portion of its Capital Contribution corresponding to the amount by which such Feeder Vehicle's investor was excluded.

## ARTICLE 6 ALLOCATIONS

Section 6.01 Initial Book Apportionment. As of the last Business Day of each Fiscal Period, the following apportionment shall initially be made in respect of each Sub-Fund (subject to Section 6.02):

(a) the Regular Profit or Regular Loss of the Sub-Fund for such Fiscal Period shall initially be apportioned to all of its Shareholders in proportion to their respective Book Capital Accounts as of the opening of business on the first Business Day of such Fiscal Period (adjusted to take into account any Capital Contributions, distributions, withdrawals or expense (including Advisory Fee Expense and Non-Reimbursable Expense) as of such date);

(b) the New Issue Charge and the New Issue Profit or New Issue Loss of the Sub-Fund for such Fiscal Period shall initially be apportioned to its New Issue Shareholders, and the New Issue Credit shall initially be apportioned to its non-New Issue Shareholders, in proportion to their respective Book Capital Accounts as of the opening of business on the first Business Day of such Fiscal Period (adjusted to take into account any Capital Contributions, distributions, withdrawals or expense (including Advisory Fee Expense and Non-Reimbursable Expense) as of such date);

(c) the Non-Reimbursable Expense for such Fiscal Period shall be apportioned to all Shareholders of the Sub-Fund in proportion to the Advisory Fee Expense that the AIFM, in its discretion, estimates each Fee Shareholder would be assessed pursuant to Section 5.02(b) on the first Business Day of the immediately succeeding Fiscal Period without taking into account any Non-Reimbursable Expense that will be apportioned under this Section 6.01(c) on such date;

(d) except as specifically set forth in this Instrument and subject to Section 5.09(a)(xv), all Miscellaneous Income and Miscellaneous Expense for such Fiscal Period shall be apportioned to the Shareholders of the Sub-Fund in proportion to their Book Capital Accounts as of the opening of business on the first Business Day of such Fiscal Period (adjusted to take into account any Capital Contributions, distributions, withdrawals or expense (including Advisory Fee Expense and Non-Reimbursable Expense) as of such date); provided that, any Miscellaneous Income and Miscellaneous Expense may be borne by the Shareholders on another basis if the AIFM reasonably determines that such other basis is more equitable, including, without limitation, that the AIFM may (but shall not be obligated to) determine that Miscellaneous Expense incurred by the Sub-Fund in respect of a Feeder Vehicle be specifically allocated to be borne by such Feeder Vehicle; and

(e) all Forfeited Default Balance for such Fiscal Period shall be apportioned to all Shareholders of the Sub-Fund other than the respective forfeiting Shareholders in proportion to their Book Capital Accounts as of the opening of business on the first Business Day of such Fiscal Period (adjusted to take into account any Capital Contributions, distributions, withdrawals or expense (including Advisory Fee Expense and Non-Reimbursable Expense) as of such date).

Section 6.02 Book Allocations.

(a) Allocation of Net Profit for Shareholders. As of the last Business Day of each Fiscal Period in which Net Profit was initially apportioned to Shareholders of a Sub-Fund (other than Carry Waiver Shareholders) pursuant to Section 6.01, each such Shareholder's amount of such Net Profit shall then be allocated to the Book Capital Account of such Shareholder and to the Book Capital Account of the Special Shareholder as follows:



(i) First, 100% to such Shareholder until it has been allocated Total Return reflecting an internal rate of return of 8%, compounded annually, on such Shareholder's Capital Contributions from the later of (A) the Contribution Date in respect of each Capital Contribution and (B) the date on which each Capital Contribution is received, to the date of each distribution to such Shareholder (the "**Preferred Return**").

(ii) Second, to the Special Shareholder as Carried Interest, until the cumulative amount of Net Profit allocated to the Special Shareholder pursuant to this Section 6.02(a) with respect to such Shareholder (net of any Net Losses allocated to the Special Shareholder in respect of such Shareholder under Section 6.02(b)) in the current and in all prior Fiscal Periods equals 20% of the Net Profits allocated to such Shareholder and to the Special Shareholder in respect of such Shareholder under this Section 6.02(a) (net of any Net Losses allocated to such Shareholder and to the Special Shareholder in respect of such Shareholder under Section 6.02(b)) in the current and in all prior Fiscal Periods.

(iii) Third, 80% to such Shareholder and 20% to the Special Shareholder as Carried Interest.

(b) Allocation of Net Loss for Shareholders. As of the last Business Day of each Fiscal Period in which Net Loss was initially apportioned to Shareholders of a Sub-Fund (other than Carry Waiver Shareholders) pursuant to Section 6.01, each such Shareholder's amount of such Net Loss shall then be allocated to the Book Capital Account of such Shareholder and to the Book Capital Account of the Special Shareholder as follows:

(i) First, 80% to such Shareholder and 20% to the Special Shareholder to the extent of past allocations of Net Profit pursuant to Section 6.02(a)(iii) (with respect to such Shareholder) but only to the extent such Net Profit allocations have not been previously reversed pursuant to this Section 6.02(b)(i).

(ii) Second, 100% to the Special Shareholder to the extent of past allocations of Net Profit pursuant to Section 6.02(a)(ii) (with respect to such Shareholder) but only to the extent such Net Profit allocations have not been previously reversed pursuant to this Section 6.02(a)(ii).

(iii) Third, 100% to such Shareholder.

(c) Other Allocations. All Miscellaneous Income, Miscellaneous Expense, Non-Reimbursable Expense and Forfeited Default Balance shall be allocated to the Shareholders of the relevant Sub-Fund, and Net Profit and Net Loss shall be allocated to the Carry Waiver Shareholders and the Special Shareholder (with respect to amounts apportioned to them pursuant to Section 6.01), in the same manner as such items were initially apportioned pursuant to Section 6.01.

(d) Reallocations. The AIFM shall be authorized in its reasonable discretion to adjust in an equitable manner apportionment pursuant to Section 6.01 to the extent necessary to ensure that no Shareholder in a Sub-Fund has a negative Book Capital Account balance while any other Shareholder in that Sub-Fund has a positive Book Capital Account balance (such balances being determined after taking into account the allocations set forth in Section 6.02(a) through Section 6.02(c)). If any adjustments are made pursuant to the preceding sentence, subsequent allocations shall be adjusted so as to reverse (to the extent possible in the judgment of the AIFM) the effect of such prior adjustments. The AIFM's interpretation and application of the provisions of this Section 6.02(d) in good faith shall be final and binding on all the Shareholders.

Section 6.03    U.S. Tax Allocations.

(a)    Allocations of U.S. Tax Items. The income, gains, losses and deductions of each Sub-Fund shall be allocated for U.S. federal, state and local income tax purposes among the Shares of the relevant Sub-Fund so as to appropriately reflect, in the judgment of the AIFM, the allocations of the corresponding items for Book Capital Account purposes, except that (i) items with respect to which there is a difference between tax and book basis will be allocated in accordance with section 704(c) of the Code and the U.S. Treasury Regulations promulgated thereunder and (ii) the AIFM will have discretion to further adjust allocations to reflect the fact that “book” allocations are calculated on a mark-to-market basis and “tax” allocations are calculated with respect to taxable income, gain, loss or deductions.

(b)    Interpretation of U.S. Tax Provisions. It is intended that the allocations of taxable income and loss set forth in this Article 6 be recognized as having “substantial economic effect” for U.S. federal income tax purposes within the meaning of that term in section 704(b) of the Code and applicable U.S. Treasury Regulations. In furtherance of the foregoing, the AIFM is authorized (a) to interpret and apply the tax allocation provisions hereof as providing for a “qualified income offset”, “minimum gain chargeback” and such other allocation principles as may be required under section 704 of the Code and applicable regulations; (b) to determine the allocation of specific items of income, gain, loss, deduction and credit of the relevant Sub-Fund; and (c) to vary any and all of the foregoing tax allocation provisions to the extent necessary in the judgment of the AIFM to comply with section 704 of the Code and applicable regulations.

ARTICLE 7  
DISTRIBUTIONS

Section 7.01    Distributions.

(a)    *Distribution Timing.* The amount and timing of distributions from each Sub-Fund (or Class, where applicable) to its Shareholders shall be determined by the AIFM in its sole discretion.

(b)    Except for distributions upon termination or liquidation pursuant to Article 13 or in accordance with Article 14, distributions shall be made by each Sub-Fund only as follows:

(i)    Distributions of Regular Profits, New Issue Profits, New Issue Credits, Miscellaneous Income and Forfeited Default Balance will be made to the Shareholders of the relevant Sub-Fund ratably in accordance with the amounts allocated to their Book Capital Accounts in respect thereof (net of any Regular Losses, New Issue Losses, New Issue Charges, Miscellaneous Expenses, Advisory Fee Expense and Non-Reimbursable Expense allocated to such Book Capital Accounts); provided, that distributions of New Issue Profits shall only be made to those Shareholders that are New Issue Shareholders.

(ii)    Distribution to the Shareholders of invested capital recovered by the relevant Sub-Fund shall be made to the Shareholders *pro rata* in accordance with the Book Capital Accounts as of such date excluding the portion of such Book Capital Accounts which would be distributable pursuant to Section 7.01(a).

(iii)    Notwithstanding anything else in this Instrument, the AIFM may distribute to a Fee Waiver Shareholder an amount not to exceed the sum of (A) Advisory Fee that such Fee Waiver Shareholder would have been assessed pursuant to Section 2.04 had it been a Fee Shareholder and (B) an amount equal to the Non-Reimbursable Expense that would have

been allocated to such Fee Waiver Shareholder pursuant to Section 6.01(b) had it been a Fee Shareholder. All such distributions may be made at the time the corresponding Advisory Fee is paid (or at such other later time as the AIFM determines). In addition, the AIFM may (x) treat the amount of Advisory Fees paid out of the relevant Sub-Fund's available cash as an advance against future distributions payable to the relevant Shareholders and (y) appropriately adjust distributions, Book Capital Accounts and allocations of expenses to reflect the allocation of the Advisory Fee, including to give effect to waivers or reductions of the Advisory Fee.

(c) *Payment of Carried Interest Below the Sub-Fund.* The AIFM may cause the Carried Interest to be distributed to the Special Shareholder by any entity in or through which the relevant Sub-Fund has made an Investment, in which case any such amounts shall reduce on a dollar-for-dollar basis the amounts distributable to the Special Shareholder as Carried Interest calculated as if the Carried Interest distributable were not reduced by the taxes incurred by any intermediate entity through which the Sub-Fund invests.

(d) *Withholding.* The ICAV, the AIFM, the Portfolio Manager and any of their Affiliates may withhold and pay any taxes (and any interest, additions to tax, penalties or expenses relating to any such taxes) with respect to any Shareholder's allocable share of a Sub-Fund's income and payments, and any such amounts may be withheld from any distribution otherwise payable to such Shareholder. Any taxes directly or indirectly imposed on or required to be paid or withheld by the ICAV, the AIFM, the Portfolio Manager or any of their Affiliates (and any interest, additions to tax, penalties or expenses relating to any taxes or tax-related matters) may be treated by the Board and the AIFM for all purposes of this Instrument as distributed to the appropriate Shareholder (with other distributions to such Shareholder appropriately reduced) and paid by the appropriate Shareholder to the relevant taxing jurisdiction if, in the AIFM's reasonable discretion, such amounts were imposed as a result of the residence or domicile of such Shareholder or as a result of the tax status of such Shareholder or are otherwise properly allocable to such Shareholder. For the avoidance of doubt, any such taxes (or interest, additions to tax, penalties or expenses relating to any such taxes) imposed on income attributable to the Special Shareholder shall not be allocated to, or treated as a distribution to, any Shareholder other than the Special Shareholder, as appropriate. In the event that such amounts are not withheld from distributions to the relevant Shareholder, the AIFM may treat such amount as a loan at a rate of the Prime Rate plus 2% per annum (or where the Board, the AIFM or their Affiliate pays such amounts, at Bain Capital's cost of capital on its credit facility) to such Shareholder, payable on demand to the relevant Sub-Fund, the AIFM, the Portfolio Manager or the relevant Affiliate, or at the AIFM's option, withheld from distributions otherwise payable to such Shareholder. Any such amounts paid by a Shareholder will not reduce such Shareholder's Available Commitment.

(e) *Reserves.* In addition to the rights set forth in Section 5.02(e) and Section 7.01(d), the AIFM shall have the right to withhold amounts otherwise distributable by a Sub-Fund to its Shareholders in order to maintain the Sub-Fund in a sound financial and cash position and to make such provision as the AIFM deems necessary or advisable for any and all liabilities and obligations, contingent or otherwise, of the Sub-Fund (other than the obligation of the Sub-Fund to pay for the purchase price of Investments).

(f) *Distributions Permitted by Law.* Notwithstanding anything in this Instrument to the contrary, the ICAV shall not make any distributions except to the extent permitted under the Act and other applicable law.

Section 7.02 Interest on Accounts. No Shareholder shall be entitled to any payment for such Shareholder's Shares in the ICAV in excess of the amounts expressly provided for in this Instrument.

Section 7.03 Tax Distributions. The AIFM may, in its sole discretion, in any Fiscal Year of the ICAV, make distributions of cash to the Special Shareholder, in amounts intended to enable the Special Shareholder and its direct and indirect owners to discharge their U.S. federal, state and local income tax liabilities arising from allocations of income, including allocations related to the Special Shareholder's entitlement to Carried Interest from a particular Sub-Fund (any such distribution a "**Tax Distribution**"). The amount of any Tax Distribution shall be determined by the AIFM, as if allocations from the ICAV were the sole source of income and loss for the Special Shareholder and its direct and indirect owners and taking into account the Tax Percentage, the deductibility (and any limitations thereon) of state and local income taxes for U.S. federal income tax purposes, the deductibility (and any limitations thereon) of investment expenses, investment interest, and other items for U.S. federal, state and local income tax purposes, and any similar limitations and assumptions that the AIFM determines in good faith to be appropriate in the determination of the amounts subject to tax and the calculation of such taxes and, except as determined otherwise by the AIFM in its sole discretion, without regard to the carryover of items of loss, deduction and expense previously allocated to the Special Shareholder. The aggregate amount distributable to the Special Shareholder pursuant to this Section 7.03 in any Fiscal Year of the ICAV shall be reduced by all previous distributions of Carried Interest in respect of the relevant Sub-Fund made to the Special Shareholder in such Fiscal Year pursuant to Section 7.01. The AIFM shall treat distributions pursuant to this Section 7.03 as an advance and subsequent distributions of Carried Interest from the relevant Sub-Fund shall be appropriately reduced by the amount of such advances. Distributions pursuant to this Section 7.03 shall be made at the times determined by the AIFM.

Section 7.04 Certain Adjustments. Notwithstanding anything in this Instrument to the contrary, the Special Shareholder may, in its sole discretion, elect not to receive all or any portion of any distribution of Carried Interest that would otherwise be made to the Special Shareholder with respect to a Shareholder, if it is anticipated that the Special Shareholder may have an obligation to return all or a portion of such Carried Interest distribution pursuant to Article 14, or in other cases where the AIFM reasonably determines that it is necessary or appropriate to properly reflect each party's intended economic interest under this Instrument. Any amount that is not distributed to the Special Shareholder pursuant to the preceding sentence may, in the AIFM's sole discretion, be retained by the relevant Sub-Fund for the benefit of such Shareholder or distributed to such Shareholder. If distributions to the Special Shareholder are reduced pursuant to the first sentence of this Section 7.04, the AIFM may increase future distributions to the Special Shareholder and, correspondingly, decrease future distributions to each applicable Shareholder to the extent necessary to reverse all or part of the reduction made pursuant to the preceding sentence (unless the Special Shareholder has waived its right to do so and subject to any limitations on this right agreed to by the Special Shareholder and the ICAV at the time of such reduction of distributions). In addition, notwithstanding anything herein to the contrary, the AIFM may allocate Net Profit and Net Loss other than as set forth in Section 6.02 in order to give effect to the foregoing.

Section 7.05 Distributions in Kind.

(a) *Distributions of Marketable and Other Securities*. Distributions pursuant to this Section 7.05 may be made in cash, Securities or other property, and the AIFM shall determine the amount of cash and the amount and kind of Securities or other assets to be distributed to the Shareholders in its sole discretion. Distribution of property in-kind may only be made with the prior consent of the relevant Fund Investor and approval of the asset allocation by the Depositary and, (a) such property shall be treated as sold on the date of the distribution for cash equal to its Fair Market Value (net of any relevant liabilities secured by such property as determined in accordance with this Instrument), (b) the unrealized gain or loss inherent in such property shall be treated as recognized gain or loss for purposes of determining Net Profit, Net Loss, Miscellaneous Income and Miscellaneous Expense, as appropriate, (c) such gain or loss shall be allocated to the Shareholders' respective Book Capital Accounts pursuant to Article 4, and (d) such in-kind distribution shall be made after giving effect to such allocation pursuant to

Article 4. No Shareholder may demand any specific form of payment. In the case of any distribution of Securities, such securities shall be valued pursuant to Article 8. In this event, the ICAV will, if requested sell any asset or assets proposed to be distributed in kind and distribute to such Shareholder the cash proceeds less the costs of such sale which shall be borne by the relevant Shareholder. In kind distributions may only be effected if the Depositary is satisfied that the terms will not be such as are likely to result in any material prejudice to the interests of the remaining Shareholders in the relevant Sub-Fund or Class. A determination to redeem a Shareholder in kind may be solely at the discretion of the AIFM where the redeeming Shareholder requests repurchase of a number of Shares that represents five per cent (5%) or more of the Net Asset Value of the relevant Sub-Fund.

(b) *Legal or Regulatory Restrictions.* In the event that the AIFM intends to distribute Securities to Shareholders, the AIFM (i) shall, if as a result any Shareholder would have distributed to it Securities that would result in a violation by such Shareholder of any law or regulation applicable to such Shareholder, use commercially reasonable efforts to sell, upon the written request of such Shareholder, the amount of such Securities in excess of the amount that may be legally owned by such Shareholder and (ii) may otherwise agree to use commercially reasonable efforts to sell such Securities, in either case for such Shareholder's account on terms mutually acceptable to the AIFM and such Shareholder and distribute to such Shareholder the proceeds of such sale, net of fees and expenses in connection with the sale, including expenses of the ICAV, the Board and the AIFM, in lieu of such Securities. The AIFM may also, in making distributions of Securities, allocate such Securities unequally among Shareholders to the extent necessary to avoid a Shareholder receiving a Security that it is prohibited from holding, or in connection with offering investors the option of receiving a distribution of Securities in-kind or having the relevant Sub-Fund include such Securities in a sale or other disposition transaction.

#### Section 7.06 Returns of Distributions.

(a) *Returns Required Pursuant to Applicable Law.* If, notwithstanding anything to the contrary contained herein, it is determined under applicable law that any Shareholder has received a distribution which is required to be returned to or for the account of the Sub-Fund or its creditors, then the obligation under applicable law of any Shareholder to return all or any part of such distribution shall be the obligation of such Shareholder and not of any other Shareholder.

(b) *Returns of Distributions for Sub-Fund Obligations.* Except as required by the Act, other applicable law or as otherwise expressly set forth in this Instrument, no Shareholder shall be required to repay to a Sub-Fund, any Shareholder or any creditor of the Sub-Fund all or any part of the distributions made to such Shareholder pursuant to this Instrument; provided, however, that, subject to the limitations set forth herein, the AIFM may require each Shareholder to, and each Shareholder by entering into the Subscription Agreement shall covenant for itself and its executors, administrators, estate heirs, legal representatives, successors and assigns that it will, return distributions made to such Shareholder for the purpose of meeting such Shareholder's *pro rata* share of Fund Expenses (including Indemnification Obligations) as determined by the AIFM in its sole discretion. Each Shareholder's *pro rata* share of any such obligation to return distributions shall be calculated in order to reverse the distribution priorities set forth in Section 6.01(a) taking into account all distributions on a cumulative basis so that each Shareholder (including the Special Shareholder with respect to its Carried Interest) has received and retained the amount of Investment Proceeds and Temporary Investment Proceeds it would have received if such Fund Expense had been incurred prior to such time; provided that the aggregate amount of distributions a Shareholder (other than the Special Shareholder with respect to its Carried Interest) may be required to return pursuant to this Section 7.06(b) shall not exceed 50% of such Shareholder's Capital Commitment and no Shareholder shall be required to return any distribution after the third anniversary of the final liquidating distribution of the ICAV; provided, further, that if on such third anniversary, there are

any obligations then pending or any other liabilities (in each case, whether contingent or otherwise) or claims then outstanding, the AIFM shall so notify the Shareholders and the Shareholders' obligations to contribute any amounts pursuant to this Section 7.06(b) shall survive with respect to such obligations, liabilities or claims set forth in such notice until the date that any such obligations, liabilities or claims are ultimately resolved and satisfied. The obligation of a Shareholder to return distributions pursuant to this Section 7.06(b) shall survive the termination of the ICAV and this Instrument.

(c) *Treatment of Return of Distributions.* Any amount returned by a Shareholder pursuant to this Section 7.06 shall be treated as a contribution of capital to the ICAV (but not as a Capital Contribution for purposes hereof) and shall be treated as if such returned amount was not previously distributed to such Shareholder.

## ARTICLE 8 DETERMINATION OF ASSET VALUE

Section 8.01 Asset Values. The AIFM is responsible for the valuation of the assets of each Sub-Fund. The AIFM may appoint third party external valuers from time to time in order to assist in the valuation process (and shall notify Shareholders of any such appointment). However, the AIFM shall nevertheless maintain ultimate responsibility for the valuation of assets in each Sub-Fund. The AIFM has established and adopted a valuation policy which reflects the AIFM Directive's requirements on valuation. The AIFM may also establish and adopt procedures from time to time to value the securities and other assets held by the Fund. The AIFM, as of the date of this Instrument, has adopted the following procedures:

(a) Loans will be valued at the mean of the mean bid and ask as reported by an independent third party pricing service selected by the AIFM on the date of determination.

(b) Assets listed on an exchange will be valued at their last sales prices as reported to the consolidated quotation service at 4:00 P.M. eastern time on the date of determination. If no such sales of such securities occurred, such securities will be valued at the mean of the mean bid and ask as reported by an independent, third-party pricing service on the date of determination.

(c) Assets for which no such market prices are available or reliable will be valued at such value as the AIFM may reasonably determine, which may include third party valuations; provided, however that at any time the assets of the ICAV constitute "plan assets" for purposes of ERISA, such securities will be valued by an independent valuation agent appointed by the AIFM, the costs of which shall be borne by the ICAV.

(d) All other assets of each Sub-Fund (except goodwill, including the name of each Sub-Fund, which will not be taken into account), in particular illiquid/hard-to-value assets, will be assigned such value as the AIFM may reasonably determine. Such valuations shall be final and binding on all Shareholders. Securities quoted in foreign currencies will be translated into Euros at the current exchange ratio or at such other rates as the AIFM may determine.

All values assigned to Securities and other assets by the AIFM, pursuant to the Prospectus and this Instrument, will be binding on all of the Shareholders. The AIFM will determine the valuation of each Sub-Fund's assets at least annually and on any date upon which the Board permits the redemption of Shares during the life of the relevant Sub-Fund (each such date, a "Valuation Point").

### Section 8.02 Calculation of Net Asset Value.

(a) The value of the Investments of each Sub-Fund shall be determined in accordance with the valuation provisions set out in the Prospectus.

(b) The assets of the ICAV will be valued in accordance with the valuation policy of the AIFM which shall be regularly verified and updated, as necessary, by the AIFM and shall be consistent with the valuation provisions set out in the Prospectus.

(c) Such valuations and calculations shall be carried out as at each Valuation Point or otherwise at a frequency which is both appropriate to the assets held by the Sub-Fund and its issuance and repurchase frequency, provided always that the relevant assets shall be valued at least annually. Any changes to the rules as referred to herein will require confirmation from the Depositary that the proposed amendment will not, in the view of the Depositary, materially prejudice Shareholders.

(d) In calculating the value of assets of the ICAV and each Sub-Fund the following principles will apply:

(i) every Share agreed to be issued by the Board with respect to the First Closing Date and Subsequent Closing Dates shall be valued at each Valuation Point and the assets of the relevant Sub-Fund shall be deemed to include not only 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 agreed to be issued after deducting therefrom (in the case of Shares agreed to be issued for cash) or providing for preliminary charges;

(ii) where Investments have been agreed to be purchased or sold but such purchase or sale has not been completed, such Investments shall be included or excluded and the gross purchase or net sale consideration excluded or included as the case may require as if such purchase or sale had been duly completed unless the AIFM has reason to believe such purchase or sale will not be completed;

(iii) there shall be added to the assets of the relevant Sub-Fund any actual or estimated amount of any taxation of a capital nature which may be recoverable by the ICAV which is attributable to that Sub-Fund;

(iv) there shall be added to the assets of each relevant Sub-Fund a sum representing unamortised expenses and a sum representing any interest, dividends or other income accrued but not received unless the AIFM is of the opinion that such interest, dividends or other income are unlikely to be paid or received in full in which case the value thereof shall be arrived at after making such discount as the AIFM (with the approval of the Depositary) may consider appropriate in such case to reflect the true value thereof;

(v) there shall be added to the assets of each relevant Sub-Fund the total amount (whether actual or estimated by the AIFM) of any claims for repayment of any taxation levied on income or capital gains including claims in respect of double taxation relief; and

(vi) there shall be deducted from the assets of the relevant Sub-Fund:

a) the total amount of any Fund Expenses and any actual or estimated liabilities properly payable out of the assets of the relevant Sub-Fund including any and all outstanding borrowings of the ICAV in respect of the relevant Sub-Fund, interest, fees and expenses payable on such borrowings and any estimated liability for tax and such amount

in respect of contingent or projected Fund Expenses as the AIFM considers fair and reasonable as of the relevant Valuation Point;

- b) such sum in respect of tax (if any) on income or capital gains realised on the Investments of the relevant Sub-Fund as in the estimate of the AIFM will become payable;
- c) the amount (if any) of any distribution declared by the Shareholders of the relevant Sub-Fund or the AIFM but not distributed in respect thereof;
- d) the remuneration of the AIFM, the Administrator, the Depositary, the Portfolio Manager, any sub-investment manager, any distributor and any other providers of services to the ICAV accrued but remaining unpaid together with a sum equal to the value added tax chargeable thereon (if any);
- e) the total amount (whether actual or estimated by the AIFM) of any other liabilities properly payable out of the assets of the relevant Sub-Fund (including all establishment, operational and ongoing administrative fees, costs and expenses) as of the relevant Valuation Point;
- f) an amount as of the relevant Valuation Point representing the projected liability of the relevant Sub-Fund in respect of costs and expenses to be incurred by the relevant Sub-Fund in the event of a subsequent liquidation;
- g) an amount as of the relevant Valuation Point representing the projected liability of the relevant calls on Shares in respect of any warrants issued and/or options written by the relevant Sub-Fund; and
- h) any other liability of the ICAV.

(e) Without prejudice to this section, the AIFM may delegate any of its powers, authorities and discretions in relation to the determination of the value of any Investment to a third party external valuer. Any duly appointed external valuer shall be liable to the ICAV for any losses suffered by the ICAV as a result of its negligence in performing the external valuer tasks or its intentional failure to perform such tasks.

(f) In its sole discretion, the AIFM may decline to determine the value of any particular asset or all of the assets of the ICAV during any period when the New York Stock Exchange, or any other exchange on which a substantial portion of the ICAVs assets is traded, is closed, other than customary weekend and holiday closings, during periods when trading on said exchange(s) is restricted as determined by the Securities and Exchange Commission (or analogous authority with respect to any other exchange) or during any emergency as determined by said Commission (or authority) that makes it impracticable for the ICAV to dispose of its Securities or to value some or all of its assets.



ARTICLE 9  
ALTERNATIVE INVESTMENT VEHICLES

Section 9.01 Alternative Investment Vehicles.

(a) *Implementation of Alternative Investment Vehicles.* If the AIFM determines that based on legal, tax, regulatory or other similar considerations an Investment should be made or otherwise held through an alternative investment structure, the AIFM will be permitted to structure the making or holding of all or any portion of such Investment outside the ICAV by requiring any Shareholder or Shareholders (including, for the purposes of this Section 9.01(a) any shareholders or partners of any Parallel Vehicle) to make or hold such Investment through one or more partnerships, corporations or other vehicles (each, an “**Alternative Investment Vehicle**”) that directly or indirectly will invest in or otherwise directly or indirectly hold such Investment on a parallel basis with or in lieu of the ICAV, as the case may be. If the AIFM determines that some or all of a Shareholder’s indirect interest in an Investment should be held through an Alternative Investment Vehicle (after the consummation thereof, the AIFM may, in its discretion, cause the ICAV to transfer all or the relevant portion of the Investment to an Alternative Investment Vehicle (and vice versa) or between Alternative Investment Vehicles. The AIFM may, where it determines it to be appropriate, structure an Alternative Investment Vehicle to hold more than one investment and, where applicable, may admit one or more co-investors into any Alternative Investment Vehicle on such terms and conditions as the AIFM determines.

(b) *Terms of Alternative Investment Vehicles.* The economic and other terms of an Alternative Investment Vehicle will be substantially similar to those contained in this Instrument, unless otherwise determined by the AIFM, in its reasonable discretion, based on legal, tax, regulatory or other considerations, including ERISA. The economic terms of an Alternative Investment Vehicle will generally be aggregated with those of the ICAV for purposes of calculating the Special Shareholder’s Carried Interest and Reallocation pursuant to Section 14.01, if any, unless the AIFM determines otherwise because such aggregation would be reasonably likely to increase the risk of any adverse tax, legal, regulatory or other consequences. The governing documents of any Alternative Investment Vehicle shall provide for the limited liability of the Shareholders to the same extent as is provided to the Shareholders under this Instrument and, notwithstanding anything in this Instrument to the contrary, any capital contributions made by a Shareholder to an Alternative Investment Vehicle will reduce such Shareholder’s Available Commitment to the same extent as if made to the ICAV pursuant to the terms of this Instrument. If an Alternative Investment Vehicle is formed for the benefit of one or more Shareholders, the AIFM, in its discretion, may cause such benefiting Shareholders to bear the incremental economic consequences of utilizing such Alternative Investment Vehicle, which may include causing such participating Shareholders to bear all of the taxes incurred by such entities. If a Shareholder fails to make all or a portion of its required capital contribution in respect of an Alternative Investment Vehicle when due (unless the Shareholder is excluded from making such capital contribution by the governing documents of such Alternative Investment Vehicle), the Shareholder shall be deemed to have committed a Default under this Instrument and the AIFM shall be entitled to pursue any and all of the remedies set forth in Section 5.06(a) and Section 5.06(b), in addition to any applicable provisions of the governing documents of the Alternative Investment Vehicle.

(c) *Separate Identity.* Notwithstanding anything in this Instrument to the contrary, including the provisions of Section 9.01(a), to the extent permitted by law, (i) each investment made by an Alternative Investment Vehicle shall be made for the sole benefit of the investors (including any Shareholders) participating in the applicable Alternative Investment Vehicle (and not made for the benefit of the ICAV) and (ii) no Alternative Investment Vehicle shall constitute or be deemed to be an asset of the ICAV for any purpose. Without limiting the generality of the foregoing, to the extent permitted by law, (x) no Alternative Investment Vehicle shall be set forth on the books and records of the ICAV or,

except as otherwise required by law, listed on the tax returns to be filed by the ICAV, and (y) the ICAV shall not use any of its funds to acquire any investment made through an Alternative Investment Vehicle. Notwithstanding the foregoing provisions of this Section 9.01(c), the Shareholders by entering into Subscription Agreements shall agree that, in the event the assets of an Alternative Investment Vehicle (including any obligation of the Shareholders to recontribute distributions received from such Alternative Investment Vehicle) are insufficient to indemnify and hold harmless any Indemnified Person pursuant to the terms of the applicable Alternative Investment Vehicle, the AIFM may seek in its reasonable discretion to satisfy such obligation out of the assets of the ICAV (including any obligation of the Shareholders to recontribute distributions pursuant to Section 7.06); provided that the assets of the ICAV so subject to this provision shall be limited to the assets (or portions thereof) attributable to the Shareholders participating in such Alternative Investment Vehicle.

(d) *Liabilities of Alternative Investment Vehicles.* Any Alternative Investment Vehicle may borrow, guarantee, or may otherwise become contingently liable with respect to, the indebtedness or other obligations of the ICAV or any Investment or an Affiliate of the ICAV or any Investment in a manner consistent with Section 2.06; provided that any borrowings of any Alternative Investment Vehicle shall be included in the limit on the aggregate amount of borrowings in Section 2.02(t).

## ARTICLE 10 CERTAIN TAX MATTERS

Section 10.01 Tax Matters Generally. The ICAV shall elect to be treated as a partnership for U.S. federal income tax purposes and each Shareholder by entering into a Subscription Agreement shall agree that neither the ICAV, the AIFM, the Portfolio Manager nor any Shareholder shall take any action pursuant to applicable U.S. Treasury Regulations under Section 7701 of the Code or otherwise that is inconsistent with such treatment. Each Shareholder shall agree to promptly provide to the Board and the AIFM such information regarding such Shareholder as is reasonably requested and take such other actions reasonably requested by the Board or the AIFM in order to avoid adverse tax consequences to the ICAV, including pursuant to the requirements under FATCA or any similar or analogous provision of non-U.S. law, including the implementation of CRS by a jurisdiction. Without the express written consent of the Board or the AIFM, the Shareholders will not (a) treat any ICAV item inconsistently on its U.S. federal, state or local tax returns with the treatment of the item on the ICAV's U.S. federal, state or local tax returns or Schedules K-1; (b) file a notice of inconsistent treatment under Section 6222(b) of the Code or other applicable law; (c) file a request for administrative adjustment of ICAV items; (d) file a petition with respect to any ICAV item or other tax matters involving the ICAV; (e) enter into a settlement agreement with an applicable taxing authority with respect to any ICAV items; or (f) otherwise independently act, or take any inconsistent position, with respect to tax audits or tax litigation affecting the ICAV and, in any case where such consent is granted, the cost of any resulting audits or adjustments of the Shareholder's tax return shall be borne solely by the affected Shareholder.

Section 10.02 Tax Returns; Tax Elections. The AIFM shall cause to be prepared and filed all U.S. federal, state and local and non-U.S. tax returns required to be filed for the ICAV. Subject to Section 10.01, the AIFM may make, or refrain from making, any income or other tax elections for the ICAV that it deems necessary or advisable, including an election pursuant to Section 754 of the Code. Each Shareholder shall be responsible for preparing and filing all tax returns required to be filed by such Shareholder.

Section 10.03 Tax Matters Representative. The Special Shareholder, or such other eligible party as the Board shall designate, shall be designated as the ICAV's "tax matters partner" under Section 6231(a)(7) of the Code for so long as such designation is applicable, and the Special Shareholder, or such

other eligible party as the Board shall designate, shall thereafter be designated the “partnership representative” within the meaning of Section 6223 of the Code as amended by Section 1101 of the Bipartisan Budget Act of 2015 (such tax matters partner or partnership representative, as applicable, the “**Tax Matters Representative**”). The Board and the AIFM are specifically directed and authorized to take whatever steps the Board or the AIFM deems necessary or desirable to perfect any such designation, including filing any forms or documents with the IRS and taking such other action as may from time to time be required under U.S. Treasury Regulations and, upon request of the Board or the AIFM, the Shareholders shall execute any forms or statements required in connection therewith. The Tax Matters Representative (if such Person is not the Board or the AIFM) shall act in all respects in its capacity as such at the direction of the Board or the AIFM. Expenses of any Proceedings undertaken by the Tax Matters Representative shall be Fund Expenses.

Section 10.04 Adjustments. If the ICAV receives a notice of final partnership adjustment from the IRS, the Tax Matters Representative may, as determined in its discretion and with respect to any applicable year, (a) cause the ICAV to elect the application of Section 6225 of the Code, as amended by Section 1101 of the Bipartisan Budget Act of 2015, with respect to any imputed underpayment arising from such adjustment and / or (b) cause the ICAV to (i) elect the application of Section 6226 of the Code, as amended by Section 1101 of the Bipartisan Budget Act of 2015, with respect to any imputed underpayment arising from such adjustment, and (ii) furnish to each Shareholder (or former Shareholder) a statement of such Shareholder’s (or former Shareholder’s) share of any adjustment to income, gain, loss, deduction or credit (as determined in the notice of final partnership adjustment). Each Shareholder who both is permitted to, and elects to, participate in any tax Proceedings shall be responsible for any expenses incurred by such Shareholder in connection with such participation. The cost of any resulting audits or adjustments of a Shareholder’s tax return shall be borne solely by such Shareholder.

Section 10.05 U.S. State, Local, and Non-U.S. Taxes. The Board and the AIFM may take appropriate steps on behalf of the ICAV that it deems necessary or advisable to comply with the tax laws of any U.S. state, local jurisdiction, or non-U.S. jurisdictions (including, without limitation, Ireland), including with regard to the matters set forth in this Article 10.

Section 10.06 Taxable Year. Unless otherwise required by law, the taxable year of the ICAV for U.S. federal income tax purposes shall end on December 31st.

## ARTICLE 11

### REPORTS TO SHAREHOLDERS

#### Section 11.01 Reports.

(a) *Books and Records*. The Board shall keep or cause to be kept complete and accurate books and accounting records, within the meaning of section 110 of the Act, that are sufficient to (i) correctly record and explain the transactions of the ICAV and each Sub-Fund; (ii) enable at any time the assets, liabilities, financial position and profit or loss of the ICAV and each Sub-Fund to be determined with reasonable accuracy; (iii) enable the Board to ensure that any balance sheet, profit and loss account or income and expenditure account of the ICAV and each Sub-Fund complies with the requirements of the Act; and (iv) enable the accounts of the ICAV and each Sub-Fund to be readily and properly audited.

(b) The accounting records shall be kept at the registered office of the ICAV or, subject to the provisions of the Act, at such other place as the Board thinks fit. The accounting records shall be available at all reasonable times to the inspection by persons entitled pursuant to the Act.

(c) The ICAV shall provide the Central Bank with all reports and information to which it is entitled under the Act and the AIF Rulebook.

(d) *Auditors.* The books of account and records of the ICAV shall be audited as of the end of each Fiscal Year by independent auditors appointed by the ICAV in accordance with the Act. The ICAV's independent auditors shall initially be PricewaterhouseCoopers LLP. The ICAV's independent auditors thereafter shall be an internationally recognized independent certified public accounting firm selected from time to time by the Board. All reports provided to the Shareholders pursuant to this Section 11.01 shall be prepared in accordance with the relevant accounting principles as determined by the Board from time to time.

(e) *Quarterly Reports.* As soon as reasonably practicable after the end of each fiscal quarter (other than the fourth quarter), the AIFM shall prepare and mail or email to each Person who was a Shareholder during such fiscal quarter a performance report for such quarter.

(f) *Annual Reports.* The AIFM shall prepare accounts for each Fiscal Year in respect of the ICAV in accordance with the requirements of the Act. The AIFM shall also prepare, in respect of each Fiscal Year, a Directors' report in accordance with the requirements of the Act. A copy of the Directors' report as well as a copy of the independent auditor's report shall be attached to the annual accounts for the Fiscal Year of the ICAV to which the accounts relate. Copies of the annual accounts and reports shall be made available and/or sent to all Shareholders by the ICAV in accordance with the requirements of the Central Bank. Separate accounts may be prepared in respect of a Sub-Fund and all references to ICAV in this Instrument may be read as, where appropriate, referring to the relevant Sub-Fund in respect of which the separate books of account are to be prepared.

(g) *Withholding of Reports.* Notwithstanding the foregoing provisions of this Section 11.01, the Board and the AIFM may, pursuant to Section 18.04(d), keep confidential from any Shareholder information otherwise required to be delivered to such Shareholder pursuant to this Section 11.01 (other than information required to be delivered pursuant to Section 11.01(h)).

(h) *Schedule K-1.* The ICAV will use commercially reasonable efforts to distribute, as soon as reasonably practicable after March 15 of each year, IRS Schedule K-1 (or equivalent information) to each Shareholder (or former Shareholder).

## ARTICLE 12 EXCULPATION AND INDEMNIFICATION

### Section 12.01 Exculpation and Indemnification.

(a) *Exculpation.* To the fullest extent permitted by applicable law, no Indemnified Person shall be liable, responsible, or accountable in damages or otherwise to the ICAV, any Fund Investors, any Parallel Vehicle or any Feeder Vehicle any for any act or omission suffered or taken by it or him that is not in material violation of this Instrument or the AIFM Agreement and (i) in the case of an AIFM Indemnified Person (excluding the Directors), is not in material violation of this Instrument, the AIFM Agreement or any agreement that specifically relates to the ICAV with the Portfolio Manager and does not constitute Gross Negligence, willful misconduct, fraud or bad faith and with respect to any criminal action or Proceeding, without reasonable cause to believe that his or its conduct was unlawful; (ii) in the case of an Advisory Board Indemnified Person, does not constitute fraud or bad faith; and (iii) in the case of a Director, does not constitute negligence, default, breach of duty or breach of trust in relation to the ICAV on his or her part.

(b) *Indemnification.* To the maximum extent permitted by applicable law, each Indemnified Person shall be fully protected and indemnified by the ICAV out of ICAV assets against all liabilities and losses (including amounts paid in respect of judgments, fines, penalties or settlement of litigation, and legal fees and expenses reasonably incurred in connection with any pending or threatened litigation or Proceeding) suffered by virtue of its or his serving as an Indemnified Person with respect to any action or omission suffered or taken that (x) in the case of any AIFM Indemnified Person (excluding Directors), is not in material violation of this Instrument, the AIFM Agreement or any agreement with the Portfolio Manager and does not constitute bad faith, fraud, Gross Negligence or willful misconduct, and with respect to any criminal action or Proceeding, without reasonable cause to believe his or its conduct was unlawful, (y) in the case of any Advisory Board Indemnified Person, does not constitute bad faith or fraud (or does not result from acts or omissions of the Advisory Board Indemnified Person not related to the Advisory Board) and (z) in the case of a Director, does not constitute negligence, default, breach of duty or breach of trust in relation to the ICAV on his or her part; provided, however, that persons or entities which are Indemnified Persons as a result of their role as an agent or independent contractor shall only be entitled to such protection and indemnification to the extent they are selected and monitored with reasonable care.

(c) *Advancement of Expenses.* If the AIFM determines, following consultation with the Board, that the Indemnified Person will ultimately be entitled to indemnification under this Instrument, the AIFM Agreement or any agreement with the Portfolio Manager, the ICAV may advance expenses, including but not limited to legal fees, for which such Indemnified Person would be entitled by this Instrument, the AIFM Agreement or any agreement with the Portfolio Manager, as applicable, to be indemnified upon receipt of an unsecured undertaking by such Indemnified Person to repay such advances if it is ultimately determined by a court of proper jurisdiction that indemnification for such expenses is not permitted by law or authorized by this Instrument, the AIFM Agreement or any agreement with the Portfolio Manager, as applicable. Notwithstanding the foregoing, no Indemnified Person shall be indemnified for losses or liabilities arising out of an action arising out of disputes among current or former members, partners, directors or employees of the Board, the AIFM, the Portfolio Manager, Bain Capital, LP or any of their Affiliates that solely relates to the internal affairs of the Board, the AIFM, the Portfolio Manager or Bain Capital unless the Advisory Board consents to such indemnification.

(d) *Reliance on Advisors.* If any AIFM Indemnified Person consults with legal counsel, accountants, consultants and / or other advisors selected by such AIFM Indemnified Person, any act or omission suffered or taken by such AIFM Indemnified Person on behalf of the ICAV in good faith reliance upon and / or in accordance with the advice of such legal counsel, accountants, consultants and / or other advisors shall be fully justified and such AIFM Indemnified Person shall be fully protected and not liable to the ICAV, to Shareholders, any Parallel Vehicle, or any Fund Investor in any regard in so acting or omitting to act. If any AIFM Indemnified Person obtains the approval of the Advisory Board for any course of action or other decision, such AIFM Indemnified Person shall be fully justified and such AIFM Indemnified Person shall be fully protected and not liable to the ICAV, to Shareholders, any Parallel Vehicle, or any Fund Investor in any regard for acting in accordance with such approval. Furthermore, an Indemnified Person shall, to the fullest extent permitted by applicable law, be treated as having acted in good faith and with the requisite degree of care if such Indemnified Person has reasonably relied on reports and written statements of the board, officers, employees, agents, stockholders, members, managers and / or partners of an Investment with respect to the applicable Investment, unless such Indemnified Person had reason to believe that such reports or statements were not true and complete. Without limiting its obligations under this Instrument, in circumstances where Related Funds have interests that are adverse to those of the ICAV, the AIFM may exercise judgment considering the interests of the ICAV and such Related Funds taken as a whole. Provided that the AIFM has fully complied with its obligations to the ICAV and the Shareholders, neither the AIFM nor any other AIFM Indemnified Person shall be liable to the ICAV or any Shareholder solely as a result of exercising judgment in such

manner, unless there is a specific finding of bad faith, fraud, Gross Negligence, willful misconduct, and with respect to any criminal action or Proceeding, the AIFM or such AIFM Indemnified Person is without reasonable cause to believe that his or its conduct was unlawful (or where such a finding is an essential element of a judgment or order). The termination of any action, suit or Proceeding by judgment, order or settlement, or a plea of *nolo contendere* or its equivalent, shall not, of itself, create a presumption for the purposes of this Section 12.01 that the Person in question acted fraudulently or in bad faith, was grossly negligent or engaged in willful misconduct, or with respect to any criminal action or Proceeding, had reasonable cause to believe that his or its conduct was unlawful. The provisions of this Section 12.01 are for the benefit of each AIFM Indemnified Person and shall be enforceable by each such AIFM Indemnified Person. Notwithstanding the foregoing provisions of Section 12.01(a) or Section 12.01(b) no provision of this Instrument shall constitute a waiver or limitation of any Shareholder's rights under the U.S. federal or state securities laws.

(e) *Contribution.* If for any reason (other than, (i) in the case of a AIFM Indemnified Person (excluding any Director), such AIFM Indemnified Person's Gross Negligence, willful misconduct, fraud, and with respect to any criminal action or Proceeding, without reasonable cause to believe that his or its conduct was unlawful, or bad faith and knowing, intentional and material breach of this Instrument, or (ii) in the case of an Advisory Board Indemnified Person, such Advisory Board Indemnified Person's failure to act in good faith, or (iii) in the case of a Director, such Director's negligence, default, breach of duty or breach of trust in relation to the ICAV on his or her part), the indemnification described in this Article 12 is unavailable to any Indemnified Person, or insufficient to hold it harmless, then the ICAV shall contribute to the amount paid or payable by such Indemnified Person as a result of such loss, claim, damage or liability in such proportion as is appropriate to reflect the relative benefits of this Article 12 received by the ICAV, on the one hand, and such Indemnified Person, on the other hand, or, if such allocation is not permitted by applicable law, to reflect not only the relative benefits of this Article 12 referred to above but also any other relevant equitable considerations.

(f) *Reimbursement for Taxes.* Each Shareholder by entering into a Subscription Agreement shall covenant for itself and its successors, assigns, heirs and personal representatives that such Person will, to the maximum extent permitted by law, at any time prior to or after dissolution of the ICAV, whether before or after such Person's withdrawal from the ICAV, pay to the ICAV or the AIFM on demand (i) any amount which the ICAV, the AIFM, the Portfolio Manager or any other Shareholder or their Affiliates, as the case may be, pays or incurs in respect of taxes, including withholding taxes (and any interest, additions to tax, penalties or expenses relating to such taxes), imposed upon income of, or payments or distributions in respect of or attributable to, such Shareholder and (ii) any taxes directly or indirectly imposed on or required to be paid or withheld by the ICAV or the AIFM (and any interest, additions to tax, penalties or expenses relating to any such taxes) that are treated by the AIFM for all purposes of this Instrument as distributed to such Shareholder under Section 7.01 and that have not otherwise been deducted from distributions to such Shareholder.

(g) *Indemnification Obligations.* Notwithstanding anything else contained in this Instrument, the reimbursement, indemnity and contribution obligations of the ICAV under this Article 12 (the "**Indemnification Obligations**") shall:

- (i) be in addition to any liability which the ICAV and / or the Shareholders may otherwise have;
- (ii) extend upon the same terms and conditions to the officers, directors, members, employees, Affiliates, stockholders, agents and representatives of each Indemnified Person;

(iii) be binding upon and inure to the benefit of any successors, assigns, heirs and personal representatives of each Indemnified Person; and

(iv) be borne by one or more (but not all) Shareholders in the circumstances and subject to the terms described in Section 12.01(f).

(h) *Obligations of Excluded Shareholder.* Notwithstanding anything to the contrary contained in this Section 12.01, in connection with any Indemnification Obligation relating to a specific Investment, if a Shareholder has been previously excluded from participating in such Investment pursuant to Section 5.05 hereof, then such Shareholder shall not bear any part of such Indemnification Obligation.

(i) *Insurance.* The Board or the AIFM may cause the ICAV to purchase, or share in the expenses of, insurance policies, including insurance policies covering more than one Related Fund and the activities of Bain Capital generally, that the Board or the AIFM considers necessary or appropriate for the conduct of the business of the ICAV, including key personnel insurance policies naming the ICAV as beneficiary and insurance policies covering any Person individually against all claims and liabilities of every nature arising by reason of being, or holding, having held, or having agreed to hold office as, a partner, officer, member of the Advisory Board, employee, agent, investment advisor or manager, or independent contractor of the ICAV, or being, serving, having served, or having agreed to serve at the request of the ICAV as a partner, director, trustee, officer, member, employee, agent or independent contractor of another partnership, limited liability company, corporation, joint venture, trust or other enterprise, or by reason of any action alleged to have been taken or omitted by any such Person in any of the foregoing capacities, including any action taken or omitted that may be determined to constitute negligence, whether or not in the case of insurance the ICAV would have the power to indemnify such Person against such liability. The ICAV's share (as determined by the AIFM) of fees and expenses incurred in connection with obtaining and maintaining any such insurance policy or policies, including any commissions and premiums and any expenses incurred in connection with the investigation, prosecution, defense, judgment or settlement of litigation related to such insurance policies, shall be Fund Expenses.

(j) *Priority of Obligations.* Notwithstanding the foregoing, if an Indemnified Person may be entitled to be indemnified by an Investment, is insured by an insurer providing insurance coverage under an insurance policy issued to such Investment and / or may be entitled to be indemnified by any Upper Tier Indemnitor for any liabilities, expenses or other losses as to which such Indemnified Person also would be entitled to be indemnified by the ICAV pursuant to the foregoing provisions of this Section 12.01 (or by any Upper Tier Indemnitor) (i) it is intended that as among such Upper Tier Indemnitor, the ICAV, and such Investment and its insurer, such Investment and its insurer will be the full indemnitor (or insurer) of first resort, the ICAV will be the full indemnitor of second resort, and such Upper Tier Indemnitor will be the full indemnitor of third resort for any such liabilities, expenses or other losses; (ii) any amount that the ICAV is otherwise obligated to pay with respect to indemnification or advancement for such liabilities, expenses or losses will be reduced by the amount such Indemnified Person receives in respect of such indemnification, advancement or insurance from such Investment and / or its insurer; (iii) the Indemnified Person will not be required first to exhaust rights or remedies with respect to indemnification, advancement or insurance provided by such Investment or its insurer before the ICAV makes any payment to such Indemnified Person; (iv) if the Investment or its insurer does not promptly pay such indemnification, advancement or insurance to or on behalf of the Indemnified Person for any reason, the Indemnified Person will be entitled to pursue any rights to advancement or indemnification hereunder (subject to all of the terms and conditions of this Section 12.01); and (v) if the ICAV indemnifies, or advances payment for expenses to, such Indemnified Person with respect to such liabilities or losses, and such Indemnified Person may be entitled to indemnification, advancement or insurance of expenses from such Investment or its insurer, the ICAV may request that such Indemnified

Person agree with the ICAV that (x) the ICAV will be fully subrogated to all rights of such Indemnified Person to indemnification, advancement or insurance of expenses from such Investment and its insurer with respect to such payment; (y) such Indemnified Person will assign to the ICAV all of the Indemnified Person's rights to indemnification, advancement or insurance in respect of expenses from such Investment or its insurer; and (z) such Indemnified Person will execute all documents and take all other actions appropriate to effectuate the foregoing clauses (x) and (y). Before providing indemnification to any Indemnified Person out of ICAV assets, the ICAV will use commercially reasonable efforts to seek recovery under any insurance policy issued to the ICAV or any Upper Tier Indemnitor under which such Indemnified Person may be covered; provided, however, that the ICAV may provide indemnification to such Indemnified Person if the applicable insurer does not provide coverage to such Indemnified Person in a timely manner, as determined by the AIFM in good faith.

### ARTICLE 13 TERM AND WIND UP OF ICAV

Section 13.01 Duration. The term of the ICAV shall continue in existence until the close of business on the eighth anniversary of the Final Closing Date, unless the ICAV is sooner terminated in connection with a Dissolution Event pursuant to Section 13.02; provided that, subject to Section 13.02, such term (a) may be extended by the Board in its sole discretion for up to two one-year periods following the expiration of such initial term and (b) may be extended further after the expiration of the second one-year period only upon (i) the prior approval of at least 75% of the votes cast in respect of a meeting of the Fund Investors duly convened and held; or (ii) the prior written approval of all Fund Investors. The initial duration of any closed-ended Sub-Fund will comply with the provisions of the AIF Rulebook.

Section 13.02 Dissolution. Subject to the Act, the affairs of the ICAV shall be wound up and the ICAV subsequently dissolved upon the earliest of the following (each a “**Dissolution Event**”):

- (a) the expiration of the term of the ICAV provided in Section 13.01;
- (b) the ICAV ceasing to be authorized by the Central Bank;
- (c) the resignation or removal of the AIFM without the contemporaneous appointment of a Successor AIFM as provided in Section 2.08;
- (d) an order of the courts of Ireland for the winding up and dissolution of the ICAV pursuant to the Act; and
- (e) a resolution by the Board that it is impracticable or inadvisable for the ICAV to continue to operate having regard to prevailing market conditions and the best interests of the Shareholders.

Section 13.03 Liquidation. Upon termination pursuant to Section 13.01 and Section 13.02 or the occurrence of a Dissolution Event, the ICAV's business shall be liquidated in an orderly manner. The Board shall give notice of the liquidation to the relevant Shareholders and by such notice fix the date at which such termination is to take effect, which date shall be for such period after the service of such notice as the Board shall in its sole and absolute discretion determine. In such circumstances all of the relevant Shareholders will be deemed to have had requested that their Shares be redeemed by the Board on the termination date selected by the Board. With effect from the date as at which the ICAV is to terminate, the AIFM shall, on the instructions of the Board, Realize all the Investments then comprised in the ICAV (which Realization shall be carried out and completed in such manner and within such period after the termination of the ICAV as the AIFM thinks advisable). The AIFM may delay the payment of



final proceeds to Shareholders until all assets and receivables are liquidated and may make adjustments to the amount of redemption proceeds payable to Shareholders of the ICAV in order to reflect the final value of such assets and receivables upon termination. If there shall be no AIFM or if the ICAV dissolution shall be triggered pursuant to Section 13.02(c), an Ordinary Resolution of the Shareholders may approve one or more liquidators to act as the liquidator in carrying out such liquidation. In performing its duties, subject to the Act, the liquidator is authorized to sell, distribute, exchange or otherwise dispose of the assets of the ICAV in any reasonable manner that the liquidator shall determine to be in the best interest of the Shareholders.

#### Section 13.04 Distribution upon Liquidation of the ICAV.

(a) *Wind-up of ICAV Affairs.* The ICAV shall be wound up in accordance with the provisions of Part 11 of the Irish Companies Act, 2014 relating to the winding up of companies subject to any necessary modifications and the specific modifications contained in the Act which apply as if the ICAV were an investment company. The assets available for distribution among the Shareholders for the satisfaction of creditors' claims shall be applied (after first deeming the relevant Fiscal Period to end) as follows:

(i) firstly, in the payment to the Shareholders of each Class or Sub-Fund of a sum in the Base Currency (or in any other currency selected and at such rate of exchange as determined by the liquidator) as nearly as possible equal to the Net Asset Value of the Shares of the relevant Class or Sub-Fund held by such Shareholders respectively as at the date of commencement of winding up;

(ii) secondly, in the payment to the Shareholders of each Class or Sub-Fund of any balance then remaining in the relevant Sub-Fund, in proportion to the number of Shares of the relevant Class or Sub-Fund held; and

(iii) thirdly, any balance then remaining and not attributable to any Sub-Fund or Class shall be apportioned between the Sub-Funds and Classes pro rata to the Net Asset Value of each Sub-Fund or attributable to each Class immediately prior to any distribution to Shareholders and the amounts so apportioned shall be paid to Shareholders pro rata to the number of Shares in that Sub-Fund or Class held by them.

Section 13.05 Distribution In Kind upon Liquidation. If the ICAV shall be wound up (whether the liquidation is voluntary, under supervision or by the court) the liquidator may, with the authority of a 75% Resolution of the relevant Shareholders (which authority may be obtained in advance, including in each Shareholder's Subscription Agreement) and any other sanction required by the Act, divide among the Shareholders of Shares of any Class or Classes within a Sub-Fund in kind the whole or any part of the Investments relating to that Sub-Fund, and whether or not the Investments shall consist of property of a single kind, and may for such purposes set such value as he deems fair on any one or more Class or Classes of property, and may determine how such division shall be carried out as between the Shareholders or the Shareholders of different Classes of Shares as the case may be, subject in all cases to Section 7.05. The liquidator may, with the like authority, vest any part of the Investments in trustees on such trusts for the benefit of Shareholders as the liquidator, with the like authority, shall think fit, and the liquidation of the ICAV may be closed and the ICAV dissolved. A Shareholder may request that the liquidator instead of transferring any asset in specie to him/her, use commercially reasonable efforts to arrange for a sale of the Investments on terms mutually agreeable to such Shareholder, the liquidator and the applicable transferee. Upon any such sale, the liquidator shall arrange for payment to the Shareholder of the net proceeds of same with the cost of any such sale to be borne by the relevant Shareholder.

Section 13.06 Distribution to a Trust or Other Reserve. In the discretion of the liquidator, and subject to the Act, a portion of the distributions that would otherwise be *made* to the Special Shareholder and the Shareholders pursuant to this section 13 may be:

(i) distributed to a trust established for the benefit of the Shareholders for purposes of liquidating ICAV assets, collecting amounts owed to the ICAV, and paying any liabilities or obligations of the ICAV or the AIFM or the Special Shareholder arising out of, or in connection with, this Instrument or the ICAV's affairs; or

(ii) withheld, with respect to any Shareholder, to provide a reserve for the payment of such Shareholder's share of future Fund Expenses; provided that such withheld amounts shall be distributed to such Shareholder as soon as the liquidator determines that it is no longer necessary to retain such amounts.

The assets of any trust established in connection with clause (i) above shall be distributed to the Shareholders from time to time, in the discretion of the liquidator, in the same proportions as the amount distributed to such trust by the ICAV would otherwise have been distributed to the Shareholders pursuant to this Instrument.

Section 13.07 Wind-Up of Sub-Fund. A Sub-Fund may be wound up pursuant to section 37 of the Act and in such event the provisions of this section 13 shall apply mutatis mutandis in respect of that Sub-Fund. Each Shareholder by entering into its Subscription Agreement shall agree to seek recourse solely to the assets of the relevant Sub-Fund for the return of such Shareholder's aggregate Capital Contributions, and no Shareholder shall have priority over any other Shareholder as to the return of such Capital Contributions.

Section 13.08 Reconstruction and Amalgamation. The Board shall have the power to propose and implement a reconstruction and/or amalgamation of the ICAV or any Sub-Fund on such terms and conditions as are approved by the Board subject to the following conditions namely: (i) that the prior approval of the Central Bank has been obtained; and (ii) that the Shareholders in the relevant Sub-Fund have been circulated with particulars of the scheme of reconstruction and/or amalgamation in a form approved by the Board and a 75% Resolution of the Shareholders in the relevant Sub-Fund has been passed approving the said scheme. The relevant scheme of reconstruction and/or amalgamation shall take effect on such conditions being satisfied or on such later date as the scheme may provide or as the Board may determine where upon the terms of such scheme shall be binding on all the Shareholders and the Board shall have the power to and shall do all such acts and things as may be necessary for the implementation thereof.

## ARTICLE 14 SPECIAL DISTRIBUTIONS FOR SHAREHOLDERS

Section 14.01 Reallocation. Immediately prior to a Shareholder ceasing to be a Shareholder, including in connection with the termination of the ICAV pursuant to Section 13.01, the AIFM shall calculate the total amount of Net Profit, Net Loss, Miscellaneous Income, Miscellaneous Expense and Non-Reimbursable Expense which was initially apportioned to such Shareholder pursuant to Section 6.01 (such amount, the "**Total Available Amount**") and shall determine what percentage of the Total Available Amount was allocated to such Shareholder and what percentage of the Total Available Amount was allocated to the Special Shareholder in respect of such Shareholder pursuant, in each case, to Section 6.02(a)(i) through Section 6.02(a)(iii) during the time such Shareholder was Shareholder. To the extent the Special Shareholder has been allocated a greater or lesser portion of such Total Available Amount than the Special Shareholder would have been allocated had all of the Total Available Amount been

allocated as between such Shareholder and the Special Shareholder pursuant to Section 6.02(a)(i) through Section 6.02(a)(iii) on the date on which such Shareholder is ceasing to be a Shareholder, then the AIFM shall adjust the amounts allocated to such Shareholder and the Special Shareholder by an amount equal to such disparity, provided that the total amount reallocated from the Special Shareholder to such Shareholder shall not exceed (a) the total Carried Interest allocated to the Special Shareholder with respect to such Shareholder that have not been reversed minus (b) taxes on such amount based on the Tax Percentage applicable thereto plus (c) the amount of tax benefit the Special Shareholder reasonably determines its beneficial owners will receive and utilize as a result of such reallocation with respect to the year such reallocation occurs (the “**Reallocation**”). The Reallocation reallocated to such Shareholder pursuant to this Section 14.01 shall, subject to the Act, be distributed to such Shareholder.

Section 14.02 Contribution. In the event that the Special Shareholder’s Book Capital Account balance is not sufficient to permit the Reallocation required by Section 14.01, the Special Shareholder shall make a contribution to the ICAV in an amount necessary to cure such deficiency. The Special Shareholder shall cause its partners to be personally liable for such contribution obligation, and to use all reasonable efforts to enforce such contribution obligation on behalf of the ICAV. The provisions of this Article 14 are for the benefit of the Shareholders entitled to the Reallocation pursuant to Section 14.01 which requires a contribution pursuant to this Section 14.02, and shall be enforceable by such Shareholders.

## ARTICLE 15 RESTRICTIONS ON TRANSFERABILITY AND WITHDRAWAL

Section 15.01 Transferability of a Shareholder’s Shares. *Restriction on Transfer of Shareholder’s Shares*. Subject to Section 15.06, no Transfer of all or any part of a Shareholder’s Shares in the ICAV may be made without the prior written consent of the Board or its delegate, which consent may be granted or withheld by the Board or its delegate in its sole discretion.

(b) *Conditions to Transfer*. Notwithstanding the provisions of Section 15.01(a), in no event may a Shareholder directly or indirectly transfer, sell, encumber, mortgage, hypothecate, assign or otherwise dispose of or grant a security interest over or in relation to, voluntarily or involuntarily, all or any portion of its Shares (each a “Transfer”) nor may a Substituted Shareholder be admitted to the ICAV if such Transfer or such admission may, in the sole discretion of the Board or the AIFM:

- (i) cause a dissolution of the ICAV under the Act;
- (ii) cause the ICAV to be an “investment company” within the meaning of the Investment Company Act;
- (iii) cause the termination of the ICAV as a partnership for U.S. federal income tax purposes;
- (iv) result in any risk that the ICAV would be treated as a publicly traded partnership or otherwise be taxable as an association for U.S. federal income tax purposes or result in any adverse tax consequences to the ICAV (or Shareholders generally);
- (v) cause the Board, the AIFM, the Portfolio Manager or their respective Affiliates to be in violation of the Advisers Act and the rules promulgated thereunder; or

(vi) violate, or cause the ICAV, the Board, the AIFM, the Portfolio Manager or any of their respective Affiliates to violate any applicable law or regulation, including any applicable federal or state securities laws;

(vii) not be in the best interests of the ICAV as determined in the Board's sole discretion; or

(viii) result in a contravention of any provision of this Instrument or would produce a result inconsistent with any provision of the Prospectus (including, without limitation, the failure to provide such documentation as may be required to the ICAV to satisfy the ICAV as to the identity and verification of beneficial ownership of any proposed transferee in accordance with applicable anti-money laundering and prevention of terrorism laws and the failure to provide any declarations including declarations as to appropriate tax status of the proposed transferee).

In no event shall the ICAV participate in the establishment of a secondary market or the substantial equivalent thereof as defined in U.S. Treasury Regulations Section 1.7704-1(c) or the inclusion of its Shares on such a market or on an established securities market as defined in U.S. Treasury Regulations Section 1.7704-1(b), or recognize any Transfers made on any of the foregoing by admitting the purported transferee as a Shareholder or otherwise recognizing the rights of such transferee.

(c) *Provision of Information.* At the request of the Board or the AIFM, a transferring Shareholder shall, to the fullest extent permitted by applicable law, return to the Board or the AIFM any information relating to the ICAV previously furnished to such transferring Shareholder by the Board or the AIFM or certify in writing to the Board or the AIFM that such information has been destroyed and is no longer in the possession of such transferring Shareholder; provided that the Board shall allow any transferring Shareholder (i) that is subject to, or believes that it is subject to, any "freedom of information," "sunshine" or other law, rule or regulation that imposes on such Shareholder an obligation to make certain information available to the public to retain any information relating to the ICAV as required by applicable law and such Shareholder shall return such retained information, or certify in writing to the Board or the AIFM that such information has been destroyed and is no longer in the possession of such transferring Shareholder, promptly following the satisfaction of any such legal or regulatory requirement by such transferring Shareholder; and (ii) to retain any information relating to the ICAV as required, as determined by the Board or the AIFM in consultation with the Shareholder, for purposes of completing any reports, filings or similar materials of such Shareholder with respect to the year in which the Transfer occurred and such Shareholder shall return such retained information or certify in writing to the Board that such information has been destroyed and is no longer in the possession of such transferring Shareholder promptly following the completion of any reports, filings or similar materials of such Shareholder.

Section 15.02 Expenses of Transfer; Indemnification. All expenses, including diligence and attorneys' fees and expenses, incurred by any AIFM Indemnified Person in connection with any Transfer shall, as determined by the AIFM in its sole discretion, be borne by the transferring Shareholder, such Shareholder's transferee (any such transferee, when admitted and shown as such on the books and records of the ICAV, being hereinafter called a "**Substituted Shareholder**") or the ICAV. In addition, to the fullest extent permitted by applicable law, the transferring Shareholder or such transferee shall indemnify the AIFM Indemnified Persons in a manner satisfactory to the AIFM against any losses, claims, damages or liabilities to which the ICAV, the Board or the AIFM may become subject arising out of, related to or in connection with any false representation or warranty made by, or breach or failure to comply with any covenant or agreement of, such transferring Shareholder or such transferee.

Section 15.03 Recognition of Transfer: Substituted Shareholders.

(a) *Admission of Substituted Shareholder.* No purchaser, assignee, or other recipient of all or any portion of a Shareholder's Shares may be admitted to the ICAV as a Substituted Shareholder without the prior approval of the Board (which may, in the Board's sole discretion, be withheld). If the Board approves the admission of any Person to the ICAV as a Substituted Shareholder, such Person, as a condition to its admission as a Shareholder, shall execute and acknowledge such instruments (including a Subscription Agreement), in form and substance satisfactory to the Board, as the Board reasonably deems necessary or desirable to effectuate such admission and to confirm the agreement of such Person to be bound by all the terms and provisions of this Instrument with respect to the Shares acquired by such Person.

(b) *Recognition of Transfer.* The ICAV shall not (subject to Section 15.06) recognize for any purpose any purported Transfer of all or any part of a Shareholder's Shares and no purchaser, assignee, transferee or other recipient of all or any part of such Shares shall be admitted as a Substituted Shareholder hereunder unless:

(i) the provisions of Section 15.01, Section 15.02 and Section 15.03(a) shall have been complied with;

(ii) the Board shall have been furnished with the documents effecting such Transfer, in form reasonably satisfactory to the Board, executed and acknowledged by both the seller, assignor or transferor and the purchaser, assignee, transferee or other recipient;

(iii) all necessary governmental consents shall have been obtained in respect of such Transfer;

(iv) the books and records of the ICAV shall have been updated to reflect the admission of such Substituted Shareholder;

(v) all necessary instruments reflecting such admission shall have been filed in each jurisdiction in which such filing is necessary; and

(vi) the Board shall have received all documentation required of such Substituted Shareholder under any Credit Facility then in effect.

Upon the satisfaction of the conditions set forth in this Section 15.03, any such purchaser, assignee, or other recipient shall be admitted as a Substituted Shareholder, and immediately following such admission, the transferring Shareholder shall cease to be a Shareholder.

Section 15.04 Transfers During a Fiscal Year. If any Transfer (other than a pledge or hypothecation) of a Shareholder's Shares shall occur at any time other than the end of the ICAV's Fiscal Year, the distributive shares of the various items of ICAV income, gain, loss, and expense as computed for U.S. federal income tax purposes shall be allocated between the transferor and the transferee in accordance with the applicable requirements of Section 706 of the Code as determined by the AIFM.

Section 15.05 Compulsorily Redeeming a Shareholder and Other Actions. If the Board or the AIFM reasonably determines that any further participation by a Shareholder in the ICAV's affairs:

(a) is reasonably likely to result in such Parallel Vehicles, Shareholder, the ICAV, the AIFM, the Portfolio Manager, or their Affiliates violating any applicable law, order, decree, rule,

regulation or judgment of any court or governmental agency applicable to such party or would be materially detrimental to any such party's business or commercial reputation;

(b) would result in the ICAV holding "plan assets" under Title I of ERISA or Section 4975 of the Code;

(c) would result in any risk that the ICAV would be treated as a publicly traded partnership or otherwise be taxable as a corporation for U.S. federal income tax purposes; or

(d) would result in any other material adverse tax or regulatory consequences to the ICAV (or to the Shareholders generally, or to one or more of the Shareholders), including (i) non-compliance with the requirements of the Central Bank; (ii) non-compliance with requirements under FATCA or any similar or analogous provision of non-U.S. law, including CRS, or (iii) as a result of such Shareholder's failure to provide the ICAV with information, or to take any other action, that is necessary, in the determination of the AIFM, for the ICAV to satisfy its obligations under FATCA or any similar or analogous provision of non-U.S. law, including CRS,

the Board or the AIFM may: (i) exclude such Shareholder, in whole or in part, from participation in one or more future Investments through a partial redemption of such Shareholder's Shares, (ii) take any other action to mitigate any adverse effect associated with the further participation of such Shareholder in the ICAV's affairs, (iii) fully redeem or otherwise transfer such Shareholder's Shares in the ICAV, or (iv) elect to terminate the Available Commitment of such Shareholder, in whole, in each case on such terms as the Board or the AIFM determines. In the circumstances described in the preceding sentence, to the extent determined appropriate by the Board or the AIFM in its reasonable discretion, such Shareholder shall (x) cease to have the right, pursuant to this Instrument and the Act, to obtain information regarding the ICAV and its affairs other than the information furnished to such Shareholder pursuant to Article 11 to enable the Shareholder to prepare any applicable tax returns (subject to the Board's and the AIFM's rights pursuant to Section 18.04(d)), (y) not be entitled to vote, and such Shareholder's Capital Commitment shall be disregarded in connection with any vote or approval of the Shareholders sought under this Instrument except in connection with a vote or approval of the Shareholders pursuant to Section 18.01(a)(i) or as required by applicable law and (z) cease to have the right to attend meetings of the ICAV and, if such Shareholder has appointed a member of the Advisory Board, such representative shall cease to be a member of the Advisory Board (and such Shareholder shall not have the right to appoint a replacement member in his stead). Any action pursuant to clause (i) or (ii) above shall have no effect on (1) such Shareholder's Shares in, and, except as otherwise specifically provided in the immediately preceding sentence, rights and obligations with respect to, Investments existing at the time of such action, or (2) except as otherwise specifically provided in the immediately preceding sentence, such Shareholder's rights and obligations under this Instrument, including its rights under Section 18.01 and its obligations under Section 5.09, Section 12.01 or Section 18.04. Any such action shall not cause such Shareholder to cease to be a Shareholder for the purposes of the Act. In the event the Board or the AIFM causes a Shareholder to withdraw pursuant to this Section 15.05, ninety percent of the amount so withdrawn shall be paid within 30 days after the date as of which the withdrawal is made, and the balance shall be paid not later than 30 days after the audited financial statements of the ICAV for the Fiscal Year in which the withdrawal occurred are delivered to the Shareholders. Neither the Board nor the AIFM shall be liable to any Shareholder if the Board or the AIFM determines not to apply the provisions of this Section 15.05 in whole or in part to any Shareholder.

Section 15.06 Withdrawal, Death or Incompetency of a Shareholder. Upon the death or incompetency of an individual Shareholder, such Shareholder's executor, administrator, guardian, conservator or other legal representative may exercise all of such Shareholder's rights for the purpose of settling such Shareholder's estate or administering such Shareholder's property, except that the AIFM

may reduce or cancel the Available Commitment of such Shareholder (on such terms as the AIFM determines (which may include leaving such Shareholder obligated to make Capital Contributions with respect to Fund Expenses up to the amount of such Shareholder's Available Commitment immediately prior to the time such Available Commitment is so reduced or canceled)). Except as expressly provided in this Instrument, no other event affecting a Shareholder (including bankruptcy or insolvency) shall affect its obligations under this Instrument or affect the ICAV or cause such Shareholder to cease to be a Shareholder.

## ARTICLE 16 MEETINGS, VOTING AND NOTICE PROVISIONS

Section 16.01 Annual General Meetings. (a) The ICAV shall hold in each year a general meeting as its annual general meeting in addition to any other meeting in that year and shall specify the meeting as such in the notice calling it. Not more than 15 months shall elapse between the date of one annual general meeting and that of the next, provided that so long as the ICAV holds its first annual general meeting within 18 months after the date on which the registration order made by the Central Bank in respect of the ICAV comes into operation, it need not hold it in the year of its incorporation or in the following year. Subsequent annual general meetings shall be held once in each year.

(b) The Board may elect to dispense with the holding of an annual general meeting by giving 60 days' written notice to all of the Shareholders, which notice has effect for the year in which it is made and subsequent years. Where an election to dispense with the holding of an annual general meeting has effect for a year, one or more Shareholder(s) holding not less than 10% of the voting rights in the ICAV 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.

Section 16.02 Convening General Meetings. The Board may convene general meetings. Extraordinary general meetings (which shall refer to all general meetings other than annual general meetings) may also be convened on such requisition, or in default may be convened by such requisitionists, and in such manner as may be provided by the Act. If at any time there are not within the Republic of Ireland sufficient Directors capable of acting to form a quorum, any Director or Shareholder may convene an extraordinary general meeting in the same manner as nearly as possible as that in which general meetings may be convened by the Board.

### Section 16.03 Notice of General Meetings.

(a) Subject as otherwise herein provided, an annual general meeting and an extraordinary general meeting called for the passing of a 75% Resolution shall be called by at least 21 Clear Days' notice and all other extraordinary general meetings shall be called by at least 14 Clear Days' notice.

(b) Any notice convening a general meeting shall specify the time and place of the meeting and, in the case of special business, the general nature of that business and, in reasonable prominence, that a Shareholder entitled to attend and vote is entitled to appoint a proxy to attend, speak and vote in his place and that a proxy need not be a Shareholder. Subject to any restrictions imposed on any Shares, the notice shall be given to all the Shareholders and to the Board and the ICAV's auditors and counsel.

(c) The accidental omission to give notice of a meeting to, or the non-receipt of notice of a meeting by, any person entitled to receive notice shall not invalidate the proceedings at the meeting.

(d) Where, by any provision contained in the Act, extended notice is required of a resolution, the resolution shall not be effective (except in the case of a resolution to remove a Director where the Board has resolved to submit it) unless notice of the intention to move it has been given to the ICAV not less than 28 Clear Days (or such shorter period as the Act permits) before the meeting at which it is moved, and the ICAV shall give to the Shareholders notice of any such resolution as required by and in accordance with the provisions of the Act.

(e) A meeting shall, notwithstanding that it is called by shorter notice than that specified above, be deemed to have been duly called if it is so agreed by all the Shareholders entitled to attend and vote thereon.

#### Section 16.04 Quorum for General Meetings.

(a) No business other than the appointment of a chairman of the meeting shall be transacted at any general meeting unless a quorum of Shareholders or holders of Subscriber Shares is present at the time when the meeting proceeds to business. The quorum necessary for the transaction of business may be determined by the Board and, except as provided in relation to an adjourned meeting, until otherwise determined shall be two persons entitled to vote on the business to be transacted, each being a Shareholder or a holder of Subscriber Shares or a proxy for such holders or a duly authorised representative of a corporate Shareholder, shall be a quorum.

(b) If such a quorum is not present within half an hour from the time appointed for the meeting, or if during a meeting a quorum ceases to be present, the meeting shall stand adjourned to the same day in the next week at the same time and place, or to such other time and place as the Board may determine. If at the adjourned meeting such a quorum is not present within half an hour from the time appointed for the meeting, the meeting, if convened otherwise than by resolution of the Board, shall be dissolved, but if the meeting shall have been convened by resolution of the Board, one person entitled to be counted in a quorum present in person or by proxy at the meeting shall be a quorum.

Section 16.05 Special Business. All business shall be deemed special that is transacted at an extraordinary general meeting. All business that is transacted at an annual general meeting shall also be deemed special, with the exception of the consideration of the accounts, balance sheets and reports of the Board and auditors, the re-appointment of the retiring auditors and the fixing of the remuneration of the auditors.

Section 16.06 Chairman of General Meetings. The chairman of the Board or, in his absence, the deputy chairman (if any) or, in his absence, some other Director or person nominated by the Board shall preside as chairman at every general meeting of the ICAV. If at any general meeting none of such persons shall be present within 15 minutes after the time appointed for the holding of the meeting and willing to act, the Directors present shall elect one of their number to be chairman of the meeting and, if there is only one Director present and willing to act, he shall be chairman. If at any meeting no Director is willing to act as chairman or if no Director is present within 15 minutes after the time appointed for holding the meeting, the Shareholders present (in person or by proxy) and entitled to vote shall choose one of the Shareholders (including his proxy) personally present to be chairman of the meeting.

Section 16.07 Directors', Auditors' and Counsel's Right to Attend General Meetings. Each Director shall be entitled, notwithstanding that he is not a Shareholder, to attend and speak at any general meeting and at any separate meeting of the Shareholders of any Sub-Fund or Class of Shares. The ICAV's auditors shall be entitled to attend any general meeting and to be heard on any part of the business of the meeting that concerns them as auditors. The ICAV's counsel shall also be entitled to attend any general meeting and to be heard on any part of the business of the meeting.



Section 16.08 Adjournment of General Meetings. The chairman, with the consent of a meeting at which a quorum is present, may (and if so directed by the meeting, shall) adjourn the meeting from time to time (or sine die) and from place to place, but no business shall be transacted at any adjourned meeting other than business that might properly have been transacted at the meeting had the adjournment not taken place. Where a meeting is adjourned sine die, the time and place for the adjourned meeting shall be fixed by the Board. When a meeting is adjourned for 14 days or more or sine die, at least 7 Clear Days' notice shall be given specifying the time and meeting and the general nature of the business to be transacted. Except as aforesaid it shall not be necessary to give any notice of an adjourned meeting.

Section 16.09 Determination of Resolutions. At any general meeting, a resolution put to the vote of the meeting shall be decided on a show of hands unless before, or on the declaration of the result of, the show of hands, a poll is duly demanded. 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 minutes of the meeting shall be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favor of or against the resolution. The demand for a poll may be withdrawn before the poll is taken but only with the consent of the chairman, and a demand so withdrawn shall not be taken to have invalidated the result of a show of hands declared before the demand was made.

Section 16.10 Entitlement to Demand Poll. A poll may be demanded: (i) by the chairman of the meeting; (ii) by at least two Shareholders present (in person or by proxy) having the right to vote at the meeting; or (iii) by any Shareholder or Shareholders present (in person or by proxy) representing not less than one-tenth of the total voting rights of all the Shareholders having the right to vote at the meeting.

Section 16.11 Taking of a Poll.

(a) A poll shall be taken in such manner as the chairman directs and he may appoint scrutineers (who need not be Shareholders) and fix a time and place for declaring the result of the poll. The result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded.

(b) A poll demanded on the election of a chairman or on a question of adjournment shall be taken immediately. A poll demanded on any other question shall be taken either immediately or at such time (not being more than 30 Clear Days after the poll is demanded) and place as the chairman of the meeting may direct. 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 was demanded. If a poll is demanded before the declaration of the result of a show of hands and the demand is duly withdrawn, the meeting shall continue as if the demand had not been made.

(c) No notice need be given of a poll not taken immediately if the time and place at which it is to be taken are announced at the meeting at which it is demanded. In any other case at least 7 Clear Days' notice shall be given specifying the time and place at which the poll is to be taken.

Section 16.12 Votes of Shareholders.

Votes may be given either personally or by proxy. Subject to any rights or restrictions for the time being attached to any Class, Classes or Series of Shares:

- (i) on a show of hands, every Shareholder, who is present in person or by proxy, shall have one vote and the holder(s) of Subscriber Shares present in person or by proxy shall have one vote in respect of all of the Subscriber Shares in issue;

- (ii) on a poll, every Shareholder present in person or by proxy shall have one vote for every Share of which he is the Shareholder and every holder of a Subscriber Share present in person or by proxy shall have one vote in respect of his holding of Subscriber Shares;
- (iii) on a poll of all the Shareholders of Shares in a Sub-Fund, where there is more than one Class in existence in that Sub-Fund, the voting rights of such Shareholders may at the discretion of the Board be adjusted in such manner, determined by the Board, so as to reflect the most recently calculated price at which the Shares of each of the Classes in question may be redeemed by the ICAV; and
- (iv) a Shareholder or Shareholders who hold a fraction of a Share may not exercise any voting rights, whether on a show of hands or on a poll, in respect of such fraction of a Share.

Section 16.13 Written Resolutions. A resolution in writing executed, whether in manuscript or electronically, in accordance with applicable law by or on behalf of each Shareholder who would have been entitled to vote on it if it had been proposed at a meeting at which he was present shall be as effectual as if it had been passed at a general meeting duly convened and held and, in the case of a resolution in writing, may consist of several instruments in the like form, each executed by or on behalf of one or more Shareholders. In the case of a corporation, a resolution in writing may be signed or executed electronically in accordance with applicable law on its behalf by a director or the secretary thereof or by its duly appointed attorney or duly authorized representative.

Section 16.14 Chairman's Casting Vote. Where there is 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 be entitled to a casting vote in addition to any other vote he may have.

Section 16.15 Voting by Joint Shareholders. Where there are joint Shareholders of a Share, the vote of the senior who tenders a vote, whether in person or by proxy, in respect of such Share shall be accepted to the exclusion of the votes of the other joint Shareholders and for this purpose seniority shall be determined by the order in which the names of the Shareholders stand in the Register in respect of the Share.

Section 16.16 Voting by Incapacitated Shareholders. A member of unsound mind, or in respect of whom an order has been made by any court having jurisdiction (whether in the State or elsewhere) in matters concerning mental disorder, may vote, whether on a show of hands or on a poll, by his committee, receiver, guardian or other person appointed by that court and any such committee, receiver, guardian or other person may vote by proxy on a show of hands or on a poll. Evidence to the satisfaction of the Board of the authority of the person claiming to exercise the right to vote shall be deposited at the ICAV's registered office or at such other place as is specified in accordance with this Instrument for the deposit of instruments of proxy by such time as the Board may determine before the time appointed for holding the meeting or adjourned meeting at which the right to vote is to be exercised and in default the right to vote shall not be exercisable.

#### Section 16.17 Restriction of Voting Rights.

(a) If at any time the Board shall determine that a Shareholder has failed to adequately disclose an interest where required under the "Disclosure of Interests" section in Appendix A hereto, the Board may serve a notice to such effect on the relevant Shareholder. On the service of any such notice (in this Instrument referred to as a "restriction notice"), no Shareholder of the Share or Shares specified in

such restriction notice shall be entitled, for so long as such restriction notice shall remain in force, to attend or vote at any general meeting, either personally or by proxy.

(b) A restriction notice shall be cancelled by the Board as soon as reasonably practicable, but in any event not later than forty-eight hours, after the Shareholder or Shareholders concerned shall have remedied the default. A restriction notice shall automatically cease to have effect in respect of any Share transferred on registration of the relevant Transfer provided that a restriction notice shall not cease to have effect in respect of any Transfer where no change in the beneficial ownership of the Share shall occur. For this purpose it shall be assumed that no such change in the beneficial ownership has occurred where a transfer form in respect of the Share is presented for registration having been stamped at a reduced rate of stamp duty by virtue of the transferor or transferee claiming to be entitled to such reduced rate as a result of the transfer being one where no beneficial interest passes.

(c) The Board shall cause a notation to be made in the Register against the name of any Shareholder or Shareholders in respect of whom a restriction notice shall have been served indicating the number of Shares specified in such restriction notice and shall cause such notation to be deleted on cancellation or cesser of such restriction notice.

(d) Any determination of the Board and any notice served by it pursuant to the provisions of this Section 16.17 shall be conclusive as against the Shareholder or Shareholders of any Share and the validity of any notice served by the Board in pursuance of this Section 16.17 shall not be questioned by any person.

Section 16.18 Time for Objection to Voting. 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 tendered and every vote not disallowed at such meeting shall be valid. Any such objection made in due time shall be referred to the chairman of the meeting whose decision shall be final and conclusive.

Section 16.19 Appointment of Proxy. Every Shareholder entitled to attend and vote at a general meeting may appoint a proxy to attend, speak and vote on his behalf. The instrument appointing a proxy shall be in writing in any usual form or in any other form that the Board may approve and shall be executed by or on behalf of the Shareholder. The signature on such instrument need not be witnessed. A body corporate may execute a form of proxy under its common seal or under the hand of a duly authorized officer thereof. A proxy need not be a Shareholder.

Section 16.20 Bodies Corporate Acting by Representatives at Meetings. Any body corporate that is a Shareholder may by resolution of its directors or other governing body authorize such person as it thinks fit to act as its representative at any meeting of the ICAV or of any Class of Shareholders of the ICAV and the person so authorized shall be entitled to exercise the same powers on behalf of the body corporate that he represents as that body corporate could exercise if it were an individual Shareholder.

Section 16.21 Deposit of Proxy Instruments. The instrument appointing a proxy and any authority under which it is executed or a copy, certified notarially or in some other way approved by the Board, shall be deposited at the registered office of the ICAV or (at the option of the Shareholder) at such other place or places (if any) as may be specified for that purpose in or by way of note to the notice convening the meeting or adjourned meeting at such time as may be determined by the Board before the time appointed for the holding of the meeting or adjourned meeting or (in the case of a poll taken otherwise than at or on the same day as the meeting or adjourned meeting) for the taking of the poll at which it is to be used, and in default shall not be treated as valid. Provided that an instrument of proxy relating to more than one meeting (including any adjournment thereof) having once been so delivered for

the purposes of any meeting shall not require to be delivered again for the purposes of any subsequent meeting to which it relates.

Section 16.22 Effect of Proxy Instruments. Deposit of an instrument of proxy in respect of a meeting or adjourned meeting shall not preclude a Shareholder from attending and voting at the meeting or at any adjournment thereof. The instrument appointing a proxy shall be valid, unless the contrary is stated therein, as well for any adjournment of the meeting as for the meeting to which it relates.

Section 16.23 Effect of Revocation of Proxy or of Authorization.

(a) A vote given or poll demanded in accordance with the terms of an instrument of proxy or a resolution authorising a representative to act on behalf of a body corporate 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 of the resolution authorising the representative to act or transfer of the Share in respect of which the instrument of proxy or the authorisation of the representative to act was given, provided that no intimation in writing of such death, insanity, revocation or transfer shall have been received by the ICAV at its registered office at least one hour before the commencement of the meeting or adjourned meeting at which the instrument of proxy is used or at which the representative acts.

(b) The Board may send, at the expense of the ICAV, by post or otherwise, to the Shareholders instruments of proxy (with or without stamped envelopes for their return) for use at any general meeting or at any Class meeting, either in blank or nominating any one or more of the Directors or any other persons in the alternative. 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 Shareholders entitled to be sent a notice of the meeting and to vote thereat by proxy.

Section 16.24 Determining an Ordinary Resolution, Special Resolution or 75% Resolution. For purposes of determining an Ordinary Resolution, a Special Resolution or a 75% Resolution of the Shareholders, the following shall be excluded from both the numerator and the denominator of any such calculation: (i) Book Capital Accounts of Defaulting Shareholders until such Default is cured; (ii) Book Capital Accounts of any Shareholder which has Transferred all of its Shares in the ICAV (but, for the avoidance of doubt, the Book Capital Account of any Substituted Shareholder in respect of such Transfer shall be included); (iii) Book Capital Accounts acquired by an assignee of all or any portion of the Shares in the ICAV of a Shareholder that has not become a Substituted Shareholder; (iv) Book Capital Accounts of a Shareholder (other than any Feeder Vehicle) which is an Affiliate of the Portfolio Manager or the AIFM; (v) Book Capital Accounts of any Sanctioned Shareholder; (vi) such portion of a BHC Shareholder's Book Capital Account that is held as Non-Voting Shares pursuant to Section 17.01; and (vii) such portion of a Bad Actor Limited's Book Capital Account that is held as Non-Voting Shares pursuant to Section 17.01. The Board may obtain an Ordinary Resolution of the Shareholders in lieu of any approval of the Advisory Board with respect to any matter set forth in this Instrument and such Ordinary Resolution of the Shareholders shall have the same force and effect as the approval of the Advisory Board.

Section 16.25 Voting with Parallel Vehicles. Whenever any vote or consent which has a material impact on the shareholders, partners or other beneficial owners of any Parallel Vehicle is required by this Instrument or the corresponding governing documents of any Parallel Vehicle by a specified percentage in interest of the Shareholders or the shareholders, partners or other beneficial owners of any Parallel Vehicle, and the Board and the applicable Parallel Vehicle Board determines in its sole discretion that the subject matter of such vote or consent is such that an aggregate vote or aggregate

consent of the Shareholders and the shareholders, partners or other beneficial owners of any such Parallel Vehicle is appropriate, such action shall be deemed to require the aggregate vote or aggregate consent of the Shareholders and the shareholders, partners or other beneficial owners of any Parallel Vehicle, and such action shall be deemed to be valid if taken upon the aggregate written vote by those Shareholders and shareholders, partners or other beneficial owners of any Parallel Vehicle who represent the specified percentage in interest of all Shareholders and shareholders, partners and other beneficial owners of any Parallel Vehicle at the time voting as a single class. However, if the Board determines in its sole discretion that a particular vote to be taken under this Instrument would not be applicable to one or more Parallel Vehicles, then such vote will only require the consent of requisite percentage of the Shareholders.

Section 16.26 Feeder Vehicle Voting. Any Feeder Vehicle shall vote its Shares in the relevant Sub-Fund in accordance with such Feeder Vehicle's governing documents, which may result in a Feeder Vehicle casting a divided vote representing the portion of its investors in support of, and against, such decision.

Section 16.27 Sub-Fund and Class Meetings. Except as otherwise provided for in this Instrument, the provisions of this Article 16 shall apply mutatis mutandis to meetings of a Sub-Fund and/or a Class in a particular Sub-Fund, as they apply to general meetings of the ICAV.

Section 16.28 Notices.

(a) *Notices in Writing*. Any notice to be given, served or delivered pursuant to this Instrument shall be in writing (which includes writings via email).

(b) *Notice Address*. Any notice to any Shareholder shall be delivered to the address or electronic mail address of such Shareholder set forth in such Shareholder's Subscription Agreement or such other address or electronic mail address of which such Shareholder shall advise the Board in writing. Any notice to the ICAV or the AIFM shall be sent to the registered office of the ICAV. The Board may at any time change the location of such registered office. Notice of any such change shall be given to the Shareholders on or before the date of any such change.

(c) *Effective Notice*. Any notice that may be or is required to be given hereunder shall be deemed to have been duly given if (i) personally delivered, when received, or (ii) sent by express post on the second following Business Day (or third following Business Day if mailed outside the United States), (iii) delivered by recognized overnight courier, when delivered, or (iv) posted on a password protected website maintained by the AIFM or its Affiliates and for which any Shareholder has received confirmation of such posting and access instructions by electronic mail, when such confirmation is sent. Every legal personal representative, committee, receiver, assignee in bankruptcy or liquidator of a Shareholder shall be bound by a notice given as aforesaid if sent to the last registered address of such Shareholder, notwithstanding that the ICAV may have notice of the death, lunacy, bankruptcy, liquidation or disability of such Shareholder. A notice may be given by the ICAV to the joint Shareholders of a Share by giving the notice to the joint Shareholder whose name stands first in the Register in respect of the Share and notice so given shall be sufficient notice to all the joint Shareholders.

## ARTICLE 17 U.S. REGULATORY PROVISIONS

Section 17.01 BHC Shareholders.

(a) *Non-Voting Shares*. If any Shareholder that has indicated its desire in its Subscription Agreement to be treated as a bank holding company, as defined in Section 2(a) of the U.S.

Bank Holding Company Act of 1956, as amended (the “**BHC Act**”), or a non-bank subsidiary of a bank holding company (each, a “**BHC Shareholder**”) and its Affiliates that are BHC Shareholders in the aggregate hold for their own account Shares that are determined at any time to be in excess of 4.99% (or such greater percentage as may be agreed by such BHC Shareholder and permitted under the BHC Act) of the Shares of any Class, such amount in excess of 4.99% (or such greater percentage) shall be compulsorily exchanged for Shares of a Class which confer no right on Shareholders to vote at general meetings of the ICAV or of the relevant Class (“**Non-Voting Shares**”) (whether or not subsequently transferred in whole or in part to any other Person) and, in accordance with this Section 17.01(a), shall not be included (in either the numerator or denominator) in determining whether an Ordinary Resolution, Special Resolution or 75% Resolution of the Shareholders have taken any action under this Instrument; provided that such Non-Voting Share shall be permitted to vote on any proposal to dissolve the ICAV or to continue the business of the ICAV, but not, to the extent permissible, on the approval of a Successor AIFM. Each BHC Shareholder by entering into a Subscription Agreement shall thereby irrevocably waive, to the extent permissible, its corresponding right under applicable law to vote its Non-Voting Shares in respect of a Successor AIFM or successor Portfolio Manager in respect of any other matter (other than, in either case, a proposal to dissolve the ICAV or continue the business of the ICAV), which waiver shall be binding upon each such BHC Shareholder or, in the case of a Non-Voting Share, any Person which succeeds to such Non-Voting Share.

(b) *BHC Shareholder Election.* Notwithstanding the foregoing, any Shareholder that has indicated its desire to be treated as a BHC Shareholder in its Subscription Agreement may subsequently elect not to be governed by this Section 17.01 by notifying the AIFM in writing that the BHC Shareholder is not prohibited from acquiring or controlling more than 4.99% (or such greater percentage as may be permitted under the BHCA) of any Class of Shares (which shall be the “voting securities” under the Regulation Y of the BHCA), in which case recalculation of the Non-Voting Shares of such BHC Shareholder shall be made, and only the portion of such electing BHC Shareholder’s Shares as may be specified in such written notice to be subject to this Section 17.01 shall continue to be Non-Voting Shares. Any such election by a BHC Shareholder may be rescinded at any time by providing the AIFM with written notice that such BHC Shareholder is prohibited by law or regulation applicable to such BHC Shareholder from acquiring or controlling a specified percentage of the votes of the Shareholders.

(c) *Nature of Non-Voting Share.* Except as provided in this Section 17.01, Non-Voting Shares shall be identical in all regards to all other Shares.

Section 17.02 Bad Actor Provisions. Each Shareholder by entering into a Subscription Agreement shall agree that the AIFM may, in its sole discretion, deem the portion of any Bad Actor Shareholder’s Shares in excess of 19.99% of the outstanding aggregate voting Shares (excluding any Shares that are Non-Voting Shares) to be, or convert such Bad Actor Shareholder’s Shares into, Non-Voting Shares.

#### Section 17.03 Sanctioned Shareholders.

(a) *Sanctioned Shareholder Adjustments.* In the event that the AIFM determines that a Shareholder is a Sanctioned Shareholder, any of the AIFM, the Portfolio Manager and their Affiliates may, without prior notice to such Sanctioned Shareholder or the other Shareholders, take such actions as it determines appropriate to comply with applicable Sanctions Laws and Regulations and other applicable laws and regulations. In connection with taking any such actions and / or upon the lifting of any sanctions on a Sanctioned Shareholder, the AIFM may make such adjustments, including adjustments to Drawdowns, capital accounts, Capital Contributions, Available Commitments, distributions, allocations, voting rights, and any and all other fees, payments and obligations, as it determines appropriate. In

addition, in the event that the AIFM determines that a Shareholder is a Sanctioned Shareholder, such Shareholder will not participate in Investments made by the ICAV while the applicable Shareholder is a Sanctioned Shareholder.

(b) *Allocation of Fund Expenses in the Event of Sanction.* Each Shareholder that is not a Sanctioned Shareholder will be required to bear an increased amount of Fund Expenses (other than Advisory Fees) in order to cover the amount attributable to Sanctioned Shareholders, except in the case of customs duties, taxes, and fees payable to any government or regulatory agency or instrumentality.

(c) *Sanctioned Shareholder Contributions.* In the event a Sanctioned Shareholder ceases to be subject to sanctions under any Sanctions Laws and Regulations, the AIFM may require such Sanctioned Shareholder to make a contribution to the ICAV (or the AIFM may retain amounts otherwise distributable to such Sanctioned Shareholder) for any Advisory Fees and other Fund Expenses to which such Sanctioned Shareholder would have been subject had such Sanctioned Shareholder not been subject to such sanctions, plus an additional amount equal to Prime Rate plus 2% per annum, or such other rate as determined by the AIFM, on the amount such Sanctioned Shareholder is required to contribute to the ICAV under this Section 17.03(c) (such additional amount shall not be treated as a Capital Contribution or reduce the Available Commitment of such Shareholder). The AIFM (in its discretion as to timing and amount) may make distributions of any amounts received by the ICAV in accordance with this Section 17.03(c) (other than amounts received with respect to Advisory Fees) to the Shareholders (excluding such Sanctioned Shareholder) *pro rata* in accordance with the amounts contributed by such other Shareholders under Section 17.03(b) hereof.

## ARTICLE 18 GENERAL PROVISIONS

### Section 18.01 Amendments to the Instrument; Waivers.

(a) *Amendments Generally.* Except as otherwise provided in this Section 18.01, this Instrument may generally be amended only with the approval of the Board and an Ordinary Resolution of the ICAV and subject to the prior approval of the Central Bank; provided that, notwithstanding the foregoing, an amendment of this Instrument that:

(i) increases any Shareholder's Capital Commitment, reduces its share of the ICAV's distributions, income and gains, increases its share of the ICAV's losses or increases the Advisory Fee payable or Carried Interest borne by such Shareholder, shall require, in each case, the written consent of each Shareholder so affected;

(ii) amends this Section 18.01, shall require the approval of all the Shareholders adversely affected thereby (other than any Defaulting Fund Investor);

(iii) amends, supplements or waives Section 17.01 hereof or any other provision of this Instrument which deals with the BHC Act, shall require the consent of a majority of the BHC Shareholders adversely affected thereby;

(iv) except as set forth in Section 18.01(b)(vi) amends, supplements or waives Section 2.05 or any other provision of this Instrument which deals with ERISA, shall require the consent of a majority of the ERISA Shareholders adversely affected thereby; or

(v) amends any provision of this Instrument that specifies a percentage of Capital Commitments required for any action or approval of the Shareholders,

shall require the approval of Shareholders having Capital Commitments representing such percentage of Capital Commitments.

(b) *Other Amendments.* Notwithstanding Section 18.01(a), the Board may amend the Instrument to make any change necessary or advisable, in the opinion of the Board, without the consent of any Shareholder, subject to the prior approval of the Central Bank and provided that the Depositary certifies that such amendment does not prejudice the interests of Shareholders, including without limitation changes:

- (i) to reflect a change in the name of the ICAV;
- (ii) to cure any ambiguity, correct or supplement any provision in this Instrument or the AIFM Agreement that would be inconsistent with any other provision in this Instrument or the AIFM Agreement, respectively, or correct any typographical or similar drafting mistakes;
- (iii) to conform this Instrument or the AIFM Agreement to the disclosure contained in the Prospectus of the ICAV dated September 29, 2017, as supplemented or amended;
- (iv) to satisfy any requirements, conditions or guidelines contained in any applicable statute or any opinion, directive, order, ruling or regulation relating thereto;
- (v) to make any change in any provision of this Instrument or the AIFM Agreement that requires any action to be taken by or on behalf of the Board, the AIFM or the ICAV pursuant to the requirements of applicable Irish law if the provisions of applicable Irish law are amended, modified or revoked so that the taking of such action is no longer required;
- (vi) to prevent any of the ICAV, the Board or the AIFM from in any manner being deemed an “investment company” subject to the provisions of the Investment Company Act, from failing to qualify for the exemption from registration under Section 3(c)(7) of the Investment Company Act or from being subject to the registration requirements of the Exchange Act;
- (vii) to prevent the assets of the ICAV from being deemed to be “plan assets” for purposes of ERISA;
- (viii) to comply with or reduce the burdens of complying with any current or future laws, rules, regulations or legal requirements applicable to the Board, the ICAV, the AIFM, the Portfolio Manager or any of their respective Affiliates;
- (ix) to restructure the way in which the Carried Interest is allocated, distributed or otherwise paid, including by modifying the nature of the Carried Interest so that it is treated as an incentive fee, in a manner intended to reduce or eliminate any adverse impact of any material change, or anticipated change, in law (including administrative or regulatory interpretations thereof) that affects the U.S. federal income tax treatment of the Carried Interest while preserving the intended economic arrangement among the Shareholders;
- (x) to address other adverse changes in the tax law or interpretations thereof applicable to the Fund;



(xi) to conform this Instrument to the governing agreement of any Feeder Vehicle and / or Parallel Vehicle in connection with the formation of any Feeder Vehicle and / or Parallel Vehicle; or

(xii) negotiated with Shareholders at a Subsequent Closing Date, or limited partners or shareholders of a Parallel Vehicle at a closing of a Parallel Vehicle.

Section 18.02 ICAV Name. The ICAV shall have the full and exclusive ownership of and right to use the name Bain Capital Special Situations Europe ICAV subject to Section 2.08. At no time during the existence of the ICAV, as between the Shareholders, or for the purpose of determining the capital account of any Shareholder, shall any value be placed upon the name of the ICAV, or the right to its use or any goodwill attached thereto. Upon the earlier to occur of the removal of the AIFM and the termination of the ICAV, the entire right, title and interest to the name of the ICAV and the goodwill attached thereto shall be assigned without compensation to the AIFM or to such other Person as shall be designated by the AIFM.

### Section 18.03 Advisory Board.

(a) *Constitution of Advisory Board*. The ICAV and the Parallel Vehicles shall have a single advisory committee (the “**Advisory Board**”) consisting of representatives of Fund Investors selected from time to time by the AIFM and the Parallel Vehicle Boards; provided that no member of the Advisory Board shall be an Affiliate, employee, agent or representative of the AIFM or its Affiliates, but that any such Person may serve as the chairperson or observer of the Advisory Board. The AIFM may from time to time establish a separate advisory committee solely for the ICAV consisting of representatives of the Shareholders selected from time to time by the AIFM for purposes of approving transactions between or among the ICAV and any Parallel Vehicles, or for other purposes deemed appropriate by the AIFM and the provisions of this Section 18.03 and the other provisions of this Instrument shall apply, *mutatis mutandis*, to the affairs of such ICAV-specific committee.

(b) *Authority of Advisory Board*. In addition to the other authorities indicated herein, the Advisory Board shall be authorized to, if requested by the Board, the AIFM or the Portfolio Manager (i) review the AIFM’s valuations of particular assets, (ii) review or approve such potential conflicts of interest that the AIFM may present to it (including principal transactions requiring consent under Section 206(3) of the Advisers Act), (iii) approve any matters requiring the consent of the ICAV under the Advisers Act, (iv) waive the investment limitations of Section 3.01, (v) waive the Leverage Limitation, (vi) consent to investments in Follow-On Investments in excess of the limitation included in the proviso in the last sentence of Section 5.03(a), (vii) review the advisability of fees for members of the Advisory Board fixed by the AIFM, (viii) approve investment by the Fund in Related Funds, (ix) waive the restriction on aggregate Capital Commitments, (x) waive the limitations on the Final Closing Date and (xi) any other matters which may be referred to the Advisory Board.

(c) *Effect of Consultation with Advisory Board*. If the AIFM, the Board and/or the Portfolio Manager consults with the Advisory Board with respect to any matter, and the Advisory Board gives its consent with respect to such matter or the AIFM, the Board and/or the Portfolio Manager acts pursuant to standards or procedures approved by the Advisory Board with respect to such matter, then none of the AIFM, the Board, the Portfolio Manager or any of their Affiliates shall have any liability to the ICAV, any Parallel Vehicle, any Shareholder or any other Fund Investor for actions in respect of such matter taken in good faith by them, including actions in the pursuit of their own interests. Consent by the Advisory Board to any matter (i) which, pursuant to this Instrument, requires the consent of the Advisory Board, or (ii) which requires the consent of the ICAV under the Advisers Act shall be deemed to

constitute the consent of the ICAV and all Shareholders and shall be binding on the ICAV and the Shareholders.

(d) *Advisory Board Expenses.* The AIFM may determine in its discretion to reimburse any member of the Advisory Board who is a representative of a Shareholder by the ICAV in respect of the ICAV's *pro rata* share of reasonable out-of-pocket expenses incurred by such member of the Advisory Board in connection with attendance at meetings of the Advisory Board, and such reimbursements shall constitute Fund Expenses. In addition, the Advisory Board may retain such counsel, accountants, consultants and other advisors as it deems reasonably necessary in order to execute its duties under this Instrument, and any expenses associated with such advisors shall also constitute Fund Expenses. The members of the Advisory Board and the Shareholders that they represent owe no fiduciary duties to the ICAV, the Parallel Vehicles or the shareholders or partners thereof, as applicable, but such members and Shareholders shall have the obligation to act in good faith.

(e) *Advisory Board Meetings.* Meetings of the Advisory Board may be held in person or by telephone. The Advisory Board shall act by a majority of its members present and in person at any meeting or by written consent of a majority of the entire Advisory Board in lieu of a meeting.

(f) *Control of the Business of the ICAV.* Notwithstanding anything contained in this Section 18.03, (i) the Advisory Board shall not possess or exercise any power that, if possessed or exercised by a Shareholder, would constitute participation in the control of the business of the ICAV (within the meaning of the Act) and (ii) each Shareholder (and each Shareholder of any Parallel Vehicle) with a representative serving on the Advisory Board and each such representative shall be an Advisory Board Indemnified Person for purposes of Article 12.

#### Section 18.04 Confidentiality.

(a) *Agreement to Keep Confidential.* Each Shareholder by entering into a Subscription Agreement shall agree to keep confidential, and not to make any use of (other than for purposes reasonably related to its Shareholding or for purposes of filing such Shareholder's tax returns or for other routine matters required by law) nor to disclose to any Person, any confidential information or matter relating to the Fund and its respective affairs, including the identities of the other Shareholders or shareholders or partners of any Parallel Vehicle, all offering materials used in connection with the marketing and private placement of Shares (including this Instrument, the Prospectus, the related Subscription Agreement, any related marketing and other disclosure document and any of the foregoing which related to a Parallel Vehicle), communications from the Board, the AIFM, the Portfolio Manager or Bain Capital and any information or matter related to any Investment ("**Confidential Information**"); provided that such Shareholder may disclose Confidential Information to its employees, trustees, agents, accountants, advisors (including financial advisors) or representatives responsible for matters relating to the ICAV on a need-to-know basis and it being understood that such Shareholder is responsible for compliance by any such recipients with maintaining the confidentiality of Confidential Information (each such Person being hereinafter referred to as an "**Authorized Representative**"); provided, further, that such Shareholder and its Authorized Representatives may disclose Confidential Information to the extent that (i) the Confidential Information being disclosed is publicly known at the time of proposed disclosure by such Shareholder or Authorized Representative, (ii) the Confidential Information otherwise is or becomes known to such Shareholder other than through a breach of confidentiality obligations to the Board, the AIFM, the Portfolio Manager or any of their Affiliates or from a Person whom such Shareholder knows or should know to be subject to confidentiality obligations, (iii) such disclosure, based upon written advice of legal counsel acceptable to the AIFM (if such written advice is requested by the AIFM), is required by law or regulation (including any applicable tax law or regulation), (iv) such disclosure, based upon written advice of legal counsel acceptable to the AIFM (if such written advice is

requested by the AIFM), is required by any regulatory authority or self-regulatory organization having jurisdiction over such Shareholder or (v) such disclosure is approved in advance by the Board or the AIFM.

(b) *Notice Prior to Disclosure.* Prior to making any disclosure pursuant to Section 18.04(a)(iii) or Section 18.04(a)(iv), each Shareholder shall, to the maximum extent permitted by applicable law, provide the AIFM at least 30 calendar days' prior written notice of such disclosure and, if requested by the AIFM, deliver to the AIFM a copy of the legal advice referred to above.

(c) *FOIA.* With respect to each Shareholder that is subject to, or believes that it is subject to, any "freedom of information," "sunshine" or other law, rule or regulation that imposes upon such Shareholder an obligation to make certain information available to the public, such Shareholder shall treat, to the maximum extent permitted under such law, rule or regulation, Confidential Information as confidential. No Shareholder shall release any Confidential Information pursuant to any such law, rule or regulation without, to the maximum extent permitted by applicable law, first giving the Board and the AIFM at least 30 calendar days' notice and reasonably cooperating with the Board and the AIFM to contest, eliminate or otherwise mitigate the obligation to release such Confidential Information.

(d) *Withholding of Confidential Information.* Except as provided otherwise in this Section 18.04, the Board and the AIFM shall have the right not to provide any Shareholder with any Confidential Information that such Shareholder would otherwise be entitled to receive or have access to pursuant to this Instrument or otherwise if:

(i) the Board or the AIFM reasonably believes such Confidential Information to be in the nature of trade secrets or otherwise is eligible for confidential treatment under applicable law, or to be comprised of internal memoranda of the Board, the AIFM or their Affiliates, whether relating to Fund matters or otherwise, or correspondence and memoranda of advice from attorneys or accountants for the ICAV or the Board or the AIFM;

(ii) the Fund, the Board, the AIFM or any of their respective Affiliates is prohibited or restricted under any law, regulation, or agreement from disclosing such information;

(iii) the Board or the AIFM reasonably believes that the disclosure of such information to such Shareholder may have an adverse effect on (w) the ability to entertain, negotiate or consummate any proposed investment or transaction, (x) the Fund, any Parallel Vehicle, the Board, the AIFM or any of their Affiliates, (y) any Investment or any of its Affiliates or (z) any other Fund Investor; or

(iv) the AIFM in good faith determines that it is reasonably foreseeable that such information could be disclosed by such Shareholder as a consequence of the Shareholder being subject to any "freedom of information," "sunshine" or other law, rule or regulation that imposes upon such Shareholder an obligation to make certain information available to the public and the disclosure of such information would not be in the best interests of or could be harmful to the Fund or its Investments or the Board, the AIFM or their respective Affiliates.

In the event the Board or the AIFM withholds Confidential Information from a Shareholder in accordance with this Section 18.04(d), the Board or the AIFM, after consultation with the Shareholder may make Confidential Information available only via a secured website in a non-downloadable, non-printable format, or via any other means that the Board or the AIFM determines will permit the ICAV to provide Confidential Information to such Shareholder while precluding further disclosure of such information by the Shareholder.

(e) *Tax Information.* Notwithstanding the foregoing, a Shareholder (and each employee, representative, or other agent of such Shareholder) may disclose to any and all Persons, without limitation of any kind, the tax treatment and tax structure of the transactions in which such Shareholder participates by becoming or being a Shareholder. For this purpose, “tax structure” is limited to any facts relevant to the U.S. federal income tax treatment of the transaction and does not include information relating to the identity of the parties.

(f) *ICAV-Level Information.* Each Shareholder shall be permitted to disclose the following and such information shall not be considered Confidential Information:

- (i) the name and address of the ICAV;
- (ii) the fact that the disclosing Shareholder is a Shareholder of the ICAV and the amount of the disclosing Shareholder’s Capital Commitment;
- (iii) the amount of the aggregate Capital Commitments to the Fund;
- (iv) the ICAV’s general investment strategy;
- (v) the identity of the AIFM;
- (vi) the term of the ICAV; and
- (vii) the currency of denomination of the Shares held in the ICAV.

Section 18.05 Governing Law; Severability; Forum Selection.

(a) *Governing Law.* **THIS INSTRUMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF IRELAND.** This Instrument shall be construed to the maximum extent possible to comply with all of the terms and conditions of the Act. If it shall be determined by a court of competent jurisdiction that any provision or wording of this Instrument shall be invalid or unenforceable under the Act or other applicable law, such invalidity or unenforceability shall not invalidate the entire Instrument, in which case this Instrument shall be construed so as to limit any term or provision so as to make it enforceable or valid within the requirements of applicable law, and, in the event such term or provision cannot be so limited, this Instrument shall be construed to omit such invalid or unenforceable provisions.

(b) *Jurisdiction.* Each Shareholder by entering into a Subscription Agreement irrevocably submits to the nonexclusive jurisdiction of Ireland, the nonexclusive jurisdiction of the state courts of the State of Delaware and The Commonwealth of Massachusetts and to the nonexclusive jurisdiction of the United States District Courts for the Districts of Delaware and Massachusetts for the purpose of any suit, action or other Proceeding arising out of or based upon this Instrument or the subject matter hereof or in any way connected to the dealings of any Shareholder (or shareholder or partner of any Parallel Vehicle) or the ICAV in connection with any of the above.

(c) *Forum.* Each Shareholder by entering into a Subscription Agreement, to the extent not prohibited by applicable law, waives and agrees not to assert, by way of motion, as a defense or otherwise, in any such Proceeding brought in any of the above-named courts, any claim that such Shareholder is not subject personally to the jurisdiction of such court, that such Shareholder’s property is exempt or immune from attachment or execution, that such Proceeding is brought in an inconvenient

forum, that the venue of such Proceeding is improper, or that this Instrument or the subject matter hereof, may not be enforced in or by such court.

(d) *Service of Process.* Each of the Shareholders, to the fullest extent permitted by law, irrevocably consents to service of process in connection with any matter referred to in Section 18.05(b) by first class mail, certified postage prepaid, at the address and to the Person(s) specified pursuant to Section 16.03. Nothing in this Instrument will affect the right of any party to this Instrument to serve process in any other manner permitted by law.

(e) *Jury Trial.* UNLESS THE BOARD OTHERWISE AGREES IN WRITING, EACH SHAREHOLDER BY ENTERING INTO A SUBSCRIPTION AGREEMENT THEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATED TO THIS INSTRUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY. The ICAV or any Shareholder may file an original counterpart or a copy of this Section 18.05 with any court as written evidence of the consent of the Shareholders to the waiver of their rights to trial by jury.

Section 18.06 Filings. The Board shall promptly prepare, following the execution and delivery of this Instrument, any documents required to be filed and recorded, or which are, in the Board's discretion, appropriate for filing and recording, under the Act, and the Board shall promptly cause each such document to be filed and recorded in accordance with the Act and, to the extent required by local law, to be filed and recorded or notice thereof to be published in the appropriate place in each jurisdiction in which the ICAV may hereafter establish a place of business. The Board shall also promptly cause to be filed, recorded and published such statements of fictitious business name and other notices, certificates, statements or other instruments required by any provision of any applicable law of the United States or any U.S. state or other jurisdiction which governs the conduct of its business from time to time.

#### Section 18.07 Power of Attorney.

(a) *Appointment.* Each Shareholder by entering into a Subscription Agreement shall thereby constitute and appoint the Board as its true and lawful representative and attorney-in-fact, in its name, place and stead to make, execute, sign, deliver and file:

(i) this Instrument and any amendments to this Instrument which are adopted in accordance with Section 18.01;

(ii) all such other instruments, documents and certificates which may from time to time be required by the laws of Ireland, the United States of America, the Commonwealth of Massachusetts or any other state, or any political subdivision or agency thereof, or any non-U.S. jurisdiction, to effectuate, implement and continue the valid and subsisting existence of the ICAV or to dissolve the ICAV, to admit a new Shareholder, to take any action contemplated by Section 5.06 or to effect a Transfer of a Shareholder's Share in the ICAV;

(iii) any business certificate, fictitious name certificate, amendment thereto, or other instrument, agreement, indemnity or document of any kind necessary or desirable to accomplish the business, purposes and the investment objectives of the ICAV, or required by an applicable federal, state or local law;

(iv) any agreement or instrument that is necessary or desirable in connection with establishing the terms of or otherwise structuring any Alternative Investment Vehicle and

admitting the Shareholders thereto pursuant to Section 9.01, including any agreement or instrument required for the formation of any Alternative Investment Vehicle; and

(v) to make, execute and sign any documents, instruments and certificates necessary to implement the default remedies set forth in Section 5.06(b).

(b) *Irrevocability.* The power of attorney granted pursuant to this Section 18.07 (i) is irrevocable, (ii) is given to secure the performance by each Shareholder of its obligations hereunder and (ii) shall survive the delivery of a Transfer or attempted Transfer by any Shareholder of the whole or any portion of its Shares, except that where an assignee or transferee of such Shares has been approved as a Substitute Shareholder, then such power of attorney of the assignor of the Shareholder shall survive the delivery of such Transfer for the sole purpose of enabling the Board to execute, acknowledge and file any and all instruments necessary to effect such substitution.

Section 18.08 Waiver of Partition. Each Shareholder by entering into a Subscription Agreement shall thereby waive any rights to partition of ICAV property.

Section 18.09 No Bill for ICAV Accounting. Subject to mandatory provisions of law applicable to a Shareholder and to circumstances involving a breach of this Instrument, each of the Shareholders by entering into a Subscription Agreement shall covenant that it will not (except with the consent of the Board) file a bill for ICAV accounting.

Section 18.10 Headings. Sections and other headings contained in this Instrument are for reference only and are not intended to describe, interpret, define or limit the scope or intent of this Instrument or any provision hereof.

Section 18.11 Overriding Provisions. In the event of there being any conflict between the provisions of this Instrument and the Act or the AIFMD Regulations, the Act or the AIFMD Regulations shall prevail.

Section 18.12 Fair Treatment of Shareholders. The Board shall ensure that the decision-making procedures and organizational structure of the ICAV provides for fair treatment of Shareholders. Notwithstanding the foregoing, certain Fund Investors (including Shareholders) may be accorded preferential treatment with respect to their investment in a Sub-Fund or Parallel Vehicle by the Board, the AIFM and/or the Portfolio Manager, and such preferential treatment may be effected by the Board, the AIFM and/or the Portfolio Manager (each on its own behalf or on behalf of the ICAV) entering into side letters or similar agreements (each, a “**Side Letter**”) with any Fund Investor which may have the effect of establishing rights under, or altering or supplementing the terms of, this Instrument or of any Subscription Agreement in a manner more favorable to such Fund Investor than those terms applicable to other Fund Investors. Any preferential treatment accorded to one or more Fund Investors shall be described in the Prospectus (or otherwise disclosed to investors prior to their investment in the relevant Sub-Fund), provided however that any such preferential treatment should not result in an overall material disadvantage to Fund Investors as a whole. Fund Investors accorded preferential treatment with respect to their investment in a Sub-Fund may for example: (i) have commercial arrangements or economic links, including but not limited to managed accounts, separate advisory or intermediary arrangements, share subscription/commitment agreements or similar arrangements with the ICAV, the AIFM, the Portfolio Manager or an Affiliate; or (ii) have legal or group connections with the ICAV, the AIFM, the Portfolio Manager or an Affiliate; or (iii) be a director, officer, principal, partner or employee of the ICAV or the AIFM (or an affiliated entity of either of these. Such preferential treatment may include (but is not limited to) the preferential rights or terms provided to Shareholders in Side Letters, examples of which are set forth in the Prospectus.

Section 18.13 Compliance with Anti-Money Laundering Requirements. Notwithstanding any other provision of this Instrument to the contrary, the Board and the AIFM, each in its own name and on behalf of the ICAV, shall be authorized without the consent of any Person, including any Shareholder, to take such action as it determines to be necessary or advisable to comply with any anti-money laundering or anti-terrorist laws, rules, regulations, directives or special measures, including the actions contemplated by any Subscription Agreement of any Shareholder.

Section 18.14 Rules of Construction.

(a) *Non-Exclusivity.* For all purposes of this Instrument, except as expressly provided herein or unless the context otherwise requires, the words “including,” “includes,” “include,” and words of similar import shall be deemed to be followed by the phrase “without limitation” and shall be regarded as a reference to non-exclusive and non-characterizing illustrations.

(b) *Fair Meaning.* It is intended that the terms of this Instrument be construed in accordance with their fair meanings and not against any particular Person, including the Board and the AIFM. Defined terms used in this Instrument shall have the same meaning whether defined or used herein in the singular or the plural, as the case may be.

(c) *Duties.* To the extent that the provisions of this Instrument restrict or eliminate the duties and liabilities or rights and powers of any Person otherwise existing at law or in equity, the Shareholders by entering into Subscription Agreements shall agree to restrict or eliminate such other duties, liabilities, rights and powers of such Persons as set forth in this Instrument to the fullest extent permitted by law.

(d) *Parallel Vehicle.* For all purposes of this Instrument, any term defined herein with respect to the ICAV and used in the context of a Parallel Vehicle shall have the corresponding or equivalent meaning with respect to such Parallel Vehicle (including if such Parallel Vehicle is not an Irish collective asset-management vehicle).

(e) *Discretion.* Whenever in this Instrument the Board or the AIFM is permitted or required to make a decision in its “discretion” or under a grant of similar authority or latitude, the Board or the AIFM, as applicable, shall be entitled to consider in good faith such interests and factors as it desires, including its own interests, and shall, to the maximum extent permitted by law, have no duty or obligation to give any consideration to any interest of or factors affecting any Shareholder. Nothing contained in this Instrument shall restrict or eliminate the duties of the Board or the AIFM under the Act, the Advisers Act or any other laws to the extent such duties are not permitted to be contractually restricted or eliminated. To the extent that, at law or in equity, any Indemnified Person has duties (including fiduciary duties) or liabilities to the ICAV or any Shareholder, the Board, the AIFM and any other Indemnified Person acting in connection with the ICAV’s business or affairs shall not be liable to the ICAV or to any Shareholder for its good faith reliance on the provisions of this Instrument. The provisions of this Instrument, to the extent that they restrict or eliminate the duties and liabilities or rights and powers of any Indemnified Person otherwise existing at law or in equity, replace such other duties, liabilities, rights and powers of such Indemnified Person to the maximum extent permitted by law.

(f) *Capital Contributions.* For purposes of this Instrument, a Capital Contribution “in respect of,” “with respect to” or “attributable to” an Investment shall mean a Capital Contribution applied directly towards acquiring the Securities comprising such Investment and any Capital Contributions used for expenses directly attributable to such Investment, including all unreimbursed expenses incurred in connection with the making, holding, refinancing, pledging, sale or other Realization or proposed refinancing, pledging, sale or other Realization of all or any portion of such Investment, any

expenses in connection with any hedging transaction entered into pursuant to Section 2.02(kk) with respect to such Investment and any borrowing (including principal, interest and fees related thereto) and Indemnification Obligations arising with respect to such Investment.

Section 18.15 Goodwill. No value shall be placed on the name or goodwill of the ICAV.

Section 18.16 Reliance by Third Parties. Persons dealing with the ICAV are entitled to rely conclusively upon the power and authority of the Board and the AIFM as set forth in this Instrument.

Section 18.17 Segregation of Liabilities.

(a) The ICAV is an umbrella fund with segregated liability between its Sub-Funds. Pursuant to the terms of the Act, any liability incurred on behalf of or attributable to any Sub-Fund shall be discharged solely out of the assets of that Sub-Fund, and no Director, receiver, examiner, liquidator, provisional liquidator or other person shall apply nor be obliged to apply the assets of any such Sub-Fund in satisfaction of any liability incurred on behalf of or attributable to any other Sub-Fund.

(b) The assets allocated to a Sub-Fund shall be applied solely in respect of the Shares of such Sub-Fund and no Shareholder relating to such Sub-Fund shall have any claim or right to any asset allocated to any other Sub-Fund.

(c) Any asset or sum recovered by the ICAV by any means whatsoever or wheresoever shall, after the deduction or payment of any costs of recovery, be applied to the Sub-Fund affected. In the event that assets attributable to a Sub-Fund are taken in execution of a liability not attributable to that Sub-Fund, and in so far as such assets or compensation in respect hereof cannot otherwise be restored to that Sub-Fund, the Board with the consent of the Depositary, shall certify or cause to be certified, the value of the assets lost to the Sub-Fund affected and transfer or pay from the assets of the Sub-Fund or Sub-Funds to which the liability was attributable, in priority to all other claims against such Sub-Fund or Sub-Funds, assets or sums sufficient to restore to the Sub-Fund affected, the value of the assets or sums lost to it.

(d) The ICAV may sue and be sued in respect of a particular Sub-Fund and may exercise the same rights of set-off, if any, as between its Sub-Funds as apply at law in respect of the ICAV and the property of a Sub-Fund is subject to orders of the Irish courts as it would have been if the Sub-Fund were a separate legal person.

(e) In any proceedings brought by any Shareholder of a particular Sub-Fund, any liability of the ICAV to such Shareholder in respect of such proceeding shall only be settled out of the assets of that Sub-Fund corresponding to such Shares without recourse in respect of such liability or any allocation of such liability to any other Sub-Fund of the ICAV.

(f) Nothing in this Section shall prevent the application of any enactment or rule of law that would require the application of the assets of any Sub-Fund in discharge of some or all of the liabilities of any other Sub-Fund on the grounds of fraud or misrepresentation.

(g) Where a Sub-Fund enters into financial derivative transactions for and on behalf of a particular Class, the gains and losses attributable to such transactions shall accrue solely to the Shareholders of the Shares in that Class. The relevant transaction will be valued in accordance with the provisions of the Prospectus and shall be clearly attributable to the specific Class. The counterparty to any such transaction shall have its recourse limited to the proportionate participation of the relevant Class in the assets of the relevant Sub-Fund represented by the Net Asset Value of such Class. The ICAV may, for



the purposes of meeting any such claim, apply the assets representing the participation of that relevant Class in the relevant Sub-Fund in discharging its obligations under the financial derivative transaction. Upon exhaustion of the participation of the relevant Class in the assets of the relevant Sub-Fund, such counterparty's claim shall be fully satisfied by the payment of such amounts as are available to be paid from that Class and any claim for further payment shall be extinguished.

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## **Appendix A: Detailed Provisions Relating To Shares**

### **Section 1.01    Share Capital.**

(a) The authorised Share capital of the ICAV is two (2) redeemable Subscriber Shares of €1 each and 1,000,000,000,000 Shares of no par value initially designated as unclassified participating Shares. The Share capital may be divided into different Sub-Funds, Classes and Series of Shares with any restrictions or preferential, deferred or special rights or privileges attached thereto and from time to time, may be varied so far as may be necessary to give effect to any such restrictions or rights or privileges. The minimum issued Share capital of the ICAV shall be two Subscriber Shares of €1 each.

(b) The actual value of the paid up Share capital of the ICAV shall at all times be equal to the value of the assets of the ICAV after the deduction of its liabilities. The Share capital of the ICAV shall at all times be equal to the value for the time being of the issued Share capital of the ICAV.

(c) The Board from time to time may increase the Share capital by such amount and/or number as the Board may prescribe. Subject to the provisions of the Act and this Instrument, the new Shares shall be issued to such persons, on such terms and conditions and with such rights and privileges annexed thereto as the Board shall determine.

(d) Prior to the issue of any Class of Shares, the Board shall determine the rights and restrictions attaching thereto including the Sub-Fund to which they relate, the designated currency of the Shares, the Capital Commitment obligations and the fees and expenses to be borne by the Class of Shares (which shall be disclosed in the Prospectus). The Board may in relation to a Sub-Fund (subject to prior notification to the Central Bank) create more than one Class of Shares to participate in the relevant Sub-Fund, without notice to, or consent from, existing Shareholders. Each Class may have different terms and conditions from those of the other Classes as set out in the Prospectus, including without limitation: (i) Base Currency; (ii) distribution policy; (iii) fees, charges and expenses; (iv) hedging policies; (v) liquidity features; and (vi) asset allocation. Subject to any applicable provisions of the AIF Rulebook, the ICAV will distribute or accrue capital gains or losses and income to each Shareholder relative to its participation in the relevant Class. Shareholders holding the same class of Shares shall be treated equally, and all Shareholders among the different Classes shall be treated fairly in accordance with the requirements of the Central Bank. In order to facilitate the equitable valuation of the holding of each Shareholder in respect of a Class, the Board may create Series of Shares within that Class.

(e) Where a Class is denominated in a currency other than the currency in which an Investment is denominated, the Board shall determine if such Class will participate in hedging transactions in respect of such Investment. Notwithstanding anything contained in this Instrument, the costs and gains/losses of any hedging transactions relating to a Class shall accrue solely to the Shareholders of Shares in such Class and shall not form part of the assets of the Sub-Fund or constitute a liability of the relevant Sub-Fund. Any currency hedging transaction relating to a Class shall be valued in accordance with the provisions of this Instrument and shall be clearly attributable to the specific Class. None of the Classes shall be leveraged as a result of such a currency hedging transaction.

(f) In respect of each Class, a Class Account will be established in the books of each Sub-Fund. An amount equal to the proceeds of issue of each Share will be credited to the relevant Class Account. Any increase or decrease in the Net Asset Value of the portfolio of assets of the Sub-Fund (disregarding for these purposes any increases in the Net Asset Value of the portfolio due to new subscriptions or decreases due to redemptions or any designated Class adjustments (as defined below)) will be allocated to the relevant separate Class Accounts based on the previous relative Net Asset Values of each such separate Class Account. There will then be allocated to each Class Account the “designated

Class adjustments”, being those costs, pre-paid expenses, losses, dividends, profits, gains and income that the Board determines relate to a single separate Class (for example, those items relating to the foreign exchange transactions in respect of each Class).

#### Section 1.02 Issue of Shares.

(a) The Board is generally and unconditionally authorized to exercise all powers of the ICAV to allot participating Shares, including fractions thereof, up to an amount equal to the authorized but as yet unissued Share capital of the ICAV. Shares may be issued as fully paid up, or subscribed and partly paid up, in accordance with the Prospectus and conditions imposed by the Central Bank, and shall have no par value. The Board will have sole discretion to determine the manner of issue which may include contractual subscriptions for specific Shares or Capital Commitments to invest in lieu of the issue of current and future Shares. The terms of any such offers (including future obligations) will be set out in the Prospectus and the relevant Subscription Agreement.

(b) To be entered on the Register, an applicant or transferee must certify to be a Qualifying Investor, must comply with such other eligibility criteria as may be specified in the Prospectus and Subscription Agreement, and must commit an amount which is at least equal to the applicable Minimum Commitment Amount.

(c) The liability of each Shareholder in respect of any Share issued shall be limited to the amount, if any, unpaid on such Share. This is without prejudice to any other liability to which a Shareholder may be subject as provided under the Act or as provided under this Instrument, the Subscription Agreement, the Prospectus, the AIFM Agreement and any other agreement related to the ICAV, including any liability related to any direct or indirect indemnification obligations of the Shareholders under such documents.

(d) Subject as hereinafter provided and subject to any regulations made or conditions imposed by the Central Bank pursuant to the AIFMD Regulations, the initial issue of Shares by a Sub-Fund shall be subject to the receipt by the ICAV or its authorized agent of: (i) a duly completed Subscription Agreement; (ii) such information and declarations as the Directors may from time to time require; and (iii) of the initial Capital Contribution in such manner and currency and within such time limit and to such account as the AIFM from time to time may specify.

(e) If payment (or such Subscription Agreement, information or declaration referred to above) is not received in full for any Shares by the relevant deadline provided by the AIFM or in the event of non-clearance of funds, the Board shall be entitled to: (i) cancel the allotment of Shares; and/or (ii) charge the applicant interest at a reasonable rate; and/or (iii) require the applicant to compensate the ICAV for any loss suffered by it and such compensation may be, for example, deducted from dividends payable to the applicant in relation to the Shares allotted to him; and/or (iv) treat the relevant money as payment in respect of an application for Shares following receipt of such money or of the cleared funds.

(f) Where payments received by or on behalf of the ICAV in respect of the issue or allotment of Shares are not an exact multiple of the issue price for those Shares, a fraction of a Share may be allotted to the investor who shall be registered as the Shareholder of such a fraction provided that any holding of Shares is a multiple of 1/1000 part of a Share or such other fractional amount as the Board may determine from time to time. Rights, entitlements and benefits of a Shareholder of a Share under this Instrument are granted to a Shareholder of a fraction of a Share in proportion to the fraction of a Share held by him and, except where the context otherwise requires or is otherwise provided herein, reference in this Instrument to “Share” shall include a fraction of a Share. However, notwithstanding anything

contained in this Instrument, the Shareholder of a fraction of a Share may not exercise any voting rights in respect of such Share.

(g) The Board may in its absolute discretion refuse to accept any application for Shares in the ICAV in whole or in part. Applications for the issue of Shares will further be irrevocable unless the Board otherwise agrees.

(h) The terms of the issue of Shares as set out in this Instrument, the Prospectus and the Subscription Agreement will be binding on Shareholders.

Section 1.03 Variation of Rights. Whenever the Share capital of a Sub-Fund is divided into different Classes and/or Series of Shares, the rights attached to any Class may be varied or abrogated with the consent in writing of the Shareholders of three-fourths in number of the issued Shares of that Class, or with the sanction of a 75% Resolution passed at a separate general meeting of the Shareholders of the Shares of the Class, and may be so varied or abrogated either while the ICAV is a going concern or during or in contemplation of a winding-up, but such consent or sanction will not be required in the case of a variation, amendment or abrogation of the rights attached to any Shares of any Class if, in the view of the Board, such variation, amendment or abrogation does not materially prejudice the interests of the relevant Shareholders or any of them. Any such variation, amendment or abrogation will be set out in the Prospectus issued in connection with the relevant Sub-Fund. The quorum at any such separate general meeting, other than an adjourned meeting, shall be two persons holding or representing by proxy at least one-third of the issued Shares of the Class in question and the quorum at an adjourned meeting shall be one person holding Shares of the Class in question or his proxy.

Section 1.04. Trusts Not Recognized. Except as required by law, no Person shall be recognized by the ICAV as holding any Share on any trust, and the ICAV shall not be bound by or be compelled in any way to recognize (even when having notice thereof) any equitable, contingent, future or partial interest in any Share or any interest in any fractional part of a Share or (except only as by this Instrument or by law otherwise provided) any other rights in respect of any Share except an absolute right to the entirety thereof in the Shareholder. This shall not preclude the Board from requiring the Shareholders or a transferee of Shares to furnish the ICAV with information as to the beneficial ownership of any Share when such information is reasonably required by the ICAV.

Section 1.05. Disclosure of Interests.

(a) Notwithstanding the provisions above, the Board, at any time and from time to time if, in its absolute discretion, it considers it to be in the interests of the ICAV to do so, may give a notice to a Shareholder requiring such Shareholder to notify the Board in writing within such period as may be specified in such notice (which shall not be less than 28 days from the date of service of such notice) of full and accurate particulars of all or any of the following matters, namely: (i) his interest in such Share; (ii) if his interest in the Share does not consist of the entire beneficial interest in it, the interests of all persons having any beneficial interest in the Share (provided that one joint Shareholder of a Share shall not be obliged to give particulars of interests of persons in the Share that arise only through another joint Shareholder); and (iii) if any arrangement (whether legally binding or not) entered into by him or any person having any beneficial interest in the Share whereby it has been agreed or undertaken or the Shareholder of such Share can be required to transfer the Share or any interest therein to any person (other than a joint Shareholder of the Share) or to act in relation to any meeting of the ICAV or of any Sub-Fund or Class of Shares of the ICAV in a particular way or in accordance with the wishes or directions of any other person (other than a person who is a joint Shareholder of such Share).

(b) If, pursuant to any notice given under (a) above, the person stated to own any beneficial interest in a Share or the person in favour of whom any Shareholder (or other person having any beneficial interest in the Share) has entered into any arrangements referred to in Section 1.05(a) above, is a body corporate, trust, society or any other legal entity or association of individuals and/ or entities, the Board, at any time and from time to time if, in its absolute discretion, it considers it to be in the best interests of the ICAV to do so, may give a notice to the Shareholder or Shareholders of such Share (or any of them) requiring such Shareholder or Shareholders to notify the ICAV in writing within such period as may be specified in such notice (which shall not be less than 28 days from the date of service of such notice) of full and accurate particulars of the name and addresses of the individuals who control (whether directly or indirectly and through any number of vehicles, entities or arrangements) the beneficial ownership of all the Shares, interests, units or other measure of ownership of such body corporate, trust, society or other entity or association wherever the same shall be incorporated, registered or domiciled or wherever such individuals shall reside provided that if at any stage of such chain of ownership the beneficial interest in any Share shall be established to the satisfaction of the Board to be in the ownership of any body corporate any of whose share capital is listed or dealt in on any bona fide stock exchange, unlisted securities market or over-the-counter securities market, it shall not be necessary to disclose details of the individuals ultimately controlling the beneficial interests in the shares of such body corporate.

(c) The Board may serve any notice pursuant to the terms of this Section 1.05 irrespective of whether or not the Shareholder on whom it shall be served may be dead, bankrupt, insolvent or otherwise incapacitated and no such incapacity or any unavailability of information or inconvenience or hardship in obtaining the same shall be a satisfactory reason for failure to comply with any such notice provided that if the Board in its absolute discretion think fit, they may waive compliance in whole or in part with any notice given under this Section 1.05 in respect of a Share in any case of bona fide unavailability of information or genuine hardship or where they otherwise think fit but no such waiver shall prejudice or affect in any way any non-compliance not so waived whether by the Shareholder concerned or any other joint Shareholder of the Share or by any person to whom a notice may be given at any time.

#### Section 1.06 Registration of Title to Shares.

(a) The ICAV shall maintain the Register in accordance with the Act. The Register shall be kept available for inspection by a person entitled to inspect it in accordance with the Act. The Register shall be kept at the registered office of the ICAV or at such other place within the Republic of Ireland, as the Board may determine, subject to the requirements of the Act.

(b) Share certificates will not be issued by, or on behalf of, the ICAV. Every Shareholder shall receive written confirmation of entry on the Register (which may be sent to Shareholders by ordinary post, facsimile, electronic or such other means, as may be determined by the Board, in accordance with the requirements of the Central Bank) in respect of his holding of Shares within such period as the Board may determine from time to time after receipt of payment for the Shares and the necessary accompanying documentation. The ICAV shall not be bound to register more than four persons as joint Shareholders of any Share (except in the case of executors or trustees of a deceased member).

(c) Nothing in this Instrument shall preclude title to any Shares of the ICAV being recorded other than in writing, in accordance with such arrangements as may from time to time be permitted by the Act and approved by the Board.

## **Appendix B: Detailed Provisions Relating To Directors**

Section 1.01     Number of Directors. The ICAV shall always have at least two Directors.

Section 1.02     Remuneration of Directors.

(a)           Unless otherwise determined from time to time by the ICAV in general meeting, the ordinary remuneration of each Director shall be determined from time to time by resolution of the Board.

(b)           Any Director who is appointed as an executive director (including for this purpose the office of chairman or deputy chairman) or who serves on any committee, or who otherwise performs services that in the opinion of the Board are outside the scope of the ordinary duties of a Director, may be paid such extra remuneration by way of fees, commission or otherwise as the Board may determine.

Section 1.03     Expenses of Directors. The Board may be paid all travelling, hotel and other out-of-pocket expenses properly incurred by them in connection with their attendance at meetings of the Board or committees established by the Board or general meetings or separate meetings of the Shareholders of any Sub-Fund or Class of Shares of the ICAV or otherwise in connection with the discharge of their duties.

Section 1.04     Alternate Directors.

(a)           Any Director may appoint by writing under his hand any person (including another Director) to be his alternate, provided always that no such appointment of a person other than a Director as an alternate shall be operative unless and until such appointment shall have been approved by the Central Bank. Any such authority may be sent by post, facsimile, electronic mail or any other means of communication approved by the Board and may bear a printed or facsimile signature of the Director giving such authority.

(b)           An alternate Director shall be entitled to receive notices of all meetings of the Board and of all meetings of committees established by the Board of which his appointor is a member, to attend and vote at any such meeting at which the Director appointing him is not personally present and in the absence of his appointor to exercise all the powers, rights, duties and authorities of his appointor as a Director (other than the right to appoint an alternate hereunder).

(c)           Except as otherwise provided in this Instrument, an alternate Director shall be deemed for all purposes to be a Director and shall alone be responsible for his own acts and defaults and he shall not be deemed to be the agent of the Director appointing him. The remuneration of any such alternate Director shall be payable out of the remuneration paid to the Director appointing him and shall consist of such portion of the remuneration of the Director as shall be agreed between the alternate and the Director appointing him.

(d)           A Director may revoke at any time the appointment of any alternate appointed by him. If a Director shall die or cease to hold the office of Director, the appointment of his alternate shall thereon cease and determine, but if a Director otherwise retires but is reappointed or deemed to have been reappointed at the meeting at which he retires, any appointment of an alternate Director made by him that was in force immediately prior to his retirement shall continue after his reappointment.

(e)           Any appointment or revocation by a Director under this Section 1.04 shall be effected by notice in writing given under his hand to the Secretary or deposited at the ICAV's registered office or in any other manner approved by the Board.

Section 1.05 Register of Shareholdings. The ICAV shall keep a register showing, in relation to each Director and the Secretary, the number, description and amount of any Shares in or debentures of the ICAV, or 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), in accordance with the requirements of the Act. For the avoidance of doubt, no Director shall be obliged to hold Shares in the ICAV.

Section 1.06 Appointment and Retirement of Directors.

(a) *Eligibility for appointment at a general meeting*. To be eligible for appointment as a Director at a general meeting of the ICAV, a person must be recommended by the Board or, not less than 6 nor more than 30 Clear Days before the date appointed for the meeting, notice executed by a Shareholder qualified to vote at the meeting must have been given to the ICAV of the intention to propose that person for appointment stating the particulars that would be required, if he were so appointed, to be included in the ICAV's register of Directors together with notice executed by that person of his willingness to be appointed. Any appointment of a Director, including an alternate Director, is subject to the requirements of the Central Bank including its prior approval.

(b) *No retirement on account of age*. No Director shall be required to retire on account of age. Any purported appointment of a minor (being a person that has not attained the age of 18 years) as a director will be void.

(c) *Appointment of additional Directors*. Subject to this Instrument, the ICAV may in general meeting appoint a person to be a Director either to fill a vacancy or as an additional Director. The provisions of section 61 of the Act shall apply to any such appointments. The Directors may appoint a person who is willing to act to be a Director, either to fill a vacancy or as an additional Director, provided that the appointment does not cause the number of Directors to exceed any number as fixed by or in accordance with this Instrument of Incorporation as the maximum number of Directors. Any Director so appointed shall not be required to retire at any subsequent annual general meeting of the ICAV. The continuing Directors may act notwithstanding any vacancy in their body, provided that if the number of the Directors is reduced below two, the remaining Director shall appoint immediately an additional Director or additional Directors to make up a quorum or shall convene a general meeting of the ICAV for the purpose of making such appointment or appointments. If, in such circumstances, there be no Director or Directors able or willing to act then any two Shareholders may summon a general meeting for the purpose of appointing Directors. Any additional Director so appointed shall not be required to retire at any subsequent annual general meeting of the ICAV.

Section 1.07 Disqualification of Directors. The office of a Director shall be automatically vacated and the person shall no longer be a Director if: (i) he ceases to be a Director by virtue of any provision of the Act or he becomes prohibited by law from being a Director; (ii) he becomes bankrupt or makes any arrangement or composition with his creditors generally; (iii) in the written opinion of a majority of his co-Directors, he becomes incapable by reason of mental incapacity of discharging his duties as a Director and a copy of the written opinion has been delivered to the former Director; (iv) he resigns his office by notice in writing to the ICAV signed by him and delivered to the registered office of the ICAV; (v) he is convicted of an indictable offence, unless the Board otherwise determines; (vi) he shall have been absent for more than six consecutive months without permission of the Board from meetings of the Board held during that period and his alternate Director (if any) shall not have attended any such meeting in his place during such period, and the Board passes a resolution that by reason of such absence he has vacated office; (vii) a majority of his co-Directors resolve to terminate his appointment; or (viii) the Central Bank requires him to resign.

Section 1.08     Removal of Directors. The ICAV, by Ordinary Resolution of which extended notice has been given in accordance with the provisions of the Act, may remove any Director notwithstanding anything in this Instrument or in any agreement between the ICAV and such Director and may, if thought fit, by Ordinary Resolution appoint another Director in his stead. Nothing in this section shall be taken as depriving a person removed hereunder of compensation or damages payable to him in respect of the termination of his appointment as Director or of any appointment terminating with that of the Director. The provisions of section 62 of the Act shall apply to any resolution to remove a Director.

Section 1.09     Directors' Interests.

(a)     Subject to the provisions of the Act, and provided that he has disclosed to the Board the nature and extent of any material 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 any subsidiary or associated company thereof or in which the ICAV or any subsidiary or associated company thereof is otherwise interested; (ii) may be a director or other officer of, or employed by, or a party to any transaction or arrangement with, or otherwise interested in, any body corporate promoted by the ICAV or in which the ICAV or any subsidiary or associated company thereof is otherwise interested; and (iii) shall not be accountable, by reason of his office, to the ICAV for any benefit that 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.

(b)     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 company 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 Board 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 Board 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 Board held after he becomes so interested.

(c)     A copy of every declaration made and notice given under this section shall be entered within three 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 Shareholder at the ICAV's registered office and shall be produced at every general meeting of the ICAV and at any meeting of the Board if any Director so requests in sufficient time to enable the book to be available at the meeting.

(d)     For the purposes of this section, a general notice given to the Board by a Director in accordance with the provisions of the Act shall be deemed to be a sufficient declaration of interest.

Section 1.10     Restriction on Directors' Voting.

(a)     Except as otherwise provided by this Instrument, a Director shall not vote at a meeting of the Board or any committee established by the Board on any resolution concerning a matter in which he has, directly or indirectly, an interest that is material (other than an interest arising by virtue of his interest in shares or debentures or other securities or otherwise in or through the ICAV) or a duty that conflicts or may conflict with the interests of the ICAV. Such a Director may be counted in the quorum present at a meeting in relation to any such resolution, but shall not be entitled to vote in respect of such resolution.



(b) A Director shall be entitled to vote (and be counted in the quorum) in respect of any resolutions concerning any of the following matters, namely: (i) the giving of any security or indemnity to him in respect of money lent by him to the ICAV or any of its subsidiary or associated companies or obligations incurred by him at the request of or for the benefit of the ICAV or any of its subsidiary or associated companies; (ii) the giving of any security or indemnity to a third party in respect of a debt or obligation of the ICAV or any of its subsidiary or associated companies for which he himself has assumed responsibility in whole or in part and whether alone or jointly with others under a guarantee or indemnity or by the giving of security; (iii) any proposal concerning any offer of Shares or debentures or other securities of or by the ICAV or any of its subsidiary or associated companies for subscription/commitment, 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 company in which he is interested, directly or indirectly and whether as an officer or shareholder or otherwise howsoever.

(c) 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 or any company in which the ICAV is interested, such proposals may be divided and considered in relation to each Director separately and in such case each of the Directors concerned (if not 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.

(d) If a question arises at a meeting of the Board or of any committee established by the Board 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. If the matter relates to the chairman, it will be decided on the basis of a majority decision of the other Directors present at the meeting.

(e) The Directors may suspend or relax the provisions of this Section 1.10 to any extent or ratify any transaction not duly authorised by reason of a contravention of this Section 1.10.

#### Section 1.11 Convening and Regulation of Board Meetings.

(a) Subject to the provisions of this Instrument, the Board may regulate its proceedings as it thinks fit. A Director may, and the Secretary at the request of a Director shall, call a meeting of the Board. Any Director may waive notice of any meeting and any such waiver may be retrospective. If the Board so resolves, it shall not be necessary to give notice of a meeting of the Board to any Director or alternate Director who, being an Irish resident, is for the time being absent from the Republic of Ireland.

(b) Notice of a meeting of the Board shall be deemed to be duly given to a Director if it is given to him personally or sent in writing by post to him at his last known address or any other address given by him to the ICAV for this purpose, or by facsimile, or electronic mail or any other means of communication approved by the Board.

(c) Meetings of the Board shall be generally held in Ireland.

#### Section 1.12 Quorum for Board Meetings.

(a) The quorum for the transaction of the business of the Board may be fixed by the Board and, unless so fixed at any other number, shall be two Directors. A person who holds office only as an alternate Director shall, if his appointer is not present, be counted in the quorum but notwithstanding that

such person may act as alternate Director for more than one Director, he shall not count as more than one for the purposes of determining whether a quorum is present.

(b) The continuing Directors or a sole Director may act notwithstanding any vacancies in their number but if the number of Directors is less than the number fixed as the quorum, they may act only for the purpose of filling vacancies or for calling a general meeting.

#### Section 1.13 Voting at Board Meetings.

Questions arising at any Board meeting shall be decided by a majority of votes. Where there is an equality of votes, the chairman of the meeting shall have a casting vote. Subject as hereinafter provided, each Director present and voting shall have one vote and in addition to his own vote shall be entitled to one vote in respect of each other Director not present at the meeting who shall have authorised him in respect of such meeting to vote for such other Director in his absence. Any such authority may relate generally to all meetings of the Board or to any specified meeting or meetings and must be in writing and may be sent by post, facsimile, electronic mail or any other means of communication approved by the Board and may bear a printed or facsimile signature of the Director giving such authority. The authority must be delivered to the Secretary for filing prior to or must be produced at the first meeting at which a vote is to be cast pursuant thereto provided that no Director shall be entitled to any vote at a meeting on behalf of another Director pursuant to this Section 1.13 if the other Director shall have appointed an alternate Director and that alternate Director is present at the meeting at which the Director proposes to vote pursuant to this Section 1.13.

#### Section 1.14 Telecommunication Meetings.

Any Director or alternate Director may participate in a meeting of the Board or any committee established by the Board by means of conference telephone or other telecommunications equipment (whether in use when this Instrument of Incorporation is adopted or developed subsequently) by means of which all persons participating in the meeting can hear each other speak. Any such meeting shall be deemed to have been convened in the place from which the conference telephone call or similar telecommunication is initiated, which shall always be in the Republic of Ireland. A person so participating by telephone or other communication shall be deemed to be present in person at the meeting and shall be counted in a quorum and entitled to vote. A resolution passed at any meeting held in the above manner, and signed by the chairman of the meeting, shall be as valid and effectual as if it had been passed at a meeting of the Board (or committee, as the case may be) duly convened and held.

#### Section 1.15 Chairman of the Board.

Subject to any appointment to the office of chairman made pursuant to this Instrument, the Board may elect a chairman of its meetings and determine the period for which he is to hold office, but if no such chairman is elected or if at any meeting the chairman is unwilling to act or is not present within five minutes after the time appointed for holding the same the Directors present may choose one of their number to be chairman of the meeting.

#### Section 1.16 Validity of Acts of Directors.

All acts done by any meeting of the Board or of a committee established by the Board or by any person acting as a Director, notwithstanding that it be afterwards discovered that there was some defect in the appointment of any such Director or person acting as aforesaid, or that they or any of them were disqualified from holding office or had vacated office, shall 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.

Section 1.17     Directors' Resolutions or other Documents in Writing.

A resolution in writing (in electronic form or otherwise) signed (whether by electronic signature, advanced electronic signature or otherwise approved by the Board) by all the Directors for the time being entitled to receive notice of a meeting of the Board and to vote thereat shall be as valid and effectual as a resolution passed at a meeting of the Board duly convened and may consist of several documents in the like form each signed by one or more of the Board, and for the purposes of the foregoing, signature by any alternative Director shall be as effective as the signature of the Director by whom he is appointed.

Section 1.18     Minutes of Meetings.

The Board shall cause minutes to be made of: (i) all appointments of officers and committees made by the Board and of their salary or remuneration; (ii) of the names of Directors present at every meeting of the Board and of the names of any Directors and of the names of all other members present at every meeting of any committee established by the Board; and (iii) of all resolutions and proceedings of all meetings of the ICAV and of the Shareholders of any Class or Classes of Shares in the ICAV and of the Board and of committees established by the Board. Any such minute as aforesaid, if purporting to be signed by the chairman of the meeting at which the proceedings were had, or by the chairman of the next succeeding meeting, shall be receivable as prima facie evidence of the matters stated in such minute without any further proof.

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## **Appendix C: Detailed Provisions Relating To Closed-ended Sub-Funds**

(a) The Prospectus shall specify the finite period for each closed-ended Sub-Fund. At the end of the relevant specified period, the Board will: (i) terminate the relevant Sub-Fund and apply to the Central Bank for revocation of its approval; (ii) redeem all outstanding Shares in the relevant Sub-Fund and apply to the Central Bank for revocation of its approval; (iii) convert the relevant Sub-Fund into an open-ended Sub-Fund; or (iv) obtain the approval of the Shareholders to extend the duration of the relevant Sub-Fund.

(b) If it is proposed to increase the maximum redemption charge (if any), or annual fee (including any Advisory Fee, Carried Interest or similar distribution model) charged by the ICAV, the AIFM or the Portfolio Manager with respect to a closed-ended Sub-Fund, and the Prospectus does not permit the higher charge or fees to be charged, the ICAV shall be obliged to obtain a 75% Resolution of the Shareholders of that Sub-Fund.

(c) The investment objective of a closed-ended Sub-Fund as disclosed in the Prospectus may not be altered, and no material changes to the investment policies of a closed-ended Fund as disclosed in the Prospectus may be made, without a 75% Resolution of the Shareholders of that Sub-Fund. Non-material amendments may be made to such investment policies at the discretion of the Board, and will be notified to the relevant Shareholders (which may be by means of appropriate disclosure in the next annual report).

(d) Notwithstanding anything to the contrary herein, in accordance with the requirements of and subject to prior approval of the Central Bank, the ICAV may, in respect of a closed-ended Sub-Fund, issue and/or redeem Shares at a fixed price, provided that the Shareholders of the relevant Sub-Fund shall not be prejudiced thereby.

[Remainder of page intentionally left blank.]

<b>Names, addresses and descriptions of Subscribers</b>	<b>Number of Subscriber Shares taken by each Subscriber</b>
Eva Hartnett	One
3 Raleigh Harbour North	
Raleigh Quay	
Governors Harbour	
Grand Cayman	
Cayman Islands	
 Ann-Marie Teehan	 One
#66 Villas of the Galleon	
PO Box 1797	
Grand Cayman	
KY1-1109	
Cayman Islands	
Total number of Subscriber Shares taken:	Two