

Registration No: C182324

**IRISH COLLECTIVE ASSET-MANAGEMENT VEHICLES ACT 2015**

**ALBACORE PARTNERS II FEEDER ICAV**

**INSTRUMENT OF INCORPORATION**

(as amended with effect from 27 August 2018)

Arthur Cox  
Ten Earlsfort Terrace  
Dublin 2  
Ireland

# IRISH COLLECTIVE ASSET-MANAGEMENT VEHICLES ACT 2015

## INSTRUMENT OF INCORPORATION of ALBACORE PARTNERS II FEEDER ICAV

### PART A

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

securities of any other company;

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

- (15) to enter into any arrangements with any government or authority, supreme, municipal, local or otherwise, or company that may seem conducive to the Fund's objects or any of them, and to obtain from any such government, authority or company, any charters, contracts, decrees, rights, privileges and concessions, and to carry out, exercise and comply with any such arrangements, charters, contracts, decrees, rights, privileges and concessions;
- (16) to lend the securities and other assets of the Fund, including any cash, in accordance with the requirements of the Central Bank;
- (17) to borrow or raise or secure the payment of money in such manner as the Fund shall think fit, and, in particular (but without prejudice to the generality of the foregoing), by the issue of debentures, debenture stocks, bonds, obligations and securities of all kinds, either perpetual or terminable and either redeemable or otherwise and to secure the repayment of any money borrowed, raised or owing by trust deed, mortgage, charge, or lien upon the whole or any part of the Fund's undertaking, property or assets (whether present or future) including its uncalled capital, and also by a similar trust deed, mortgage, charge or lien to secure and guarantee the performance by the Fund of any obligation or liability it may undertake;
- (18) to guarantee, support or secure, whether by personal covenant or by mortgaging or charging all or any part of the undertaking, property and assets (both present and future) and uncalled capital of the Fund, or by indemnity or undertaking, or by any one or more of such methods, the performance of the obligations of, and the repayment or payment of the principal amounts of and premiums, interest and dividends on any security, indebtedness or obligations of the Fund;
- (19) to create, maintain, invest and deal with any reserve or sinking funds for redemption of obligations of the Fund, or for any other purpose of the Fund;
- (20) to distribute either upon a distribution of assets or division of profits among the members of the Fund in kind any property of the Fund, and, in particular, any shares, debentures or securities of other companies belonging to the Fund or of which the Fund may have the power of disposing;
- (21) to remunerate any person, firm or company rendering services to the Fund, whether by cash payment or by the allotment of shares or securities of the Fund credited as paid up in full or in part or otherwise;
- (22) to procure the Fund to be registered or recognised in any foreign country, dependency or place;
- (23) to the extent permitted by law to obtain and hold, either alone or jointly with any person or company, insurance cover in respect of any risk of the Fund, its directors, officers, employees and agents;
- (24) to pay all or any expenses of, incidental to, or incurred in connection with, the formation and incorporation of the Fund and the raising of its share and loan capital, or to contract with any person or company to pay the same, and (subject in the case of shares to the provisions of any statute for the time being in force) to pay commissions to brokers and others for underwriting, placing, selling or guaranteeing the subscription of any shares, debentures or securities of the Fund;

- (25) to do all or any of the above things in any part of the world, whether as principals, agents, contractors, trustees or otherwise, and either by or through trustees, agents, subcontractors or otherwise and either alone or in partnership or conjunction with any person or company, and to contract for the carrying on of any operation connected with the Fund's business by any person or company;
- (26) to amalgamate with any other fund of a collective investment scheme including any other sub-fund thereof (the "**Transferee Fund**"), subject to the requirements of the Central Bank, and in doing so to dispose of the assets of the Fund to the Transferee Fund in consideration for the issue of shares in the Transferee Fund to the Members *pro rata* to their shareholding in the Fund; and
- (27) to do all such other things as may be deemed incidental or conducive to the attainment of the above objects or any of them.

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

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

- 4. The liability of the members is limited to the amount, if any, unpaid on the shares respectively held by them subject and without prejudice to any other liability to which a member may be subject as provided by or under the ICAV Act.
- 5. The issued share capital of the Fund shall be not less than the currency equivalent of €2.00 represented by two subscriber shares of no par value and the maximum issued share capital of the Fund shall be not more than 500 billion shares of no par value. The share capital of the Fund shall be at all times equal to the value for the time being of the issued share capital of the Fund. The actual value of the paid up share capital of the Fund shall be at all times equal to the value of the assets of the Fund after the deduction of its liabilities.

## PART B

### INDEX

|     |  |    |
|-----|--|----|
| 1.  | DEFINITIONS.....   | 1  |
| 2.  | PRELIMINARY .....  | 12 |
| 3.  | APPOINTMENT OF SERVICE PROVIDERS .....                                     | 14 |
| 4.  | TERMINATION OF DEPOSITARY ARRANGEMENTS .....                               | 15 |
| 5.  | TERMINATION OF AIFM ARRANGEMENTS .....                                     | 16 |
| 6.  | SHARE CAPITAL .....  | 16 |
| 7.  | THE CLASSES.....   | 17 |
| 8.  | ISSUE OF DEBENTURES .....  | 18 |
| 9.  | CONFIRMATIONS OF OWNERSHIP AND REGISTERS .....                             | 18 |
| 10. | QUALIFIED HOLDERS.....   | 21 |
| 11. | ISSUE OF SHARES.....   | 22 |
| 12. | CONVERSION OF SHARES .....   | 23 |
| 13. | PRICE PER SHARE.....   | 24 |
| 14. | SUBSEQUENT CLOSINGS .....  | 25 |
| 15. | CAPITAL COMMITMENTS AND DRAWDOWN NOTICES.....                              | 27 |
| 16. | EXCUSE RIGHTS .....  | 28 |
| 17. | DEFAULT PROVISIONS.....  | 28 |
| 18. | COMPULSORY REDEMPTION OF SHARES AND COMPULSORY TRANSFER OF<br>SHARES ..... | 30 |
| 19. | TOTAL REDEMPTION.....  | 33 |
| 20. | DETERMINATION OF NET ASSET VALUE.....                                      | 34 |
| 21. | VALUATION OF ASSETS .....  | 36 |
| 22. | TRANSFER AND TRANSMISSION OF SHARES.....                                   | 37 |
| 23. | INVESTMENT OBJECTIVES .....  | 40 |
| 24. | GENERAL MEETINGS.....  | 40 |
| 25. | NOTICE OF GENERAL MEETINGS.....  | 40 |
| 26. | PROCEEDINGS AT GENERAL MEETINGS.....                                       | 41 |
| 27. | VOTES OF MEMBERS .....   | 43 |
| 28. | THE FUND AS A FEEDER FUND .....  | 44 |
| 29. | DIRECTORS .....  | 44 |
| 30. | DIRECTORS, OFFICES AND INTERESTS.....                                      | 46 |
| 31. | POWERS OF DIRECTORS.....   | 49 |
| 32. | BORROWING AND INVESTMENT POWERS.....                                       | 49 |
| 33. | PROCEEDINGS OF DIRECTORS.....  | 50 |
| 34. | SECRETARY .....  | 51 |
| 35. | THE SEAL AND AUTHORISED SIGNATORIES .....                                  | 52 |
| 36. | INVESTOR ADVISORY COMMITTEE .....  | 52 |
| 37. | PROFITS, LOSSES AND DISTRIBUTIONS .....                                    | 53 |
| 38. | DIVIDENDS.....   | 54 |
| 39. | MEMBER GIVEBACK .....  | 57 |
| 40. | UNTRACED MEMBERS .....   | 58 |
| 41. | AIVS AND RELATED MANDATES .....  | 59 |
| 42. | CONFLICTS OF INTEREST.....   | 62 |
| 43. | PREFERENTIAL TREATMENT .....   | 63 |
| 44. | ACCOUNTS.....  | 63 |
| 45. | AUDIT.....   | 65 |
| 46. | NOTICES .....  | 66 |
| 47. | TERM, WINDING UP AND TERMINATION .....                                     | 67 |

|     |  |    |
|-----|--|----|
| 48. | INDEMNITY .....  | 69 |
| 49. | DESTRUCTION OF DOCUMENTS.....                                  | 70 |
| 50. | SEVERABILITY .....   | 71 |
| 51. | ALTERATION TO INSTRUMENT OF INCORPORATION AND PROSPECTUS ..... | 71 |

## 1. DEFINITIONS

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

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| <b>“Accounting Date”</b>               | the initial accounting date is 31 December 2019, and, thereafter, 31 December in each year, unless otherwise determined by the Directors;  |
| <b>“Accounting Period”</b>             | a period ending on the Accounting Date and commencing, in the case of the first such period, on the date of registration of the Fund and, in subsequent such periods, on the day following expiry of the last accounting period;   |
| <b>“Administrator”</b>                 | International Fund Services (Ireland) Limited (a division of State Street Corporation), or such other person as may be appointed in accordance with the requirements of the Central Bank to provide administration services to the Fund;   |
| <b>“Advanced Electronic Signature”</b> | has the meaning given in the Electronic Commerce Act, 2000;  |
| <b>“Affiliate” and “Affiliates”</b>    | with respect to a person, any other person(s) that either directly or indirectly control(s), is controlled by or is under common control with the first person;  |
| <b>“Aggregate Commitments”</b>         | the aggregate amount, at any time, of the Capital Commitments of all Members;  |
| <b>“AIF”</b>                           | an alternative investment fund within the meaning of AIFMD;  |
| <b>“AIFM”</b>                          | AlbaCore Capital Limited or such other person or entity as may be appointed, in accordance with the requirements of the Central Bank to act as alternative investment fund manager to the Fund under the AIFM Regulations;   |
| <b>“AIFM Agreement”</b>                | the agreement among the Fund, AlbaCore Partners II ICAV, AlbaCore Partners II Investment Holdings C Designated Activity Company, AlbaCore Partners II Investment Holdings D Designated Activity Company and the AIFM, as the same may be amended, restated, replaced, supplemented or otherwise varied from time to time, pursuant to which the AIFM has been appointed as alternative investment fund manager of, <i>inter alia</i> , the Fund; |
| <b>“AIFMD”</b>                         | Directive 2011/61/EU of the European Parliament and the Council of the European Union on alternative investment fund managers;   |



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| <b>“AIFM Delegated Regulation”</b> | Commission Delegated Regulation (EU) No. 231/2013 of 19 December 2012;  |
| <b>“AIFMD Regulations”</b>         | the European Union (Alternative Investment Fund Managers) Regulations 2013 (S.I. No. 257/2013);   |
| <b>“AIF Rulebook”</b>              | the rulebook issued by the Central Bank setting out the conditions it imposes on AIFs;  |
| <b>“AIV”</b>                       | as defined in Clause 41(a)(i) hereof;   |
| <b>“AlbaCore Affiliate”</b>        | means: <ul style="list-style-type: none"> <li>(a) AlbaCore Capital Limited and the equivalent entity of any Related Mandate(s);</li> <li>(b) AlbaCore Capital LLP and the equivalent entity of any Related Mandate(s);</li> <li>(c) the Promoter and the equivalent entity of any Related Mandate(s);</li> <li>(d) any direct or indirect subsidiary undertaking of an entity at (a), (b) or (c) above; and</li> <li>(e) any undertaking (which may include a newly established undertaking) held, directly or indirectly, by substantially the same shareholders as the shareholders of the AIFM, the Investment Manager or the Promoter;</li> </ul> |
| <b>“Annual Report”</b>             | a report prepared in accordance with Clause 44 hereof;  |
| <b>“Applicant”</b>                 | as defined in Clause 12(a) hereof;  |
| <b>“Associated Company”</b>        | any corporation which in relation to the person concerned (being a corporation) is: (a) a holding company; or (b) a subsidiary of any such holding company of a corporation (or a subsidiary of a corporation) at least one-fifth of the issued equity share capital of which is beneficially owned by the person concerned or an associate thereof under the preceding part of this definition. Where the person concerned is an individual or firm or other unincorporated body the expression “Associated Company” shall mean and include any corporation directly or indirectly controlled by such person;  |
| <b>“Auditors”</b>                  | the auditors for the time being of the Fund;  |
| <b>“Authorised Signatory”</b>      | as defined in Clause 3(h) hereof;   |
| <b>“Base Currency”</b>             | the base currency of the Fund, as may be specified in the Prospectus;   |

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| <b>“Business Day”</b>             | a business day as defined in the Prospectus;   |
| <b>“Capital Commitment”</b>       | in respect of a Member, the total capital (drawn and undrawn) agreed to be subscribed by such Member pursuant to the relevant Subscription Agreement;  |
| <b>“Capital Contribution”</b>     | monies advanced to the Fund by a Member in respect of a Capital Subscription;  |
| <b>“Capital Subscription”</b>     | in respect of a Member and a Drawdown Notice, the amount of capital subscribed or required to be subscribed by that Member for shares pursuant to such Member’s Subscription Agreement and that Drawdown Notice;   |
| <b>“Capital Subscription Day”</b> | a Business Day, specified in a Member’s Subscription Agreement or pursuant to a Drawdown Notice, on which a subscription for Shares is required to be made or is made in respect of all or part of such investor’s Capital Commitment;                   |
| <b>“Central Bank”</b>             | the Central Bank of Ireland or any successor regulatory authority with responsibility for the authorisation and supervision of the Fund;   |
| <b>“Class”</b>                    | any class of shares from time to time created by the Fund, details of which shall be set out in the Prospectus. The Prospectus may provide that a Class be designated as a “Series” or “series”;   |
| <b>“Class Currency”</b>           | the currency of denomination of a Class;   |
| <b>“Class Liabilities”</b>        | as defined in Clause 20(c) hereof;   |
| <b>“Clear Days”</b>               | in relation to the period of a notice, that period excluding the day on which the notice is given or deemed to be given and the day for which it is given or on which it is to take effect;  |
| <b>“Closing Date”</b>             | a date upon which the Directors accept applications to enter into Capital Commitments or permit an existing Member to increase its Capital Commitment (including the Initial Closing Date and the Final Closing Date) as provided for in the Prospectus; |
| <b>“Code”</b>                     | the United States Internal Revenue Code of 1986, as amended from time to time;   |
| <b>“Co-Investment Vehicle”</b>    | as defined in the Prospectus;  |
| <b>“Commission”</b>               | such amount or amounts payable on the issue or redemption of shares in the Fund as may be specified in the Prospectus (including, without limitation, any anti-dilution levy, subscription or redemption charge) and                                     |

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|                                   | which may be deducted from the subscription or redemption monies;   |
| <b>“Commitment Period”</b>        | the period between the Initial Closing Date and the Final Closing Date;   |
| <b>“Companies Act”</b>            | the Companies Act 2014, as amended from time to time;   |
| <b>“Conversion”</b>               | as defined in Clause 12 hereof;   |
| <b>“Conversion Notice”</b>        | as defined in Clause 12(a) hereof;  |
| <b>“Defaulting Member”</b>        | a Member who fails to meet a Drawdown Notice as further described in the Prospectus;  |
| <b>“Deployable Capital”</b>       | in respect of each of the Master Fund (and/or any AIV) and any Parallel Fund in respect of any proposed investment, the aggregate of the undrawn commitments of that vehicle plus the amounts available to be borrowed under a fixed term facility entered into by that vehicle (excluding any commitment bridge or subscription facility); |
| <b>“Depositary”</b>               | State Street Custodial Services (Ireland) Limited, or such other person as may be appointed in accordance with the requirements of the Central Bank to act as Depositary to the Fund;   |
| <b>“Depositary Agreement”</b>     | the agreement among, <i>inter alia</i> , the Fund, the AIFM and the Depositary, as the same may be amended, restated, replaced, supplemented or otherwise varied from time to time; pursuant to which the depositary has been appointed as the depositary of the Fund;  |
| <b>“Director” and “Directors”</b> | the board of Directors of the Fund for the time being and any duly authorised committee thereof;  |
| <b>“Disposition Proceeds”</b>     | as defined in Clause 37(e) hereof;  |
| <b>“Distribution Period”</b>      | save as provided in the Prospectus, such period as the Directors and/or the AIFM may determine from time to time;   |
| <b>“Drawdown Notice”</b>          | a written notice served by the Fund on an Investor requiring that Investor to subscribe and pay for Shares in respect of all or part of such Investor’s Capital Commitment on a Capital Subscription Day;   |
| <b>“Duties and Charges”</b>       | all stamp and other duties, taxes, governmental charges, valuation fees, property management fees, agents fees, brokerage fees, bank charges, transfer fees, registration fees and other charges whether in respect of the constitution or increase of the assets or the creation,  |

exchange, sale, purchase or transfer of shares or the purchase or proposed purchase of investments or otherwise which may have become or will become payable in respect of or prior to or upon the occasion of any transaction, dealing or valuation, but not including Commission payable on the issue and/or redemption of shares;

- “Elected Shares”** as defined in Clause 38(k)(ii) hereof;
- “Electronic Communication”** has the meaning given to that expression in the Electronic Commerce Act, 2000;
- “Electronic Proxy Scheme”** any scheme established by the Fund whereby electronic means may be used by Members to appoint a proxy;
- “Electronic Signature”** has the meaning given to that expression in the Electronic Commerce Act, 2000;
- “ERISA”** the US Employee Retirement Income Security Act of 1974;
- “ERISA Member”** any Member that is a “benefit plan investor” as defined in United States Department of Labor Regulation 29 C.F.R. §2510.3-101 and Section 3(42) of ERISA and includes (a) any employee benefit plan subject to Part 4, sub-title B, of Title I of ERISA; (b) any plan to which Code Section 4975 applies; and (c) any entity whose underlying assets include plan assets by reason of a plan’s investment in the entity (generally because 25% or more of a class of equity interests in the entity is owned by plans). An entity described in Sub-Clause (c) immediately above will be considered to hold plan assets only to the extent of the percentage of the equity interests in the entity held by benefit plan investors. Benefit plan investors also include that portion of any insurance company’s general account assets that are considered “plan assets” and (except if the entity is an investment company registered under the United States Investment Company Act of 1940, as amended) also include assets of any insurance company separate account or bank common or collective trust in which plans invest;
- “€”** the euro;
- “Fair Value”** as defined in Clause 21(d) hereof;
- “FATCA”** sections 1471 through 1474 (inclusive) of the Internal Revenue Code of 1986 of the US, as amended, any current or future regulations or official interpretations thereof, any agreement entered into thereunder, or any fiscal or regulatory legislation, rules or practices adopted pursuant to any intergovernmental agreement entered into

in connection with the implementation thereof;

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| <b>“Feeder Fund”</b>                   | any fund established by or on behalf of the AIFM or any of its affiliates formed for the purpose of investing substantially all of its assets in the Master Fund and approved as a “Feeder Fund” by the directors of the Master Fund and the AIFM and any other fund approved as such by the directors of the Master Fund and the AIFM; |
| <b>“Final Closing Date”</b>            | the final Closing Date of the Fund as determined by the Directors and specified in the Prospectus;  |
| <b>“Final Redemption Day”</b>          | the date determined by the Directors, upon which all of the issued and outstanding shares of the Fund will be redeemed in accordance with Clause 18(i);   |
| <b>“Fractional Shares”</b>             | as defined in Clause 11(d) hereof;  |
| <b>“Fund”</b>                          | AlbaCore Partners II Feeder ICAV, an Irish collective asset-management vehicle incorporated under the ICAV Act;   |
| <b>“Fund Expenses”</b>                 | as defined in Clause 2(d) hereof;   |
| <b>“Fund Proportion”</b>               | with respect to any Related Mandate, its proportionate share based on deployable capital of such Related Mandate (including undrawn commitments from Members, and any borrowings under a fixed term facility (excluding any commitment bridge facility)) available to be invested in any proposed investment;                           |
| <b>“ICAV”</b>                          | an Irish collective asset-management vehicle;   |
| <b>“ICAV Act”</b>                      | the Irish Collective Asset-management Vehicles Act 2015;  |
| <b>“Independent Valuation Service”</b> | as defined in Clause 21(c) hereof;  |
| <b>“Initial Closing Date”</b>          | the initial Closing Date specified in the Prospectus, or such other date as may be determined by the Directors in their sole discretion;  |
| <b>“Initial Offer Price”</b>           | the price at which any shares of any Class are first offered for purchase or subscription in accordance with the Prospectus;  |
| <b>“Instrument of Incorporation”</b>   | this document, as may be amended or modified from time to time in accordance with the rules set out herein;   |
| <b>“Interested Party”</b>              | as defined in Clause 42(a)(ii) hereof;  |
| <b>“Investment”</b>                    | a portfolio investment made directly or indirectly by the Fund, including but not limited to investments made in  |

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|                                      | loans (including senior, unitranche, junior, second lien and mezzanine loans), loan receivables, funded or unfunded sub-participations, or any other kind of loan asset, corporate bonds, private debt, subordinated debt, collateralised loan obligation debt, non-performing loans, receivables, structured credit, sovereign debt, convertible bonds, related equities, preferreds, warrants, distressed debt and similar investments thereto; |
| <b>“Investment Period”</b>           | the period commencing on the Initial Closing Date and ending on the third anniversary of the Final Closing Date, subject to extension or early termination as described in the Prospectus;  |
| <b>“Investment Manager”</b>          | AlbaCore Capital LLP or such other person or entity as may be appointed, in accordance with the requirements of the Central Bank to act as investment manager to the Fund under the AIFM Regulations;   |
| <b>“Investor Advisory Committee”</b> | as defined in Clause 36(a) hereof;  |
| <b>“Management Fee”</b>              | the management fee payable by the Fund to the AIFM as further described in the Prospectus;  |
| <b>“Master Fund”</b>                 | AlbaCore Partners II ICAV;  |
| <b>“Member”</b>                      | a person who is registered as the holder of shares in the Register of Members and, where the context permits, a person whose Capital Commitment has been accepted by the Fund on a Closing Date but who has not yet subscribed for shares;  |
| <b>“Member State”</b>                | a member state of the European Union and, where the context requires, a member state of the European Economic Area;   |
| <b>“MiFID II”</b>                    | European Union Markets in Financial Instruments Directive (Directive 2014/65/EU) and Markets in Financial Instruments Regulation (Regulation (EU) No 600/2014);   |
| <b>“Minimum Capital Commitment”</b>  | the minimum Capital Commitment required to be committed by a Member of the Fund as set out in the Prospectus, provided that it shall not be less than the minimum subscription amount prescribed by the Central Bank from time to time;   |
| <b>“Month” and “Months”</b>          | a calendar month or months;   |
| <b>“Net Asset Value”</b>             | the amount determined for any particular Valuation Day pursuant to Clauses 20 and 21 hereof;  |

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| <b>“Net Distributable Income”</b> | all cash income proceeds received by the Fund from the Master Fund (excluding repayment of principal amounts or other capital receipts any arrangement fees or similar fees that have not resulted in a cash receipt by the Fund) less fees, costs, expenses and any other liabilities of the Fund, including accruals and reserves;  |
| <b>“Net Investment Proceeds”</b>  | in relation to an Investment, all cash receipts arising from such Investment, including income, interest, return of principal, financing and re-financing fees, distributions in kind of securities, dividends and other receipts, disposal proceeds, default fees and maturity payments less any applicable fees, costs, expenses and other liabilities of the Master Fund allocable to such Investment, provided that references to “Net Investment Proceeds” within the Prospectus shall be to Net Investment Proceeds allocated and received by the Fund from the Master Fund;  |
| <b>“New Shares”</b>               | as defined in Clause 12 hereof;   |
| <b>“Officer”</b>                  | any Director of the Fund or the Secretary;  |
| <b>“Ordinary Resolution”</b>      | a resolution of the Fund or of any Class of shares in the Fund, as appropriate: <ul style="list-style-type: none"> <li>(a) passed by a simple majority of such Members as, being entitled to do so, vote in person or, where proxies are allowed, by proxy at a general meeting of the Fund and where a poll is taken regard shall be had in computing a majority to the number of votes to which each Member is entitled; or</li> <li>(b) approved in writing by all of the Members entitled to vote at a general meeting of the Fund in one or more instruments each signed by one or more of the Members and the effective date of the resolution so adopted shall be the date on which the instrument or the last of such instruments if more than one, is executed;</li> </ul> |
| <b>“Original Shares”</b>          | as defined in Clause 12 hereof;   |
| <b>“Parallel Fund”</b>            | any investment vehicle established by any AlbaCore Affiliate to accommodate any specific legal, taxation, regulatory, policy or governance requirements, or requirement of the governing documents, of one or more Members or prospective investors which is formed for the specific purpose of co-investing alongside the Master Fund in proportion to the respective Deployable Capital of the Master Fund and such investment vehicle subject to any specific restrictions or limitations applicable to such investment  |

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|                                | vehicle;  |
| <b>“Performance Fee”</b>       | the performance fee payable by the Fund as further described in the Prospectus;   |
| <b>“PRIIPS Regulation”</b>     | Regulation (EU) No 1286/2014 of the European Parliament and of the Council of 26 November 2014 on key information documents for packaged retail and insurance-based investment products;  |
| <b>“Primary Price”</b>         | as defined in Clause 21(d) hereof;  |
| <b>“Principal”</b>             | such persons as may be designated as a Principal by the AIFM in its sole discretion from time to time;  |
| <b>“Professional Investor”</b> | an investor who is a professional client or which may, on request, be treated as a professional client within the meaning of Annex II of MiFID II;  |
| <b>“Promoter”</b>              | AlbaCore Capital Limited;   |
| <b>“Prospectus”</b>            | a prospectus from time to time issued by the Fund in respect of the Fund, including any supplement thereto designed to be read and construed together with and to form part of the prospectus;  |
| <b>“Qualifying Investor”</b>   | <p>(a) a Professional Investor;</p> <p>(b) an investor who receives an appraisal from a European Union credit institution, a firm authorised pursuant to MiFID II or a management company authorised pursuant to Directive 2009/65/EC on the Co-ordination of Laws, Regulations and Administrative Provisions relating to Undertakings for Collective Investment in Transferable Securities (UCITS) that the investor has the appropriate expertise, experience and knowledge to adequately understand the investment in the Fund; or</p> <p>(c) an investor who certifies that they are 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 Fund.</p> |



Within the European Economic Area, Capital Commitments and/or Shares may only be marketed to Professional Investors and shall not be made available to any “retail investor” for the purposes of the PRIIPS Regulation;

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| <b>“Qualifying Investor AIF”</b>         | a qualifying investor alternative investment fund, as defined in the AIF Rulebook;  |
| <b>“Redemption Day”</b>                  | any Business Day identified by Directors and notified to Members as a day on which shares may be redeemed by the Directors;   |
| <b>“Register of Directors’ Holdings”</b> | the register in which the Directors’ holdings are listed;   |
| <b>“Register of Members”</b>             | the register in which are listed the names of the Members of the Fund;  |
| <b>“Related Mandate”</b>                 | as defined in Clause 41(h) hereof;  |
| <b>“Rules”</b>                           | any rules or conditions from time to time made by the Central Bank pursuant to section 27 of the ICAV Act and the AIFMD Regulations;  |
| <b>“Secondary Price”</b>                 | as defined in Clause 21(d) hereof;  |
| <b>“Secretary”</b>                       | any person, firm or corporation appointed by the Directors to perform the duties of the secretary of the Fund and who may be one of the Directors;  |
| <b>“Segregated Investment”</b>           | as defined in Clause 16(a) hereof;  |
| <b>“Segregated Investment Class”</b>     | as defined in Clause 16(b) hereof;  |
| <b>“Segregated Mandate”</b>              | any vehicle or account (other than a Parallel Fund) established by any AlbaCore Affiliate that has an investment strategy which is substantially similar to the investment strategy of the Master Fund and that has been formed for the purposes of investing alongside the Master Fund subject to any specific restrictions or limitations set out under such mandate; |
| <b>“share” or “shares”</b>               | a share or shares in the Fund representing an interest in the Fund;   |
| <b>“Shortfall Amount”</b>                | as defined in Clause 17(a) hereof;  |
| <b>“Special Resolution”</b>              | a special resolution of the Fund or of any Class of shares in the Fund, as appropriate, passed in accordance with the ICAV Act, being a resolution:   |

- (a) passed by a majority of not less than 75% of such

Members as, being entitled to do so, vote in person or, where proxies are allowed, by proxy at a general meeting of the Fund of which notice specifying the intention to propose the resolution as a special resolution has been duly given and where a poll is taken regard shall be had in computing a majority to the number of votes to which each Member is entitled; or

- (b) approved in writing by all of the Members entitled to vote at a general meeting of the Fund in one or more instruments each signed by one or more of the Members and the effective date of the Special Resolution so adopted shall be the date on which the instrument or the last of such instruments if more than one, is executed;

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| <b>“Subscriber Shares”</b>          | the shares which the subscribers to the Instrument of Incorporation agree to subscribe for as more particularly hereinafter set forth after their names;   |
| <b>“Subscription Agreement”</b>     | the agreement between each Member and the Fund pursuant to which, <i>inter alia</i> , the relevant Member has made a Capital Commitment and agreed to subscribe and pay for shares;  |
| <b>“Subsequent Closing Date”</b>    | each additional Closing Date following the Initial Closing Date up to, and including, the Final Closing Date;  |
| <b>“Subsidiary”</b>                 | any subsidiary within the meaning of section 2 of the ICAV Act;  |
| <b>“Substitute Member”</b>          | as defined in Clause 22(b) hereof;   |
| <b>“Third Country”</b>              | a country other than a Member State;   |
| <b>“Transferee”</b>                 | as defined in Clause 19(b) hereof;   |
| <b>“Undrawn Capital Commitment”</b> | in respect of a Member, such portion of its Capital Commitment which has not been drawn down (or is deemed not to have been drawn down following a distribution hereunder or is deemed to have been added back to the Undrawn Capital Commitment pursuant to the terms of the Prospectus); |
| <b>“Valuation Day”</b>              | such day or days as the Directors may from time to time determine, provided that:<br><br>(a) a Valuation Day shall be on such Business Days as shall be set out in the Prospectus or such other Business Days as shall be determined by the Directors and notified to Members;             |

- (b) in the event of any change in a Valuation Day reasonable notice thereof shall be given by the Directors to each Member at such time and in such manner as the Depositary may approve;
- (c) the assets of the Fund shall be valued on each Valuation Day; and
- (d) there shall be at least one Valuation Day per year;

**“Valuation Point”** such time on a Valuation Day as the Directors from time to time may determine; and

**“Withholding Amount”** as defined in Clause 37(h) hereof.

- (b) Reference to laws, regulations, rules and enactments and to articles and sections of laws, regulations, rules and enactments shall include reference to any amendments, modifications or re-enactments thereof for the time being in force.
- (c) Unless repugnant to the context:
  - (i) words importing the singular number shall include the plural number and *vice versa*;
  - (ii) words importing the masculine gender only shall include the feminine gender and *vice versa*;
  - (iii) words importing persons only shall include companies or associations or bodies of persons, whether corporate or not;
  - (iv) the word “may” shall be construed as permissive and the word “shall” shall be construed as imperative;
  - (v) expressions in this Instrument of Incorporation referring to execution of any document shall include any mode of execution under seal or under hand or any mode of Electronic Signature as shall be approved by the Directors. Expressions in this Instrument of Incorporation referring to receipt of any Electronic Communication shall, unless the contrary intention appears, be limited to receipt in such manner as the Fund has agreed to; and
  - (vi) unless otherwise expressly stated to the contrary herein, any reference to any Clause or Sub-Clause or Schedule in Part B of this Instrument of Incorporation is to a Clause or Sub-Clause or Schedule (as the case may be) of this Part B of this Instrument of Incorporation.

## 2. PRELIMINARY

- (a) Subject to the provisions of the ICAV Act and the requirements of the Central Bank, the business of the Fund shall be commenced as soon after the registration and authorisation of the Fund as the Directors think fit.
- (b) The Fund’s organisational expenses (as further described in the Prospectus) shall be payable by the Fund and any amount so payable may be carried forward in the accounts of the Fund and amortised in such manner and over such a period as the Directors may

at any time and from time to time establish or determine to lengthen or shorten.

- (c) Unless otherwise provided in the Prospectus, the Fund may make calls on Undrawn Capital Commitments to meet such costs, expenses and liabilities as further detailed in the Prospectus.
- (d) Save as otherwise provided in the Prospectus, the Fund shall also bear the following fees and expenses (“**Fund Expenses**”), save to the extent that such fees and expenses may be waived or otherwise discharged by any other person and not recovered from the Fund:
  - (i) all taxes and expenses which may be incurred in connection with the acquisition and disposal of the assets of the Fund;
  - (ii) all taxes which may be payable on the assets, income and expenses chargeable to the Fund;
  - (iii) all brokerage, bank and other charges incurred by the Fund in relation to its business transactions;
  - (iv) all fees and expenses due to the Auditors, the AIFM (including any Performance Fee), the Depositary, the Administrator, any Investment Manager or adviser, any sub-custodian of the Fund, the legal advisers to the Fund, any valuer, dealer, distributor or other supplier of services to the Fund;
  - (v) all expenses incurred in connection with publication and supply of information to the Members and, in particular, without prejudice to the generality of the foregoing, the cost of printing and distributing the Annual Report, any report to the Central Bank or any other regulatory authority, any other report and any Prospectus and all costs incurred in translating any of the foregoing into any languages other than English and the costs of publishing quotations of prices and notices in the financial press and the costs of obtaining a rating for the shares of the Fund from a rating agency and all stationery, printing and postage costs in connection with the preparation and distribution of cheques, warrants, tax certificates and statements;
  - (vi) all expenses incurred in the registration of the Fund with any government agencies or regulatory authority in any jurisdiction where registration is available or necessary and in having the shares of the Fund listed or dealt on any stock exchange or any regulated market and in having the shares of the Fund rated by any rating agency;
  - (vii) all expenses arising in respect of legal or administrative proceedings;
  - (viii) all expenses incurred in connection with the operation and management of the Fund, including, without limitation to the generality of the foregoing, all Directors’ fees and costs, all costs incurred in organising Directors’ and Members’ meetings and in obtaining proxies in relation to such meetings, all insurance premiums and association membership dues and all non-recurring and extraordinary items of expenditure as may arise;
  - (ix) all expenses incurred in the termination or the liquidation or winding-up of the Fund;

- (x) the Fund's *pro rata* share of the fees and expenses incurred by the Master Fund as provided for in the Prospectus;
  - (xi) all other fees and expenses as provided for in the Prospectus; and
  - (xii) any other similar expenses related to the Fund, as the Directors reasonably determine.
- (e) At the absolute discretion of the Directors and in accordance with the requirements of the Central Bank, the fees and expenses of the Fund may be charged to capital, against current income, against realised capital gains and, if need be, against assets.

### **3. APPOINTMENT OF SERVICE PROVIDERS**

- (a) The Fund shall forthwith after its incorporation and before the issue of any shares (other than the Subscriber Shares) appoint:
- (i) a person, firm or corporation to act as Depositary of the Fund and shall entrust the assets of the Fund to the Depositary for safe keeping;
  - (ii) a person, firm or corporation to act as Administrator of the Fund; and
  - (iii) a person, firm or corporation to act as AIFM of the Fund (which may be the same entity as the Investment Manager), provided that the Fund may determine that it shall be an internally-managed AIF, in which case the Fund shall be the alternative investment fund manager.

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

- (b) The terms of appointment of any Depositary may authorise such Depositary to appoint (with powers of sub-delegation) sub-custodians, nominees, agents or delegates at the expense of the Depositary or otherwise and to delegate any of its functions and duties to any person or persons so appointed, provided that such appointment shall first have been notified to the Fund and is in accordance with the requirements of the Central Bank and provided, further, that any such appointment insofar as it relates to an appointment in relation to the assets of the Fund shall terminate forthwith on termination of the appointment of the Depositary.
- (c) The terms of appointment of any Administrator may authorise such service providers, subject to the approval of the Central Bank, to appoint one or more sub-managers, administrators, transfer agents or other agents at their own expense and to delegate any of their functions and duties to any person or persons so appointed, provided that such appointment or appointments shall first have been approved by the ICAV and provided further that any such appointment shall terminate forthwith on termination of the appointment of the Administrator.
- (d) The AIFM shall make available such information as may be required pursuant to the AIFMD Regulations to be made available to prospective Members.

- (e) The maximum annual fee payable to the AIFM and/or the Investment Manager out of the assets of the Fund shall not be increased without the approval of at least 75% of the outstanding shares in the Fund at a general meeting, where there is no opportunity for Members to redeem or otherwise exit the Fund, or without the approval of at least 50% of the outstanding shares in the Fund at a general meeting, where there is an opportunity for Members to redeem or otherwise exit the Fund, or such other means of approval as may be agreed with the Central Bank.
- (f) The appointment of the Depositary, the Administrator, the Investment Manager and the AIFM shall in each case be subject to the approval of the Central Bank and the agreements appointing the Depositary, the Administrator, the Investment Manager and the AIFM in each case shall be in accordance with the requirements of the Central Bank. The Central Bank may at its discretion have the power to replace the Depositary and/or the AIFM with another Depositary and/or AIFM, as the case may be, at any time. Replacement of the Depositary and/or the AIFM is subject to the prior approval of the Central Bank. Replacement of the Administrator and/or the Investment Manager must be made in accordance with the requirements of the Central Bank.
- (g) The Fund or the AIFM on behalf of the Fund may use the services of a prime broker, the terms of which shall be set out in a written contract. Such contract may provide for the possibility of the transfer and re-use of the assets of the Fund.
- (h) The Fund may appoint any person, firm or company, including without limitation, the AIFM and/or the Investment Manager, as an authorised signatory of the Fund (an “**Authorised Signatory**”) and, in connection therewith, the Authorised Signatory may be granted the power and authority to execute and deliver for and in the name of the Fund any contracts, agreements, certificates, applications and other documents and instruments as are determined by the Authorised Signatory to be necessary, appropriate or advisable to carry out the Authorised Signatory’s functions under any agreement with the Fund for and in the name of the Fund.

#### **4. TERMINATION OF DEPOSITARY ARRANGEMENTS**

- (a) In the event of the Depositary desiring to retire or being removed from office the Fund shall use its reasonable endeavours to find a corporation willing to act as Depositary who must be approved by the Central Bank to act as Depositary and upon so doing the Fund shall appoint such corporation to be Depositary in place of the former Depositary. The Depositary Agreement shall provide that the Depositary may not retire or be removed from office until the Fund appoints a replacement Depositary or until the authorisation of the Fund by the Central Bank has been revoked.
- (b) If within a period of ninety (90) days from the date on which the Depositary notifies the Fund of its desire to retire, or from the date on which the Depositary ceases to be approved by the Central Bank no replacement Depositary shall have been appointed, the Directors may resolve to repurchase all of the shares in issue or the Secretary, at the request of the Directors or the Depositary, shall forthwith convene an extraordinary general meeting of the Fund at which there shall be proposed a resolution to wind up the Fund and if a resolution is passed to wind up the Fund in accordance with Part 11 of the Companies Act, as modified by the ICAV Act, the liquidator shall distribute the assets of the Fund in accordance with the provisions of Clause 47 hereof but in any event the appointment of the Depositary shall not be terminated until the authorisation of the Fund has been revoked by the Central Bank.

- (c) The Central Bank may replace the Depositary with another depositary in accordance with the AIF Rulebook and applicable law.

## **5. TERMINATION OF AIFM ARRANGEMENTS**

- (a) The AIFM may only be removed from office by the Directors in accordance with the requirements of the Central Bank and the terms of: (i) the AIFM Agreement; (ii) the Prospectus; and (iii) this Clause 5.
- (b) With the approval of the Central Bank, the appointment of the AIFM may be terminated and a replacement alternative investment fund manager may be appointed and the terms of appointment of an AIFM from time to time may be varied and the Fund may authorise such AIFM to appoint one or more investment managers, investment advisers or other agents, delegates or service providers and to delegate any of its functions and duties to any person or persons so appointed, provided that such appointment or appointments shall first have been approved by the Fund and are otherwise in accordance with the AIFMD Regulations and provided, further, that any such appointment shall terminate forthwith on termination of the appointment of the AIFM.
- (c) In the event of the AIFM desiring to retire or being removed from office or ceasing to be authorised as an alternative investment fund manager, the Fund shall use reasonable endeavours to find an entity willing to act as alternative investment fund manager who must be authorised to act as alternative investment fund manager and upon doing so the Fund shall appoint such entity to be alternative investment fund manager in place of the former alternative investment fund manager.
- (d) If within a period of 90 days (or such other reasonable period as may be determined by the Directors) from the date on which the AIFM notifies the Fund of its desire to retire, or from the date on which the AIFM ceases to be approved to act as such, no replacement alternative investment fund manager shall have been appointed and the Fund is not capable of acting as an internally-managed AIF, the Directors may resolve to repurchase all of the shares in issue and/or the Secretary, at the request of the Directors, shall forthwith convene an extraordinary general meeting of the Fund, at which there shall be proposed a resolution to wind up the Fund and if a resolution is passed to wind up the Fund in accordance with Part 11 of the Companies Act, as modified by the ICAV Act, the assets of the Fund shall be distributed in accordance with the provisions of Clause 47 hereof.
- (e) The Central Bank may replace the AIFM with another alternative investment fund manager in accordance with the AIF Rulebook and applicable law.

## **6. SHARE CAPITAL**

- (a) The paid up share capital of the Fund shall at all times be equal to the Net Asset Value of the Fund as determined in accordance with Clauses 20 and 21 hereof.
- (b) The issued share capital of the Fund shall not be less than the currency equivalent of €2.00 represented by two subscriber shares of no par value and the maximum issued share capital of the Fund shall not be more than 500 billion shares of no par value.
- (c) The Directors are hereby generally and unconditionally authorised to exercise all the powers of the Fund to allot or issue shares in the Fund pursuant to section 38 of the ICAV Act. The maximum amount of shares which may be allotted or issued under the

authority hereby conferred shall be 500 billion shares of no par value, provided, however, that any shares which have been redeemed shall be deemed never to have been issued for the purpose of calculating the maximum amount of shares which may be issued.

- (d) The Directors may delegate to the Administrator or to any duly authorised Officer or other person, the duties of accepting the subscription for, receiving payment for and allotting or issuing new shares.
- (e) The Directors in their absolute discretion may refuse to accept any application to enter into a Capital Commitment for shares in the Fund or may accept any application in whole or in part. Once a Capital Commitment for shares has been accepted by the Directors (in whole or in part), the Directors shall issue shares in accordance with Clauses 11, 13, 14 and 15 hereof and in accordance with the terms of the Prospectus and the Subscription Agreement.
- (f) The assets of the Fund shall belong exclusively to the Fund and no Member shall have any interest in the assets of the Fund.
- (g) No person shall be recognised by the Fund as holding any shares on trust and the Fund shall not be bound by or recognise (even when having notice thereof) any equitable, contingent, future or partial interest in any shares or (except only as otherwise provided herein or as by law may be required) any other right in respect of any share, except an absolute right of title thereto in the registered holder.
- (h) At any time after the issue of shares, and subject to applicable law, the Fund shall be entitled to redeem the Subscriber Shares or to procure the transfer of the Subscriber Shares to any person who may be a qualified holder of shares in accordance with Clause 10 hereof.

## **7. THE CLASSES**

- (a) The Fund shall be closed-ended and shall be subject to the conditions set down by the Central Bank in relation to closed-ended funds. The Fund may establish separate classes or series of shares on such terms as the Directors may resolve and such Classes may be differentiated on the basis of Class Currency, subscription/redemption procedures, distribution policies or charging structure, hedging policies or other criteria disclosed in the Prospectus. The creation of further Classes in the Fund must be effected in accordance with the requirements of the Central Bank.
- (b) Shares may be issued with such voting rights and rights to participate in or receive profits or income arising from the acquisition, holding, management or disposal of assets of the Fund as the Directors from time to time may determine and set forth in the Prospectus. The Directors may restrict (including, without limitation, by applying weighted voting rights to certain Classes of shares) the voting rights attaching to any class of shares. In particular, and without prejudice to the generality of the foregoing, the Directors may issue one or more classes of shares the voting rights of which shall be restricted on the basis that the:
  - (i) voting rights attaching to the shares of such Class or Classes will be weighted and/or limited to a certain percentage vis-à-vis total voting rights (or such voting rights as are eligible to be exercised) in respect of certain proposals that may be put to Members in general meeting (e.g. in respect of the appointment



or removal of Directors) or otherwise; or

- (ii) holders shall be precluded from voting in respect of any resolution, provided that any such resolution shall not become effective unless the holders have been provided with a certain number of days' notice of the date on which the particular resolution is to be effected as is set forth in the Prospectus. The decision to subscribe for any class of shares in respect of which the voting rights are restricted is made solely by the Member.
- (c) Where permitted in the circumstances described in the Prospectus and in accordance with the requirements of the Central Bank, the Directors are hereby authorised from time to time to re-designate any existing class of shares in the Fund and merge such class of shares with any other class of shares in the Fund, provided that Members in such class or classes are first notified by the Fund and given the opportunity to have the shares redeemed. With the prior consent of the Directors, Members may convert shares in one class of shares into shares of another class in the Fund in accordance with the provisions of Clause 11 hereof.
- (d) Subject to Clause 7(c) hereof, for the purpose of enabling shares of one Class to be re-designated or converted into shares of another Class, the Fund may take such action as may be necessary to vary or abrogate the rights attached to shares of one Class to be converted so that such rights are replaced by the rights attached to the other Class into which the shares of the original Class are to be converted, provided that the Members in the affected Class or Classes have consented to the variation of their rights pursuant to a Special Resolution.
- (e) Separate records shall be maintained in respect of each Class of shares.

## **8. ISSUE OF DEBENTURES**

- (a) The Fund may borrow or raise or secure the payment of money in such manner as the Fund shall think fit, including in such manner and as set out in the Prospectus and, in particular (but without prejudice to the generality of the foregoing), by the issue of debentures, debenture stocks, bonds, obligations, loans, notes and securities of all kinds, either perpetual or terminable and either redeemable or otherwise and to secure the repayment of any money borrowed, raised or owing by trust deed, mortgage, charge, or lien upon the whole or any part of the Fund's undertaking, property or assets (whether present or future) including its uncalled capital, and also by a similar trust deed, mortgage, charge or lien to secure and guarantee the performance by the Fund of any obligation or liability it may undertake.
- (b) The instrument of transfer of a debenture shall be signed by or on behalf of the transferor and need not be signed by the transferee. The Directors may decline to register any transfer of debentures at their absolute discretion. Without limitation the Directors may decline to register any transfer of debentures unless the instrument of transfer is deposited at the registered office of the Fund or at such other place as the Directors may reasonably require, with such other evidence as the Directors may reasonably require to show the right of the transferor to make the transfer.

## **9. CONFIRMATIONS OF OWNERSHIP AND REGISTERS**

- (a) A Member shall have his title to shares evidenced by having his name, address and the number of shares held by him entered in the Register of Members which shall be

maintained in the manner required by law. In order for Members to be entered in the Register of Members, the Members must have agreed to make the Minimum Capital Commitment to the Fund and have applied for or acquired shares (other than Subscriber Shares) to the value of not less than the minimum subscription amount as set out in Chapter 2 of the AIF Rulebook and made the Capital Contribution requested in the first Drawdown Notice and must certify that they meet the Qualifying Investor criteria as set out in that chapter and certify that they are aware of the risks involved in the proposed investment and that inherent in such investment is the potential to lose all of the sum invested.

- (b) A Member whose name appears in the Register of Members at the Member's request shall be entitled to be issued with a written confirmation of ownership representing the number of shares held by him. Share certificates shall not be issued. To be entered on the Register of Members, Members must be Qualifying Investors except to the extent the shares are Subscriber Shares.
- (c) If a written confirmation of ownership is damaged or defaced or alleged to have been lost, stolen or destroyed, a new written confirmation of ownership representing the same shares may be issued to the Member upon request subject to delivery of the old written confirmation of ownership or (if alleged to have been lost, stolen or destroyed) on compliance with such conditions as to evidence and indemnity and the payment of exceptional out-of-pocket expenses of the Fund in connection with the request as the Directors may think fit.
- (d) The Register of Members may be kept electronically and/or digitally or in accordance with some other mechanical or electronic system, provided that legible evidence can be produced therefrom to satisfy the requirements of applicable law and of this Instrument of Incorporation.
- (e) The Directors shall cause to be entered in the Register of Members, in addition to the particulars required to be so entered by law, the following particulars:
  - (i) the name and address of each Member (save that in the case of joint holders, the address of the first named holder only need be entered), a statement of the shares of each Class held by him distinguishing each share by its number so long as the share has a number, the Class (if any) to which the share belongs and of any amount paid or agreed to be considered as paid on such shares;
  - (ii) the date on which each person was entered in the Register of Members as a Member; and
  - (iii) the date on which any person ceased to be a Member,

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

- (f)
  - (i) The Register of Members shall be kept in such manner as to show at all times the Members of the Fund for the time being and the shares respectively held by them.
  - (ii) The Register of Members shall be open to inspection by Members and any

person entitled to inspect it in accordance with the ICAV Act at the registered office of the Fund or at an alternative place notified to the Central Bank as being the place where the Register of Members is kept, provided that such alternative place shall be in Ireland. Each Member shall be entitled to inspect only the entry in the Register of Members relating to that Member.

- (g) The Fund shall keep the Register of Directors' Holdings in accordance with the provisions of the ICAV Act showing, in relation to each Director and the Secretary of the Fund, the number, description and amount of any shares in or debentures of:
  - (i) the Fund, or
  - (ii) any other body corporate which is the Fund's subsidiary or holding company, or a subsidiary of the Fund's holding company,

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

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

- (v) for the purpose of the provisions of this Clause 9(j), the first-named shall be determined by the order in which the names of the joint holders stand in the Register of Members.
- (k) The Fund shall not issue bearer certificates, either to first time subscribers in the Fund or to existing Members in respect of shares already held by such Members.
- (l) The Directors shall also be entitled to charge a Member such fee as the Directors from time to time may determine in respect of the cost of confirmations of ownership.

## **10. QUALIFIED HOLDERS**

- (a) The Directors shall have power (but shall not be under any duty) to impose such restrictions (other than a restriction on transfer which is not expressly referred to in this Instrument of Incorporation) as they may think necessary for the purpose of ensuring that no shares in the Fund are acquired or held by any person as described in Clause 10(d).
- (b) The Directors may upon an application for shares or on a transfer or transmission of shares or at any other time and from time to time require such evidence or declarations to be furnished to them in connection with the matters stated in Clauses 10(a) and (e) as they shall in their absolute discretion deem sufficient.
- (c) If a person becomes aware that he is holding or owning shares in contravention of this Clause 10 he shall forthwith in writing request the Fund to redeem such shares in accordance with Clause 18 or shall transfer such shares to a person duly qualified to hold the same unless he has already received a notice under Clause 10(d).
- (d) If it shall come to the notice of the Directors or if the Directors shall have reason to believe that any shares are owned directly or beneficially by:
  - (i) any person in breach of any law or requirement of any country including, without limitation, FATCA and the Organisation for Economic Cooperation and Development's Common Reporting Standard or governmental authority or by virtue of which such person is not qualified to hold such shares;
  - (ii) any person or persons in circumstances which, (whether directly or indirectly affecting such person or persons and whether taken alone or in conjunction with any other person or persons whether connected or not, or any other circumstances appearing to the Directors to be relevant) in the opinion of the Directors, might result in the Fund, any Member or the AIFM or incurring any liability to taxation or suffering regulatory, legal, pecuniary, tax or material administrative disadvantage which the Fund, any Member or the AIFM might not otherwise have suffered or incurred;
  - (iii) any person who does not supply any of the information or declarations required hereunder within seven (7) days of a request to do so being sent by the Directors;
  - (iv) any person who is not a Qualifying Investor;
  - (v) any person otherwise specified as being ineligible to hold shares in the Fund under the terms of the Prospectus; or

- (vi) any person who subscribes for or acquires shares representing less than the Minimum Capital Commitment,

the Directors shall be entitled to give notice (in such form as the Directors deem appropriate) to such person or persons requiring him or them to transfer such shares to a person who is qualified or entitled to own the same or to request in writing the redemption of such shares in accordance with Clause 18.

- (e) If any person upon whom such a notice is served as aforesaid does not, within the period specified in the relevant notice, transfer such shares or request in writing the Fund to redeem the shares he shall be deemed forthwith upon the expiration of the period specified in the relevant notice to have so requested the redemption of all of his shares which are the subject of such notice whereupon he shall be bound to deliver the confirmation of ownership in respect of the shares to the Fund forthwith and the Directors shall be entitled to appoint any person to execute such documents as may be required for the purposes of the redemption. The deemed request to redeem the shares may not be withdrawn, notwithstanding that redemptions may have been suspended pursuant to Clause 20.
- (f) Subject to any requisite official consents first having been obtained, settlement shall be effected by depositing the redemption monies or proceeds of sale in a bank for payment to the person entitled upon such consents being obtained and, if relevant, against production of such evidence of ownership as the Directors may require representing the shares previously held by such person, together with the redemption request duly signed. Upon deposit of such redemption monies as aforesaid such person shall have no further interest in such shares or any of them or any claim in respect thereof except the right to claim without recourse to the Fund the redemption monies so deposited (without interest) upon such consents being obtained and against the production of the said evidence of ownership with the redemption request duly signed.

The Fund, the AIFM, the Investment Manager, the Administrator and the Depositary shall each be entitled to rely absolutely on any declaration received from a Member or his agent as to the status, residence or compliance of such Member with the provisions of Clause 10(d) and shall not incur liability in respect of any action taken or thing suffered by any of them in good faith in reliance upon such a declaration received from the Member and any information provided in conjunction with such declaration.

## **11. ISSUE OF SHARES**

- (a) Subject as hereinafter provided on receipt by the Fund of the following:
  - (i) a subscription agreement or any other application for shares in such form as the Fund from time to time may determine;
  - (ii) such declarations as to the applicant's status, residence and otherwise as the Fund from time to time may require;
  - (iii) certification from the applicant that the applicant is a Qualifying Investor and is aware of the risks of investing in the shares; and
  - (iv) payment for the shares within a reasonable time and in such manner and currency as the Fund from time to time may specify in the Prospectus, and a Drawdown Notice;

the Fund may issue such shares in such classes from time to time created by the Fund at the relevant Initial Offer Price or, following the Final Closing Date, at the Net Asset Value for each such share then in issue unless otherwise specified in the Prospectus or may allot such shares pending receipt of cleared funds, provided that if cleared funds representing the subscription monies are not received by the Fund, within such reasonable period as the Directors may determine, the Directors may cancel any allotment of shares in respect thereof. The Directors may decline to accept any application for the allotment or issue of shares in whole or in part, save where shares are issued following a drawdown as described in Clause 15. The Directors may cease to offer shares in the Fund for allotment or issue for a definite period or otherwise.

- (b) The Fund shall, subject to the absolute discretion of the Directors, be entitled to receive securities or other investments from an applicant for shares and to sell, dispose of or otherwise convert such securities or investments into cash and to apply such cash (net of any expenses incurred in the conversion) for the purchase of shares in the Fund in accordance with the provisions hereof.
- (c) Unless otherwise determined by the Directors, no issue of shares shall be made in respect of an application which would result in the applicant having less than the Minimum Capital Commitment, if any.
- (d) The Directors shall be entitled to issue fractional shares (hereinafter called “**Fractional Shares**”) where the subscription monies received by the Fund are insufficient to purchase an integral number of shares, provided, however, that Fractional Shares shall not carry any voting rights and provided, further, that the Net Asset Value of a Fractional Share of any Class of shares shall be adjusted by the amount which such Fractional Share bears to an integral share of that Class of shares at the time of issue and any dividend payable on such Fractional Shares shall be adjusted in like manner.

## 12. **CONVERSION OF SHARES**

Where provided for in, and subject to the terms of, the Prospectus and as hereinafter provided a holder of shares in any Class (the “**Original Shares**”) may, with the prior consent of the Directors (which may be withheld for any or no reason), from time to time convert all or any portion of such shares (“**Conversion**”) having such minimum value at the time of conversion as may be determined by the Directors from time to time into shares of another Class (the “**New Shares**”) either existing or agreed to be brought into existence on terms hereinafter appearing:

- (a) Conversion may be exercisable by the said holder (hereinafter called the “**Applicant**”) giving a notice (hereinafter called the “**Conversion Notice**”) to the Administrator in such form as the Administrator may require, provided that the shareholding satisfies the Minimum Capital Commitment, and provided that the original application is received within the time limits set out in the Prospectus, and shall be accompanied by such evidence of ownership, succession or assignment satisfactory to the Directors together with unmatured dividend coupons;
- (b) the Conversion of shares comprised in a Conversion Notice which is delivered to the Administrator following the deadline specified in the Prospectus for a Valuation Day shall be made on the Valuation Day next following the receipt of the Conversion Notice;
- (c) Conversion of the Original Shares comprised in the Conversion Notice shall be effected by the redemption of such Original Shares (save that the redemption monies shall not

be released to the Applicant) and the issue of New Shares, such redemption and issue taking place on the Valuation Day referred to in paragraph (b) of this Clause 12;

- (d) the number of New Shares to be issued on Conversion shall be determined by the Directors in accordance (or as nearly as may be in accordance) with the following formula:

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

where:

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

A = the number of Original Shares to be converted;

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

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

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

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

If NS is not an integral number of shares the Directors reserve the right to issue fractional New Shares or to return the surplus arising to the Member seeking to convert the shares.

- (e) upon Conversion, the Fund shall cause assets or cash representing the value of NS as defined in (d) above to be allocated to the Class of shares comprising the New Shares.

### 13. PRICE PER SHARE

- (a) The Initial Offer Price per share at which the shares of any Class shall be allotted or issued and the Commission payable on the Initial Offer Price and the Commitment Period in relation to any Class shall be determined by the Directors. The Fund may only offer shares at a fixed price after the close of the Commitment Period in relation to a Class where the Fund has confirmed to the Central Bank that existing Members of the Class will not be prejudiced.
- (b) The price of any share following the Commitment Period in respect of such share shall be the applicable Net Asset Value of such share as determined in accordance with Clause 20 adjusted in such manner as may be provided for in the Prospectus to cover any Commission or other charge payable. Where provided for in the Prospectus, in calculating the subscription price per share the Directors may on any Valuation Day when there are net subscriptions adjust the subscription price by adding an anti-dilution levy to cover dealing costs and to preserve the value of the underlying assets of the Fund.

- (c) Where provided for in, and subject to the terms of, the Prospectus, the Directors may require an applicant for shares to pay to the Fund in addition to the price per share such Duties and Charges in respect of the shares as the Directors from time to time may determine.
- (d) The Directors may issue shares on terms providing for settlement to be made in specie by the vesting in the Fund of any investments for the time being held or which may be held hereunder and would qualify as investments of the Fund in accordance with the investment objectives, policies and restrictions of the Fund and in connection therewith the following provisions shall apply:
  - (i) the Directors shall be satisfied that the terms of any such exchange shall not be such as are likely to result in any material prejudice to the Members;
  - (ii) the number of shares to be issued shall be not more than the number which would have been issued for settlement in cash as hereinbefore provided;
  - (iii) no shares shall be issued until the investments shall have been vested in the Depositary to the Depositary's satisfaction;
  - (iv) any Duties and Charges or Commission arising in connection with the vesting of such investments in the Fund shall be paid by the person to whom the shares are to be issued; and
  - (v) the Depositary shall be satisfied that the terms on which the shares are issued shall not be such as are likely to result in any material prejudice to the existing Members.
- (e) No shares shall be issued in respect of any Class for which the determination of the Net Asset Value is suspended pursuant to Clause 20 hereof.

#### **14. SUBSEQUENT CLOSINGS**

- (a) Members participating on a Subsequent Closing Date (whether as new investors or by increasing their existing Capital Commitments) will be required to contribute to the Fund, on such Closing Date: (i) their *pro rata* share of any amounts drawn down prior to such Closing Date; and (ii) an amount equivalent to interest on the amounts indicated at Sub-Clause (i) at such rate as may be specified in the Prospectus, calculated from the dates on which such amounts would have been paid had the Member invested on the Initial Closing Date. A portion of the amount due under Sub-Clause (i) will cover the subsequent close Member's *pro rata* share of organisational expenses, Fund Expenses, Management Fees and other general fees and expenses as if they had been admitted and made their full Capital Commitment on the Initial Closing Date. Amounts due under Sub-Clauses (i) and (ii) above will be distributed to existing Members *pro rata* to their Capital Commitments calculated immediately prior to the relevant Subsequent Closing Date. Each recipient Member's portion of amounts received under Sub-Clause (i) will be added to such Member's Undrawn Capital Commitment and will be available for drawdown by the Directors.
- (b) Except in relation to interest payments under Clause 14(a)(ii) above, all amounts due from a Member under this equalization mechanism shall be effected by a share subscription. Except in relation to interest payments under Clause 14(a)(ii), amounts due to be returned to Members shall be effected by way of share redemption at the



Initial Offer Price. Interest payments due under Clause 14(a)(ii) shall not constitute a Capital Contribution or subscription for shares or otherwise reduce a Member's Undrawn Capital Commitment.

- (c) The Directors may make such adjustments in connection with the admission of Members on a Subsequent Closing Date (including, without limitation, adjusting the amount of interest payable under Clause 14(a)(ii)) as they deem necessary in their sole discretion in order to address any material change in the valuation of the Fund's assets since their acquisition. Any such adjustments will be disclosed to Members participating on a Subsequent Closing Date in advance of such Closing Date.
- (d) To the extent that a Subsequent Closing Member is an AlbaCore Affiliate, the payments in this Clause 14 shall be adjusted by the Directors to reflect the fact that AlbaCore Affiliate may not (and the remaining Members do) bear the Management Fee on their Capital Commitment.
- (e) On, or as soon as possible after, each Subsequent Closing Date and closing of any Related Mandate or any AIV (excluding any Feeder Fund, and any AIV to the extent that it invests through another Related Mandate) at which new investors are admitted or pre-existing investors increase their capital commitments, the Directors and the equivalent entity of any such Related Mandate(s) or AIV(s) shall be entitled to make such allocations and adjustments to the books and accounts of the Fund and each such Related Mandate or AIV respectively to reflect their Fund Proportions, amounts drawn down from them, and the timing of such drawdowns, as the Directors and each equivalent body of such Related Mandate(s) or AIV(s) in their absolute opinion determine to be fair and equitable so that the Fund and each other such Related Mandate or AIV shall be treated as if it had existed and held its total commitment (as at such Subsequent Closing Date or closing) on the Initial Closing Date and had invested (directly or indirectly) in Investments and been drawn down in its Fund Proportion from that date, subject to legal, tax, regulatory, foreign exchange rates, interest rates, hedging and other similar considerations.
- (f) The Fund may receive cash from and pay amounts to any such Related Mandate(s) or AIV(s) so as to equalise the Members and the investors in any Related Mandate(s) or AIV(s) following the admission of a new Member or investor, the establishment of a Related Mandate or AIV or any increase in Capital Commitments or capital commitments to such Related Mandate(s) or AIV(s) until and including at the Final Closing Date. Amounts received by the Fund from a Related Mandate or AIV pursuant to this Clause 14 will be distributed to the Members in accordance with Clause 14(a).
- (g) An Investment made prior to the Final Closing Date may be transferred between the Fund and any such Related Mandate(s) or AIV(s) so that at the Final Closing Date each of them shall hold their Fund Proportion of such Investment, subject to any legal, tax, regulatory or other similar considerations.
- (h) The Directors shall be entitled to make such equalising or balancing payments or charges between the Members as it may consider necessary or desirable in relation to any adjustments made pursuant to Clauses 14(e) to 14(g) above as they may in their absolute opinion determine to be fair and equitable.
- (i) Amounts contributed to the Fund by Subsequent Closing Members and distributed (or deemed distributed) to existing Members shall, in accordance with Section 707(a) of the Code, be treated for all purposes of this Instrument of Incorporation and the

Prospectus and for all accounting and tax reporting purposes as payments made directly from such Subsequent Closing Members to the existing Members in connection with a sale in part of the existing Members' Capital Commitment and/or shares to the Subsequent Closing Members, and each Subsequent Closing Member shall succeed to the appropriate portion of the Capital Commitment of the existing Members. The Directors shall appropriately adjust the Members' Undrawn Capital Commitments and any other relevant items to give effect to the intent of this Clause.

- (j) If the Directors determine in their absolute discretion that adverse tax consequences could result from the application of this Clause 14 the Directors may adjust the amounts contributed by the Subsequent Closing Members and the amounts distributed to one or more existing Members.

## **15. CAPITAL COMMITMENTS AND DRAWDOWN NOTICES**

- (a) Members will, pursuant to the Subscription Agreement and in accordance with the Prospectus and this Instrument of Incorporation, be required to make a Capital Commitment to the Fund and undertake irrevocably to subscribe and pay for fully paid shares in the Fund when required to do so by the Directors or their delegate in accordance with the Prospectus.
- (b) The Fund will draw down on Members' Capital Commitments through the issue of fully paid shares. The Directors or their delegate may issue Drawdown Notices for shares, require payment for such shares and shall issue such shares (a "drawdown") in accordance with the provisions, procedures and time frames set down in the Prospectus. Provided that the terms of the Subscription Agreement and the relevant Drawdown Notice are complied with in full, the Directors may not decline to issue shares following receipt of payment of shares pursuant to a drawdown.
- (c) Any portion of Capital Commitments that are drawn down but not utilised by the Fund may, at the Directors' absolute discretion, be returned to the respective Members (less any deduction for costs and expenses) with any applicable bank interest. Sums drawn down in accordance with this Clause 15 may be used to make temporary investments pending further utilisation by the Fund.
- (d) Any sums returned to Members under Clause 15(c) (excluding any bank interest thereon) shall be treated as Undrawn Capital Commitments and shall be available for further drawdown in accordance with the terms of this Instrument of Incorporation and the Prospectus.
- (e) Amounts distributed to Members which are in aggregate equal to Capital Commitments that have been drawn down to fund payments of Management Fee to the AIFM shall be available for further drawdown in accordance with the terms hereof (and will therefore increase the amount of Undrawn Capital Commitments accordingly).
- (f) Amounts distributed to Members which are in aggregate equal to Capital Commitments that have been drawn down to fund Fund Expenses shall be available for further drawdown in accordance with the terms hereof (and will therefore increase the amount of Undrawn Capital Commitments accordingly).
- (g) The Directors may determine in their absolute discretion to retain and use Net Investment Proceeds that have been determined to be distributable to a Member in respect of a Class in accordance with the Fund's distribution policy to pay all or part of

any Capital Commitment that is required to be made by such Member in respect of such Class and the amount of such Net Investment Proceeds so retained shall be deemed to have been distributed to such Member in respect of such Class and then recontributed to the Fund by such Member under the relevant Class. In addition, the Directors may hold back and use Net Investment Proceeds that otherwise would be distributable to a Member to pay all or part of any amounts otherwise owing by such Member to any other Member as referred to herein.

- (h) Members will be released from any obligation to meet calls on Undrawn Capital Commitments on such conditions as the Directors may prescribe as shall be set down in the Prospectus (as they may be amended from time to time). Other than as may be required to pay costs, expenses and liabilities of the Fund, following the disposal of all the assets of the Fund, the Directors may cancel all Undrawn Capital Commitments and cause the AIFM or the Investment Manager to conduct an orderly disposal of assets of the Fund or a Class and cause it to be liquidated in accordance with the provisions of Clause 47.

## 16. EXCUSE RIGHTS

- (a) As a general matter, the Directors will not permit Members to be excused from any particular Investment. If a Member demonstrates a clear legal or regulatory issue resulting from exposure to a particular Investment (a “**Segregated Investment**”), the Directors will endeavour to resolve such issue in the best interests of the Fund overall. In doing so, the Directors may excuse a Member from participating in such Segregated Investment (in whole or in part) in accordance with the provisions of this Instrument of Incorporation, or may use its reasonable endeavours to find a purchaser for the Capital Commitment and/or Shares of the relevant Member. The excused Member’s Undrawn Capital Commitment will not be reduced as a result of such excuse and the Fund may issue new calls for further Capital Contributions to the extent of Undrawn Capital Commitments, making such adjustments to the relative percentages drawn from Members on future drawdowns as is necessary with a view to ensuring that Members have the same proportion of drawn Capital Commitments to Undrawn Capital Commitments overall.
- (b) Each Segregated Investment may be held in a separate portfolio, along with any corresponding hedges and reserves. A separate Class (a “**Segregated Investment Class**”) will be established and the non-excused Members will be issued Segregated Investment Class shares representing their *pro rata* interests in such Segregated Investment. The Segregated Investment Class shares will participate solely in the relevant Segregated Investment. The Directors may at their discretion apportion fees, expenses and other liabilities relating to the Segregated Investment to the Segregated Investment Class.

## 17. DEFAULT PROVISIONS

- (a) Where any amount is not paid by a Member by the due date specified in the Drawdown Notice, the Fund may impose a late payment fee as set out in the Prospectus. If a Member fails to contribute any portion of its Undrawn Capital Commitment on the date on which such portion of the Undrawn Capital Commitment is due under a Drawdown Notice (and fails to remedy such default within such period as set out in the Prospectus) as described in the Prospectus (a “**Shortfall Amount**”), the Fund may declare such Member to be a Defaulting Member. In the event that a Member is declared a Defaulting Member, it may be subject to the following default provisions.

- (i) In the event that a Member is declared a Defaulting Member, the Fund shall have the right to sell the shares of any Defaulting Member to any one or more other Members at the highest price offered by such other Member(s), or, at the absolute discretion of the Fund, to any third party or parties acceptable to the Fund who shall offer a higher price and who otherwise qualify as an eligible investor in accordance with the terms hereof. The proceeds of any such sale shall be applied as follows: (i) first, to reimburse the Fund for any costs (including taxes) incurred in connection with such sale; (ii) then, to pay interest to the Fund at the rate specified in the Prospectus on any amounts due and owing by the Defaulting Member from the date the payment was due until the date of the sale; and (iii) then, to pay to the Defaulting Member a maximum amount equal to two-thirds of the net proceeds (including after deducting the amounts set forth in (i) and (ii) above) received in respect of the sale.
  - (ii) Any remaining proceeds after payment of the amounts referred to above shall be retained by the Fund and treated as income to the Fund, and the Defaulting Member shall have no further rights thereto. A Defaulting Member shall also forfeit all rights to all the monies payable in respect of any shares and not paid before the default.
  - (iii) As of the date of such sale, the transferee of such Defaulting Member's shares shall become the owner of the Defaulting Member's shares and shall be treated for all purposes as having made all payments made by the Defaulting Member pursuant to any Drawdown Notice, and shall be obligated to pay the entire remaining amount of the Defaulting Member's Undrawn Capital Commitment (including payment in full in immediately available funds on the date of such sale of the portion of such Capital Commitment then due and payable, if any).
  - (iv) Effective as of such sale, the Defaulting Member shall cease to be a Member and shall have no further rights in or against the Fund and shall not be entitled to receive notice of, attend or vote at any general meeting of the Fund or the Class or to participate in any subsequent votes or resolutions of Members.
  - (v) The Fund shall have the sole authority to compromise any claim of the Fund relating to the obligation of any Member to fund a Drawdown Notice, and no consent or approval of any other Member or other person shall be required for such purpose.
  - (vi) In addition to the above remedies the Fund shall retain the right to pursue all legal remedies available to it including the right to institute legal proceedings to collect all amounts due and owing by a Member together with all expenses incurred by the Fund in the collection of the relevant amount. The Fund shall not be obligated to exercise the remedy for default provided for herein and, at its absolute discretion, the Fund may pursue any other available legal remedies or none at all.
- (b) If a Member becomes a Defaulting Member, then the procedure set forth below shall apply in respect of the resulting Shortfall Amount:
- (i) the Fund may in its absolute discretion determine to increase the amount of the applicable Drawdown Notice required from each non-Defaulting Member on a *pro rata* basis based on the aggregate Undrawn Capital Commitment of all non-Defaulting Members (up to an amount not exceeding any non- Defaulting

Member's Undrawn Capital Commitment);

- (ii) to the extent any Shortfall Amount has not been fully funded under the foregoing Sub-Clause (i), the Fund may also offer non-Defaulting Members the opportunity to increase their Capital Contributions for such Investment. If any such non-Defaulting Member declines to invest in all or any portion of its share of the Shortfall Amount, such uncommitted amount will be offered to any non-Defaulting Member who has agreed to invest in its share of the Shortfall Amount and concurrently advised the Fund of its willingness to increase its Capital Contribution in excess of such share, and the Fund shall allocate such uncommitted amount among all such other non-Defaulting Members on a basis the Fund determines; and
- (iii) to the extent any Shortfall Amount has not been fully funded under foregoing Sub-Clauses (i) and (ii), the Fund may offer the remaining balance of such Shortfall Amount to any other person on such terms and conditions as the Fund may determine.

## **18. COMPULSORY REDEMPTION OF SHARES AND COMPULSORY TRANSFER OF SHARES**

- (a) Save to the extent that the provisions of the Prospectus provide to the contrary and subject to any conditions set down by the Central Bank, the Members may not, without the prior consent of the Directors (which may be withheld for any or no reason), require the Fund to redeem any of the shares held by them.
- (b) Subject to the provisions of the ICAV Act and this Instrument of Incorporation, the Directors may, in their sole discretion, redeem all or some of the shares of any or all Classes of any holder and the Directors may specify a Redemption Day for such purpose. Redeemed shares shall be cancelled.
- (c) Shares compulsorily redeemed in accordance with this Clause 18 will be redeemed as at a Valuation Day (which may be a special Valuation Day) determined by the Directors taking due account of the interests of the remaining Members at a price per share equal to the applicable Net Asset Value as determined in accordance with the provisions of this Instrument of Incorporation and the Prospectus.
- (d) The Directors shall have full authority to: (i) cause a transfer of a Member's shares to a person or entity selected by the Fund for any consideration that can be obtained for such shares; (ii) compulsorily redeem the shares held by a Member and cause such Member to redeem as a Member for such consideration as may be determined by the Directors and paid in the manner provided for in the Prospectus or as otherwise determined by the Directors; (iii) assign the shares to an AIV or new parallel entity formed at the expense of the Member (and whose expenses the Member will bear on an ongoing basis); or (iv) take any other steps as the Fund determines in its absolute discretion are necessary or appropriate to mitigate adverse consequences in the following circumstances:
  - (i) where the Member has acquired its shares in contravention of any terms upon which an application for such shares was made;
  - (ii) in the event that the continued ownership of any shares by any person would result in adverse tax, regulatory or similar consequences to the Fund, any

- Member or the AIFM;
- (iii) if there is a material likelihood that by virtue of that Member continuing to remain a member of the Fund the Fund may be subject to any registration requirement in any jurisdiction;
  - (iv) if, in the judgement of the Directors, a significant delay, extraordinary expense or material adverse effect on the Fund or the Investments is likely to result without such redemption;
  - (v) if such Member has failed to provide the Directors upon reasonable notice with such evidence of its identity as the Directors deems necessary to comply with applicable anti-money laundering regulations;
  - (vi) where the Directors deems it necessary to protect the Fund, the AIFM or any AlbaCore Affiliate from disclosure, or from any further disclosure, of confidential information by the Member if confidential information regarding the Fund would otherwise be disclosed as a result of actions by the Member in breach of any applicable confidentiality provisions and, in the Directors' opinion, the disclosure of such confidential information could materially adversely affect the Fund;
  - (vii) if any representation, warranty, acknowledgement and/or confirmation made by the Member in its Subscription Agreement was untruthful or, in the case of representations and/or warranties given on a continuous basis, has become untrue;
  - (viii) where a Member is declared to be a Defaulting Member pursuant to Clause 17;  
or
  - (ix) in the event of the death, bankruptcy, insolvency, dissolution or striking off from any applicable register of such Member.
- (e) In the event that a Member is required to redeem or transfer all or part of its shares in the Fund pursuant to Clause 18(d), such Member shall be paid its liquidating share in cash and/or, at the discretion of the Directors, in securities or other interests whether or not representing Investments or portions thereof selected by the Directors in their absolute discretion (including any interests in any Subsidiary) but in any event no later than 30 Business Days following the date on which such Member is notified of the redemption or transfer. The value of any distribution made pursuant to this Clause 18(e) shall be determined by the Directors or its delegates acting reasonably and in good faith as being a fair valuation of such liquidating share, provided always that the Directors shall have the right to have such value determined by a reputable major international audit and accountancy practice acting as expert and not as arbitrator.
- (f) If the Fund determines, at its absolute discretion, to allow a Member to retain its shares, despite the fact that the Member has not provided the information, representations, certificates or forms (or undertaken any actions) requested by the Fund or its delegates, it is possible that a withholding tax might be imposed in respect of certain of the Fund's income, and, to the extent that such income is attributable to the Member, or in respect of, or distributions to, such Member, the Fund shall have the right to cause the Member to bear the economic burden of such tax by specially allocating such tax to the shares held by the Member and/or by withholding any such tax from or distributions to such

Member.

- (g) The Directors may, in their discretion, require the compulsory redemption of any shares held by an ERISA Member or require an ERISA Member to transfer its shares to another person acceptable to the Directors and who would not be an ERISA Member, in each case upon notice from the Directors where the Directors determines in their absolute discretion that the continued ownership by the ERISA Member of a shares would result in the underlying assets of the Fund being treated as assets of any ERISA Member or in any other adverse regulatory consequence for the Fund or the Directors. It is intended that the aggregate value of each Class in the Fund held by ERISA Members will at all times be less than 25% of the aggregate value of such Class and the Directors may exercise the power set out in this Clause 18(g) to this end. In the event that all or any part of an ERISA Member's shares are compulsorily redeemed or transferred pursuant to this Clause 18(g), such ERISA Member shall be paid its liquidating share in cash and/or in securities or other interests whether or not representing Investments or portions thereof selected by the Directors in their absolute discretion (including any interests in any Subsidiary) in accordance with the requirements set out herein but in any event no later than 30 Business Days after the end of the notice period.
- (h) The Directors may, in their discretion, require the compulsory redemption of any shares held by an ERISA Member in connection with an Investment made via an AIV.
- (i) The Fund shall terminate and the Directors will arrange for the issued and outstanding shares of the Fund to be redeemed at the Net Asset Value per share on the Final Redemption Day, provided that the Final Redemption Day may be deferred for a finite period at the discretion of the Investment Manager and subject to approval by the Members in accordance with the Prospectus. Following such redemption, the Fund shall apply to the Central Bank for the withdrawal of the authorisation of the Fund. Settlement proceeds shall be paid to Members of record as soon as practicable after the Final Redemption Day. Where the redemption of shares on the termination of the Fund would result in the number of Members falling below the legal minimum number of members set out in the ICAV Act or would result in the issued share capital of the Fund falling below such minimum amount as the Fund may be obliged to maintain under the ICAV Act, the Fund may defer the redemption of such shares the redemption of which would result in such number or amount not being satisfied until the Fund is wound up or until the Fund procures the issue of sufficient shares to ensure that the aforesaid number and amount are satisfied. The Fund shall be entitled to select the shares for such deferred redemption in such manner as it may deem fair and reasonable and as may be approved by the Depositary.
- (j) Payment to a Member under this Clause 18 will ordinarily be made in the Base Currency of the relevant Class or in any other freely convertible currency at the rate of exchange for conversion on the date of payment and shall be dispatched within the period specified in the Prospectus.
- (k) Where the Fund determines to redeem shares in respect of which the Fund is required to account for, deduct or withhold tax, the Fund shall be entitled to deduct from the proceeds of the redemption such amount of tax as the Fund is required to account for, deduct or withhold and shall arrange to discharge the amount of tax due.
- (l) At the absolute discretion of the Directors and with the approval of the relevant Member, the Fund may satisfy any redemption of shares by the transfer to the Member

of assets of the Fund *in specie*, provided that the Fund shall transfer to the Member that proportion of the assets of the Fund which is then equivalent in value to the shareholding of the Member redeeming shares, but adjusted as the Directors may determine to reflect the liabilities of the Fund, provided always that the nature of the assets and the type of assets to be transferred to each Member shall be determined by the Directors on such basis as the Directors in their absolute discretion shall deem equitable and not materially prejudicial to the interests of the remaining Members, and such allocation shall be subject to the approval of the Depositary. For the foregoing purposes the value of assets shall be determined on the same basis as used in calculating the Net Asset Value. If a Member so requests, the Fund shall arrange to dispose of the Investments on behalf of the Member. The price obtained by the Fund may be different from the price at which the Investments were valued when determining the Net Asset Value and the AIFM, the Investment Manager and the Fund shall not be liable for any difference arising. The transaction costs incurred in the sale of any assets pursuant to this Clause 18(1) shall be payable by the relevant Member.

- (m) At the absolute discretion of the Directors, the Fund may satisfy any redemption of shares by a Member which represents five (5) per cent or more of the Net Asset Value of the Fund by the transfer to the Member of assets of the Fund *in specie*, provided always that the nature of the assets and the type of assets to be transferred to each Member shall be determined by the Directors on such basis as the Directors in their absolute discretion shall deem equitable and not prejudicial to the interests of the remaining Members and which shall be approved by the Depositary and for the foregoing purposes the value of the assets shall be determined on the same basis as used in calculating the Net Asset Value. If a Member so requests, the Fund shall arrange to dispose of the Investments on behalf of the Member. The price obtained by the Fund may be different from the price at which the Investments were valued when determining the Net Asset Value and the Investment Manager and the Fund shall not be liable for any difference arising. The transaction costs incurred in the sale of any assets pursuant to this Clause 18 shall be payable by the relevant Member.

## 19. TOTAL REDEMPTION

- (a) All of the shares of the Fund or Class may be redeemed by the Fund if so determined by the Directors, provided that notice of not less than twenty-one (21) days or such longer period as may be specified in the Prospectus has been given to the holders of shares in the Fund or the relevant Class.
- (b) If all of the shares are to be redeemed as aforesaid and the whole or any part of the business or property of the Fund or Class or any of the assets of the Fund is proposed to be transferred or sold to another company (hereinafter called the “**Transferee**”) the Fund may, with the sanction of a Special Resolution conferring either a general authority on the Directors or an authority in respect of any particular arrangement, receive in compensation or part compensation for the transfer or sale, shares, units, policies or other like interests or property in or of the Transferee for distribution among the Members, or may enter into any other arrangement whereby any Member may *in lieu* of receiving cash or property, or in addition thereto, participate in the profits of, or receive, any other benefit from the Transferee.
- (c) Where a redemption of shares pursuant to Clauses 19(a) or (b) would result in the number of Members falling below two or would result in the issued share capital of the Fund falling below such minimum amount as the Fund may be obliged to maintain pursuant to applicable law, the Fund may defer the redemption of such shares, the



redemption of which would result in such number or amount not being satisfied, until the Fund is wound up or until the Fund procures the issue of sufficient shares to ensure that the aforesaid number and amount are satisfied. The Fund shall be entitled to select the shares for such deferred redemption in such manner as it may deem to be fair and reasonable and as may be approved by the Depositary.

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

## **20. DETERMINATION OF NET ASSET VALUE**

- (a) The Fund shall determine the Net Asset Value of the Fund and each Class at each Valuation Point. The Net Asset Value shall be determined in accordance with this Clause 20 and the Prospectus. The Net Asset Value of the Fund is calculated by deducting the total liabilities of the Fund from the total assets of the Fund as may be further described in the Prospectus. Total assets include the value of all Investments held, the sum of any cash and accrued interest. Total liabilities comprise all liabilities including any borrowings, accrued expenses and any contingencies for which reserves are determined to be required. Members shall be informed of the Net Asset Value calculation(s) applicable to them in the manner provided for in the Prospectus or as otherwise determined by the Directors.
- (b) Subject to Clause 20(c), the Net Asset Value per share of a Class shall be the value of the gross assets attributable to the Class less all of the liabilities attributable to the Class in respect of the costs and expenses payable in relation to the Class divided by the number of shares of the Class outstanding as of the Valuation Point.
- (c) The Net Asset Value of each Class shall be determined by establishing the proportion of the assets of the Class as at the most recent Net Asset Value calculation or the close of the Commitment Period in the case of an initial offer of a Class, adjusted to take account of any subscription orders (after deduction of any redemption orders) and by allocating relevant Class Liabilities (as defined below) to the Class and making appropriate adjustments to take account of distributions paid, if applicable, and apportioning the Net Asset Value accordingly. The Net Asset Value per share of a Class shall be calculated by dividing the Net Asset Value of the Class by the number of shares in issue in that Class. Expenses or fees or charges not attributable to a particular Class may be allocated amongst the Classes based on their respective Net Asset Value or any other reasonable basis determined by the Fund in consultation with the Administrator and approved by the Depositary having taken into account the nature of the fees and charges. Class Liabilities relating specifically to a Class will be charged to that Class. In the event that Classes are priced in a currency other than the Base Currency, currency conversion costs will be borne by that Class. In the event that a hedged Class of shares is issued which is priced in a currency other than the Base Currency, the costs and

gains/losses of any hedging transaction will accrue solely to the hedged currency Class to which they relate. Hedged Classes of shares shall not be leveraged as a result of these transactions except to the extent agreed upon by the Central Bank.

“**Class Liabilities**” means any fees, expenses or other liabilities relating to a Class, including as may be disclosed in the Prospectus.

- (d) Unless otherwise specified in the Prospectus, the Fund at any time may, but shall not be obliged to, temporarily suspend the determination of the Net Asset Value, the sale, conversion and/or redemption of shares in the Fund, in the following instances and as disclosed in the Prospectus:
- (i) during any period (other than ordinary holiday or customary weekend closings) when any market is closed which is the main market for a significant part of the Fund’s Investments, or when trading thereon is restricted or suspended;
  - (ii) during any period when, as a result of political, economic, military or monetary events or any circumstances outside the control, responsibility and power of the Directors, disposal or valuation of a substantial portion of the investments of the Fund is not reasonably practicable without this being seriously detrimental to the interests of Members;
  - (iii) during any period during which disposal or valuation of Investments which constitute a substantial portion of the assets of the Fund is not practically feasible or if feasible would be possible only on terms materially disadvantageous to Members;
  - (iv) during any period when for any reason the prices of any Investments of the Fund cannot be reasonably, promptly, or accurately ascertained by the Fund;
  - (v) during any period when remittance of monies which will, or may, be involved in the realisation of, or in the payment for, Investments of the Fund cannot, in the opinion of the Directors, be carried out at normal rates of exchange;
  - (vi) during any period when proceeds of the sale or redemption of the shares cannot be transmitted to or from the Fund’s account;
  - (vii) upon the service on the Members of a notice to consider a resolution to wind up the Fund;
  - (viii) upon the occurrence of an event causing the Fund to enter into liquidation; or
  - (ix) during any period when the Directors consider it to be in the best interests of the Fund to do so.
- (e) The Fund may elect to treat the first Business Day on which the conditions giving rise to the suspension have ceased as a substitute Valuation Day in which case the Net Asset Value calculations shall be made at the relevant Valuation Point and/or all issues and/or redemptions of shares shall be effected on the Valuation Day relating to that Valuation Point. Alternatively, the Fund may elect not to treat such Business Day as a Valuation Day in which case it shall notify all applicants for shares and Members requesting redemption of shares who shall then be entitled to withdraw their applications and redemption requests by the date stated in the notification.

- (f) A suspension of redemptions may be made at any time prior to the payment of the redemption monies and the removal or the amendment to the Member's holding in the Register of Members. A suspension of subscriptions may be made at any time prior to the entry of the details of the relevant shares on the Register of Members.
- (g) Any such suspension shall be notified immediately to the Central Bank and in any event within the working day on the day of the suspension.

## 21. VALUATION OF ASSETS

- (a) The Net Asset Value of the Fund shall be calculated in accordance with the provisions of the Prospectus and such calculation shall be carried out for each Valuation Day as at the Valuation Point. Members shall be informed of the valuation(s) of Investments attributable to their shares in the manner provided for in the Prospectus or as otherwise determined by the AIFM.
- (b) Save as otherwise provided in the Prospectus, the assets and liabilities of the Fund are to be valued in accordance with International Financial Reporting Standards and the valuation policy of the Fund, using the following hierarchy of pricing sources:
  - (i) market prices (e.g. exchange provided prices);
  - (ii) pricing services (e.g. Bloomberg and Markit);
  - (iii) quotes from brokers or dealers;
  - (iv) counterparty valuations;
  - (v) recently observed and verifiable traded price, taking into account the trade size relative to the fund's position size and the trade timing relative to the Valuation Day;
  - (vi) Independent Valuation Service, if applicable; or
  - (vii) internally developed or adopted models of the Investment Manager.
- (c) The AIFM will seek to obtain, and utilise, all relevant market data and/or price sources at each Valuation Day, while recognising that all data sources are not equally reliable. At each Valuation Day, the AIFM will seek to obtain a primary price source and secondary price source for each position. The primary price will be the price obtained from the highest ranking source in the hierarchy (the "**Primary Price**"). The secondary price will be the price obtained from the second highest ranking source in the hierarchy (the "**Secondary Price**"). For the avoidance of doubt, two different independent pricing services may be used for the Primary Price and Secondary Price. Where any pricing source provides a range of values the mid-point should be selected. Where possible and appropriate, the AIFM will be consistent in its source from one Valuation Day to the next and across all positions of the same product category.
- (d) "Hard-to-value" assets or liabilities include assets or liabilities which are not listed or traded on a securities exchange or which have been delisted or suspended. Such assets and liabilities will be valued in accordance with the Valuation Policy on the basis of their expected net realisable value ("**Fair Value**"), determined in good faith by the AIFM or an independent valuation service (the "**Independent Valuation Service**").

- (e) For assets or liabilities where there is only one independent price source or no independent price source (i.e. where the price source is the AIFM), an Independent Valuation Service will be engaged at least annually to report on the Fair Value of such positions. In these scenarios the Independent Valuation Service will be utilised as the Primary Price source.
- (f) Cash and other liquid assets will be valued at their face value with interest accrued daily.
- (g) If the AIFM determines that the valuation of any investment pursuant to the valuation procedures does not fairly represent market value or would be inconsistent with International Financial Reporting Standards, the AIFM will value such investment as it determines in its good faith and discretion, and will set forth the basis of such valuation in writing. The AIFM expects that it will be uncommon to assign a value to a security that differs from the valuation pursuant to the valuation procedures.
- (h) The AIFM may appoint or procure the appointment of an external valuer to the Fund to perform the valuation function in accordance with the AIFMD Regulations and, in such case, references herein to the AIFM shall be deemed to include references to the external valuer acting in such capacity.

## **22. TRANSFER AND TRANSMISSION OF SHARES**

- (a) No transfer of shares, whether voluntary or involuntary, shall be valid or effective without the prior written consent of the Directors, which consent may not, in the case of a transfer of shares to an Affiliate of a Member, be unreasonably withheld or delayed; for the purposes of this Clause 22(a), it shall be reasonable for the Directors to withhold their consent if they consider that, amongst others:
  - (i) the transferee does not qualify as a Qualifying Investor;
  - (ii) in consequence of such transfer the transferor or the transferee would have less than the Minimum Capital Commitment;
  - (iii) the transfer would cause the Fund to be disqualified as a Irish collective asset-management vehicle or be terminated;
  - (iv) such transfer will be likely to result in:
    - (A) adverse legal or regulatory consequences for the Fund in any material jurisdiction; or
    - (B) an acceleration of any Fund indebtedness, a default under any loan or other agreement to which the Fund is a party or cause any assets of the Fund to become subject to cash collateralisation;
  - (v) any proposed transferee of the entire shareholding of a Member intends to hold such shareholding otherwise than for itself beneficially; or
  - (vi) the transfer would violate any applicable law or regulation, including the ICAV Act, the AIFMD, the AIFM Delegated Regulations, the AIFMD Regulations, the AIF Rulebook, Irish law, any term of this Instrument of Incorporation, any term of the Prospectus or otherwise adversely affect the Fund.

- (b) A Member wishing to transfer shares shall apply to the Fund for its consent to the transfer by giving not less than 20 Business Days' prior written notice (or such shorter period as the Fund shall determine, either generally or in any specific case, in its absolute discretion) and shall provide such information in relation to the proposed transfer and the transferee as may be required by the Directors and no such assignee or transferee of shares shall become a substitute member (a "**Substitute Member**") without such consent being given.
- (c) Only investors who certify that they are Qualifying Investors and that they are aware of the risks involved in the proposed investment and that inherent in such investment is the potential to lose all of the sum invested shall be entered on the Register of Members as a Member.
- (d) Prior to a proposed transfer, the Fund and/or the AIFM shall be entitled to require a written opinion of reputable counsel, satisfactory in form and substance to the Fund and the AIFM, to the effect that such transfer will not result in any of the effects referred to in Clause 22(a) or any other material adverse effect for the Fund, any Member or the AIFM. Such opinion shall cover such matters as the Fund and/or AIFM may reasonably request.
- (e) All transfers of shares shall be effected by a transfer in writing in any usual or common form and every form of transfer shall state the full name and address of the transferor and transferee. The Directors may decline to register any transfer of shares unless the instrument of transfer relates only to one Class of shares and is deposited at the registered office of the Fund or at such other place as the Directors may reasonably require, with such other evidence as the Directors may reasonably require to show the right of the transferor to make the transfer.
- (f) The instrument of transfer of a share shall be signed by or on behalf of the transferor and need not be signed by the transferee. The transferor shall be deemed to remain the holder of the share until the name of the transferee is entered in the Register of Members in respect thereof.
- (g) The transferring Member shall bear all costs and expenses arising in connection with any such permitted transfer, including reasonable legal fees arising in relation thereto including under Clause 22(d).
- (h) Any Substitute Member shall be bound by all the provisions of this Instrument of Incorporation and the Prospectus and, as a condition of giving its consent to any transfer to be made in accordance with the provisions of this Clause 22, the Directors may require any proposed Substitute Member to give such warranties and indemnities, consents and authorities as were given by Members upon their application for shares (including as appropriate by the transferring Member in its Subscription Agreement) and to require the Substitute Member to acknowledge its assumption (in whole or in part) of the Capital Commitment and other obligations of the transferring Member under this Instrument of Incorporation and the Prospectus and Irish law by completing a Subscription Agreement and/or an instrument of transfer in such form as the Directors may require.
- (i) If the Directors decline to register a transfer of any share they shall, within two Months of the date on which the transfer was lodged with the Fund, send to the transferee written notice of the refusal, where permitted to do so by applicable law.

- (j) The registration of any transfers may be suspended at such times and for such periods as the Directors from time to time may determine, provided always that such registration of transfers shall not be suspended for more than thirty (30) days in any calendar year.
- (k) All instruments of transfer which shall be registered shall be retained by the Fund subject to Clause 49, but any instrument of transfer which the Directors may decline to register shall (except in the case of fraud or where such is not permitted by applicable law) be returned to the person depositing the same.
- (l) None of the Fund, the AIFM and the Investment Manager shall incur any liability for allocations and distributions made in good faith to the transferring Member and such transfer shall not be valid or effective until the written instrument of transfer has been received by the Fund, accepted by the Fund and recorded in the Register of Members and the other provisions of this Clause 22 have been satisfied.
- (m) Notwithstanding any other provisions of this Clause 22, each of the Members undertakes to notify the Fund and the AIFM forthwith in writing of the full name and beneficial ownership of any entity or person to whom it proposes to transfer its shares pursuant to this Clause 22, of any change in its own name and of any other information which the Fund and/or the AIFM may reasonably request.
- (n) No transfer of shares in violation of this Clause 22 shall be valid or effective and consequently the Fund shall not recognise such transfer for any purpose, including the making of distributions of income or capital, or otherwise with respect to shares and any transfer of shares to a Substitute Member on the basis of any representation by a Member which is untrue or which is subsequently breached by such Member shall be void.
- (o) In the case of the death of a Member, the survivors or survivor where the deceased was a joint holder, and the executors or administrators of the deceased where he was a sole or surviving holder, shall be the only person recognised by the Fund as having title to his interest in the shares, but nothing in this Clause 22 shall release the estate of the deceased holder whether sole or joint from any liability in respect of any share solely or jointly held by him.
- (p) Any guardian of an infant Member and any guardian or other legal representative of a Member under legal disability and any person entitled to a share in consequence of the death, insolvency or bankruptcy of a Member shall, upon producing such evidence of his title as the Directors may require, have the right either to be registered himself as the holder of the share or to make such transfer thereof as the deceased or bankrupt Member could have made, but the Directors shall, in either case, have the same right to refuse or suspend registration as they would have had in the case of a transfer of the share by the infant or by the deceased, insolvent or bankrupt Member before the death, insolvency or bankruptcy of the Member under legal disability before such disability.
- (q) A person so becoming entitled to a share in consequence of the death, insolvency or bankruptcy of a Member shall have the right to receive and may give a discharge for all monies payable or other advantages due on or in respect of the share, but he shall not be entitled to receive notice of or to attend or vote at meetings of the Fund, nor save as aforesaid, to any of the rights or privileges of a Member unless and until he shall be registered as a Member in respect of the share, provided always that the Directors may at any time give notice requiring any such person to elect either to be registered himself

or to transfer the share and if the notice is not complied with within ninety (90) days the Directors may thereafter withhold all moneys payable or other advantages due in respect of the share until the requirements of the notice have been complied with.

### **23. INVESTMENT OBJECTIVES**

The Prospectus shall, where appropriate, set out details of the size, portfolio structure and investment strategy and objective of the Fund. Under the current Rules, the Fund is deemed to be a collective investment scheme for marketing solely to Qualifying Investors. Consequently, the minimum subscription amount will not fall below the amount prescribed by the Central Bank in respect of such Qualifying Investors, which is currently €100,000.

### **24. GENERAL MEETINGS**

- (a) All general meetings of the Fund shall be held in Ireland.
- (b) Subject to the requirements of the ICAV Act and to Clause 24(c), the Fund shall in each year hold a general meeting as its annual general meeting in addition to any other meeting in that year. Subject to Clause 24(c), not more than fifteen Months shall elapse between the date of one annual general meeting of the Fund and that of the next, provided that if the Fund holds its first annual general meeting within eighteen Months after the date on which the registration order made by the Central Bank in respect of the Fund comes into effect, the Fund need not hold any other meeting as its annual general meeting in the year of its incorporation or in the following year. Subject to Clause 24(c), subsequent annual general meetings shall be held once in each year as determined by the Directors from time to time at such time and place in Ireland as may be determined by the Directors.
- (c) Subject to the requirements of the ICAV Act, the Directors may, and intend to, elect to dispense with the holding of an annual general meeting by giving 60 days' written notice to the Members. An election under this Clause has effect for the year in which it is made and subsequent years, but does not affect any liability already incurred by reason of default in holding an annual general meeting. Where an election under this Clause has effect for a year:
  - (i) one or more Members holding, or together holding, not less than 10% of the voting rights in the Fund, or
  - (ii) the Auditor,may require the Fund to hold an annual general meeting in that year by giving notice in writing to the Fund in the previous year or at least one Month before the end of that year and the Fund shall hold the required meeting.
- (d) All general meetings (other than annual general meetings) shall be called extraordinary general meetings.
- (e) The Directors may call an extraordinary general meeting whenever they think fit and extraordinary general meetings shall be convened on such requisition, or in default may be convened by such requisitionists, and in such manner as provided in this Instrument of Incorporation and by the ICAV Act.

### **25. NOTICE OF GENERAL MEETINGS**

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

## **26. PROCEEDINGS AT GENERAL MEETINGS**

- (a) All business that is transacted at an extraordinary general meeting and all business that is transacted at an annual general meeting, with the exception of the election of Directors in the place of those retiring, the reappointment of the retiring Auditors and the fixing of the remuneration of the Auditors, shall be deemed special.
- (b) No business shall be transacted at any general meeting unless a quorum is present. Two Members present either in person or by proxy shall be a quorum for a general meeting, provided that, in the event that there is only one Member in the Fund or class, the quorum shall be one Member present in person or by proxy at the meeting. A representative of a corporation authorised pursuant to Clause 27(m) to be present at any meeting of the Fund shall be deemed to be a Member for the purpose of a quorum.
- (c) If within thirty (30) minutes from the time appointed for a meeting a quorum is not present, the meeting, if convened on the requisition of or by Members, shall be dissolved. In any other case it shall stand adjourned to the same day in the next week, at the same time and place or to such other day and at such other time and place as the Directors may determine.
- (d) The chairman or, if absent, the deputy chairman of the Fund, or failing him, some other Director nominated by the Directors shall preside as chairman at every general meeting of the Fund, but if at any meeting neither the chairman nor the deputy chairman nor any other Director is present within fifteen minutes after the time appointed for holding the meeting, or if none of them are willing to act as chairman, the Directors present shall choose some Director present to be chairman, or if no Directors are present, or if all the Directors present decline to take the chair, the Members present shall choose some Member present to be chairman.
- (e) The chairman may, with the consent of any meeting at which a quorum is present (and shall if so directed by the meeting), adjourn the meeting from time to time and from place to place but no business shall be transacted at any adjourned meeting except business which might lawfully have been transacted at the meeting from which the adjournment took place. When a meeting is adjourned for fourteen (14) days or more ten (10) days' notice at the least specifying the place, the day and the hour of the



adjourned meeting, shall be given as in the case of the original meeting but it shall not be necessary to specify in such notice the nature of the business to be transacted at the adjourned meeting. Save as aforesaid, it shall not be necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.

- (f) At any general meeting, a resolution put to the vote of the meeting shall be decided on a show of hands unless before or upon the declaration of the result of the show of hands a poll is demanded by the chairman or by five (5) Members or by any Members present representing at least one tenth in number or value of the shares in issue having the right to vote at the meeting. Unless a poll is so demanded, a declaration by the chairman that a resolution has been carried, or carried unanimously, or by a particular majority, or lost, or not carried by a particular majority, and an entry to that effect in the book containing the minutes of the proceedings of the Fund shall be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against such resolution.
- (g) If a poll is duly demanded, it shall be taken in such manner and at such place as the chairman may direct (including the use of ballot or voting papers or tickets) and the result of a poll shall be deemed to be the resolution of the meeting at which the poll was demanded.
- (h) The chairman may, in the event of a poll, appoint scrutineers and may adjourn the meeting to some place and time fixed by him for the purpose of declaring the result of the poll.
- (i) In the case of an equality of votes, whether on a show of hands or on a poll, the chairman of the meeting at which the show of hands takes place or at which the poll is demanded shall have a second or casting vote.
- (j) A poll demanded on the election of a chairman and a poll demanded on a question of adjournment shall be taken forthwith. A poll demanded on any other question shall be taken at such time and place as the chairman directs not being more than thirty (30) days from the date of the meeting or adjourned meeting at which the poll was demanded.
- (k) The demand for a poll shall not prevent the continuance of a meeting for the transaction of any business other than the question on which the poll has been demanded.
- (l) A demand for a poll may be withdrawn and no notice need be given of a poll not taken immediately.
- (m) If at any time the share capital is divided into different Classes of shares, the rights attached to any Class (unless otherwise provided by the terms of issue of the shares of that Class or unless otherwise provided herein) may, whether or not the Fund is being wound up, be varied at the absolute discretion of the Directors with the consent in writing of all of the holders of shares in that Class or the approval of three-fourths of the holders of shares in that Class, by value, eligible to vote and represented or present and voting at a separate general meeting of the holders of the shares of that Class, to which the provisions of this Instrument of Incorporation relating to general meetings shall mutatis mutandis apply.
- (n) Subject to the provisions of the ICAV Act and except where otherwise prescribed by the ICAV Act, a resolution in writing signed by all of the Members for the time being

entitled to attend and vote on such resolution at a general meeting (or being bodies corporate by their duly authorised representative) shall be as valid and effective for all purposes as if the resolution had been passed at a general meeting duly convened and held, and may consist of several documents in like form each signed by one or more persons, and if described as a Special Resolution shall be deemed to be a Special Resolution within the meaning of the ICAV Act. Any such resolution shall be served on the Fund.

## **27. VOTES OF MEMBERS**

- (a) On a show of hands every Member who is present shall have one vote.
- (b) On a poll every Member present in person or by proxy shall be entitled to one vote in respect of each share held by him.
- (c) In the case of joint holders of a share, the vote of the senior who tenders a vote, whether in person or by proxy, shall be accepted to the exclusion of the votes of the other joint holders, and for this purpose seniority shall be determined by the order in which the names stand in the Register of Members in respect of the shares.
- (d) No objection shall be raised to the qualification of any voter except at the meeting or adjourned meeting at which the vote objected to is given or tendered, and every vote not disallowed at such meeting shall be valid for all purposes. Any such objection made in due time shall be referred to the chairman of the meeting, whose decision shall be final and conclusive.
- (e) On a poll, votes may be given either personally or by proxy.
- (f) On a poll, a Member entitled to more than one vote need not, if he votes, use all his votes or cast all the votes he uses in the same way.
- (g) The instrument appointing a proxy shall be in writing under the hand of the appointor or of his attorney duly authorised in writing, or if the appointor is a corporation, either under its common seal or under the hand of an officer or attorney so authorised. The appointment of a proxy by electronic means shall be effective only in such form as the Directors may approve. An instrument of proxy shall be in any usual form or in such form as the Directors may approve, provided always that such form shall give the holder the choice of authorising his/her proxy to vote for or against each resolution.
- (h) Any person (whether a Member or not) may be appointed to act as a proxy. A Member may appoint more than one proxy to attend on the same occasion.
- (i) The instrument appointing a proxy and the power of attorney or other authority (if any) under which it is signed or a notarially certified copy of such power or authority, shall be deposited at the registered office of the Fund or at such other place as is specified for that purpose in the notice of meeting or in the instrument of proxy issued by the Fund not later than the deadline for receipt of proxies set out in the notice of meeting and if the aforesaid conditions are not complied with the instrument of proxy shall not be treated as valid. Where the appointment of a proxy and any authority under which it is signed is to be received by the Fund in electronic form, it may also be received where an address has been specified by the Fund for the purpose of receiving Electronic Communications:

- (i) in the notice convening the meeting; or
  - (ii) in any appointment of proxy sent out by the Fund in relation to the meeting; or
  - (iii) in any invitation contained in an Electronic Communication to appoint a proxy issued by the Fund in relation to the meeting.
- (j) No instrument appointing a proxy shall be valid after the expiration of twelve Months from the date named in it as the date of its execution, except at an adjourned meeting or on a poll demanded at a meeting or an adjourned meeting in cases where the meeting was originally held within twelve Months from such date.
- (k) The Directors may at the expense of the Fund send, by post or otherwise, to the Members instruments of proxy (with or without prepaid postage for their return) for use at any general meeting or at any meeting of any class of Members, either in blank or nominating in the alternative any one or more of the Directors or any other persons as proxy. If for the purpose of any meeting invitations to appoint as proxy a person or one of a number of persons specified in the invitations are issued at the expense of the Fund, such invitations shall be issued to all (and not to some only) of the Members entitled to be sent a notice of the meeting and to vote thereat by proxy.
- (l) A vote given in accordance with the terms of an instrument of proxy shall be valid notwithstanding the death or insanity of the principal or the revocation of the instrument of proxy, or of the authority under which the instrument of proxy was executed, or the transfer of the shares in respect of which the instrument of proxy is given, provided that no intimation in writing of such death, insanity, revocation or transfer shall have been received by the Fund at the registered office of the Fund, before the commencement of the meeting or adjourned meeting at which the instrument of proxy is used.
- (m) Any body corporate which is a Member may authorise by resolution of its Directors or other governing body such person as it thinks fit to act as its representative at any meeting of the Fund and the person so authorised shall be entitled to exercise the same powers on behalf of the body corporate which he represents as that body corporate could exercise if it were an individual Member and such body corporate shall for the purposes of these presents be deemed to be present in person at any such meeting if a person so authorised is present thereat.
- (n) The provisions of Clauses 24, 25, 26 and 27 shall apply *mutatis mutandis* to meetings of each Class or series of Members.

## **28. THE FUND AS A FEEDER FUND**

- (a) In the event that the Fund is invited or requested to vote and/or to consent to any matter in its capacity as a Feeder Fund, the Fund will seek a corresponding vote and/or consent from Members in respect of such matter and will exercise its votes and/or consents as a Feeder Fund in a manner which reflects the result of any such vote and/or consent given by the Members (and may split its vote and/or consent accordingly), provided that where a Member does not exercise its right to vote and/or consent, the Fund shall exercise its rights as a Feeder Fund in relation to any relevant vote and/or consent in such manner as it may in its discretion deem appropriate.

## **29. DIRECTORS**

- (a) The number of the Directors shall not be less than two or, unless otherwise determined by the Fund by Ordinary Resolution, more than twelve (12). The first Directors shall be appointed by the subscribers herein.
- (b) A Director need not be a Member.
- (c) The Directors shall have power at any time and from time to time to appoint any person to be a Director, either to fill a casual vacancy or as an addition to the existing Directors.
- (d) Subject to the prohibition on tax-free payments to Directors contained in the ICAV Act, the Directors shall be entitled to such remuneration in relation to the performance of their duties as the Directors may from time to time determine. The Directors and any alternate Directors may also be paid all travelling, hotel and other expenses properly incurred by them in attending and returning from meetings of the Directors or any committee of the Directors or general meetings or any meetings in connection with the business of the Fund.
- (e) The Fund shall not make any payment to a Director by way of compensation for loss of office, or as consideration for or in connection with retirement for loss of office, or as consideration for or in connection with retirement from office, unless the following conditions are first satisfied:
  - (i) that particulars relating to the proposed payment (including its amount) are disclosed to the Members; and
  - (ii) that the proposal is approved by resolution of the Fund in general meeting.
- (f) The Directors may, in addition to such remuneration as is referred to in Clause 29(d) hereof grant special remuneration to any Director who, being called upon, shall perform any special or extra services to or at the request of the Fund.
- (g) The Fund at any general meeting at which a Director retires or is removed shall fill the vacated office by electing a Director unless the Fund shall determine to reduce the number of Directors.
- (h) The office of a Director shall be vacated by a Director in any of the following events, namely:
  - (i) if he resigns his office by notice in writing signed by him and left at the registered office of the Fund;
  - (ii) if he becomes bankrupt or makes any arrangement or composition with his creditors generally;
  - (iii) if he becomes of unsound mind;
  - (iv) if he ceases to be a Director by virtue of, or becomes prohibited from being a Director by reason of an order made under the provisions of any law or enactment;
  - (v) if he is requested by a majority of the other Directors (not being less than two in number) to vacate office; or
  - (vi) if he is removed from office by an Ordinary Resolution.

- (i) At a general meeting a motion for the appointment of two or more persons as Directors by a single resolution shall not be made unless a resolution that it shall be so made has been first agreed to by the meeting without any vote being given against it.
- (j) Any Director may at any time by instrument in writing (whether in electronic form or otherwise in writing) under his hand and deposited at the registered office, or delivered at a meeting of the Directors, appoint any Director or other person to be his alternate Director and may in like manner at any time terminate such appointment.
- (k) The appointment of an alternate Director shall determine if his appointer ceases to be a Director or on the happening of any such event which if he were a Director would cause him to vacate such office.
- (l) An alternate Director shall be entitled to receive notices of meetings of the Directors and shall be entitled to attend and vote as a Director at any such meeting at which the Director appointing him is not personally present and generally at such meeting to perform all functions of his appointor as a Director and for the purposes of the proceedings at such meeting the provisions hereof shall apply as if he (instead of his appointor) were a Director. If he himself shall be a Director, or shall attend any such meeting as an alternate for more than one Director, his voting rights shall be cumulative, provided, however, that he shall count as one for the purposes of determining a quorum. If his appointor is for the time being temporarily unable to act, his signature to any resolution in writing of the Directors or any other document executed on behalf of the Fund shall be as effective as the signature of his appointor. To such extent as the Directors may from time to time determine in relation to any committee of the Directors, the foregoing provisions of this paragraph shall also apply *mutatis mutandis* to any meeting of any such committee of which his appointer is a member. An alternate Director shall not (save as aforesaid or as otherwise herein provided) have power to act as a Director nor shall he be deemed to be a Director.
- (m) An alternate Director shall be entitled to contract and be interested in and benefit from contracts or arrangements or transactions and to be repaid expenses and to be indemnified to the same extent *mutatis mutandis* as if he were a Director but he shall not be entitled to receive from the Fund in respect of his appointment as alternate Director any remuneration except only such part (if any) of the remuneration otherwise payable to his appointor as such appointor may by notice in writing to the Fund from time to time direct.

### **30. DIRECTORS, OFFICES AND INTERESTS**

- (a) The Directors may appoint one or more of their body to the office of managing Director or joint managing Director or to any other executive office under the Fund (including, where considered appropriate, the office of chairman) on such terms and for such period as they may determine and, without prejudice to the terms of any contract entered into in any particular case, may revoke any such appointment at any time.
- (b) A Director holding any such executive office shall receive such remuneration, whether in addition to, or in substitution for, his ordinary remuneration, as a Director and whether by way of salary, commission, participation in profits or otherwise or partly in one way and partly in another, as the Directors may determine.
- (c) The appointment of any Director to the office of chairman or managing or joint managing Director shall determine automatically if he ceases to be a Director but

without prejudice to any claim for damages for breach of any contract of service between him and the Fund.

- (d) The appointment of any Director to any other executive office shall not determine automatically if he ceases from any cause to be a Director unless the contract or resolution under which he holds office shall expressly state otherwise, in which event such determination shall be without prejudice to any claim for damages for breach of any contract of service between him and the Fund.
- (e) A Director may hold any other office or place of profit under the Fund (except that of Auditor) in conjunction with his office of Director, and may act in a professional capacity to the Fund, on such terms as to remuneration and otherwise as the Directors may arrange.
- (f) Subject to the provisions of the ICAV Act, and provided that he has disclosed to the Directors the nature and extent of any direct or indirect interest of his, a Director notwithstanding his office:
  - (i) may be a party to, or otherwise interested in, any transaction or arrangement with the Fund or in which the Fund is interested; and
  - (ii) shall not be accountable, by reason of his office, to the Fund for any benefit which he derives from any such office or employment or from any such transaction or arrangement or from any interest in any such body corporate and no such transaction or arrangement shall be liable to be avoided on the ground of any such interest or benefit.
- (g) No Director or intending Director shall be disqualified by his office from contracting with the Fund either as vendor, purchaser or otherwise, nor shall any such contract or any contract or arrangement entered into by or on behalf of the Fund 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 Fund for any profit realised by any such contract or arrangement by reason of such Director holding that office or of the fiduciary relationship thereby established. The nature of a Director's interest must be declared by him at the meeting of the Directors at which the question of entering into the contract or arrangement is first taken into consideration, or if the Director was not at the date of that meeting interested in the proposed contract or arrangement at the next meeting of the Directors held after he became so interested, and in a case where the Director becomes interested in a contract or arrangement after it is made, at the first meeting of the Directors held after he becomes so interested.
- (h) A copy of every declaration made and notice given under this Clause shall be entered within three (3) days after the making or giving thereof in a book kept for this purpose. Such book shall be open for inspection without charge by any Director, Secretary, Auditor or Member at the registered office of the Fund and shall be produced at every general meeting of the Fund and at any meeting of the Directors if any Director so requests in sufficient time to enable the book to be available at the meeting.
- (i) For the purposes of this Clause:
  - (i) a general notice given to the Directors by a Director to the effect that he is a member of a specified Irish collective asset management vehicle or a specified company or firm and is to be regarded as interested in any contract which may,

after the date of the notice, be made with that Irish collective asset management vehicle, company or firm, or he is to be regarded as interested in any contract which may after the date of the notice be made with a specified person who is connected with him within the meaning of section 77 of the ICAV Act shall be deemed to be a sufficient declaration of interest in relation to any such contract, provided, however, that no such notice shall be of effect unless either it is given at a meeting of the Directors or the Director takes reasonable steps to secure that it is brought up and read at the next meeting of the Directors after it is given;

- (ii) an interest of which a Director has no knowledge and of which it is unreasonable to expect him to have knowledge shall not be treated as an interest of his; and
  - (iii) a Director shall not be required to declare his interest where that interest cannot reasonably be regarded as likely to give rise to a conflict with the interests of the Fund.
- (j) Save as otherwise provided by this Instrument of Incorporation, a Director shall not vote at a meeting of the Directors or a committee of Directors on any resolution concerning a matter in which he has, directly or indirectly, an interest which is material or a duty which conflicts or may conflict with the interests of the Fund. Unless otherwise resolved by the Directors, a Director shall not be counted in the quorum present at a meeting in relation to any such resolution on which he is not entitled to vote.
- (k) A Director shall be entitled (in the absence of some other material interest than is indicated below) to vote (and be counted in the quorum) in respect of any resolution concerning any of the following matters, namely:
- (i) the giving of any security, guarantee or indemnity to him in respect of money lent by him to the Fund or any of its Subsidiaries or Associated Companies or obligations incurred by him at the request of or for the benefit of the Fund or any of its Subsidiaries or Associated Companies;
  - (ii) the giving of any security, guarantee or indemnity to a third party in respect of a debt or obligation of the Fund or any of its Subsidiaries or Associated Companies for which he himself has assumed responsibility in whole or in part under a guarantee or indemnity or by the giving of security;
  - (iii) any proposal concerning any offer of shares or other securities of or by the Fund or any of its Subsidiaries or Associated Companies for subscription, purchase or exchange in which offer he is or is to be interested as a participant in the underwriting or sub-underwriting thereof; or
  - (iv) any proposal concerning any Master Fund; body corporate; company; or trust, partnership or other body of persons in which he is or is to be interested, directly or indirectly and whether as an officer, shareholder, employee or otherwise.
- (l) Where proposals are under consideration concerning the appointment (including fixing or varying the terms of appointment) of two or more Directors to offices or employments with the Fund such proposals may be divided and considered in relation

to each Director separately and in such case each of the Directors concerned (if not otherwise debarred from voting) shall be entitled to vote (and be counted in the quorum) in respect of each resolution, except that concerning his own appointment.

- (m) If a question arises at a meeting of Directors or of a committee of Directors as to the materiality of a Director's interest or as to the right of any Director to vote and such question is not resolved by his voluntarily agreeing to abstain from voting, such question may be referred, before the conclusion of the meeting, to the chairman of the meeting and his ruling in relation to any Director other than himself shall be final and conclusive.
- (n) For the purpose of this Clause 30, an interest of a person who is the spouse or a minor child of a Director shall be treated as an interest of the Director and, in relation to an alternate Director, an interest of his appointor shall be treated as an interest of the alternate Director.
- (o) The Fund by Ordinary Resolution may suspend or relax the provisions of this Clause 30 to any extent or ratify any transaction not duly authorised by reason of a contravention of this Clause 30.

### **31. POWERS OF DIRECTORS**

- (a) The business of the Fund shall be managed by the Directors, who may exercise all such powers of the Fund as are not by the ICAV Act, by the Rules or hereby required to be exercised by the Fund in general meeting, subject, nevertheless, to the provisions of the ICAV Act, to the Rules and to the regulations herein contained being not inconsistent with the aforesaid regulations as may be prescribed by the Fund in general meeting, but no regulations made by the Fund in general meeting shall invalidate any prior act of the Directors which would have been valid if such regulations had not been made. The general powers given by this Clause 31 shall not be limited or restricted by any special authority or power given to the Directors by this or any other Clause.
- (b) All cheques, promissory notes, drafts, bills of exchange and other negotiable or transferable instruments drawn on the Fund, and all other receipts for moneys paid to the Fund shall be signed, drawn, accepted, endorsed or otherwise executed, as the case may be, in such manner as the Directors from time to time shall by resolution determine.
- (c) Subject to the limits and conditions set forth in the AIFMD Regulations and in the Prospectus and subject to the provisions of this Instrument of Incorporation, the Directors may exercise all the powers of the Fund to invest the Fund's assets. The Directors may exercise all the powers of the Fund to invest all or any funds of the Fund as authorised by this Instrument of Incorporation and may establish Subsidiaries in the circumstances specified by the Central Bank and subject to the conditions imposed by the Central Bank, including restrictions on the Subsidiary acting other than under the control of the Fund and restrictions on any person or entity other than the Fund holding shares in the Subsidiary.

### **32. BORROWING AND INVESTMENT POWERS**

Subject to the limits and conditions set forth in the ICAV Act and in the Prospectus or otherwise laid down by the Central Bank and subject to the provisions of this Instrument of Incorporation (including, without limitation, Clause 33(j) hereof), the Directors may exercise all the powers



of the Fund to make and dispose of Investments, borrow money, to mortgage, charge, pledge or assign its undertaking, property, or any part thereof, including in such manner and as set out in the Prospectus.

### **33. PROCEEDINGS OF DIRECTORS**

- (a) The Directors may meet together for the dispatch of business, adjourn and otherwise regulate their meetings as they think fit. Questions arising at any meeting shall be determined by a majority of votes. In the case of an equality of votes, the chairman shall have a second or casting vote. A Director may, and the Secretary on the requisition of a Director shall, at any time summon a meeting of the Directors.
- (b) The quorum necessary for the transaction of business of the Directors may be fixed by the Directors and, unless so fixed at any other number, shall be two.
- (c) The continuing Directors or a sole continuing Director may act notwithstanding any vacancies in their number but, if and so long as the number of Directors is reduced below the minimum number fixed by or in accordance with the provisions hereof, the continuing Directors or Director may act for the purpose of filling vacancies in their number or of summoning general meetings of the Fund, but not for any other purpose. If there be no Directors or Director able or willing to act, then any two Members may summon a general meeting for the purpose of appointing Directors.
- (d) The Directors may from time to time elect or remove a chairman and, if they think fit, a deputy chairman and determine the period for which they respectively are to hold office.
- (e) The chairman or, failing him, the deputy chairman shall preside at all meetings of the Directors, but if there be no chairman or deputy chairman, or if at any meeting the chairman or deputy chairman be not present within five (5) minutes after the time appointed for holding the same, the Directors present may choose one of their number to be chairman of the meeting.
- (f) A resolution in writing (in electronic form or otherwise) signed (whether by Electronic Signature, Advanced Electronic Signature or otherwise approved by the Directors) by all the Directors for the time being entitled to receive notice of a meeting of the Directors and to vote thereat shall be as valid and effectual as a resolution passed at a meeting of the Directors duly convened and may consist of several documents in the like form each signed by one or more of the Directors and for the purposes of the foregoing, signature by any alternate Director shall be as effective as the signature of the Director by whom he is appointed. A resolution in writing shall be deemed to have been signed in the country or place where the last signatory to sign the resolution in writing (in electronic form or otherwise) executes such resolution.
- (g) A meeting of the Directors for the time being at which a quorum is present shall be competent to exercise all powers and discretions for the time being exercisable by the Directors.
- (h) The Directors may delegate any of their powers to committees consisting of such of their members as they think fit. The meetings and proceedings of any such committee shall conform to the requirements as to quorum imposed under the provisions of Clause 33(b) and shall be governed by the provisions hereof regulating the meetings and proceedings of the Directors so far as the same are applicable and are not superseded

by any regulations imposed on them by the Directors.

- (i) The Directors may, whether by standing resolution or otherwise, delegate their powers relating to the issue and redemption of shares and the calculation of the Net Asset Value of the shares, the declaration of dividends and all management and administrative duties in relation to the Fund to the Administrator or to any duly authorised Officer or other person subject to such terms and conditions as the Directors in their absolute discretion may resolve.
- (j) The Directors may delegate their powers relating to the management of the Fund's assets to the AIFM, the Investment Manager or its or their sub-delegates or to any duly authorised Officer or other person, subject to such terms and conditions as the Directors in their absolute discretion may resolve.
- (k) All acts done by any meeting of Directors, or of a committee of Directors or by any person authorised by the Directors shall, notwithstanding it be afterwards discovered that there was some defect in the appointment or authorisation of any such Directors or person acting as aforesaid, or that they or any of them were disqualified, or had vacated office, or were not entitled to vote, be as valid as if every such person had been duly appointed, and was qualified and had continued to be a Director and had been entitled to vote.
- (l) The Directors shall cause minutes to be made of:
  - (i) all appointments of Officers made by the Directors;
  - (ii) the names of the Directors present at each meeting of the Directors and of any committee of Directors; and
  - (iii) all resolutions and proceedings of all general meetings of the Fund and of the Directors and of committees of Directors.
- (m) Any such minutes as are referred to in Clause 33(l) hereof, if purporting to be signed by the chairman of the meeting at which the proceedings took place, or by the chairman of the next succeeding meeting, shall, until the contrary be proved, be conclusive evidence of the proceedings.
- (n) Any Director may participate in a meeting of the Directors or any committee of the Directors by means of a conference telephone or other telecommunication equipment by means of which all persons participating in the meeting can hear each other speak and such participation in a meeting shall constitute presence in person at the meeting.

#### **34. SECRETARY**

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

### 35. THE SEAL AND AUTHORISED SIGNATORIES

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

### 36. INVESTOR ADVISORY COMMITTEE

- (a) The AIFM may (but is not required to) invite Members and investors in any Parallel Fund or AIV to appoint a person to a committee of the Members and investors in such entity (the “**Investor Advisory Committee**”) which shall be composed of not more than seven members (unless increased with the consent of the AIFM and a majority of members of the Investor Advisory Committee). Members of the Investor Advisory Committee may not be associates of the AIFM.
- (b) Where permitted by the AIFM in its absolute discretion, any member of the Investor Advisory Committee may appoint any person or entity to act as its alternate. Such alternate shall be entitled to attend and vote at any meetings of the Investor Advisory Committee at which the appointing Member is not present and any references in this Instrument of Incorporation to a member of the Investor Advisory Committee shall be deemed to be a reference to any such alternate, as the context requires.
- (c) The Investor Advisory Committee will meet at least once a year and may meet more frequently as required or requested by the AIFM or any member of the Investor Advisory Committee. Notice of all meetings shall be given or mailed to each member not less than five (5) Business Days before the date of such meeting. Notice of any meeting may be waived in writing, either before or after the meeting, and shall be deemed to be waived by any member in attendance.
- (d) Members of the Investor Advisory Committee may vote and participate in meetings in person, by proxy or delegate, by written consent or by means of conference telephone or similar communication equipment. The Investor Advisory Committee may adopt such by-laws for the conduct of their meetings as they may deem appropriate, provided that such by-laws may not be inconsistent with this Instrument of Incorporation.
- (e) Unless otherwise provided in this Instrument of Incorporation, all matters to come before the Investor Advisory Committee shall be determined by majority vote. Action may be taken by the Investor Advisory Committee by written consent based upon the same vote that would be required to authorise such action at a meeting held in person.
- (f) Notwithstanding anything to the contrary in this Instrument of Incorporation a Member shall not be entitled to vote on any matters before the Investor Advisory Committee in

relation to which it has a direct or indirect conflict of interest.

- (g) The function of the Investor Advisory Committee shall be to review and/or provide such advice and counsel as may be requested by the AIFM in relation to the matters that the AIFM refers to it, with its recommendations being non-binding other than as provided in this Instrument of Incorporation and as more particularly set out in the Prospectus.
- (h) The Investor Advisory Committee will not owe any fiduciary duties to the Fund or any Member<sup>1</sup> and members of the Investor Advisory Committee will be entitled to an indemnity on the terms as are set out under Clause 48.
- (i) The Fund shall reimburse members of the Investor Advisory Committee for their reasonable expenses actually incurred in attending one meeting of the Investor Advisory Committee per year. Members (or their employers) shall bear the expense of their attendance at all other meetings.

### 37. PROFITS, LOSSES AND DISTRIBUTIONS

- (a) No distributions shall be made to Members during the Commitment Period.
- (b) Following the end of the Commitment Period, the Directors may make distributions of Net Distributable Income on a Class by Class basis on the terms set out in the Prospectus. Distributions of Net Distributable Income are generally expected to be made by way of dividend in respect of Shares but may be made by way of compulsory redemptions of Shares at the Directors' absolute discretion. Distributions of Net Distributable Income shall not increase the amount of a Member's Undrawn Capital Commitment.
- (c) During the Investment Period, the Directors may, at the direction of the AIFM: (i) retain any Net Investment Proceeds within the Fund, without reducing the Members' Undrawn Capital Commitments, for the purpose of making Investments and/or paying Fund Expenses or Management Fees; or (ii) return Net Investment Proceeds to the Members, thereby increasing their respective Undrawn Capital Commitments (but not above their total Capital Commitments to the Fund). Any such amounts returned to the Members, expressly excluding distributions of Net Distributable Income, hereunder may be subject to recall or redeployment for contribution to the Fund as provided herein.
- (d) Following the end of the Investment Period, Net Investment Proceeds re-invested by the Fund shall not exceed (i) the amount that (X) Management Fees and Fund Expenses drawn down from Members during the Investment Period; exceeds (Y) amounts re-invested by the Fund during the Investment Period plus amounts re-advanced by Members during the Investment Period in respect of Commitment drawn down from them in respect of Management Fee or Fund Expenses; and (ii) the Management Fees and Fund Expenses incurred following the end of the Investment Period and drawn down from Members.
- (e) Where Net Investment Proceeds (other than Net Distributable Income) are to be distributed, such Net Investment Proceeds available for distribution ("**Disposition**")

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<sup>1</sup> *Note to draft:* The addition of "or any Member" codifies the confirmation provided to PSP in its Fund I side letter.

**Proceeds**”) will be distributed to all Members as soon as reasonably practicable (and in any event within three Months) after receipt thereof (except with respect to scheduled amortisation payments and as otherwise provided herein). The Fund will be entitled to withhold from any distribution amounts necessary or appropriate to create, in its sole discretion, appropriate reserves for expenses and liabilities of the Fund.

- (f) Distribution Proceeds shall be returned to Members in the manner and in the order of priority set out in the Prospectus. Distribution Proceeds may be returned to Members through: (i) compulsory redemptions of Shares pursuant to Clause 18 (including by way of a redemption *in specie* in accordance with Clause 18(1)); (ii) distributions by way of dividend in respect of Shares pursuant to Clause 38; and/or (iii) such other means as the Director may from time to time determine. Such capital returns may be made in one or more tranches and the Directors may specify Redemption Days and special distribution record dates for these purposes. Shares will be redeemed at their Net Asset Value per Share. Members will be notified in advance of compulsory redemptions and dividends by the Administrator.
- (g) Should the AIFM or any partner thereof become subject to taxation in respect of the Performance Fee accrued to it pursuant to the distribution procedures outlined in the Prospectus (whether on a single event or permanent basis) in circumstances such that the AIFM does not at the time of the accrual receive a corresponding actual payment, the AIFM or any partner thereof shall be entitled to a payment sufficient to cover such tax liabilities. Any such distribution will be deemed an advance of Performance Fees and shall reduce any future distribution to the AIFM accordingly.
- (h) If the Directors are required by applicable law to withhold tax with respect to a Member (“**Withholding Amount**”), and to pay over such withheld amount to a taxation authority, such payment generally will be treated as if it were a distribution to such Member or in accordance with customary accounting practices, as determined by the Directors.
- (i) In the event that any tax authority determines that any Withholding Amount should be or should have been withheld from distributions of the Fund to a Member, the Directors shall be entitled to set off from any further distribution to such Member an amount equal to the Withholding Amount, together with any interest payments relating thereto, and to apply such set off amount in satisfaction of any liabilities arising from such failure to withhold. In such circumstances, the Member concerned shall be deemed to have received a distribution of cash equal to the Withholding Amount and a distribution of cash equal to any additional amount retained by the Directors in order to satisfy any interest payments referred to above.
- (j) The Directors may postpone any distribution if the aggregate of such amount that would otherwise be payable to all of the Members after paying Fund Expenses and setting aside appropriate reserves for, or otherwise paying, liabilities and obligations would be less than €1,000,000.

### **38. DIVIDENDS**

- (a) The Directors may from time to time as they think fit pay such dividends on shares of the Fund as appear to the Directors to be justified, subject to any policy statement and procedures in relation to dividends for the relevant Class set forth in the Prospectus. Any dividends payable shall be calculated and paid in accordance with the terms set out in the Prospectus.

- (b) Subject to any policy statement and procedures in relation to dividends for the relevant Class set forth in the Prospectus, the amount available for distribution in respect of any Class of shares in any Distribution Period shall be a sum equal to the aggregate of the net income received by the Fund in respect of such Class (whether in the form of dividends, interest or otherwise and including realised and unrealised capital gains less realised and unrealised capital losses during the relevant Distribution Period) calculated in accordance with the following:
- (i) addition or deduction of a sum by way of adjustment to allow for the effect of sales or redemptions, cum or ex-dividend;
  - (ii) addition of a sum representing any interest or dividend or other income accrued but not received by the Fund at the end of the Distribution Period and deduction of a sum representing (to the extent that an adjustment by way of addition has been made in respect of any previous Distribution Period) interest or dividends or other income accrued at the end of the previous Distribution Period;
  - (iii) addition of the amount (if any) available for distribution in respect of the last preceding Distribution Period but not distributed in respect thereof;
  - (iv) addition of a sum representing the estimated or actual repayment of tax resulting from any claims in respect of corporation tax relief or double taxation relief or otherwise;
  - (v) deduction of the amount of any tax or other estimated or actual liability properly payable out of the income of the Fund;
  - (vi) deduction of a sum representing participation in income paid upon the cancellation of shares during the Distribution Period;
  - (vii) deduction of such sum as the Fund may think appropriate in respect of any of the expenses provided in Clause 2 hereof, provided always that the Fund shall not be responsible for any error in any estimates of corporation tax repayments or double taxation relief expected by way of taxation or of income receivable and, if the same shall not prove in all respects correct, the Directors shall ensure that any consequent deficiency or surplus shall be adjusted in the Distribution Period in which a further or final settlement is made of such tax repayment or liability or claim to relief or the amount of any such estimated income receivable is determined, and no adjustment shall be made to any dividend previously declared; and
  - (viii) deduction of any amounts declared as a distribution but not yet distributed.
- (c) The Directors may also declare such dividends on the shares or on any Class of shares from the capital attributable to the relevant Class provided appropriate disclosure is made in the Prospectus in accordance with the requirements of the Central Bank.
- (d) The Directors with the approval of the Members of a Class of shares in accordance with the Prospectus may distribute in kind among Members of such Class by way of dividend or otherwise any of the assets of the relevant Class.
- (e) Shares shall qualify for dividends in such manner as may be determined by the Directors and set out in the Prospectus.

- (f) Any declaration of a dividend by the Directors on any Class of shares may specify that the same shall be payable to the persons registered as the Members at the close of business on a particular date, and thereupon the dividend shall be payable to them in accordance with their respective holdings so registered, but without prejudice to the rights inter se in respect of such dividend, of transferors and transferees of shares.
- (g) The Fund may transmit any dividend or other amount payable in respect of any share by wire transfer or other electronic means or by cheque or warrant sent by ordinary post to the registered address of the Member, or, in the case of joint holders, to the person whose name and address appears first on the Register of Members and shall not be responsible for any loss arising in respect of such transmission.
- (h) No dividend or other amount payable to any holder of shares shall bear interest against the Fund. All unclaimed dividends and other amounts payable as aforesaid may be invested or otherwise made use of for the benefit of the Fund until claimed. Payment by the Fund of any unclaimed dividend or other amount payable in respect of a share into a separate interest bearing account shall not constitute the Fund a trustee in respect thereof. Any dividend unclaimed after six years from the date when it first became payable shall be forfeited automatically, without the necessity for any declaration or other action by the Fund.
- (i) In the event that the amount payable to a Member as a dividend is exceeded by the cost of dispatching, transmitting, effecting or otherwise making such payments to the Member, the Fund shall be entitled to retain such dividends for the benefit of the relevant Member until such time as the amount payable to the Member is not exceeded by the cost of dispatching, transmitting, effecting or otherwise making such payments to the Member. Payment by the Fund of any retained dividend into a separate account shall not constitute the Fund a trustee in respect thereof.
- (j) At the option of any Members, the Directors may apply all dividends declared on the shares of any Class held by such Member in the issue of additional shares of that Class in the Fund to that Member at the Net Asset Value obtaining when such dividends are declared and on such terms as the Directors from time to time may resolve, provided, however, that any Member shall be entitled to elect to receive a cash dividend in respect of the shares held by that Member.
- (k) The Directors may provide at their absolute discretion that Members will be entitled to elect to receive in lieu of any dividend (or part thereof) an issue of additional shares of the same Class as those in respect of which the dividend is declared in the Fund credited as fully paid. In any such case the following provisions shall apply:
  - (i) the number of additional shares (including any fractional entitlement) to be issued in lieu of any amount of dividend shall be equal in value to the amount of such dividend at the date the dividend was declared;
  - (ii) the dividend (or that part of the dividend in respect of which a right of election has been accorded) shall not be payable on shares in respect of which the share election has been duly exercised (the “**Elected Shares**”), and in lieu thereof additional shares shall be issued to the holders of the Elected Shares on the basis determined as aforesaid and for such purpose the Directors shall capitalise a sum equal to the aggregate value of the dividends in respect of which elections have been made and apply the same in paying up in full the appropriate amount of unissued shares;

- (iii) the additional shares so issued shall rank *pari passu* in all respects with the fully paid shares then in issue save only as regards participation in the relevant dividend (or share election in lieu);
  - (iv) the Directors may do all acts and things considered necessary or expedient to give effect to any such capitalisation, with full power to the Directors to make such provision as they think fit in the case of shares becoming distributable in fractions so that fractional entitlements are disregarded or rounded up or the benefit of fractional entitlements accrues to the Fund; and
  - (v) the Directors may on any occasion determine that rights of election shall not be made available to any Member with registered addresses in any territory where in the absence of a registration statement or other special formalities the circulation of an offer of rights of election would or might be unlawful, and in such event the provisions aforesaid shall be read and construed subject to such determination.
- (l) Where the Fund proposes to pay a distribution to a Member, it shall be entitled to deduct from the distribution such amount as may be necessary to discharge the Fund's liability to tax in respect of such distribution and shall arrange to discharge the amount of tax due.
  - (m) Where a dividend is declared in or around the same time as a Drawdown Notice is issued, the Fund may, in the absolute discretion of the Directors, apply dividends payable to a Member towards satisfaction of such Drawdown Notice.

### **39. MEMBER GIVEBACK**

- (a) Subject to Clause 39(b), the Fund may require a Member to return redemption proceeds or dividends made to such Member for the purposes of meeting such Member's *pro-rata* share of any obligations or liabilities (including indemnification obligations) of the Fund that cannot be met from the Fund's immediately available assets and resources, subject as otherwise set out herein. Any clawback from Members will be made in the reverse order in which such distributions were made (meaning that amounts which have been subject to Performance Fees will be clawed back in priority to other amounts).
- (b) The Directors may issue a notice on not less than 5 Business Days' notice requiring each Member to return distributions in accordance with Clause 39(a). Subject to applicable law, the obligation to return distributions set forth in Clause 39(a) shall:
  - (i) cease in respect of a particular distribution on the second anniversary of the dissolution of the Fund or if written notice of a potential claim has already been given to the Members by the Directors by that date, until such date as determined by the AIFM, acting reasonably, up to the second anniversary of the dissolution of the Fund; and
  - (ii) be, with respect to each Member, limited to the lesser of (i) the Capital Commitment of such Member and (ii) 20% of distributions received by such Member (gross of any taxes paid, provided that such taxes are not irrecoverable taxes and provided, further, that such Member shall not be required to gross-up any payment pursuant to this paragraph in respect of any withholdings or deductions required by law to be made from such distributions or payments).



Where any amounts to be returned are reduced as a result of any withholdings or deductions pursuant to this Clause 39(b), the relevant Member(s) shall provide the AIFM with such reasonable assistance as it shall reasonably require to recover any amounts so withheld or deducted.

- (c) The amount of any distributions returned by a Member pursuant to Clause 39(a) shall be treated as a reduction in the cumulative amount of distributions of Net Investment Proceeds. Distributions returned under Clause 39(a) shall be deemed returned in the reverse order of any distributions of Net Investment Proceeds made in accordance with the Prospectus.
- (d) A Member's obligation to return distributions to the Fund under Clause 39(a) shall survive the Term of the Fund, subject to the limitations expressed in this Clause 39, and the Fund may pursue and enforce all rights and remedies it may have against each Member under Clause 39(a), including requiring interest from the date such contribution was required to be paid under Clause 39(b) calculated at the rate specified in the Prospectus.
- (e) If any Member transfers its Capital Commitment in the Fund, the Substitute Member to whom such Capital Commitment is transferred shall assume any obligations and liabilities of the transferor pursuant to Clause 39(a) in respect of any distributions made prior to the effective date of such transfer.
- (f) Any Member that is redeemed from the Fund shall remain liable to repay distributions to the Fund pursuant to Clause 39(a) after the date that it ceases to be a Member in respect of any claim or liability made in connection with Investments made prior to the date that such Member ceased to be a Member.
- (g) An excused Member pursuant to Clause 16 shall not be required to repay distributions to the Fund pursuant to Clause 39(a) to the extent that the relevant claim or liability relates solely to an Investment in respect of which such Member was excused in accordance with Clause 16.

#### **40. UNTRACED MEMBERS**

- (a) The Fund shall be entitled to redeem any share of a Member or any share to which a person is entitled by transmission and to forfeit any dividend which is declared and remains unpaid for a period of six years if and provided that:
  - (i) for a period of six years no cheque or confirmation of ownership of shares sent by the Fund through the post in a pre-paid letter addressed to the Member or to the person entitled by transmission to the share at his address on the Register of Members or the last known address given by the Member or the person entitled by transmission to which cheques or confirmations of ownership of shares are to be sent has been cashed or acknowledged and no communication has been received by the Fund from the Member or the persons entitled by transmission (provided that during such six year period at least three dividends shall have become payable in respect of such share);
  - (ii) at the expiration of the said period of six years by notice sent by pre-paid letter addressed to the Member or to the person entitled by transmission to the share at his address on the Register of Members or to the last known address given by the Member or the person entitled by transmission or by advertisement in a

national daily newspaper published in Ireland or in a newspaper circulating in the area in which the address referred to in Clause 40(a)(i) is located the Fund has given notice of its intention to redeem such share;

- (iii) during the period of three Months after the date of the advertisement and prior to the exercise of the power of redemption the Fund has not received any communication from the Member or person entitled by transmission; and
  - (iv) if the shares are quoted on a stock exchange the Fund has first given notice in writing to the appropriate section of such stock exchange of its intention to redeem such share, if it is required to do so under the rules of such stock exchange.
- (b) The Fund shall account to the Member or to the person entitled to such share for the net proceeds of such redemption by carrying all moneys in respect thereof to a separate interest bearing account which shall be a permanent debt of the Fund and the Fund shall be deemed to be a debtor and not a trustee in respect thereof for such Member or other person.

#### **41. AIVS AND RELATED MANDATES**

- (a) If at any time the AIFM determines in good faith that for legal, tax, regulatory or other similar considerations, or otherwise, that it is in the best interests of the Fund, for certain or all of the Members to have an interest in a potential or existing Investment through one or more alternative investment structures, the AIFM may effect the holding of all or any portion of such interest outside of the Fund:
- (i) in the case of a potential Investment, by requiring certain or all Members to be admitted as shareholders or other similar investors to, and to make capital contributions with respect to such potential Investment directly to, a limited partnership or other similar vehicle (each, an “AIV”); or
  - (ii) in the case of an existing Investment, by transferring all or any portion of the Investment to an AIV; and
  - (iii) in either case, by creating such AIV and distributing interests therein to certain or all the Members as shareholders or other similar investors therein.
- (b) In addition, the AIFM shall also have the right to direct that capital contributions of certain or all Members with respect to a potential Investment be made through an AIV if, in the determination of the AIFM, the consummation of the potential Investment would be prohibited or unduly burdensome for the Fund because of legal, tax, regulatory or other considerations but would be permissible or less burdensome if an AIV were instead utilised. Each AIV will be managed or advised by a AlbaCore Affiliate, and will be governed by constitutional documents containing provisions substantially similar in all material respects to those of the Fund (including, but not limited to, those provisions relating to the Central Bank requirements for investing via subsidiaries and to the intention that at all times participation in the Fund by ERISA Members shall not be “significant” under 29 C.F.R. Section 2510.3-101 and Section 3(42) of ERISA), with such differences as may be required by the legal, tax, regulatory or other considerations referred to above, provided that the Members investing therein shall not be generally liable for the obligations of such AIV and provided, further, that the AIFM shall provide any participants in such AIV with a written legal opinion from

external and independent reputable counsel, confirming that the AIV will not impact on such Members' limited liability and the tax treatment of the AIV (covering, among other things, that the Members with respect to that investment in such AIV will not (i) be directly subject to tax on its net income in the jurisdiction in which the AIV is organised, established or located excluding for these purposes withholding tax or (ii) be required to file tax returns in such jurisdiction). All references in this paragraph (b) to the members of an AIV shall be deemed to include all investors in an AIV formed as a vehicle other than an Irish collective asset-management vehicle.

- (c) Each Member admitted to and investing in an AIV shall be required to make capital contributions to such AIV in a manner similar to that which it is required to make Capital Contributions to the Fund in accordance with the Prospectus, and each such Member's Undrawn Capital Commitment shall be reduced by the amount of such contributions to the same extent as if such contributions were made to the Fund as Capital Contributions. With respect to each Investment in which an AIV participates with the Fund, any investment expenses or indemnification obligations related to such Investment shall be borne by the Fund in respect of the Fund, such AIV and any other Related Mandate (excluding any Feeder Fund and any AIV to the extent it invests through another Related Mandate) in the proportions specified in the Prospectus. Any management fee funded by a Member with respect to an AIV shall reduce such Member's share of the Management Fee funded by such Member, and distributable to the AIFM by the Fund, by a corresponding amount. The investment results of an AIV will be aggregated with the investment results of the Fund for purposes of determining distributions under the Prospectus unless the AIFM in its absolute discretion elects otherwise based on its determination that such aggregation increases the risk of any adverse tax consequences or imposes legal or regulatory constraints that would be contrary to the best interests of the Fund in respect of the Fund and the Members. Unless the AIFM determines in its discretion that doing otherwise would result in an adverse tax consequence or would impose a legal or regulatory constraint, the Fund in respect of the Fund and the AIV shall invest, hold and dispose of their respective interests in the Investment at the same time in proportion to their respective ownership interests therein and otherwise on the same terms. Where the AIFM determines in good faith that an AIV is required to deal with legal, tax regulatory or other similar considerations which are specific to and result solely from the Members admitted to the AIV, such Members shall bear the establishment and operating costs of such AIV *pro rata* to their participation in such vehicle, subject to such adjustment as the AIFM deems fair and equitable between the Fund in respect of the Fund, the AIV and any Parallel Funds.
- (d) Prior to the Final Closing Date, the AIFM may determine to form one or more Parallel Funds having substantially the same terms (including, but not limited to, those provisions relating to the intention that at all times participation in the Fund by ERISA Members shall not be "significant" under 29 C.F.R. Section 2510.3-101 and Section 3(42) of ERISA) as the Fund. All references in this paragraph to the shareholders of a Parallel Fund shall be deemed to include all investors in a Parallel Fund formed as a vehicle other than an Irish collective asset-management vehicle.
- (e) In addition, the AIFM may, at any time, to accommodate legal, tax, regulatory or other similar considerations, require one or more Members to subscribe for shares in, or be admitted as limited partners or other similar investors to, one or more Parallel Funds, and in connection therewith and in consideration for the cancellation of all or a portion of their shares, such Members will receive an equivalent interest in (and may be required to make an equivalent contribution to) such Parallel Funds. In furtherance of

the foregoing, each such Member will have a capital commitment and capital account or equivalent in the Parallel Fund equal to the applicable cancelled portion of such Member's Capital Commitment and Undrawn Capital Commitment in the Fund and each such Member shall cease to hold such cancelled portion and the Administrator shall update the books of the Fund accordingly.

- (f) Subject to the legal, tax, regulatory or other similar considerations referred to above, each Parallel Fund will be managed or advised by an AlbaCore Affiliate.
- (g) The Investment Manager and its Affiliates may create and manage or advise one or more Segregated Mandates.
- (h) Parallel Funds and Segregated Mandates shall together be referred to as “**Related Mandates**”. For the avoidance of doubt, a Related Mandate shall exclude any Co-Investment Vehicle. Where the Investment Manager determines that a prospective investment would be an appropriate investment for both the Fund and a Related Mandate, such Related Mandate will be entitled to invest alongside the Fund (whether by participating alongside the Fund in an investment holding entity, directly or through its own investment holding entity) as provided in the Prospectus, provided always that the Investment Manager reasonably determines, acting in good faith, that the terms of such investment by that Related Mandate would not reasonably be expected to prejudice the interests of the Fund in relation to such prospective investment. Although the structure and economic terms of any Related Mandate may differ from those of the Fund, where such Related Mandates invest in investments in which the Fund is also participating, they will invest and divest on substantially the same terms and conditions as the Fund and at substantially the same time as the Fund except to the extent that legal, tax or regulatory considerations dictate otherwise. A Related Mandate will also generally invest in substantially the same interests as those of the Fund. However to the extent that this is not the case, the interests of the Related Mandate will have substantially the same economics as, and rank *pari passu* with, the interests of the Fund.
- (i) Investment opportunities that are suitable for the Fund's investment strategy will be allocated by the AIFM in accordance with the terms of the Prospectus and any fees, costs, expenses or liabilities are incurred in relation to such an investment opportunity shall be borne between the Fund, any AIV, any Related Mandate, and any Co-Investment Vehicle invested in or that intended to invest in such investment in accordance with the terms of the Prospectus.
- (j) In the event that the AIFM determines to form one or more Parallel Funds or AIVs, the Directors shall, in accordance with the requirements of the Central Bank, have full authority, without requiring the consent of any person, including any other Member, to amend the Prospectus and/or this Instrument of Incorporation as may be necessary or appropriate in the good faith judgment of the AIFM and the Directors to facilitate the formation and operation of such Parallel Fund or AIV and the investments thereof. The instrument of incorporation and/or other constitutional or transfer documents of any Parallel Fund or AIV and any other documents reflecting the admission of the Members to such Parallel Fund AIV will be executed on behalf of the Members investing therein by the Directors pursuant to the power of attorney granted by each of the Members pursuant to the Subscription Agreement.
- (k) The AIFM shall have the right to instruct the Directors to direct or limit capital contributions of ERISA Members in each AIV and Parallel Fund to the extent necessary to limit the value of each class of equity interest in the AIV and Parallel Fund held by

ERISA Members so that it will at all times be less than 25% of the aggregate value of each class of equity interests in that AIV or Parallel Fund.

#### 42. CONFLICTS OF INTEREST

- (a) Subject to any relevant restrictions set out in this Instrument of Incorporation or in the Prospectus and subject to applicable law:
- (i) certain Investments may be appropriate for the Fund and also for other clients advised or managed by any AlbaCore Affiliate including but not limited to any Related Mandates or Co-Investment Vehicles;
  - (ii) any AlbaCore Affiliate, any of their directors, members, officers or employees, any members of the immediate family of the foregoing persons and/or any partnerships, limited companies, corporations, trusts or other entities which are substantially comprised of the foregoing persons (each an “**Interested Party**”) may become Members and hold, dispose of or otherwise deal with shares, subject always to the restrictions set out in this Instrument of Incorporation and the Prospectus;
  - (iii) an Interested Party may contract, or enter into any financial, banking or other transaction, with the Fund or any Member or any of their respective Affiliates or in respect of any Investment or with any company or body, any of whose securities are held by or for the account of or otherwise connected with the Fund or which is a borrower in relation to an Investment (or an Affiliate thereof), or be interested in any such transaction, and the Interested Party shall not be called upon to account in respect of any such contract or transaction or benefit derived therefrom by virtue only of the relationship between the parties concerned, and the Interested Party shall be entitled to retain for its own benefit any profit or benefit derived therefrom;
  - (iv) an Interested Party may complete a transaction pursuant to a contract effected in the normal manner on a stock exchange or otherwise where the purchaser or vendor is undisclosed to the Interested Party at the time;
  - (v) an Interested Party may advise Subsidiaries (or an Affiliate thereof) or any borrower in relation to any Investment in relation to sourcing or acquiring or otherwise dealing with assets, loans, companies or businesses which are complementary to their existing businesses or in relation to the making of other investments and they are under no obligation to offer a participation in any such opportunity to the Fund;
  - (vi) an Interested Party may provide services to Subsidiaries or Investments (as applicable) or with respect to an Investment or to corporations, partnerships, trusts, limited liability companies or other entities in which the Fund wishes to invest and in such circumstances may receive fees in respect of such services;
  - (vii) an Interested Party may directly or indirectly acquire an interest in any Investment on terms which the AIFM in its absolute discretion determines to be arm’s length; and
  - (viii) an Interested Party may be subject to such other conflicts of interest as are disclosed in the Prospectus,

and the Interested Party shall not be under any duty to disclose to the Fund information which has come into the possession of the Interested Party or any Associated Company as a result of any such arrangements entered into for third parties or by any other means communicated to the Fund and shall not be liable to account to the Fund for any brokerage commissions or fees charged in connection with or profits or benefits made or derived from or in connection with any such transaction, including without limitation any commissions or fees charged to the Fund or a counterparty in circumstances in which the AIFM has acted as agent for the account of the Fund or such counterparty in connection with the sale or purchase of shares in the Fund or Investments, provided that, with respect to transactions of the type referred to in Clauses (ii), (iii) and (vii) above, in accordance with the requirements of the Central Bank, such transactions are in the best interests of Members and are negotiated at arm's length and:

- (A) a certified valuation of such transaction by a person approved by the Depositary (or in the case of any such transaction entered into by the Depositary, the AIFM) as independent and competent has been obtained;
  - (B) such transaction has been executed on best terms obtainable on an organised investment exchange under its rules; or
  - (C) where (A) and (B) are not practical, such transaction has been executed on terms which the Depositary is (or in the case of any such transaction entered into by the Depositary, the AIFM is) satisfied conform with the principle that such transactions be negotiated at arm's length and in the best interests of the Members.
- (b) Nothing in this Instrument of Incorporation shall be construed as prohibiting any Member from buying or selling securities for its own account, including securities of the same issuers as those held by the Fund.

#### **43. PREFERENTIAL TREATMENT**

Where permitted in the Prospectus, some Members may obtain preferential treatment from time to time. The AIFM will seek to ensure the fair treatment of Members by adhering to the requirements of this Instrument of Incorporation, the Prospectus and any policies and procedures adopted by the Fund or the AIFM in relation to the fair treatment of Members. The preferential treatment may apply to any type of Member (including Members who have legal or economic links with the Fund or the AIFM) and may relate to fees, information rights, redemption rights or other matters described in the Prospectus. Information on the preferential treatment shall be made available to investors upon request or by any other means in accordance with the requirements of the AIFMD Regulations.

#### **44. ACCOUNTS**

- (a) The Directors shall cause to be kept such books of account as are necessary in relation to the conduct of the Fund's business and as are required by the ICAV Act.
- (b) The books of account shall be kept at the registered office, or subject to the provisions of the ICAV Act, at such other place or places as the Directors shall think fit, and shall at all reasonable times be open to inspection by the Directors, the Secretary and by those persons entitled pursuant to the ICAV Act to inspect the accounting records of the Fund.

- (c) The Fund's financial statements shall be prepared in accordance with such general accepted accounting practice in Ireland, international financial reporting standards or an alternative body of accounting standards as the Directors may determine in accordance with the ICAV Act.
- (d) A balance sheet, including every document required by law to be annexed to it, and a profit and loss account of the Fund shall be made out as at the end of each financial year of the Fund as determined by the Directors from time to time and shall be audited by the Auditors, and such balance sheet shall contain a general summary of the assets and liabilities of the Fund. The balance sheet shall be accompanied by a report of the Directors as to the state and condition of the Fund, and the amount (if any) which they have carried or propose to carry to reserve, together with a profit and loss account. The balance sheet of the Fund and the report of the Directors and the profit and loss account shall be signed on behalf of the Directors by at least two of the Directors. An Auditors' report shall be attached to the balance sheet of the Fund.
- (e) Once at least in every year the Directors shall cause to be prepared an Annual Report relating to the management of the Fund. The Annual Report shall include the balance sheet and profit and loss account duly audited by the Auditors and the Directors' report and the Auditors' report as provided for in Clause 44(d) and shall be in a form approved by the Central Bank and shall contain such information required by it. There shall be attached to such Annual Report such additional information and reports as the Central Bank may specify.
- (f) A copy of the Annual Report including the balance sheet (including every document required by law to be annexed thereto) together with a copy of the Directors' report and the Auditors' report shall be sent by the Fund (by electronic mail or any other means of Electronic Communication sent to the address of the recipient notified to the Fund by the recipient for such purposes or shall be made available on the website of the Fund) to the Members and to every person entitled under the ICAV Act to receive them within 180 days following the end of the relevant Accounting Period, subject to reasonable delays in the event of late receipt of any necessary financial information from or in respect of any Investment subject always to the approval of the Central Bank, where appropriate, and the requirements of the AIFMD Regulations. If any of the shares are quoted on any stock exchange, the required number of copies of these documents shall be forwarded at the same time to such stock exchange.
- (g) Members have the right to request a hard copy of the Annual Reports including the balance sheet (including every document required by law to be annexed thereto) together with a copy of the Directors' report and the Auditors' report from the Fund at any time free of charge and these will also be made available for inspection at the registered office of the Fund.
- (h) The Auditors' certificate appended to the Annual Report and statement referred to therein shall declare that the accounts or statement attached respectively thereto (as the case may be) have been examined together with the books and records of the Fund in relation thereto and that the Auditors have obtained all the information and explanations they have required and the Auditors shall report whether the accounts are in their opinion properly drawn up in accordance with such books and records and present a true and fair view of the state of affairs of the Fund and whether the accounts are in their opinion properly drawn up in accordance with the provisions hereof.
- (i) The information required by Regulation 24 of the AIFMD Regulations shall be

disclosed by way of a report to Members or other means permitted under, and at the frequency required by, AIFMD.

#### **45. AUDIT**

- (a) The appointment and removal of Auditors and the determination of eligibility for appointment as Auditors to the Fund shall be governed by the provisions of the ICAV Act.
- (b) The first Auditors shall be appointed by the Directors at any time before the first general meeting and shall hold office until the conclusion of that meeting.
- (c) On the date on which the holding of an annual general meeting is dispensed with in accordance with Clause 24(c), if any Auditors appointed in accordance with the ICAV Act cease to hold office and the Directors shall immediately reappoint the Auditors or appoint new Auditors.
- (d) The Directors, or the Fund in general meeting, may fill a casual vacancy in the office of Auditors. While a vacancy in the office of Auditors continues, any surviving or continuing Auditors may continue to act.
- (e) A person, other than the retiring Auditors, shall not be capable of being appointed Auditors at an annual general meeting unless notice of an intention to nominate that person to the office of Auditors has been given by a Member to the Fund not less than twenty eight (28) days before the annual general meeting and the Directors shall send a copy of any such notice to the retiring Auditors and the proposed replacement auditors and shall give notice thereof and of any representations made by the retiring auditors to the Fund and its Members in accordance with section 133 of the ICAV Act.
- (f) The remuneration of the Auditors appointed by the Fund in general meeting shall be approved by the Fund in general meeting or in such manner as the Fund in general meeting may determine. The remuneration of the Auditors shall be approved by the Directors or the Central Bank.
- (g) The Auditors shall examine such books, accounts and vouchers as may be necessary for the performance of their duties.
- (h) The report of the Auditors to the Members on the audited accounts of the Fund shall state whether in the Auditors' opinion the balance sheet and profit and loss account in their opinion give a true and fair view of the state of the Fund's affairs and of its profit and loss for the period in question.
- (i) The Fund shall furnish the Auditors with a list of all books kept by the Fund and at all reasonable times shall afford to the Auditors the right of access to the books and accounts and vouchers of the Fund. The Auditors shall be entitled to require from the Officers and employees of the Fund such information and explanation as may be necessary for the performance of their duties.
- (j) The Auditors shall be entitled to attend any general meeting of the Fund at which any accounts which have been examined or reported on by them are to be laid before the Fund and to make any statement or explanations they may desire with respect to the accounts and notice of every such meeting shall be given to the Auditors in the manner prescribed for the Members.



## 46. NOTICES

- (a) Any notice or other document required to be given to, delivered, served upon or sent to a Member pursuant to this Instrument of Incorporation and/or the applicable law may be given to, delivered, served or sent to any Member by the Fund by any of the following means:
- (i) personally;
  - (ii) by sending it through the post (by airmail where applicable) in a pre-paid letter addressed to the Member at the Member's address as appearing in the Register of Members;
  - (iii) by sending it by courier to or leaving it at the Member's address appearing on the Register of Members;
  - (iv) subject to such Member's consent to Electronic Communications, by the Fund sending it by email or other electronic means, in each case to an address or number supplied by such Member; or
  - (v) subject to such Member's consent to the use of the website, by publication of an electronic record of it on a website and notification of such publication (which shall include the address of the website and the place on the website where the document may be found).
- (b) Any notice or other document shall be deemed to have been given to, delivered, served upon or sent to any Member by the Fund:
- (i) if sent by courier or personal delivery, at the time of delivery;
  - (ii) if sent by post, 48 hours after it was put in the post;
  - (iii) if sent by email or other electronic means, upon sending; or
  - (iv) if published as an electronic record on a website, upon publication;
- and in proving such service or delivery, it shall be sufficient to prove that the notice or document was properly addressed and stamped and put in the post or sent by courier, email or by electronic means, or published on a website, as the case may be, in accordance with this Instrument of Incorporation.
- (c) Any requirement in this Instrument of Incorporation for the consent of a Member with regard to Electronic Communications and the use of a website shall be deemed to have been satisfied where the Member subscribes for or holds shares in the Fund as the Member is bound by this Instrument of Incorporation as if they had been signed by such Member. The Member may at any time revoke such consent by requesting the Fund to communicate with that Member in documented form, provided, however, that this requirement to communicate in documented form shall not take effect until 30 days after written notice of the requirement is received by the Fund.
- (d) In the case of joint holders of a share, service or delivery of any notice or other document on or to one of the joint holders shall for all purposes be deemed sufficient service on delivery to all joint holders.

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

#### **47. TERM, WINDING UP AND TERMINATION**

- (a) The term of the Fund shall be as specified in the Prospectus. At the end of the term of the Fund, the Fund shall be put into liquidation automatically in accordance with the provisions of this Clause 47 and the Fund shall wind-up and apply to the Central Bank for revocation of the authorisation of the Fund.
- (b) All of the shares in the Fund or all of the shares in a Class may be redeemed by the Fund in the following circumstances:
  - (i) if so provided in the Prospectus;
  - (ii) if so determined by the Directors, provided that not less than 21 days' written notice, or such longer period as may be specified in the Prospectus, has been given to the holders of the shares of the Fund or the Class, as appropriate, that all of the shares of the Fund or the Class, as the case may be, shall be redeemed by the Fund;
  - (iii) if no replacement Depositary shall have been appointed during the period of ninety (90) days commencing on the date the Depositary or any replacement thereof shall have notified the Fund of its desire to retire as Depositary or shall have ceased to be approved by the Central Bank; or
  - (iv) if no replacement alternative investment fund manager shall have been appointed during the period of ninety (90) days commencing on the date the AIFM or any replacement thereof shall have notified the Fund of its desire to retire as alternative investment fund manager or shall have ceased to be approved by the Central Bank.
- (c) Where a redemption of shares would result in the number of shareholders falling below two or such other minimum number stipulated by statute or where a redemption of shares would result in the issued share capital of the Fund falling below such minimum amount as the Fund may be obliged to maintain pursuant to applicable law, the Fund may defer the redemption of the minimum number of shares sufficient to ensure compliance with applicable law. The redemption of such shares will be deferred until the Fund is wound up or until the Fund procures the issue of sufficient shares to

ensure that the redemption can be effected. The Fund shall be entitled to select the shares for deferred redemption in such manner as it may deem to be fair and reasonable and as may be approved by the Depositary.

- (d) If the Fund shall be wound up or dissolved the liquidator shall apply the assets of the Fund in satisfaction of creditors' claims in such manner and order as he thinks fit.
- (e) The assets of the Fund available for distribution (after satisfaction of creditors' claims, including any Management Fee and Performance Fee due to the AIFM) amongst the Members shall be distributed *pro rata* to the holders of the shares of each Class in the Fund and shall be *pro rata* to the number of shares in that Class held by them.
- (f) The assets available for distribution among the Members shall then be applied in the following priority:
  - (i) firstly, in the payment to the Members of each Class of a sum in the relevant Class Currency or in any other currency selected by the liquidator as nearly as possible equal (at a rate of exchange reasonably determined by the liquidator) to the Net Asset Value of the shares of such Class held by such holders respectively as at the date of commencement of the winding up, provided that there are sufficient assets available in the Fund to enable such payment to be made;
  - (ii) secondly, in the payment to the holders of the Subscriber Shares of sums up to the amount paid thereon (plus any interest accrued) out of the assets of the Fund remaining after any recourse thereto under paragraph (i) above;
  - (iii) thirdly, in the payment to the Members of any balance then remaining in the Fund, such payment being made in proportion to the number of shares held; and
  - (iv) fourthly, in the payment to the Members of any balance then remaining, such payment being made in proportion to the value of each Class and in proportion to the Net Asset Value per share.
- (g) If the Fund shall be wound up or dissolved (whether the liquidation is voluntary, under supervision or by the Court) the liquidator may, with the authority of an Ordinary Resolution of the Fund, divide among the Members *pro rata* to the value of their shareholdings in the Fund (as determined in accordance with Clause 20 herein) *in specie* the whole or any part of the assets of the Fund or may make distributions *in specie* to any individual Member who so consents whether or not the assets shall consist of property of a single kind and may for such purposes value any class or classes of property in accordance with the valuation provisions in Clause 21. If a Member so requests, the Fund shall arrange to dispose of the Investments on behalf of the Member at the expense of such Member. The price obtained by the Fund may be different from the price at which the investments were valued when determining the Net Asset Value and none of the Fund, the Administrator, the AIFM, the external valuer and/or the Investment Manager shall be liable for any difference arising. The liquidator may, with the like authority, vest any part of the assets in trustees upon such trusts for the benefit of Members as the liquidator shall think fit, and the liquidation of the Fund may be closed and the Fund dissolved, but not so that any Member shall be compelled to accept any asset in respect of which there is a liability. The Subscriber Shares do not entitle the holders to participate in the dividends or net assets of the Fund.

## 48. INDEMNITY

- (a) The Fund shall indemnify its Directors, Officers, employees and any person who serves at the request of the Fund as a director, officer, employee of another company, partnership, joint venture, trust or other enterprise as follows:
- (i) every person who is or has been a Director, Officer, or employee of the Fund and every person who serves at the Fund's request as Director, Officer or employee of another company, partnership, joint venture, trust or other enterprise shall be indemnified by the Fund to the fullest extent permitted by law against liability and against all expenses reasonably incurred or paid by him in connection with any debt, claim, action, demand, suit, proceeding, judgment, decree, liability or obligation of any kind in which he becomes involved as a party or otherwise by virtue of his being or having been a Director, Officer or employee of the Fund or of another company, partnership, joint venture, trust or other enterprise at the request of the Fund and against amounts paid or incurred by him in the settlement thereof except where any of the foregoing is attributable to any negligence, default, breach of duty or breach of trust on the part of such Director, Officer or employee;
  - (ii) the words "claim", "action", "suit" or "proceedings" shall apply to all claims, actions, suits or proceedings (civil, criminal, administrative, legislative, investigative or other, including appeals) and shall include, without limitation, legal fees, costs, judgments, amounts paid in settlement, fines, penalties and other liabilities;
  - (iii) the rights of indemnification herein provided may be insured against by policies maintained by the Fund, shall be severable, shall not affect any other rights to which any Director, Officer or employee may now or hereafter be entitled, shall continue as to a person who has ceased to be such a Director, Officer or employee and shall ensure to the benefit of the heirs, executors and administrators of such a person;
  - (iv) no indemnification shall be provided hereunder unless an independent legal adviser to the Fund has confirmed in a written opinion that the person to be indemnified is entitled to an indemnity under applicable law; and
  - (v) the Fund may make advances of expenses incurred in the defence of any claim, action, suit or proceedings against any person whom the Fund is obliged to indemnify pursuant to Clause 48(a) hereof.
- (b) For the avoidance of doubt, no Director shall be liable for the acts or omissions of any other Director.
- (c) The Fund may indemnify the AIFM, any Investment Manager, Administrator, Investor Advisory Committee members, adviser, service provider, delegate and any agent of the Fund and any directors, officers, managers, partners, members, shareholders, principals, investment professionals, employees, advisors, consultants, representatives or other agents and related persons and legal representatives of the foregoing to the extent permitted by law and the provisions of the Prospectus and the agreement providing for such indemnity.
- (d) The Depositary shall be entitled to such indemnity from the Fund upon such terms and

subject to such conditions and exceptions and with such entitlement to have recourse to the assets of the Fund with a view to meeting and discharging the costs thereof as shall be provided under its agreement with the Fund, provided that no such indemnity shall arise as a result of any liability that the Depositary assumes in the Depositary Agreement.

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

#### **49. DESTRUCTION OF DOCUMENTS**

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

and it shall conclusively be presumed in favour of the Fund that every instrument of transfer so destroyed was a valid and effective instrument duly and properly registered and that every other document hereinbefore mentioned so destroyed was a valid and effective document in accordance with the recorded particulars thereof in the books or records of the Fund, provided always that:

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

#### **50. SEVERABILITY**

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

#### **51. ALTERATION TO INSTRUMENT OF INCORPORATION AND PROSPECTUS**

- (a) No alteration to the Instrument of Incorporation and no change in the name of the Fund shall be made without obtaining the prior approval of the Central Bank.
- (b) No alteration to the Instrument of Incorporation shall be made unless:
  - (i) the alteration has been approved by Ordinary Resolution; or
  - (ii) the Depositary has certified in writing that the amendment does not:
    - (A) prejudice the interests of the Members; and
    - (B) relate to any such matter as may be specified by the Central Bank as one in the case of which an alteration may be made only if approved by the Members.
- (c) For the purposes of Clause 51(b), a change in the name of the Fund does not constitute an alteration to the Instrument of Incorporation.
- (d) The AIFM shall provide to the Investment Manager and each Member a copy of each amendment to the Prospectus promptly after its effective date of implementation.

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

**Names, addresses and descriptions  
of Subscribers**

**Number of Shares**

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For and on behalf of Attleborough Limited  
10 Earlsfort Terrace  
Dublin 2  
Ireland  
  
Body Corporate

One

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For and on behalf of Fand Limited  
10 Earlsfort Terrace  
Dublin 2  
Ireland  
  
Body Corporate

One

---

Dated:

Witness to the above signatures:

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Carrie Ingram  
10 Earlsfort Terrace  
Dublin 2  
Ireland