

**INSTRUMENT OF INCORPORATION OF  
LC MASTER FUND ICAV  
AN UMBRELLA TYPE IRISH COLLECTIVE ASSET-MANAGEMENT VEHICLE WITH  
SEGREGATED LIABILITY BETWEEN FUNDS**



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

**INSTRUMENT OF INCORPORATION OF**

**LC MASTER FUND ICAV**

**AN UMBRELLA TYPE IRISH COLLECTIVE ASSET-MANAGEMENT VEHICLE WITH  
SEGREGATED LIABILITY BETWEEN FUNDS**

**1. DEFINITIONS**

1.1 In this Instrument the words standing in the first column of the table next hereinafter contained, shall bear the meanings set opposite to them respectively in the second column thereof if not inconsistent with the subject or context:

<b>Accounting Date</b>	means 31 December in each calendar year or such other date as the Directors may from time to time decide. The Central Bank will be notified in advance of any change in the Accounting Date.
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<b>Accounting Period</b>	means a period ending on the Accounting Date and commencing, in the case of the first such period on the date of registration of the ICAV and, in subsequent such periods, on the day following expiry of the last Accounting Period.
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<b>Act</b>	means the Irish Collective Asset-management Vehicles Act 2015 and every modification, consolidation amendment or re- enactment thereof for the time being in force.
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<b>Administration Agreement</b>	means any agreement between the ICAV, the AIFM and the Administrator relating to the appointment and duties of the Administrator as may be amended from time to time subject to the requirements of the Central Bank.
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<b>Administrator</b>	means a person or company appointed by the ICAV and/or the AIFM to carry out the day to day administration of the ICAV appointed from time to time subject to the requirements of the Central Bank.
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<b>Advisory Board</b>	means any advisory committee formed by the ICAV in respect of one or more Funds for the purposes of carrying out the duties, obligations and authorities as may be determined by the ICAV and/or set out in the Prospectus and/or Supplement.
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<b>Aggregate Capital Drawdowns</b>	means in respect of a Fund which is either closed ended or of limited liquidity, if so determined by the Directors, with respect to any Shareholder as of any date, the aggregate amount of all Capital Drawdowns made by such Shareholder to a particular Fund on or prior to such date.
<b>AIF</b>	means an alternative investment fund as defined in the Regulations.
<b>AIFM</b>	means any person, firm or corporation appointed by the ICAV in accordance with the Regulations and Rulebook and for the time being providing management services in relation to the ICAV's Funds.
<b>AIFM Agreement</b>	means any alternative investment fund management agreement made between the ICAV and the AIFM relating to the appointment and duties of the AIFM as alternative investment fund manager as may be amended from time to time.
<b>AIFMD</b>	means the European Union Directive on Alternative Investment Fund Managers, 2011/61/EU, as may be amended and supplemented from time to time.
<b>AIFM Legislation</b>	means the Regulations, the AIFM Directive, the Level 2 Regulation, the Act and any applicable regulations made pursuant to any of them, as the case may be.
<b>Application Form</b>	means any application form to be completed by subscribers for Shares as prescribed by the ICAV from time to time which may be referred to for any closed-ended Fund as a " <b>Subscription Agreement</b> ".
<b>Auditors</b>	means the auditors for the time being of the ICAV.
<b>Base Currency</b>	means the currency of account of a Fund as specified in the relevant Supplement relating to that Fund.
<b>Base Rate</b>	means on any date, a variable rate per annum as determined by the Directors in their discretion and as may be disclosed in the relevant Supplement.
<b>Business Day</b>	means in respect of a Fund such day or days as may be determined by the Directors of the ICAV at their absolute discretion in respect of a Fund.
<b>Call Notice</b>	means in respect of a Fund which is either closed ended or of limited liquidity, if so determined by the Directors, a written notice served by the ICAV on an

investor or Shareholder requiring that investor or Shareholder to make Capital Drawdowns for Shares in respect of all or part of such investor's Capital Commitment as of a Subscription Day.

<b>Capital Commitment</b>	means in respect of a Fund which is either closed ended or of limited liquidity, if so determined by the Directors, in respect of an investor or Shareholder, the total capital agreed to be subscribed by such investor or Shareholder in the relevant Fund pursuant to the relevant Subscription Agreement.
<b>Capital Drawdown</b>	means in respect of a Fund which is either closed ended or of limited liquidity, if so determined by the Directors, in respect of an investor or Shareholder, the amount of capital subscribed or required to be subscribed by that investor or Shareholder for Shares of a Class of a Fund pursuant to such investor's or Shareholder's Capital Commitment.
<b>Capital Drawdown Date</b>	the date on which the capital drawdown proceeds are due and when Shares are issued to Shareholders in accordance with a Call Notice.
<b>Carried Interest</b>	means a share in the income and/or gains of a Fund that is determined by the Directors and agreed with the Investment Manager and allocable to the Investment Manager or an affiliate thereof through a fee payable by the ICAV or through a Carried Interest Class issued by the ICAV in respect of a Fund.
<b>Carried Interest Class</b>	means a Class of Shares the return on which is made up exclusively of, or includes, the Carried Interest.
<b>Central Bank</b>	means the Central Bank of Ireland.
<b>Class or Classes</b>	means a particular division of Shares or Management Shares of the ICAV.
<b>Clear Days</b>	means in relation to the period of a notice, that period excluding the day when the notice is given or deemed to be given and the day for which it is given or on which it is to take effect.
<b>Code Commitment</b>	The U.S. Internal Revenue Code of 1986 as amended. means in respect of a Fund which is either closed ended or of limited liquidity, if so determined by the Directors and reflected in the relevant Supplement, the undertaking of each investor to purchase and pay for Shares in the Fund when required to do so by or on behalf of the AIFM or its delegate.
<b>Dealing Day</b>	means such Business Day or Business Days as the Directors from time to time may determine for each Fund subject to Clause 8 hereof. Dealing Day refers to a "Subscription Day" or a "Redemption Day" as the context requires.
<b>Debenture</b>	means debenture stock, bonds and any other securities of the ICAV whether constituting a charge on the assets

of the ICAV or not.

<b>Depository</b>	means any corporation appointed and for the time being acting as depository of all of the assets of the ICAV in accordance with the Regulations and the requirements of the Central Bank.
<b>Depository Agreement</b>	means any agreement made between the ICAV, and/or the AIFM and the Depository relating to the appointment and duties of the Depository as may be amended or modified from time to time subject to the requirements of the Central Bank.
<b>Directors</b>	means the members of the board of directors of the ICAV for the time being, or as the case may be, the Directors assembled as a committee of the Board, and any successors to such members as may be appointed from time to time with the prior approval of the Central Bank.
<b>Distributor</b>	means one or more persons, firms or corporations appointed for the time being by the ICAV and/or the AIFM providing distribution services in relation to the ICAV in accordance with the requirements of the Central Bank.
<b>Duties and Charges</b>	means 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 of Shares.
<b>ERISA</b>	means the United States Employee Retirement Income Security Act of 1974, as amended.
<b>ERISA Investor</b>	means (i) any plan subject to Title I of the United States Employee Retirement Income Security Act of 1974, as amended ("ERISA") (e.g., U.S. corporate plans) (ii) any plan subject to Section 4975 of the Code (e.g., IRAs) and (iii) any passive investment fund whose underlying assets include "plan assets" (generally because plans (described in (i) or (ii) own 25% or more of a class of such fund's equity interests).
<b>Euro or €</b>	means the lawful currency of the participating member states of the European Union which have adopted the single currency in accordance with the EC Treaty of Rome dated 25th March 1957 (as amended by the Maastricht Treaty dated 7th February 1992).
<b>External Valuer</b>	means any natural or legal person appointed by the AIFM to value all or any of the assets of a Fund in

accordance with the requirements of the Central Bank and the Regulations.

<b>Final Closing Date</b>	means in respect of a Fund which is either closed ended or of limited liquidity, if so determined by the Directors, the date on which the final Subsequent Closing shall be made which shall be determined by the Directors at their discretion.
<b>Fund</b>	means a sub-fund of the ICAV which is established by the Directors from time to time with the prior approval of the Central Bank representing the designation by the Directors of a particular Class or Classes of Shares as a sub-fund the proceeds of issue of which are pooled separately and invested in accordance with the investment objective and policies applicable to such sub-fund.
<b>ICAV</b>	means LC Master Fund ICAV.
<b>Ineligible Applicant</b>	means an ineligible applicant as may be described in the Prospectus or relevant Supplement.
<b>Initial Closing Date</b>	means in respect of a Fund which is either closed ended or of limited liquidity, the date during the Initial Commitment Offer Period, as determined by the Directors, on which the first Capital Commitment Agreement is accepted by the ICAV, as may be determined by the Directors
<b>Initial Commitment Offer Period</b>	means the period during which investors may apply to enter into Capital Commitments to subscribe for Shares, ending on the Final Closing Date.
<b>Initial Offer Period</b>	means in the period during which Shares are offered at their Initial Offer Price and which in the case of a closed-ended Fund or open-ended Fund with limited liquidity may be described as the " <b>Initial Commitment Offer Period</b> ".
<b>Initial Offer Price</b>	means the price, as specified in the Supplement at which Shares are offered during the Initial Offer Period.
<b>Instrument</b>	means this Instrument of Incorporation.
<b>Investment or Investments</b>	means any of the assets or property of the ICAV of whatever kind and all rights, benefits, title and interest in those assets or property, including but not limited to transferable securities, shares, stocks, debentures, bonds equities, debt instruments, money market instruments, financial futures, cash deposits, foreign exchange transactions which may be acquired or held



	or disposed of by the ICAV or as used as techniques and instruments for efficient portfolio management or hedging.
<b>Investment Company Act</b>	means the United States Investment Company Act of 1940, as amended.
<b>Investment Manager</b>	means any person, firm or corporation appointed in accordance with the requirements of the Central Bank and for the time being providing investment management services in relation to one or more of the Funds.
<b>Investment Management Agreement</b>	means any investment management agreement made between the ICAV and/or the AIFM and the Investment Manager relating to the appointment and duties of the Investment Manager, as may be amended from time to time subject to the requirements of the Central Bank.
<b>Investment Period</b>	means in respect of a Fund which is either closed-ended or of limited liquidity, if so determined by the Directors, the period for investment as may be specified in the Prospectus or Supplement in respect of a Fund, which will commence on the Initial Capital Drawdown Date (unless otherwise determined by the Directors) or, if so determined by the Directors and disclosed in the Supplement for a Fund, the period during which the Fund may return disbursements which have been paid to them but have been marked as subject to recycling at the time of distribution and which shall expire on such date as the Directors may determine in their discretion and disclose in the Supplement for the relevant Fund. Such period may be extended by the Directors under the conditions set out in the Prospectus or Supplement in respect of the relevant Fund.
<b>In writing</b>	means written, printed, lithographed, photographed, telexed, telefaxed or represented by any other substitute for writing (including where agreed or permitted under applicable law and regulation any means of electronic communication) or any combination of the foregoing which may be processed to produce legible text.
<b>Ireland</b>	means the Republic of Ireland.
<b>Management Share</b>	means a management share in the capital of the ICAV as described in Clause 5 of this Instrument.
<b>Member</b>	means a Shareholder or a person who is registered as the holder of one or more Shares or Management Shares.

<b>Member State</b>	means a member state of the European Union.
<b>Minimum Holding</b>	means the minimum number or value of Shares, if any, which must be held by Shareholders in any Fund or Class of Shares as specified in the Prospectus or relevant Supplement.
<b>Minimum Subscription</b>	means the minimum initial subscription for Shares in the ICAV, any Fund or Class of Shares as set out in the Prospectus or relevant Supplement provided the minimum amount of such initial subscription (taking into account initial subscriptions by the applicant in other Funds or Classes of Shares in the ICAV) shall not be less than €100,000 or its equivalent in another currency or where outlined in the relevant Supplement for a particular Fund €500,000 or its equivalent in another currency (subject to certain exemptions for certain categories of persons which may be granted by the ICAV in accordance with the requirements of the Central Bank and provided for in Clause 9.05 of this Instrument ("Knowledgeable Persons")) and the aggregate of one or more investor's investments in one or more Classes may generally be taken into account for the purposes of satisfying the regulatory minimum subscription requirement.
<b>Month</b>	means a calendar month
<b>Net Asset Value</b>	means the Net Asset Value of a Fund or the Net Asset Value of a Class of Shares (as appropriate) calculated as hereinafter provided.
<b>Net Asset Value per Share</b>	means the Net Asset Value per Share of a particular Fund or Class of Shares calculated as hereinafter provided.
<b>New Partnership Audit Procedures</b>	means Subchapter C of Chapter 63 of the Code, as amended by Section 1101 of the Bipartisan Budget Act of 2015, Pub. L. No. 114-74, any amended or successor version, Treasury Regulations promulgated thereunder, official interpretations thereof, related notices and other related administrative guidance.
<b>Office</b>	means the registered office of the ICAV.
<b>Ordinary Resolution</b>	means a resolution of the Members of the ICAV or of the Shareholders of a particular Fund or Class(es) of Shares in general meeting passed by a simple majority of the votes cast in person or by proxy at a general meeting of the ICAV, a Fund or Class(es) of Shares as the case may be.

<b>Organisational Expenses</b>	means the organisational expenses incurred by the ICAV in the formation and establishment of the ICAV or a Fund or Class and the raising of its share capital including without limitation the fees of the professional advisers of the ICAV (including legal, accounting and taxation), commissions payable to brokers and others for underwriting, placing, selling, guaranteeing or procuring the underwriting, placing or selling of or guaranteeing the subscription for any Shares, debentures or securities of the ICAV and any costs or expenses (whether incurred directly by the ICAV or not) incurred in connection therewith or with any subsequent application for a listing or quotation of any of the Shares in the ICAV on any exchange or any application for registration, authorisation or recognition of the ICAV in any country and any other expenses which the Directors consider to be in the nature of such expenses.
<b>OTC</b>	means Over-the-Counter.
<b>Paid Up</b>	means the amount paid up as capital on any share including amounts credited as paid up.
<b>Pound, Sterling or £</b>	means the lawful currency for the time being of the United Kingdom.
<b>Prospectus</b>	means the prospectus issued by the ICAV from time to time and any supplement or addenda thereto issued in accordance with the requirements of the Central Bank.
<b>Qualifying Investor</b>	means: <ul style="list-style-type: none"> <li>(a) An investor who is a professional client within the meaning of Annex II of Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (Markets in Financial Instruments Directive) ("MiFID"); or</li> <li>(b) An investor who receives an appraisal from an EU credit institution, a MiFID firm or a UCITS management company that the investor has the appropriate expertise, experience and knowledge to adequately understand the investment in the scheme; or</li> <li>(c) An investor who certifies that they are an informed investor by providing the following: <ul style="list-style-type: none"> <li>• Confirmation (in writing) that the investor</li> </ul> </li> </ul>

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

- 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 ICAV.

Qualifying investors must certify in writing to the ICAV that they meet the minimum criteria listed above and are aware of the risks involved in the proposed investment and of the fact that inherent in such investments is the potential to lose all of the sum invested. The Minimum Subscription for Qualifying Investors is €100,000 (or its equivalent in other currencies) (except for Knowledgeable Persons). The aggregate of an investor's investments in different ICAVs or Classes can be taken into account for the purposes of determining this requirement. The Directors may also increase this amount to take into account legal or regulatory requirements of other jurisdictions and will notify investors subscribing for Shares of any changes in advance of each subscription. The Directors have full discretion to limit investment by an investor who would meet the above criteria, but their investment would result in the legal or beneficial ownership of such Shares by a person in contravention of any restrictions on ownership or might result in legal, regulatory, pecuniary, taxation or material administrative disadvantage to the ICAV, a Fund or Class or Shareholders as a whole.

Within the EU, the ICAV may only be marketed to professional investors as defined in the AIFMD unless the Member State in question permits, under the laws of that Member State, the ICAV to be sold to other categories of investors and that such investors encompasses Qualifying Investors set out in (b) and (c) above.

**Redemption Charge**

means such charge as may be applied at the discretion of the Directors to a redemption of Shares in a Fund in the manner provided for in Clause 12 of this Instrument.

**Redemption Day**

means such day or days in each year as the Directors may from time to time determine in respect of a particular Class of Shares or for each Fund and

specified in the Prospectus or relevant Supplement to the Prospectus in respect of each Fund or as may otherwise be determined by the Directors in accordance with this Instrument.

<b>Redemption Price</b>	means the price at which Shares of a Fund or Class of Shares shall be redeemed pursuant to this Instrument calculated in accordance with Clause 12.
<b>Register</b>	means the register maintained by or on behalf of the ICAV in which are listed the names of Members of the ICAV.
<b>Regulations</b>	means the European Communities (Alternative Investment Fund Managers Regulations 2013 (S.I. No. 257 of 2013) (as may be amended and supplemented from time to time) and which transposed the AIFMD into Irish law.
<b>Rulebook</b>	means the AIF Rulebook issued by the Central Bank as may be amended, supplemented or replaced from time to time or any regulations, notices or guidance issued by the Central Bank in lieu thereof or supplemental thereto.
<b>Seal</b>	means the common seal of the ICAV.
<b>Secretary</b>	means any person, firm or corporation appointed by the Directors to perform any of the duties of the secretary of the ICAV.
<b>Securities Act</b>	means the United States Securities Act of 1933, as amended, substituted, or enacted from time-to-time.
<b>Share</b>	means a redeemable Shares in the capital of the ICAV as more particularly described in Clause 5 of this Instrument and designated in one or more Funds, issued in accordance with this Instrument and having the rights provided for under this Instrument.
<b>Shareholder</b>	means a person who is registered as the holder of Shares the prescribed particulars of which have been recorded in the Register.
<b>Side Pocket Class</b>	means a particular Class of Shares in a Fund as determined by the Directors in accordance with Clause 5.06(b) hereof.
<b>Side Pocket Share</b>	means a Share in the capital of the ICAV designated in one or more Side Pocket Classes, issued in accordance with this Instrument and with the rights provided for under this Instrument.
<b>Signed</b>	means a signature, mark or representation of a signature, affixed by mechanical or other means.

<b>Special Resolution</b>	means a special resolution of the Members of the ICAV or the Shareholders of a particular Fund or Class(es) of Shares in general meeting passed by not less than seventy-five per cent of the votes cast in person or by proxy at a general meeting of the ICAV, a Fund or Class(es) of Shares as the case may be.
<b>Standing Redemption and Payment Instructions</b>	means instructions specifying a named and numbered account at one bank to which the proceeds of the redemption or sale of any Shares are on the instruction of a Shareholder to be paid.
<b>Subscription Agreement</b>	means in respect of a Fund which is either closed ended or of limited liquidity, the agreement between each investor or Shareholder and the ICAV pursuant to which the relevant investor or Shareholder has agreed to make Capital Commitments for Shares of a Fund.
<b>Subscription Day</b>	means such day or days in each year as the Directors may from time-to-time determine for each Fund and specified in the Supplement to the Prospectus in respect of each Fund.
<b>Subscription Price</b>	means the price at which Shares of a Fund or Class of Shares shall be allotted pursuant to Clause 10 hereof.
<b>Subsequent Closing</b>	means in respect of a Fund which is either closed ended or of limited liquidity, if so determined by the Directors, the date or dates on which a Fund may accept additional subscriptions from new investors and/or existing Shareholders following the Initial Closing Date with the final Subsequent Closing falling on the Final Closing Date.
<b>Supplement</b>	means a supplement to the Prospectus outlining information in respect of a Fund and/or Classes of Shares of that Fund.
<b>Term</b>	means in respect of a Fund which is either closed-ended or of limited liquidity, the meaning ascribed to it in the relevant Supplement.
<b>Unfunded Commitment</b>	means in respect of a Fund which is either closed ended or of limited liquidity, if so determined by the Directors, with respect to any Shareholder as of any date, the amount of such Shareholder's Capital Commitment minus such Shareholder's Aggregate Capital Drawdowns previously made and not distributed to such Shareholder as a return of capital. For the avoidance of doubt (i) distributions of income by a Fund shall not increase a Shareholder's Unfunded Commitment and (ii) distributions that constitute a

return of capital shall increase a Shareholder's Unfunded Commitment.

**UK** means the United Kingdom of Great Britain and Northern Ireland.

**United States or US** means the United States of America (including the federal states and the District of Columbia), its territories, its possessions and other areas subject to its jurisdiction.

**US Dollar, USD and US\$** means United States Dollars, the lawful currency for the time being of the United States.

**US Person** means a US Person as defined in the Prospectus or otherwise determined by the Directors.

**Valuation Day** means such day as is specified in the Prospectus or relevant Supplement to the Prospectus for each Fund **PROVIDED THAT** there shall be a Valuation Day in respect of each Dealing Day.

**Valuation Point** means the time on each Valuation Day by reference to which the Net Asset Value shall be calculated on or with respect to each Dealing Day as shall be determined by the Directors and specified in the Prospectus or relevant Supplement for each Fund.

1.2 In this Instrument, unless there be something in the subject or context inconsistent with such construction:-

- (a) words importing the singular number shall include the plural number and vice versa;
- (b) words importing the masculine gender only shall include the feminine gender;
- (c) words importing persons only shall include companies or associations or bodies of persons, whether corporate or not;
- (d) the word "may" shall be construed as permissive and the word "shall" shall be construed as imperative;
- (e) all references to a time of day or night shall be to Irish time;
- (f) references to enactments and to sections of enactments shall include reference to any modifications or re-enactments thereof for the time being in force; and
- (g) headings and captions in this Instrument are inserted for convenience of reference only and shall not affect the construction or interpretation hereof.

1.3 Where for the purposes of this Instrument or for any other purpose any amount in one currency is required to be converted into another currency the Directors may effect such conversion using such rates as are quoted by such banks or other market participants as the Directors may deem appropriate at the relevant time except where otherwise in this Instrument specifically provided.

## 2. OBJECT

- 2.1 The sole object of the ICAV is the collective investment of its funds in property with the aim of giving its Members the benefit of the results of the management of its funds.
- 2.2 The ICAV may take any measures and carry out any operations which it may deem useful or necessary to the accomplishment and development of its purpose to the full extent permitted by applicable law.
- 2.3 For the purposes of achieving the sole object in Clause 2.01 above, the ICAV shall have, subject to applicable law, full and unlimited capacity to carry on and undertake any business or activity, do any act or enter into any transaction and, for such purposes, shall have full rights, powers and privileges and shall also have the following powers:
- (a) to carry on the business of an Irish collective asset-management vehicle and for that purpose to:
    - (i) to acquire, dispose of, invest in and hold by way of investment or otherwise participate in shares, units, partnership interests or other units of ownership of any limited partnership, unit trust scheme, mutual fund or other collective investment scheme, shares, stocks, warrants, debentures, debenture stock, loan stock, bonds, notes, obligations, certificates of deposit, and other instruments creating or acknowledging indebtedness issued by or on behalf of any body corporate, mutual body, government or local authority treasury bills, trade bills, bank acceptances, bills of exchange, money market instruments, fixed rate securities, variable or floating rate securities, securities in respect of which the return and /or any redemption amount is calculated by reference to any index, price or rate, commercial paper, mortgage or asset backed securities, promissory notes, obligations and securities and financial instruments of any kind created, issued or guaranteed by any government, sovereign ruler, commissioners, public body or authority, trust, municipal, local, supranational authority, agency or division thereof or otherwise in any part of the world or by any bank, financial institution, association, partnership or company, whether with limited or unlimited liability wherever incorporated or carrying on business, policies of assurance and insurance, domestic and foreign currency and any present or future rights to or in any of the foregoing and to acquire real estate, real estate related assets, unit trust schemes, mutual funds and collective investment schemes of any kind whatsoever in any part of the world and from time to time to sell, exchange, lend, vary or dispose of and grant and dispose of options over any of the foregoing and to deposit money (or place money on current account) with such persons in such currencies and otherwise on such terms as may seem expedient;
    - (ii) to employ, utilise, acquire or dispose of derivative instruments and techniques of all kinds for the investment or efficient management of the ICAV's assets as may be permitted by applicable law and regulation;
    - (iii) to establish or acquire any wholly owned subsidiary of, or trading vehicles for, the ICAV in accordance with the requirements of the Central Bank;
    - (iv) to enter into brokerage arrangements or other arrangements with brokers or their related entities;
    - (v) to deposit money or to advance or lend securities and/or property;
    - (vi) to invest in non-owned investment vehicles in the interests of Shareholders and the ICAV may seek to achieve its investment objective by investing all or substantially all of its assets in an investment vehicle under the terms of a



profit participating agreement of any kind including those involving swaps, transfers, payments, interest, notes, loans or rights of any kind;

- (vii) to exercise and enforce all rights and powers conferred by or incidental to the ownership of any shares, stocks, obligations, securities or instruments held, dealt or otherwise utilised by the ICAV;
- (viii) to make, draw, accept, endorse, issue, discount, and otherwise deal with debentures, bonds or other obligations, promissory notes, bills of exchange, cheques, letters of credit, circular notes, and other mercantile instruments;
- (ix) to enter into partnership or into any arrangement for sharing profits, union of interest, joint venture, reciprocal concession, co-operation or otherwise with any company carrying on, or engaged in, any business or transaction which the ICAV is authorised to carry on or engage in, or any business or transaction capable of being conducted so as directly or indirectly to benefit the ICAV and to take or otherwise acquire and hold shares or stock in or securities of any such company, to assist any such company, and to sell, hold, or otherwise deal with such shares, stock or securities;
- (x) to increase, reduce, restructure, sub-divide or otherwise vary the capital of the ICAV in any manner permitted by law;
- (xi) to borrow and raise money in any manner and to secure with or without consideration the repayment of any money borrowed, raised, or owing by mortgage, charge, debenture, debenture stock, bond, standard security, lien or any other security of whatsoever nature upon the ICAV's property or assets (whether present or future) including its uncalled capital, and also by a similar mortgage, charge, debenture, debenture stock, bond, standard security, indemnity, lien, guarantee or security of whatsoever nature to secure and guarantee the performance by the ICAV or any other company or person including (but without limitation) the holding company of the ICAV or any company which is a subsidiary of such holding company, and to secure any securities of the ICAV by a trust deed or other assurance;
- (xii) to employ any person, firm, company or other body to investigate and examine the conditions, prospects, values, character and circumstances of any business concern or undertaking and generally of any assets, concessions, properties or rights;
- (xiii) to remunerate and indemnify any person, firm or company rendering services to the ICAV or acting as counterparty to the ICAV;
- (xiv) to procure the ICAV or its share capital to be registered, authorised or recognised with or by any body or association in any foreign country or place;
- (xv) to the extent permitted by law to obtain and hold, either alone or jointly with any person or company, insurance cover in respect of any risk of the ICAV, its directors, officers, employees and agents and to pay any premium thereon;
- (xvi) to apply for, purchase or otherwise acquire any patents, trademarks, copyrights, designs, licences, and like rights, conferring an exclusive or limited right to use, or any secret or other information as to any invention which may seem capable of being used for any of the purposes of the ICAV or the acquisition of which may seem calculated directly or indirectly to benefit the ICAV and to use, exercise, develop, sell, grant licences in respect of, or otherwise turn to account the rights and information so acquired;

- (xvii) to do all or any of the above things in any part of the world, and as principals, agents, contractors, trustees or otherwise, and either by or through trustees, agents, sub-contractors or otherwise and either alone or in partnership or conjunction with any person or company, and to contract for the carrying on of any operation connected with the ICAV's business by any person or company;
  - (xviii) to grant standard security, mortgages, transfers, charges, liens, guarantees, indemnities, or any other security of whatsoever nature upon the ICAV's property or assets (whether present or future) to secure, guarantee, indemnify or otherwise support the performance by the ICAV of any obligation or liability on it or which it may undertake or which may become binding upon it;
- (b) To do all such other things as may be deemed incidental or conducive to the attainment of the above objects or any of them.

2.4 In the construction of Clause 2.03, each of the ancillary objects and powers of the ICAV (whether enumerated or not) is to be interpreted and exercised as ancillary to the main object but separate from and ranking equally to any other ancillary power.

### 3. PRELIMINARY

- 3.1 The business of the ICAV shall be commenced as soon after the date of registration and authorisation of the ICAV under the Act as the Directors think fit.
- 3.2 Any Organisational Expenses payable by the ICAV may in the accounts of the ICAV be carried forward and amortised in such manner and over such period as the Directors may determine and the Directors may at any time and from time to time determine to lengthen or shorten any such period. Any Organisational Expenses attributable to one or more Funds shall be allocated between the relevant Funds pro rata or in such other manner as the Directors shall in their sole discretion determine and disclose in the Prospectus or Supplement for a Fund and may for the avoidance of doubt be subject to such adjustment/reimbursement following the issue of new Classes or series of Classes in a Fund and/or establishment of new Funds and Classes as the Directors may in their sole discretion determine. For the avoidance of doubt the Directors may also determine where disclosed in the Prospectus or Supplement for a Fund to allocate Organisational Expenses to one or more Classes within a Fund subject to and in accordance with the requirements of the Central Bank where the Directors in their sole discretion deem it fair and reasonable to do so.
- 3.3 The ICAV and/or each Fund (and, where expenses or liabilities are attributable specifically to a Class of Shares, that Class) shall also bear the following expenses and liabilities or, where appropriate, its pro rata share thereof (subject to adjustment/reimbursement to take account of expenses and liabilities attributable to one or more Classes):-
- (a) all fees and expenses, to include out-of-pocket expenses, payable to or incurred by the ICAV, the Administrator, the Depositary, the AIFM, any Investment Manager, investment advisor, Distributor, prime broker, External Valuer or other valuation agent, the Secretary, and any other agent, advisor, employee or delegate appointed by or on behalf of the ICAV and their respective delegates;
  - (b) Duties and Charges, all taxes or government duties which may be payable on the assets, income or expenses chargeable of the ICAV and bank charges and commissions incurred by or on behalf of the ICAV in the course of its business or correspondence;
  - (c) all fees and expenses, to include out-of-pocket expenses, of the Directors, a committee of Directors and the Secretary;
  - (d) the remuneration and expenses of any paying agent or representative or correspondent bank appointed in any jurisdiction in compliance with the law or other requirements of that jurisdiction;
  - (e) the remuneration, commissions and expenses incurred or payable in the registration, marketing, promotion and distribution of Shares including without limitation commissions payable to any person in consideration of his subscribing or agreeing to subscribe or procuring or agreeing to procure subscriptions for any Shares in the ICAV and the costs and expenses of preparation and distribution of all marketing material and advertisements;
  - (f) all fees and expenses connected with the preparation, publication and supply of information to the Shareholders and the public including, without limitation, the cost of preparing, translating, printing, updating and distributing the Prospectus and any Supplements and any periodic updates thereof, marketing literature, the annual audited report, the half-yearly reports and any other periodic reports and the calculation, publication and circulation of the Net Asset Value per Share and of any notices given to the Shareholders in whatever manner;

- (g) all fees and expenses incurred in connection with the convening and holding of Members' meetings;
- (h) all fees and expenses incurred or payable in registering and maintaining a Fund or Class registered with any and all governmental and/or regulatory and/or rating agencies, including the fees of the Central Bank, clearance and/or settlement systems and/or any exchanges in any countries and jurisdictions including, but not limited to, all filing and translation expenses;
- (i) all fees and expenses incurred or payable in listing and in maintaining or complying with the requirements for the listing of the Shares on the Irish Stock Exchange (or other exchange to which Shares may be admitted);
- (j) legal, audit, accounting, consultancy, tax and other professional fees and expenses incurred by the ICAV or by or on behalf of its agents or delegates in any actions taken, including but not limited to, proceedings instituted or defended to enforce, protect, safeguard, defend or recover the rights or property of the ICAV;
- (k) any amount payable under indemnity provisions contained in any agreement with any officer, employee, agent, delegate, advisor or other service provider of the ICAV;
- (l) all sums payable in respect of any policy of insurance taken out by the ICAV including, without limitation, any policy in respect of directors' and officers' liability insurance cover or liability cover in respect of any Advisory Board;
- (m) all expenses involved in obtaining and maintaining a credit rating for the ICAV, any Fund, Class of Shares or any assets of any Fund from any rating agency;
- (n) any fees or expenses of any kind whatsoever incurred by or on behalf of a collective investment scheme (which for the avoidance of doubt may include a Fund of the ICAV) established exclusively for the purpose of investing substantially all of its assets in the ICAV or any Fund of the ICAV (an "ICAV Feeder");
- (o) tax agent fees and any fees incurred in respect of specific tax advice received in respect of particular assets of the ICAV;
- (p) any pricing vendor fees or External Valuer fees;
- (q) any license fees applicable;
- (r) all costs and expenses, license fees and other expenses associated with the use of any investment management software employed by the ICAV;
- (s) merchant banking, stockbroking, loan servicing or corporate finance fees including interest on borrowings, index calculation, performance attribution, risk control and similar services' fees and expenses, fees and charges of clearing agents and interest on debit balances and other;
- (t) all costs, expenses and charges associated with the ICAV (a) borrowing money or securities or transferring, mortgaging, charging, pledging or transferring its undertaking, property and assets, or any part thereof or (b) issuing bonds, notes, debentures, debenture stock or other securities;
- (u) the costs of any amalgamation or restructuring of the ICAV or any Fund;
- (v) other documents relating to the ICAV or a Fund including registration statements, prospectuses, explanatory memoranda, annual and extraordinary reports with all authorities (including local securities dealers associations) having jurisdiction over the ICAV, a Fund or the offer of Shares and the cost of delivering any of the foregoing to the Shareholders;

- (w) the costs of termination, winding-up, liquidation or similar process of the ICAV or any Fund, as appropriate;
- (x) all fees payable in respect of investments in collective investment schemes (including, for the avoidance of doubt, any collective investment scheme in which a Fund may invest (a "Master Fund") including, without limitation, subscription, redemption, management, performance, distribution, administration, loan servicing and/or custody fees in respect of each collective investment scheme in which a Fund invests except where this is not permitted by the Central Bank;
- (y) all other liabilities and contingent liabilities of the ICAV of whatsoever kind and all fees and expenses incurred in connection with the ICAV's operation administration and management (including, without limitation, all company secretarial expenses and all Central Bank filings and statutory fees) or as may be deemed incidental or conducive to objectives, powers or policy of the ICAV;
- (z) all other fees, costs and expenses disclosed in the Prospectus and/or relevant Supplement;

in each case all of the above payable inclusive of any taxes or charges including applicable value added tax (if any).

All recurring expenses will be charged against current income and/or against realised and unrealised capital gains, and/or against assets of the ICAV as the Directors may from time to time decide and may be carried forward and amortised in such manner and over such period as the Directors may determine and the Directors may at any time lengthen or shorten any such period.

- 3.4 Where a Fund is closed-ended and there is no realistic opportunity for Shareholders to redeem or otherwise exit the relevant Fund or Class before such change is implemented, and it is proposed to increase the maximum fees of the AIFM or any Investment Manager, the ICAV shall seek the approval of Shareholders of the relevant Fund or Class thereof by way of Special Resolution to the increased maximum fees of the AIFM or any Investment Manager. However, where there is a realistic provision for liquidity with an opportunity for Shareholders to redeem or otherwise exit the relevant Fund or Class, an Ordinary Resolution shall be sufficient to increase the maximum fees of the AIFM or any Investment Manager.

#### **4. SERVICE PROVIDERS**

- 4.1 The ICAV may appoint such persons, firms or corporations to provide services or advice to the ICAV and/or its Members (or for their benefit) and to perform such other duties upon such terms and conditions including the right to indemnities and remuneration payable by the ICAV as the Directors may in their discretion deem appropriate and the ICAV or the Directors may delegate or entrust to and confer upon such person, firm or corporation so appointed any of the powers, duties, discretions and/or functions exercisable by the Directors upon such terms and conditions and with such powers of delegation and such restrictions as they think fit. The appointment of such other persons shall be in accordance with the requirements of the Rulebook and the Regulations.

Without limiting the foregoing, the following clauses envisage specific appointments.

- 4.2
- (a) Subject to the prior approval of the Central Bank, the ICAV shall entrust its assets to a Depositary for safe-keeping and to perform such other duties upon such terms and conditions including the right to remuneration payable by the ICAV as the Directors may from time to time (with the agreement of the Depositary) determine. The ICAV may also appoint the Depositary to be responsible for the safe custody of all

Investments invested in an investment vehicle in accordance with the requirements (including any approved derogation or waiver from standard rules) of the Central Bank and the Regulations.

- (b) The Depositary shall be a company approved for the purpose by the Central Bank and the terms of any Depositary Agreement shall be in accordance with the Regulations and the requirements of the Central Bank.

#### 4.3

- (a) Subject to the prior approval of the Central Bank, the ICAV shall appoint an AIFM to be responsible for the management of all the Investments of the ICAV and to perform such other duties upon such terms and conditions including the right to remuneration payable by the ICAV as the Directors may *from* time to time (with the agreement of the said AIFM) determine.
- (b) The AIFM shall be a company approved for the purpose by the Central Bank and the terms of any AIFM Agreement shall be in accordance with the Regulations and the requirements of the Central Bank.
- (c) The terms of appointment of any AIFM may authorise such AIFM to appoint (with powers of sub-delegation) agents or delegates at the expense of the ICAV or otherwise as determined by the AIFM and the ICAV.
- (d) In the event of the AIFM desiring to retire or the ICAV desiring to remove the AIFM from office the Directors shall use their reasonable endeavours to find a corporation willing to act as AIFM and subject to the prior approval of the Central Bank and subject to Clause 4.03(b) the Directors shall appoint such corporation to be AIFM in place of the former AIFM. The AIFM may not retire or be removed from office until the Directors shall have found a corporation willing to act as AIFM and such corporation shall have been appointed AIFM in place of the former AIFM. Alternatively, the ICAV may apply to be authorised by the Central Bank as an internally managed AIFM for the purposes of the Regulations.
- (e) The ICAV may terminate the appointment of the AIFM where:-
  - (i) it gives the AIFM not less than such period of notice in writing as agreed under the terms of the AIFM Agreement of its intention to terminate;
  - (ii) where the AIFM breaches any of its obligations under the terms of the AIFM Agreement and fails to rectify within the time period specified therein;
  - (iii) where the AIFM is unable to pay its debts as they fall due or otherwise become insolvent or enter into any composition or arrangement with or for the benefit of its creditors or any class thereof, or where the AIFM is the subject of any petition for the appointment of an examiner or similar officer to it or in respect of its affairs or assets or where the AIFM has a receiver appointed over all or any substantial part of its undertaking, assets or revenues or where the AIFM is the subject of an effective resolution for its winding up except in relation to a voluntary winding up for the purposes of reconstruction or amalgamation upon terms previously approved in writing by the ICAV or where the AIFM is the subject of a court order for its winding up or liquidation;
  - (iv) in such other instances as may be set out in the AIFM Agreement; or
  - (v) the ICAV considers a termination to be in the best interests of its Members.

The AIFM Agreement will terminate if the Central Bank determines to replace the AIFM with another alternative investment fund manager. Such termination shall take effect on the appointment of a replacement alternative investment fund manager to the ICAV.

- (f) The Central Bank may, at its discretion, replace the AIFM with a new AIFM.

#### 4.4

- (a) The ICAV and/or the AIFM may appoint one or more persons, firms or corporations to act as Investment Manager for the purpose of managing the investment and reinvestment of the Investments of the ICAV or any of its Funds, providing investment advice and perform such other duties upon such terms and conditions including the right to remuneration as the Directors and/or the AIFM may from time to time (with the agreement of the said Investment Manager) determine.
- (b) The terms of any Investment Management Agreement and the appointment of an Investment Manager shall be in accordance with the requirements of the Rulebook and the Regulations.

#### 4.5

- (a) The ICAV and/or the AIFM may appoint a person, firm or corporation to act as Administrator of the ICAV for the purpose of administering the affairs of the ICAV and, in each case, to perform such other duties upon such terms and conditions including the right to remuneration as the Directors and/or the AIFM may from time to time (with the agreement of the said Administrator) determine.
- (b) The terms of any Administration Agreement and the appointment of an Administrator shall be in accordance with the requirements of the Rulebook and the Regulations.

#### 4.6

- (a) The ICAV and/or the AIFM may appoint, or may authorise the Investment Manager or other person to appoint, one or more persons, firms or corporations to act as distributor(s) for the purpose of marketing and distributing the Shares of the ICAV and to perform such other duties upon such terms and conditions including the right to remuneration as the Directors and/or the AIFM, or Investment Manager or other authorised person may from time to time (with the agreement of the said distributors) determine.
- (b) The appointment of a Distributor shall be in accordance with the requirements of the Rulebook and the Regulations.

#### 4.7

- (a) The ICAV and/or the AIFM may appoint one or more persons, firms or corporations to act as banker, broker, prime broker or financing counterparty for the purpose of facilitating its objectives and to perform such other duties upon such terms and conditions including where applicable the right to remuneration as the Directors and/or the AIFM may from time to time (with the agreement of the said party) determine.
- (b) The appointment of a banker, broker, prime broker or financing counterparty shall be in accordance with the requirements of the Rulebook and the Regulations.

- 4.8 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 ICAV or otherwise as determined by the Depositary and the ICAV.

- 4.9 In the event of the Depositary desiring to retire or the ICAV desiring to remove the Depositary from office the Directors shall use their reasonable endeavours to find a corporation willing to act as Depositary and subject to the prior approval of the Central Bank and Clause 4.02(b) the Directors shall appoint such corporation to be Depositary in place of the former Depositary. The Depositary may not retire or be removed from office until the Directors shall have found a corporation willing to act as Depositary and such corporation shall have been appointed Depositary in place of the former Depositary.
- 4.10 If within such period of time as the parties to the Depositary Agreement have agreed from the date of service of a notice of termination pursuant to the Depositary Agreement a new depositary acceptable to the ICAV and the Central Bank has not been appointed to act as depositary to the ICAV, the Depositary or the Directors may require the Secretary to convene a general meeting of the Shareholders for the purposes of considering an Ordinary Resolution that the ICAV be wound up and if such an ordinary resolution is passed the ICAV shall redeem all Shares in issue (other than the Management Shares) in accordance with the provisions of this Instrument and the ICAV shall distribute the assets of the ICAV accordingly and the Directors shall apply to the Central Bank for revocation of the ICAV's regulatory authorisation pursuant to the Act. Notwithstanding anything set out above, the Depositary's appointment shall only terminate on revocation of the ICAV's authorisation by the Central Bank.
- 4.11 The Central Bank may, at its discretion, replace the Depositary with a new Depositary.
- 4.12 The ICAV may contractually agree with the Depositary that the Depositary may discharge itself of liability PROVIDED THAT the conditions set out in Regulation 22(13) of the Regulations are met. In addition, 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 delegation requirements laid down in sub-clause (ii) of Regulation 22(11 )(b)(iv) of the Regulations, then and only in those circumstances, the ICAV may contractually agree with the Depositary that the Depositary may discharge itself of liability PROVIDED THAT the conditions set out in Regulation 22 of the Regulations are met.
- 4.13 The Investment Manager shall be a company complying with the requirements of the Central Bank and any Investment Management Agreement shall be in accordance with the requirements of the Central Bank.
- 4.14 The ICAV or the ICAV's delegate may appoint a person, firm or corporation to provide such other services to the ICAV, including but not limited to, investment management, distribution, brokerage, loan servicing, prime brokerage and sub-custodial services, as the Director's may in their discretion deem appropriate and the ICAV or the ICAV's delegate may entrust to and confer upon such person, firm or corporation so appointed any of the powers, duties, discretions and/or functions exercisable by the Directors upon such terms and conditions including the right to remuneration payable by the ICAV or by the ICAV's delegate and with such powers of delegation and such restrictions as they think fit. Such person, firm or corporation shall be appointed in accordance with the requirements of the Central Bank.
- 4.15 The ICAV and/or the AIFM shall, or shall procure that all information required by the Regulations and the Central Bank is made available to prospective Shareholders.

## **5. SHARE CAPITAL AND DEBENTURES**

- 5.1 The ICAV may issue shares and Debentures subject to and in accordance with this Instrument, the Prospectus, the requirements of the Central Bank and the Act.
- 5.2 The share capital of the ICAV shall be at all times equal to the value for the time being of the issued share capital of the ICAV. The actual value of the paid up share capital of the ICAV shall at all times be equal to the value of the assets of the ICAV after deduction of its liabilities. The Share Capital of the ICAV is to be divided into a specified number of Shares without assigning any nominal value to them.



- 5.3 Shares of the ICAV shall be divided into 500,000,000,000 (five hundred billion) ordinary Shares of no nominal value ("**Shares**") and 300,000 (three hundred thousand) ordinary non-participating management shares of no par value ("**Management Shares**"). The ICAV may issue shares as fully paid up, or subscribed and partly paid up, in accordance with this Instrument, the requirements of the Central Bank and the Act. The liability of Members in respect of payment on their shares shall be limited to the amount, if any, unpaid, on the shares respectively held by them. This is without prejudice to any other liability to which a Shareholder may be subject as provided by under the Act. As more specifically described in Clause 12 of this Instrument, Shares shall at the request of any of the Shareholders, be purchased by the ICAV directly or indirectly out of the Investments of the ICAV unless and to the extent as may be provided for in this Instrument, approved by the Central Bank and subject to such requirements as may be imposed by the Central Bank under the Act or any other enactment.
- 5.4 Subject and without prejudice to Clause 6.02 hereof, Shareholders shall have the right to participate in or receive profits or income arising from the acquisition, holding, management or disposal of Investments of the relevant Fund, to vote at any general meeting of the ICAV or at any general meeting of the relevant Fund or Class of Shares in respect of which such Shares have been issued and shall have such other rights as may be provided in respect of Shares of a particular Fund or Class in each case as more particularly described in this Instrument, the Prospectus and/or relevant Supplement subject always to the requirements of the Central Bank and the Act. Holders of Management Shares shall have the right to receive an amount not to exceed the consideration paid for such Management Shares and to vote at any general meeting of the ICAV in accordance with the provisions of this Instrument.
- 5.5 The Directors are hereby generally and unconditionally authorised to exercise all the powers of the ICAV to issue Shares and Management Shares and, subject to and in accordance with the requirements of the Central Bank, Debentures in the ICAV on such terms and in such manner as they may think fit.
- 5.6
- (a) The Directors may, subject to this Instrument, the requirements of the Central Bank, the Prospectus and the Act, allot, issue, grant options over or otherwise dispose of Shares in the ICAV to such persons on such terms and conditions and at such times and in such manner as they may think fit. The Shares shall be divided into such Classes or Funds as the Directors may from time to time determine. On or before the allotment of any Shares, the Directors shall determine the Class or Fund to which such Shares are designated. All monies payable in respect of a Share (including without limitation, the subscription and redemption monies and distributions in respect thereof) shall be paid in the currency in which the Share is designated or in such other currency or currencies as the Directors may determine either generally or in relation to a particular Class or Fund. In order to facilitate the equitable application to the holding of each Shareholder of any performance fee payable in respect of a Class of Shares, or for any other purpose as determined by the Directors in accordance with the requirements of the Central Bank and as disclosed in the Prospectus or relevant Supplement, the Directors may in their discretion create series of Shares within that Class in respect of one or more Funds, in which case an initial series of Shares for each relevant Class of Shares will be issued at such time as the Directors may determine and thereafter at such times as the Directors determine and disclose in the Prospectus or relevant Supplement. Each subsequent series of Shares may, at the discretion of the Directors, be re-designated and converted into the initial series at such time and in such circumstances as the Directors may determine and disclose as outlined in the Prospectus or relevant Supplement.
- (b) Without prejudice to the generality of the foregoing Clause 5.06(a), the Directors may, subject to this Instrument, the Prospectus and the Act and in accordance with the requirements of the Central Bank, create and issue at their discretion from time to time (including at times of suspension of (i) the determination of the Net Asset Value;

and (ii) the allotment, redemption and conversion of Shares) a new Class or Classes of Shares ("**Side Pocket Class**") to which assets and liabilities of a Fund (or any part thereof) are allocated at the discretion of the Directors at any time, either on or after the acquisition thereof, as being or having become Investments that are illiquid or otherwise difficult to value or realise plus such additional assets representing a reserve for commitments and contingencies as the Directors in their discretion determine. Shares in such Side Pocket Class ("**Side Pocket Shares**") shall be redeemable by the ICAV and/or by the holders thereof only when so determined by the Directors. The creation of a Side Pocket Class will involve the Directors effecting a pro-rata reduction in the number of Shares held by a Shareholder attributable to the relevant Fund excluding the assets and liabilities attributable to the Side Pocket Class and creating for the benefit of such Shareholder a corresponding pro-rata interest in the Side Pocket Class. The value of assets and liabilities attributed to a Side Pocket Class shall be determined by the Directors in a manner consistent with Clause 16.00 hereof. Unless otherwise described in this Clause or unless otherwise determined by the Directors, a Side Pocket Class shall have the same rights and characteristics as any other Class of Shares. Shareholders in Classes other than the Side Pocket Class shall not participate in the assets or liabilities attributable to the Side Pocket Class and the assets and liabilities attributable to the Side Pocket Class shall be segregated from and shall not form part of the other assets of the relevant Fund. The liabilities of or attributable to a Side Pocket Class shall be discharged solely out of the assets of that Side Pocket Class.

For the avoidance of doubt, the Directors may establish a Side Pocket Class based on parameters other than those detailed in these presents PROVIDED THAT such parameters are set out in the Prospectus or relevant Fund Supplement. Without prejudice to the generality of the foregoing, the Directors may also, at their discretion create and issue a Side Pocket Class to which assets and liabilities of the Fund which are illiquid or difficult to realise at the time of purchase are allocated.

- 5.7 The Directors may delegate to any duly authorised Director or officer of the ICAV, or to any duly authorised person, firm or corporation, including the AIFM or the Administrator, the duties of accepting the subscription for, receiving payment for, and delivering, new Shares.
- 5.8 The Directors may in their absolute discretion refuse to accept any application for Shares in the ICAV or to accept any application in whole or in part.
- 5.9 On any issue of Shares, the ICAV may pay any brokerage fees or commissions.
- 5.10 No notice of any trust, express or implied shall be entered on the Register and no person shall be recognised by the ICAV as holding any shares on trust and the ICAV shall not be bound by or recognise (even when having notice thereof) any equitable, contingent, future or partial interest in any shares or (except only as this Instrument otherwise provides or as by law required) any other right in respect of any share, except an absolute right of title thereto in the registered holder.
- 5.11 The ICAV may, by Ordinary Resolution, alter its share capital by consolidating, redesignating and/or dividing its share capital into shares of larger amount than its existing shares, subdividing its shares into shares of smaller amount than that fixed by this Instrument, or by cancelling any shares which, at the date of such Ordinary Resolution have not been taken or agreed to be taken by any person and diminish the amount of its share capital by the amount of the shares so cancelled.
- 5.12 Any Debentures issued by the ICAV in accordance with Clause 5.01 will be issued subject to such terms and conditions as determined by the Directors.

## **6. CONSTITUTION OF THE ICAV**

- 6.1 The ICAV is an umbrella type Irish collective asset-management vehicle comprising separate Funds, which may comprise one or more Classes of Shares and with segregated liability

between Funds. Each Fund (or, where permitted by the Central Bank, Classes within a Fund) may be established as either an open-ended or closed-ended fund or an open-ended Fund with limited liquidity. The assets of each Fund shall belong exclusively to the relevant Fund and shall not be used to discharge directly or indirectly the liabilities or claims against other Funds and shall not be available for any such purpose. No Shareholder shall have any interest in the assets of any Fund by virtue of his holding of Shares in the Fund. Subject to the Act, any liability incurred on behalf of or attributable to any Fund shall be discharged solely out of the assets of that Fund. The Directors may from time to time, with the prior approval of the Central Bank and/or upon prior notice to the Central Bank, and in accordance with the requirements of the Central Bank, designate additional Funds and/or Classes respectively and issue Shares in such Funds or Classes.

While a Fund is closed-ended, Shareholders in such Fund of the ICAV shall not be entitled to request the repurchase of their Shares (other than to the extent that the Directors may permit redemptions in specie to the extent set out in the Prospectus or relevant Supplement). During the period following the initial offer or placing of Shares a closed-ended Fund of the ICAV will be closed to redemptions at the request of Shareholders or may be subject to restriction on redemptions pursuant to the provisions of this Instrument (the "**Closed-Ended Period**"). On the expiry of the Closed Ended Period of the relevant Fund of the ICAV, the ICAV will:-

- (a) (a) as the Directors consider appropriate, taking into account the interests of Shareholders as they deem appropriate, liquidate the Fund's portfolio of Investments and return the net proceeds thereof to Shareholders as and when such proceeds become available through distributions or the compulsory repurchase of Shares, and, following such liquidation, terminate the Fund and apply to the *Central Bank* for revocation of the Fund's approval. Such liquidation shall commence immediately upon expiry of the Closed-Ended Period of the Fund unless extended pursuant to Clause 6.01(d) below;
- (b) repurchase all outstanding Shares in the relevant Fund and will apply to the Central Bank for revocation of the relevant Fund's approval PROVIDED THAT, if the relevant Fund is the last Fund of the ICAV, the Directors will apply to the Central Bank for revocation of the ICAV's authorisation;
- (c) convert the relevant Fund into an open-ended Fund, the relevant subscription and redemption details of which shall be in accordance with the requirements of the Central Bank and specified in an addendum to the Prospectus or in a new Prospectus or Supplement to the Prospectus issued upon such conversion and as determined by a duly convened and held general meeting of Shareholders of that Fund; or
- (d) obtain the approval of Shareholders by way of Special Resolution to extend the Closed-Ended Period of the Fund for a further finite period. However, where a redemption facility is available to those Shareholders who do not wish to extend the Closed-Ended Period, an Ordinary Resolution shall be sufficient to extend the Closed-Ended Period.

Unless terminated earlier in accordance with the provisions of the Prospectus or relevant Supplement, or extended as provided for herein, the term of a Fund will be set out in the Prospectus or relevant Supplement.

- 6.2 Subject to the requirements of the Central Bank, the Directors may in their absolute discretion differentiate between any Class of shares of the ICAV including without limitation as to the fees payable in respect thereof, distribution policy, currency of denomination, hedging, voting rights, return of capital, the level of fees and expenses to be charged, subscription or redemption procedures, minimum subscription restrictions (if any), minimum transaction restrictions (if any), minimum holding restrictions (if any), use of techniques and instruments for efficient portfolio management or to provide protection against exchange risks and shares of any such Class of the ICAV may have preferred, deferred or other special rights, privileges or restrictions attached thereto. Subject to the requirements of the Central Bank and the

provisions of the Regulations, the Directors may in their sole and absolute discretion agree to provide preferential treatment to certain Members (including Members with legal or economic links with the AIFM or the ICAV) whether by side letter or any other agreement as they deem appropriate. Such preferential treatment may relate to (but is not limited to) the application or calculation of fees, share allocations, indemnification obligations and/or representations warranties and covenants contained in the Subscription Agreement. In all of its decisions the Directors shall ensure the fair treatment of Members and that any preferential treatment accorded by the ICAV to one or more Members does not result in an overall material disadvantage to other Members. The Directors, a committee of the Directors or the AIFM acting on behalf of the ICAV together with the Investment Manager and any other investment vehicle as maybe managed by the Investment Manager may agree with any existing or prospective investor, whether by means of a side letter or other agreement, to waive or modify the application of any of the terms described in the Prospectus or in a contract between the ICAV and the investor or to agree any specific terms with an investor ("**Side Letter**"). Such investors may include entities or persons who are affiliated with the AIFM or the Investment Manager and/or Shareholders who hold a majority or substantial interest in the ICAV. Any such Side Letter may be agreed in accordance with the requirements of the Central Bank and the Regulations in relation to (but is not limited to) the application or calculation of fee provisions, most favoured nation provisions, indemnification obligations and/or additional representations, warranties and covenants. The Directors, a committee of the Directors or the AIFM shall ensure that any preferential treatment accorded to one or more Shareholders does not result in an overall material disadvantage to other Shareholders of the ICAV. The Directors shall not be obligated to disclose the existence of specific terms of any Side Letter agreed with an investor to any other investors.

- 6.3 The rights attaching to any shares in a Fund or Class of the ICAV may, whether or not the ICAV is being wound up, be varied or abrogated with the consent in writing of all of the Shareholders holding issued shares of that Fund or Class, or with the sanction of an Ordinary Resolution passed at a separate general meeting of the Shareholders of that Fund or Class. To every such separate general meeting the provisions of this Instrument relating to general meetings shall apply. Any Shareholder of the Class or Fund in question present in person or by proxy at a general meeting of a Class or Fund of the ICAV may demand a poll. The Directors may treat all or some Classes of the ICAV as forming one Class of the ICAV and organise a meeting accordingly if they consider that such Classes of the ICAV would be affected in the same way by the proposals under consideration.
- 6.4 The rights conferred upon the holders of the Shares of any Class or Fund issued with preferred or other rights shall not, unless otherwise expressly provided by the terms of issue of the shares of that Class of the ICAV, be deemed to be varied by the creation or issue of further shares ranking *pari passu* therewith or by the liquidation of the ICAV or of any Fund and distribution of its assets to its Members in accordance with their rights or the vesting of assets in trustees for its Members in specie.
- 6.5 Save where otherwise provided in the relevant Supplement Shareholders are entitled to convert Shares in one Class into Shares of another Class in the same Fund or any other Fund in accordance with the provisions of Clause 14.00 as hereinafter provided or as otherwise provided in the Supplement for the relevant Fund. For the purpose of same, the ICAV may, without prejudice to the provisions with respect to conversion specified in Clause 14.00, take such action as may be necessary to vary or abrogate the rights attached to Shares of one Fund or Class to be converted so that such rights are replaced by the rights attached to the other Fund or Class into which the Shares of the original Fund or Class are to be converted.
- 6.6 The assets and liabilities of the ICAV shall be allocated to each Fund in the following manner:
- (a) for each Fund, the ICAV shall keep separate books and records in which all transactions relating to the relevant Fund shall be recorded and, in particular, in which the proceeds from the issue of Shares in the relevant Fund and the assets and liabilities and income and expenditure attributable thereto shall be applied, subject to the provisions of this Clause;

- (b) any asset derived from another asset of a Fund shall be applied in the records of the relevant Fund as the asset from which it was derived and on each valuation of an asset, the increase or diminution in value thereof shall be applied to the relevant Fund;
- (c) where the ICAV incurs a liability which relates to any asset of a particular Fund or to any action taken in connection with an asset of a particular Fund, such liability shall be allocated to the relevant Fund;
- (d) where an asset or a liability of the ICAV cannot be considered as being attributable to a particular Fund, the Directors shall have the discretion to allocate such asset or liability between the Funds pro rata or on such other basis as the Directors shall in their discretion deem fair and equitable subject to and in accordance with the requirements of the Central Bank;
- (e) if, as a result of a creditor proceeding against certain of the assets of the ICAV or otherwise, a liability, expense, cost, charge or reserve would be borne in a different manner from that in which it would have been borne under paragraph (d) above, or in any similar circumstances, the Directors may transfer in the books and records of the ICAV any assets to and from any of the Funds;
- (f) where hedging strategies are used in relation to a Fund or Class of Shares, the financial instruments used to implement such strategies shall be deemed to be assets or liabilities (as the case may be) of the relevant Fund as a whole but the gains/losses on and the costs of the relevant financial instruments will accrue solely to the relevant Class;

Provided always that all liabilities of or attributable to a Fund shall in the event of a winding up of the ICAV or redemption of all of the Shares of a Fund or Class of Shares pursuant to Clause 13.00 be binding on the Fund to which they are attributable and shall not be applied in satisfaction of any liability incurred on behalf of or attributable to any other Fund.

6.7 Clause 6.6 shall apply to the assets and liabilities attributable to any Class of Shares mutatis mutandis as if repeated in full in this Clause PROVIDED THAT where hedging strategies are used in relation to Side Pocket Shares the financial instruments used to implement such strategies shall be deemed to be attributable solely to the Side Pocket Shares and the gains/losses on and the costs of the relevant financial instruments will accrue solely to the relevant Side Pocket Class.

6.8 The Investments of the ICAV shall belong exclusively to the ICAV and no Member has any ownership or other interest in the Investments of the ICAV by reason of his holding of Shares.

## **7. SHARE CERTIFICATES. CONFIRMATIONS OF OWNERSHIP AND CERTIFICATES OF DEBENTURE**

7.1 A Member in the ICAV shall have his title to Shares evidenced by having his name, address, details of shareholding and such other details as required pursuant to the Act and by the ICAV entered in the Register.

7.2 To be entered on the Register, Shareholders (applicants) must have applied for and acquired Shares in the ICAV to the value of not less than the Minimum Subscription amount (other than in the case of Knowledgeable Persons), certified that they are Qualifying Investors (or Knowledgeable Persons) and that they are aware of the risk involved in the proposed investment and of the fact that inherent in such investment is the potential to lose all of the sum invested.

- 7.3 Share Certificates shall not be issued. A Member whose name appears in the Register shall be issued with a written confirmation of entry in the Register of the number of shares held by him including without limitation fractions of shares.
- 7.4 The ICAV shall not be bound to register more than four persons as the joint holders of any share or shares.
- 7.5 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:-
- (a) 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;
  - (b) any one of such joint holders of shares may give effectual receipts for any distribution, bonus or return of capital payable to such joint holders;
  - (c) only the first-named of the joint holders of a share shall be entitled to delivery of the confirmation of entry on the Register relating to such share or to receive notices from the ICAV to attend general meetings of the ICAV or the relevant Fund or Class as the case may be. Any confirmation of entry on the Register 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;
  - (d) 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

(e) for the purpose of the provisions of this Instrument, the first-named shall be determined by the order in which the names of the joint holders stand in the Register.

7.6 The Register may be kept on magnetic tape or in accordance with some other mechanical or electrical system provided legible evidence can be produced therefrom to satisfy the requirements of applicable law and of this Instrument.

7.7 Where Debentures are issued pursuant to Clause 5.01, a Debenture holder in the ICAV shall have his title to Debentures evidenced by having his name, details of Debentures held and such other details as the ICAV determines be entered in the register of holders of Debentures.

7.8 Subject to any conditions imposed by the Central Bank pursuant to the Act, the ICAV shall prepare and have ready for delivery the certificates of all debentures allotted and /or transferred, such certificates shall be in such form as determined by the Directors from time to time.

## **8. DEALING DAYS**

8.1

(a) All allotments and all issues of Shares in any Fund or Class, other than the initial allotment and issue of Shares, subject as provided hereinafter with respect to payment for Shares, shall be effected or made with respect to a Subscription Day for the relevant Fund or Class.

(b) All redemptions of Shares in any Fund or Class shall be effected or made with respect to a Redemption Day for the relevant Fund or Class.

PROVIDED THAT in the case of a Fund which the Directors consider to be, in accordance with the requirements of the Central Bank, an "open-ended" Fund, there shall be at least one Dealing Day in each calendar quarter and provided further that in the event of any change in a Dealing Day notice in advance thereof in writing or via a durable medium shall be given by the Directors to Shareholders in the relevant Fund or Class.

## **9. ALLOTMENT OF SHARES**

9.1 Subject as hereinafter provided, the ICAV may with respect to any Subscription Day on receipt by it (or its delegate) of the following from an applicant for Shares in the capital of the ICAV:-

(a) an application for Shares in the relevant Fund or Class in such form as the Directors may from time to time determine;

(b) such declarations as to the applicant's status, identity, residence and otherwise as the Directors may from time to time require; and

(c) payment for Shares in such manner as the ICAV may from time to time specify;

allot and issue such Shares in that Fund or Class at the Subscription Price for each such Share determined in accordance with Clauses 10.01 to 10.03 of this Instrument PROVIDED THAT if any such application is received after the deadline specified from time to time by the Directors for the receipt of applications the ICAV may defer the allotment and issue of such Shares until the next succeeding Subscription Day. The deadline for receipt of applications for Shares will be set out in the Prospectus or relevant Supplement. Any applications received after the deadline specified from time to time by the Directors but before the time at which the

Net Asset Value with respect to a Subscription Day is struck may, at the sole discretion of the Directors, be accepted for the relevant Subscription Day.

- 9.2 Without prejudice to the provisions of Clause 9.06 hereof, the allotment of Shares shall (unless the Directors otherwise agree) be made on terms that (unless settlement has already been effected) the applicant shall effect settlement within such period and, in the event of such allotment being made for cash consideration, in such currency or currencies as the Directors (or their delegate) may determine to be appropriate to receive subscriptions and in the manner required by the Directors and in the event of late settlement the applicant may be charged interest at a rate to be determined by the Directors and/or may be required to compensate the ICAV or its delegate for the amount of any loss arising as a result (as conclusively determined by the Directors) provided always that if the Directors receive payment for Shares in a currency other than the denominated currency of the relevant Fund or Class, the Directors may convert or arrange for the conversion of such monies received into the denominated currency of the relevant Fund or Class, and shall be entitled to deduct therefrom all expenses incurred in such conversion. The Directors may, at their discretion and in accordance with Clause 10.04 hereof, allot Shares for consideration other than cash or may sell, dispose of or otherwise convert such non-cash consideration (net of expenses incurred in the conversion) for the purchase of Shares.
- 9.3 Subject to Clause 9.6 of this Instrument, the Directors shall not be bound, but shall be entitled, to await the arrival of cleared funds in settlement before proceeding to issue the Shares.
- 9.4 The ICAV may (at the option of the Directors) satisfy any application for the issue of Shares by procuring the transfer to the applicant of fully paid Shares. In such case, references in this Instrument to allotting and issuing Shares shall where appropriate be taken as references to procuring the transfer of Shares.
- 9.5 No allotment shall be made under Clause 9.01 in respect of an application which would result in the applicant initially subscribing less than the Minimum Subscription for the time being specified in relation to any Fund or Class of Shares PROVIDED THAT the Directors may, in their discretion, waive or reduce the Minimum Subscription with respect to any applicant for Shares or category thereof PROVIDED THAT the minimum amount of such initial subscription (taking into account other initial subscriptions by the applicant in other Funds or Classes of Shares of the ICAV) shall not be less than €100,000 or its equivalent in another currency (the "**Regulatory Minimum Amount**"). In accordance with requirements of the Central Bank, The Directors may, in their discretion waive or reduce any Minimum Holding with respect to any Shareholder or applicant for Shares or category thereof or, in accordance with exemptions permitted by the Central Bank, waive the Regulatory Minimum Amount with respect to the following:-
- (a) the AIFM;
  - (b) the Investment Manager;
  - (c) a director of the ICAV, the AIFM, or the Investment Manager;
  - (d) an employee of the ICAV, the AIFM, or the Investment Manager, where the employee:
    - (i) is directly involved in the investment activities of the ICAV or any Fund; or
    - (ii) is a senior employee of such company and has experience in the provision of investment management services.

PROVIDED THAT the ICAV is satisfied that prospective investors fall within the criteria outlined above.



Investing employees meeting the relevant criteria for waiver of the Minimum Subscription must certify that they are availing of the exemption provided for above and are aware that the ICAV is normally marketed solely to Qualifying Investors who are subject to a Minimum Subscription of €100,000.

All applicants availing of the exemption by meeting the relevant criteria must certify that they are aware of the risk involved in the proposed investment and that inherent in such investment is the potential to lose the entire sum invested.

- 9.6 Allotment of Shares may take place provisionally notwithstanding that cleared funds specified in sub-paragraph (c) of Clause 9.1 hereof have not been received by the ICAV or its authorised agent, PROVIDED THAT if such funds have not been received within the usual time limits which the Directors or AIFM may determine as reasonable and disclose in the Prospectus, Shares will not be issued and the Directors may cancel any provisional allotment made and subject to the requirements of the Act make any necessary alteration in the relevant Register and the ICAV may charge the applicant for any loss, cost, expense or fees suffered by the ICAV (or its delegate) as a result of such cancellation.
- 9.7 The Directors may decline to accept any application for the issue of Shares without assigning any reason therefor and may cease to offer Shares in the ICAV for allotment or subscription for a definite period or otherwise.
- 9.8 The Directors reserve the right from time to time to resolve to close any Class or Classes of Shares to new subscriptions, either for a specified period or until they otherwise determine. Shareholders of the relevant Class will be notified of any such closure. During any such period Shares of that Class will not be available for subscription.
- 9.9 The Directors shall be entitled to issue fractions of Shares where the subscription monies received by the ICAV are insufficient to purchase an integral number of Shares, provided, however, that fractional Shares shall not carry any voting rights and where applicable, the Net Asset Value of a fractional Shares of any Fund or Class shall be adjusted by the ratio which such fractional Shares bears to an integral Shares of that Fund or Class at the time of issue and any distribution payable on such fractional Shares shall be adjusted in like manner. Any balance of subscription moneys representing less than 0.01 of a Share or such other *amount* as may be determined by the Directors and disclosed in the Prospectus may be retained by the ICAV in order to defray administration costs.
- 9.10 The ICAV may appoint a delegate to carry out the day-to-day operation and such other elements of the allotment, issue, subscription, redemption, *transfer and any other* share actions as the Directors think fit subject to the requirements of the Act, the Central Bank and in accordance with the Rulebook and the Regulations.
- 9.11 Notwithstanding Clauses 9.1 to 9.10 hereof, the Directors may at any time in their discretion issue Shares in a Side Pocket Class in accordance with Clause 5.6(b).
- 9.12 The Directors may determine that in certain circumstances, it may be detrimental for existing Shareholders for the ICAV to accept an application for Shares representing more than a certain monetary value or a certain percentage of the Net Asset Value of the relevant Fund. In such case, the Directors may limit applications for Shares accordingly, may postpone applications, and in consultation with the relevant applicant(s), require such applicant(s) to stagger the proposed application over an agreed period of time, in which case affected investors will undertake irrevocably to subscribe and pay for Shares in the Fund up to the amount of their commitment as and when required to do so by the Directors.

## 10. SUBSCRIPTION PRICE

- 10.1 The time and the terms upon which, and the Subscription Price per Share at which the initial offer or placing of Shares shall be made shall be determined by the Directors. In the case of a closed-ended Fund, the provisions of Clause 18 of this Instrument shall apply.
- 10.2 In the case of Shares issued after the end of a Fund's Initial Offer Period or, in the case of a closed-ended Fund, after the Final Closing Date, any issuance of a Share with respect to any Subscription Day shall be made at a Subscription Price per Share ascertained by:-
- (a) determining the Net Asset Value per Share of the relevant Fund or Class of Shares as at the Valuation Point for the relevant Dealing Day in accordance with Clause 15.00 of this Instrument (in the case of a closed-ended Fund, upon a Capital Drawdown, Shares are issued at the most recently published Net Asset Value that is available at that time);
  - (b) adding thereto a provision for Duties and Charges, if the Directors so determine; and
  - (c) rounding the resulting total to such number of decimal places as the Directors may determine.

The Directors may at their discretion add a preliminary charge not exceeding five per cent (5%) of the total amount subscribed to the Subscription Price for the absolute use and benefit of the ICAV or its delegate or as it may direct, either upon the initial issue of Shares or on a contingent deferred basis and the Directors (or its delegate where the Directors have delegated their discretion) may at their discretion waive, either wholly or partially, such preliminary charge or differentiate between Shareholders or applicants for Shares as to the amount of such preliminary charge, if any, within the permitted limit.

For the purpose of calculating the number of Shares in issue and deemed to be in issue in a particular Fund, Shares:-

- (a) for which applications have been made or which are issued pursuant to Clause 9.00 hereof shall be deemed to be in issue at the close of business on the Subscription Day with respect to which such applications are effected;
  - (b) to be redeemed in accordance with Clause 12.00 hereof shall be deemed to remain in issue until the close of business on the Redemption Day with respect to which such redemption is effected.
- 10.3 The Directors shall be entitled from time to time to offer Shares in a new Class or Classes of Shares of a Fund at such time and on such terms and at such price per Shares as the Directors may determine whether or not another Class or Classes of the relevant Fund is or are in existence at the date of establishment of such further Class or Classes of the relevant Fund.
- 10.4 The Directors may on any Dealing Day allot Shares in any Fund or Class on terms that settlement shall be made by the vesting in the ICAV of any property in which the subscription monies for the relevant Shares may be invested in accordance with the investment objective policy, and restrictions of the relevant Fund PROVIDED THAT:
- (a) no Shares shall be issued until the Investments have been vested or arrangements are made to vest the Investments with the Depositary or its delegates to the Depositary's satisfaction;
  - (b) any such exchange shall be effected on terms (including provision for paying out of the ICAV's assets, the expenses of the exchange and any preliminary charge payable on the issue of Shares) that the number of Shares to be issued shall be that number which would have been issued at the Subscription Price for a cash amount equal to the value of the Investments as calculated in accordance with Clause 16.00 including

such sum as the Directors may consider represents an appropriate provision for Duties and Charges which would arise on the acquisition of the Investments for cash but less such sum as the Directors may consider represents any Duties and Charges to be paid out of the ICAV's assets in connection with the vesting of the Investments;

- (c) the Investments to be transferred to the ICAV shall be valued on such basis as the Directors may decide so long as such value does not exceed the highest amount that would be obtained on the date of the exchange by applying the rules relating to valuation of Investments contained in Clause 16.00;
- (d) there may be paid to the incoming Shareholder out of the assets or property of the relevant Fund a sum in cash equal to the value at the current price of any fraction of a Share excluded from the calculation aforesaid; and
- (e) the Depositary shall be satisfied that the terms of such exchange shall not be such as are likely to result in any material prejudice to the existing Members.

10.5 No Shares shall be allotted with respect to a particular Subscription Day if with respect to that Subscription Day the determination of the Net Asset Value of the relevant Fund or attributable to a Class is temporarily suspended pursuant to Clause 15.04 of this Instrument.

10.6 Where subscription monies will not purchase an exact number of Shares a fraction of a Share may be issued.

10.7 Shares shall be issued in registered form.

10.8 The ICAV shall only launch Classes of Shares in a Fund at a fixed price after the Initial Offer Period of those Classes where the ICAV has confirmed to the Central Bank that existing Shareholders in the relevant Fund are not prejudiced.

10.9 Notwithstanding Clauses 10.01 to 10.08 hereof, any allotment of or placing of Side Pocket Shares in a Side Pocket Class in accordance with Clause 5.06(b) hereof shall be made on such terms as the Directors shall in their sole discretion determine provided always that such terms shall be in the best interests of Members.

## **11. QUALIFIED HOLDERS AND COMPULSORY REDEMPTION**

11.1 The Directors may impose such restrictions as they may think necessary, and as may be further provided for in the Prospectus or relevant Supplement, for the purpose of ensuring that no Shares in the ICAV are acquired or held directly or beneficially by:

- (a) any person who is not a Qualifying Investor or Knowledgeable Person; or
- (b) any person in breach of any restrictions on ownership from time to time as set out herein; or
- (c) if the holding of Shares by any person is unlawful; or
- (d) if the holding of Shares by any person might result or results in legal, regulatory, pecuniary, taxation or material administrative disadvantage to the ICAV, a Fund or Class or Shareholders as a whole; or
- (e) any person in breach of the law or requirements of any country or governmental authority by virtue of which such person is not qualified to hold Shares including without limitation any exchange control regulations; or
- (f) a person who is, or any person who has acquired such Shares on behalf of, or for the benefit of US Person in contravention of applicable laws and regulations; or

- (g) any person, whose holding would cause or be likely to cause the ICAV, any Fund or any Master Fund to be required to register as an "investment company" under the Investment Company Act or to register any class of its securities under the Securities Act or similar statute; or
- (h) any person who holds less than the Minimum Holding; or
- (i) such other person or in such other circumstances as the Directors may in their reasonable discretion determine and disclose in the Prospectus or Supplement for the relevant Fund including but not limited to any Shareholder that is in default or arrears in the payment of any Capital Call as set out in the relevant Fund Supplement; or
- (j) any person whose holding would cause or be likely to cause the ICAV or any Fund to be "plan assets" under ERISA; or
- (k) any person who does not, within seven days of a request by or on behalf of the ICAV, supply any information or declaration required under the terms hereof to be furnished.

and the Directors (or any duly appointed delegate on behalf of the ICAV) may reject in their discretion any application for Shares by or any transfer of Shares to any persons who are so excluded from purchasing or holding Shares and pursuant to this Instrument at any time redeem or require or direct the transfer of Shares held by Shareholders who are so excluded from purchasing or holding Shares.

- 11.2 The Directors shall be entitled to assume without enquiry that none of the Shares are held in such a way as to entitle the Directors to give a notice in respect thereof pursuant to Clause 11.4 below PROVIDED THAT the Directors may upon an application for Shares or at any other time and from time to time require such evidence and/or undertakings to be furnished to them in connection with the matters stated in Clause 11.1 as they shall in their discretion deem sufficient.
- 11.3 If a person becomes aware that he is holding or owning Shares in contravention of Clause 11.1 he shall forthwith in writing request the ICAV to redeem such Shares in accordance with Clause 12 of this Instrument or transfer such Shares to a person duly qualified to hold the same unless he has already received a notice under Clause 11.4.
- 11.4 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 any person or persons in breach of any restrictions imposed by the Directors pursuant to Clause 11.1 the Directors shall be entitled to (i) give notice (in such form as the Directors deem appropriate) to such person requiring him to (a) transfer such Shares to a person who is qualified or entitled to own the same without contravening any restriction imposed by the Directors, or (b) request in writing the redemption of such Shares in accordance with Clause 12 and/or (ii) appropriate, compulsorily redeem and/or cancel such number of Shares held by such person as is required to discharge and may apply the proceeds of such compulsory redemption in the discharge of any taxation or withholding tax arising as a result of the holding or beneficial ownership of Shares by such person including any interest or penalties payable thereon. This Clause 11.4 is without prejudice to the provisions of this Instrument that apply in respect of Defaulting Members under Clause 18.00 of this Instrument. The Directors may also redeem any Shares held by a Shareholder for the purposes of making any distributions to Shareholders in respect of a Fund or Class pursuant to Clause 31.00. The Directors may also redeem any Shares held by a Shareholder in order to meet any charges incurred by a Fund as a result of it borrowing monies on a temporary basis pending receipt of subscription monies from the relevant Shareholder. Until such required redemption is effected, the holder of such Shares shall not be entitled to any rights or privileges attaching to such Shares other than the redemption thereof.
- 11.5 If any person upon whom such a notice is served as aforesaid does not within such time as determined by the Directors after such notice has been served transfer the Shares the subject

matter of the notice or request in writing the ICAV to redeem the Shares he shall be deemed forthwith upon the expiration of the time determined by the Directors to have requested the redemption of all his Shares the subject of such notice whereupon the ICAV shall be deemed to be appointed his attorney with authority to appoint any person to sign on his behalf such documents as may be required for the purposes of the redemption. To any such redemption the provisions of Clause 12 shall apply subject to Clause 11.6 below save that the deemed request to redeem the Shares may not be withdrawn notwithstanding that the determination of the Net Asset Value of the relevant Fund or Class of Shares may have been suspended under Clause 15.4 of this Instrument.

- 11.6 Settlement of any redemption or transfer effected pursuant to Clauses 11.4 or 11.5 hereof, shall be effected by depositing the redemption monies or proceeds of sale in a bank for payment to the person entitled subject to such consents as may be necessary being obtained. Upon deposit of the 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 ICAV the redemption monies so deposited without interest. Notwithstanding the foregoing the ICAV may apply the proceeds of such compulsory redemption in the discharge of any taxation or withholding tax arising as a result of the holding or beneficial ownership of Participating Shares by a Shareholder including any interest or penalties payable thereon.
- 11.7 Any person or persons to whom Clauses 11.1, 11.2, 11.4 or 11.5 shall apply shall indemnify the ICAV, the Directors, the AIFM, the Investment Manager, the Distributor, the Administrator, the Depositary and any Member for any claims, demands, proceedings, liabilities, damages, losses, costs, expense directly or indirectly suffered by any or all of them as a result of such person or persons acquiring or holding Shares in the ICAV.
- 11.8 If, as a result of the status of a Member, the ICAV becomes liable to account for tax, in any jurisdiction, including any interest or penalties thereon if an event giving rise to a tax liability occurs, the ICAV shall be entitled to deduct such amount from the payment arising on such event or to compulsorily redeem or cancel such number of Shares held by the Member or the beneficial owner of the Shares as have a value sufficient after the deduction of any redemption charges to discharge any such liability. The relevant Member shall indemnify and keep the ICAV indemnified against any loss arising to the ICAV by reason of the ICAV becoming liable to account for tax and any interest or penalties thereon on the happening of an event giving rise to a tax liability including if no such deduction, appropriation or cancellation has been made. The Members also must indemnify the ICAV for the ICAV's obligations for taxes attributable to lower-tier entities including for the avoidance of doubt any collective investment schemes in which the ICAV may invest on behalf of a Fund. The ICAV may also have additional rights against the Members for taxes not described above.
- 11.9 The ICAV shall be entitled to redeem any Shares of a Member or any Shares to which a person is entitled by transmission PROVIDED THAT:
- (a) for a period of six years no cheque or confirmation of entry on the Register sent by the ICAV through the post in a pre-paid letter addressed to the Member or to the person entitled by transmission to the Shares at his address on the Register or the last known address given by the Member or the person entitled by transmission to which cheques or confirmations of entry on the Register are to be sent has been cashed or acknowledged and no communication has been received by the ICAV from the Member or the persons entitled by transmission;
  - (b) at the expiration of the said period of six years the ICAV has given notice of its intention to redeem such Shares or Shares by notice sent by pre-paid letter addressed to the Member or to the person entitled by transmission to the Shares at his address on the Register 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 of the Member is located;

- (c) during the period of three months after the date of the giving of such notice and prior to the exercise of the power of redemption the ICAV has not received any communication from the Member or person entitled by transmission; and
- (d) if the Shares are quoted on a stock exchange the ICAV has first given notice in writing to the appropriate section of such stock exchange of its intention to redeem such Shares, if it is required to do so under the rules of such stock exchange.

The ICAV shall account to the Member or to the person entitled to such Shares for the net proceeds of such redemption by carrying all moneys in respect thereof as a permanent debt of the ICAV and the ICAV shall be deemed to be a debtor and not a trustee in respect thereof for such Member or other person.

- 11.10 The Directors may compulsorily redeem and/or cancel such number of Shares held by such person as is required to effect a pro-rata reduction in the number of Shares held by a Member in order to issue Side Pocket Shares in accordance with Clause 5.0(b).
- 11.11 Notwithstanding Clause 11.4, 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 any person or persons in breach of restrictions imposed by the Directors pursuant to Clause 11.1, the Directors shall be entitled to give notice (in such form as the Directors deem appropriate) of its intention to compulsorily redeem that person's Shares in consultation with the AIFM. The Directors may charge any such Member, any legal, accounting or administration costs associated with such compulsory redemption. In the event of a compulsory redemption, the Redemption Price will be determined as of the Valuation Point in respect of the relevant Dealing Day specified by the Directors in their notice to the Member. A Member whose Shares are compulsorily redeemed will have no Member rights after the close of business on the date on which the notice of compulsory redemption is issued. The proceeds of a compulsory redemption shall be paid in accordance with Clause 11 hereof.
- 11.12 The Directors may determine to compulsorily redeem the Shares held by any Shareholder for any other purposes as may be determined by the Directors in accordance with the requirements of the Rulebook and applicable law.
- 11.13 The Directors may determine that Investors in one or more Funds will not be permitted to transfer any Share to any person not treated as a "qualified resident" of the United States or the Republic of Ireland if the proposed transfer would materially increase the risk that less than 50 percent of the aggregate vote and value of the relevant Fund would be treated as being owned, directly or indirectly, by persons treated as "qualified residents" of the United States or the Republic of Ireland. For purposes of this restriction, "qualified residents" has the meaning set forth in Article 23 of the convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and capital gains currently in force between the United States and Ireland (the "US-Ireland Income Tax Treaty") or residents or citizens of the United States. Any such requirement shall be set out in the Prospectus or relevant Supplement.

## **12. REDEMPTION OF SHARES**

- 12.1 As is more specifically described herein below and in accordance with the Act, the ICAV has the power to redeem outstanding fully paid Shares of any Fund or Class and Management Shares with respect to any Redemption Day for the relevant Fund or Class in such denominations as the Directors may from time to time decide. Subject to this Instrument and/or as may be disclosed in the Prospectus or Relevant Supplement, a Member may at any time request the ICAV to redeem all or any of his Shares or Management Shares in such manner as the Directors may from time to time decide. Any such request shall be irrevocable unless otherwise approved in writing by the ICAV (or its authorised agent). Certain Funds of the ICAV may be established with limited or no redemption rights, as may be disclosed in the Prospectus or relevant Supplement and in such cases Members will not be permitted to redeem their holdings on request and a Member in a closed-ended Fund shall not be entitled to request the repurchase of its Shares for as long as the Fund remains a closed-ended Fund.

The Directors may at their discretion impose a minimum redemption amount in relation to the ICAV or any particular Fund or Class of Shares. Requests for redemption should be received by the Directors, or where it has delegated the function, such delegate, within the time limits determined by the Directors as set out in the Prospectus or, in relation to a particular Fund or Class of Shares, in the relevant supplement to that Prospectus.

- 12.2 Subject to Clauses 11.4 and 11.5 a redemption request shall not be processed until the ICAV has received a completed redemption request and, if applicable, evidence satisfactory to the ICAV of succession or assignment from the Member and such other information or documentation as the ICAV may reasonably require by such time as may from time to time be specified in the Prospectus or relevant Supplement.
- 12.3 In the event of receipt of a valid redemption request by such time as may from time to time be specified by the ICAV, the ICAV shall redeem the Shares or Management Shares that are the subject of the request subject to any suspension of this redemption obligation pursuant to Clause 15.4 hereof PROVIDED THAT the Directors may, in their discretion, accept a redemption request in respect of Shares for processing on a Dealing Day notwithstanding that such request may have been received after the time specified from time to time by the Directors for the receipt of redemption requests in respect of Shares for such Dealing Day so long as such redemption is received prior to the Valuation Point for such Dealing Day. Shares or Management Shares in the capital of the ICAV which are redeemed by the ICAV shall be cancelled and the amount of issued share capital of the ICAV shall be reduced by the amount of consideration paid by the ICAV for the purchase or other transfer of the Shares or Management Shares.
- 12.4 Following the processing of a redemption request, the Member will be paid a price per Share equal to the Redemption Price per Shares (less any applicable Redemption Charge plus any clawback payments which may be made by the Investment Manager as described in the relevant Supplement) ascertained by:-
- (a) determining the Net Asset Value of the relevant Fund or Class of Shares as at the Valuation Point for the relevant Redemption Day in accordance with the provisions of Clause 15.00 hereof, excluding as determined by the Directors in their absolute discretion, any Side Pocket Shares;
  - (b) deducting therefrom a provision for Duties and Charges if the Directors so determine;
  - (c) in the event of requests for redemption exceeding subscription applications for the relevant Fund or Class on any Dealing Day, and if the Directors so determine, deducting therefrom such provision representing an anti-dilution levy to provide for market spreads, dealing costs and preserve the value of the underlying assets of the relevant Fund as the Directors determine;
  - (d) dividing the resulting amount by the number of Shares which are issued or deemed to be in issue in the relevant Fund or Class; and
  - (e) rounding the resulting total to such number of decimal places as the Directors may determine.
- 12.5 A Redemption Charge payable out of the proceeds of redemption may be imposed in respect of redemptions of Shares at the Directors sole discretion, which discretion the Directors may delegate to the AIFM. The Redemption Charge may be retained by the AIFM or its agents at their discretion, or paid to the ICAV. The Redemption Charge may not exceed 5 per cent of the Net Asset Value of the Shares being redeemed. The Directors (or AIFM or Investment Manager, where applicable) may at their absolute discretion rebate or waive such fee in whole or in part and may distinguish between Shareholders as to the application of such fee. Investors defaulting on their Commitments may be charged additional amounts pursuant to Clause 20.00. Where a Fund is closed-ended and there is a realistic provision for liquidity with

an opportunity for Shareholders to redeem or otherwise exit the relevant Fund or Class, an Ordinary Resolution in such closed-ended Fund or Class shall be sufficient to increase the Redemption Charge.

- 12.6 Any amount payable to a Member under this Clause shall be paid in the designated currency of the relevant Fund or Class or such other currency or currencies as the Directors shall have determined as appropriate and shall be dispatched within the time frame determined by the Directors (which will be specified in the Prospectus or relevant Supplement) PROVIDED THAT the ICAV has received the redemption request or instruction in such form as may be determined by the Directors and specified in the Prospectus or Supplement for the relevant Fund. For a Fund deemed by the Directors to be an open-ended fund (an "open-ended fund"), such period must not exceed 90 calendar days from deadline for receipt of redemption requests specified in the Prospectus to the settlement date for redemptions unless otherwise determined by the Directors in accordance with the requirements of the Central Bank. For an open-ended fund which follows, in the determination of the Directors a "feeder fund" or "fund of funds" strategy, such timeframe shall not exceed 95 calendar days from deadline for receipt of redemption requests specified in the Prospectus or Supplement for the relevant Fund to the settlement date for redemptions unless otherwise determined by the Directors in accordance with the *requirements of the Central Bank*. *Therefore, where such a Fund might deal, for example, on a monthly basis there may be times when redemption proceeds are paid by that Fund on a quarterly basis.* For the avoidance of doubt, for Funds other than open-ended funds, this timeframe will be determined by the Directors in their sole discretion. Subject to the foregoing, the Directors or their delegate may, in their discretion, defer payment of any redemption proceeds for Funds other than open-ended Funds in the event that, in the opinion of the Investment Manager, the AIFM or the Directors, assets of the relevant Fund are not sufficiently liquid to realise such redemption proceeds. In the event of such deferral, payment will be made where, in the opinion of the Directors, the AIFM or the Investment Manager, assets of the relevant Fund are sufficiently liquid to merit disposal to realise redemption proceeds.

The Directors also reserve the right to hold back such portion of redemption monies payable to a Shareholder for such period of time as may be determined necessary or desirable for any purpose in accordance with the Rulebook and applicable law.

- 12.7 If a redemption of part only of a Shareholder's holding of Shares leaves the Shareholder holding less than the Minimum Holding the ICAV may redeem the whole of that Shareholder's holding.
- 12.8 Subject to as is hereinafter provided in Clause 12.14 and as provided in Clause 12.1, a Shareholder shall not be entitled to withdraw a request for redemption duly given in accordance with this Clause 12.
- 12.9 If the value of Shares of a particular Fund in respect of which redemption requests have been received with respect to any Redemption Day is equal to or greater than:
- (a) one tenth (in the case of a Fund in respect of which the ICAV provides monthly or more frequent redemptions and in respect of which the maximum permitted period from the deadline for receipt of redemption requests and settlement of any such request is 90 calendar days or less (or 95 calendar days or less in the case of a Fund which is considered to be, under the requirements of the Central Bank, a fund of funds or feeder fund); or
  - (b) one quarter (in the case of a Fund in respect of which the ICAV provides redemptions on a quarterly basis and in respect of which the maximum permitted period from the deadline for receipt of redemption requests and settlement of any such request is 90 calendar days or less (or 95 calendar days or less in the case of a Fund which is considered to be, under the requirements of the Central Bank, a fund of funds or feeder fund); or



- (c) in the case of other Funds as determined by the Directors and in accordance with the requirements of the Central Bank, such percentage as determined by the Directors and as may be disclosed in the Prospectus (the "**Relevant Percentage**");

of the Net Asset Value of that particular Fund, then the Directors or their delegate may in their discretion refuse to redeem any Shares in excess of, in the case of (i) as aforesaid, 10%, in the case of (ii) as aforesaid, 25% or in the case of (iii) as aforesaid, the Relevant Percentage, of the Net Asset Value of that Fund and, if they so refuse, the requests for redemption with respect to such Redemption Day may at the discretion of the Directors or their delegate in respect of that Fund be (i) reduced pro rata and the Shares to which each request relates which are not redeemed by reason of such refusal shall be treated as if a request for redemption had been made in respect of each subsequent Redemption Day until all the Shares to which the original request related have been redeemed or (ii) cancelled and the relevant Shareholder may submit a new redemption request for the following Redemption Day. The Directors, the AIFM or the Investment Manager in accordance with the requirements of the Central Bank may decide, in exceptional circumstances (such as severe liquidity pressures), to impose a lower gating level acting in the best interests of Shareholders. Redemptions will be made on a pro-rata basis. Requests for redemption which have been carried forward from an earlier Redemption Day shall (subject always to the foregoing limits) be complied with in priority to later requests.

Notwithstanding the foregoing, the Directors may, in accordance with the requirements of the Central Bank and applicable law, impose such other limitations on redemption of Shares from Funds other than open-ended Funds on such basis as the Directors deem equitable taking into account the interests of all Shareholders of the relevant Fund.

- 12.10 The ICAV may in respect of an open-ended Fund if in accordance with the requirements of the Central Bank, retain up to one tenth of redemption proceeds where this reflects the redemption policy of the underlying funds in which the relevant Fund invests, until such time as the full redemption proceeds from the underlying funds are received.
- 12.11 The ICAV may, at the discretion of the Directors, which discretion may be delegated to the AIFM or the Investment Manager and with the consent of the relevant Shareholders, satisfy any request for redemption of Shares by the transfer in specie to those Shareholders of assets of the relevant Fund having a value (calculated in accordance with Clause 16) equal to the Redemption Price for the Shares redeemed as if the redemption proceeds were paid in cash less any Redemption Charge and other expenses of the transfer as the Directors may determine PROVIDED THAT (i) redemptions in specie may only be accepted if the Depositary is satisfied that the terms of the exchange will not be such as are likely to result in any material prejudice to the Shareholders in the applicable Fund; and (ii) a determination to provide redemption in specie may be made solely at the discretion of the Directors and without Shareholder consent where the redeeming Shareholder requests redemption of a number of Shares that represent five per cent (5%) or more of the Net Asset Value of the Fund. In this event, the redeeming Shareholder shall be entitled to request the sale of any asset or assets proposed to be distributed in specie and the distribution to such Shareholder of the cash proceeds of such sale, the costs of which shall be borne by the relevant Shareholder. The nature and type of assets to be transferred in specie to each Shareholder shall be determined by the Directors on such basis as the Directors in their sole discretion shall deem equitable and not materially prejudicial to the interests of the remaining Shareholders in the relevant Fund or Class and any such asset allocation must be approved by the Depositary.
- 12.12 Where the ICAV receives a request for the redemption of Shares from any Member in respect of which the ICAV is required to account for, deduct or withhold taxation, the ICAV shall be entitled to deduct from the proceeds of redemption such amount of taxation as the ICAV is required to account for, deduct or withhold.
- 12.13 If the ICAV is required to deduct, withhold or account for tax on a disposal of Shares by a Shareholder (whether upon a redemption of Shares, a transfer of Shares or otherwise) or

upon the payment of a distribution to a Shareholder (whether in cash or otherwise), the Directors shall be entitled to arrange for the redemption and cancellation of such number of Shares of such Shareholder as are sufficient after the deduction of any Redemption Charge to discharge any such tax liability. At any time subject to the Act, the ICAV shall be entitled to redeem the Non- Participating Shares or to procure the transfer of the Non- Participating Shares to any person entitled to hold Shares in the ICAV.12.14 If the determination of the Net Asset Value of any Fund or Class of Shares has been suspended pursuant to Clause 15.4 hereof the right of the Shareholder to have his Shares redeemed pursuant to this Clause shall be similarly suspended and during the period of suspension he may withdraw any request for redemption of his Shares. Any withdrawal of a request for redemption under the provisions of this Clause shall be made in writing and shall only be effective if actually received by the ICAV or its duly authorised agent before termination of the suspension. If the request is not withdrawn subject as hereinbefore provided the redemption of the Shares shall be effected on the Redemption Day next following the end of the suspension.

- 12.14 In calculating the Redemption Price in respect of Shares the Directors may require the Administrator to adjust the Net Asset Value per Share to reflect the value of the ICAV's investments as calculated in the manner set out in Clauses 15 and 16 assuming its investments were valued using the lowest market dealing bid price on the relevant market at the relevant time. Without limiting the generality of the foregoing, the Directors may use this discretion to preserve the value of the shareholdings of continuing Shareholders in the event of substantial or recurring net redemption of Shares.
- 12.15 Notwithstanding Clause 12.1 of this Instrument, the ICAV may establish one or more Funds in respect of which Shares may be issued with limited or no redemption rights subject to any conditions set down by the Central Bank and as may be disclosed in the relevant Supplement describing such Funds. While a Fund is closed-ended, Shareholders in such Fund of the ICAV shall not be entitled to request the redemption of their Shares (other than to the extent that the Directors may permit redemptions in specie to the extent set out in the Prospectus or relevant Supplement). During the period following the Initial Offer Period a closed-ended Fund will be closed to redemptions at the request of Shareholders or may be subject to restriction on redemptions pursuant to the provisions of this Instrument (the "**Closed-Ended Period**"). On the expiry of the Closed Ended Period of the relevant Fund of the ICAV, the ICAV will:-
- (a) as the Directors consider appropriate, taking into account the interests of Shareholders as they deem appropriate, liquidate the Fund's portfolio of Investments and return the net proceeds thereof to Shareholders as and when such proceeds become available through distributions or the compulsory repurchase of Shares, and, following such liquidation, terminate the Fund and apply to the Central Bank for revocation of the Fund's approval. Such liquidation shall commence immediately upon expiry of the Closed-Ended Period of the Fund unless extended pursuant to paragraph (d) below;
  - (b) repurchase all outstanding Shares in the relevant Fund and will apply to the Central Bank for revocation of the relevant Fund's approval PROVIDED THAT, if the relevant Fund is the last Fund of the ICAV, the Directors will apply to the Central Bank for revocation of the ICAV's authorisation;
  - (c) convert the relevant Fund into an open-ended Fund, the relevant subscription and redemption details of which shall be in accordance with the requirements of the Central Bank and specified in an addendum to the Prospectus or in a new Prospectus or Supplement to the Prospectus issued upon such conversion and as determined by a duly convened and held general meeting of Shareholders of that Fund; or
  - (d) obtain the approval of Shareholders by way of Special Resolution to extend the Closed-Ended Period of the Fund for a further finite period. However, where a redemption facility is available to those Shareholders who do not wish to extend the Closed-Ended Period, an Ordinary Resolution shall be sufficient to extend the Closed-Ended Period; or

- (e) take any other such action as detailed in the Supplement for the relevant Fund in accordance with the requirements of the Central Bank.

Unless terminated earlier in accordance with the provisions of the Prospectus or relevant Supplement, or extended as provided for herein, the duration of any Closed-Ended Period for any closed-ended Fund shall be described in the Supplement and shall be in accordance with the requirements of the Central Bank. Subject to and in accordance with the requirements of the Central Bank, the Directors may agree, and specify in the relevant Supplement in respect of any Fund, that the term of a Fund may be extended. The Directors may determine that such extension should be subject to the approval of the Shareholders, the quorum and voting majority to be determined by the Directors and set forth in the *relevant Supplement*.

12.16 In calculating the Redemption Price in respect of Shares the Directors may require the Administrator to adjust the Net Asset Value per Share to account for any performance fee related charge, fee or adjustment.

12.17 Where all the Shares in the ICAV or a Class have been redeemed, the Directors may subsequent to such redemption make a subsequent issue of Shares in the ICAV or that Class at a price per Shares determined by the Directors. Any such issue of Shares pursuant to this Clause shall be in accordance with the requirements of the Central Bank.

12.18

- (a) Notwithstanding Clauses 12.1 to 12.18 hereof, the ICAV shall redeem Side Pocket Shares in Side Pockets Classes only when so determined by the Directors and in accordance with such procedures as may be determined by the Directors from time to time.

- (b) Where the Directors determine that any Side Pocket Shares are to be redeemed the Member holding such Side Pocket Shares will be paid a price per Side Pocket Share determined by the Directors in their sole discretion having regard to the actual realisation value of any assets attributable to Side Pocket Shares and deducting therefrom a provision for Duties and Charges and any other fees and expenses including without limitation management fees and expenses which have accrued or otherwise have become due and payable in respect of the Side Pocket Shares and the assets attributable thereto and rounding the resulting total to such number of decimal places as the Directors may determine.

- (c) Any amount payable to a Shareholder under this Clause 12.19 shall be paid in the Base Currency or in such other currencies as the Directors shall have determined as appropriate and shall be dispatched as soon as reasonably practicable following the realisation of the assets attributable to the Side Pocket Shares.

- (d) The Directors may satisfy any redemption of Side Pocket Shares by the transfer of assets in specie to a Member in accordance with the provisions outlined at Clause 12.11.

12.19 At any time, subject to the Act, the ICAV shall be entitled to redeem all or some of the issued Management Shares or to procure the transfer of the issued Management Shares to any person(s) entitled to hold shares in the ICAV. On any such redemption, the holder of the Management Share(s) shall be entitled to receive an amount not to exceed the consideration paid for such Management Share(s).

### **13. TOTAL REDEMPTION**

13.1 The ICAV may at the sole and absolute discretion of the Directors, on the giving by the ICAV to Shareholders of not less than such period of notice, ending on a Redemption Day, as the Directors may determine and/or as may be disclosed in the Prospectus or Supplement for the

relevant Fund, redeem at the Redemption Price with respect to such Redemption Day, all of the Shares in any Fund or Class or all Funds or Classes not previously redeemed. For the avoidance of doubt in the case of any closed-ended Fund the Directors may declare a specific Redemption Day (and corresponding Valuation Day) for the purposes of giving effect to a total redemption of Shares in accordance with this Clause 13.00. Any such redemption shall be effected at the Redemption Price.

- 13.2 The ICAV shall redeem all of the Shares in any Fund or Class not previously redeemed if the holders of 75% or more in value of the Shares in issue in respect of the relevant Fund or Class resolve at a meeting of the Shareholders of such Fund or Class duly convened and held that such Shares should be redeemed.
- 13.3 The Directors may in their absolute discretion resolve to retain sufficient monies prior to effecting total redemption of Shares in accordance with this Clause 13.00 to cover the costs associated with the subsequent termination of the relevant Fund; or the liquidation of the ICAV.
- 13.4 If Shares in the ICAV, a particular Fund or Class are to be redeemed as aforesaid the Directors may, with the sanction of an Ordinary Resolution of the ICAV, relevant Fund or Class or otherwise in accordance with applicable law, divide amongst the Shareholders in specie all or part of the assets of the ICAV, relevant Fund or Class according to the Net Asset Value of the Shares then held by each Shareholder in the ICAV, relevant Fund or Class in accordance with Clause 15.00 hereof PROVIDED THAT any Shareholder shall be entitled to request, at the expense of such Shareholder, the sale of any asset or assets proposed to be so distributed and the distribution to such Shareholder of the cash proceeds of such sale.
- 13.5 If all the Shares in the ICAV or a Fund or Class are to be redeemed as aforesaid and the whole or any part of the business or property of the ICAV or relevant Fund or any of the assets of the ICAV, Fund or Class are proposed to be transferred or sold to another company (hereinafter called "**the Transferee**") the Directors may, with the sanction of a

Special Resolution of the ICAV or the relevant Fund or Class conferring either a general authority on the Directors or an authority in respect of any particular arrangement, receive in compensation or part compensation for such transfer or sale shares, units, policies or other like interests or property in or of the Transferee for distribution among the said Shareholders, or may enter into any other arrangement whereby the said Shareholders 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.

- 13.6 The Directors may resolve in their absolute discretion to retain sufficient monies prior to effecting a total redemption of Shares to cover the costs associated with the subsequent termination of a Fund or the liquidation of the ICAV.

#### 14. CONVERSION OF SHARES

- 14.1 Subject as hereinafter provided and to any restrictions imposed pursuant to this Instrument or by the Directors as disclosed in the Prospectus or relevant Supplement, a Shareholder of any Fund or Class (the "**Original Fund**") may request the conversion of all or any Shares held by him into Shares of another Fund or Class or another Class in the same Fund (the "**New Fund**") either existing or agreed to be brought into existence as provided herein. The Directors in their discretion may impose a minimum conversion amount in relation to any particular Fund or Class or refuse to accept a conversion request without assigning any reasons therefor.
- 14.2 The request for conversion may be made by the said Shareholder (hereinafter called the "**Applicant**") giving to the ICAV at such place as the Directors may from time to time determine a notice (hereinafter called "**Conversion Notice**") in such form and by such time and means as the Directors may from time to time determine.
- 14.3 Where permitted by the Directors, the conversion of the Shares in the Original Fund comprised in a Conversion Notice delivered to the ICAV pursuant to this Clause, together with such evidence of title as the Directors may require, shall be made with respect to the Redemption Day in respect of the Original Fund following receipt of a Conversion Note PROVIDED THAT: (a) the Shares proposed to be converted have a value at the time of conversion of not less than the value of the Minimum Subscription for the New Fund or such other amount as may be determined by the Directors from time to time and the Shareholder otherwise satisfies the criteria determined by the Directors for investment in the New Fund; and/or (b) the Directors may, in their discretion, accept a conversion request for processing on a Redemption Day notwithstanding that such request may have been received after the time specified from time to time by the Directors for the receipt of conversion requests for such Redemption Day so long as such conversion request is received prior to the Valuation Point for the relevant Redemption Day.
- 14.4 The Applicant shall not without the consent of the Directors or its authorised agent be entitled to withdraw a Conversion Notice duly made in accordance with this Clause except in any circumstances in which he would be entitled to withdraw a request for redemption of Shares, and any such withdrawal shall only be effective if made in compliance with the Regulations in relation to redemptions.
- 14.5 Conversion of the Shares of the Original Fund comprised in the Conversion Notice shall be effected in such manner permitted by the Central Bank and this Instrument and without prejudice to the generality of the foregoing may be effected by the redemption of Shares of the Original Fund (save that the redemption monies shall not be released to the Applicant) and the allotment and issue of Shares of the New Fund. For the avoidance of doubt in the case of any closed-ended Fund the Directors may declare a specific Redemption Day (and corresponding Valuation Day) for the purposes of giving effect to a conversion of Shares.

- 14.6 The number of Shares of the New Fund to be allotted and issued on Conversion shall be determined by the Directors or their delegate in accordance (or as nearly as may be in accordance) with the following formula (or such other formula as may be described in the Supplement for the relevant Fund(s)):

$$S = \frac{R \times NAV \times ERI - F}{SP}$$

where:-

S = is the number of Shares of the New Fund to be allotted;

R = the number of Shares of the Original Fund to be redeemed;

NAV = is the Net Asset Value per Share of the Original Fund at the Valuation Point on the relevant Dealing Day;

ER = the currency conversion factor (if any) as determined by the Administrator;

F = the conversion charge (if any) of up to 5% of the realised value of the Shares of the Original Fund.

SP = the Subscription Price of the New Fund on the relevant Dealing Day.

- 14.7 Upon conversion the Directors shall cause the appropriate amount or value of assets attributable to the Shares of the Original Fund to be transferred or attributed to the New Fund.
- 14.8 Fractions of Shares of the New Fund may be allotted on conversion.
- 14.9 The Directors may, at their absolute discretion, which discretion may be delegated to their delegate, charge a fee on the conversion of Shares in the Original Fund into Shares in the New Fund up to a maximum of 5% of the realised value of Shares in the Original Fund being converted, PROVIDED THAT the Directors (or their delegate, where applicable) may reduce or waive the conversion charge and may at their absolute discretion distinguish between Shareholders accordingly.
- 14.10 Where a conversion request would result in a Shareholder holding a number of Shares in either the Original Fund or the New Fund which would be less than the Minimum Holding for the New Fund, the Directors may, if they think fit, convert the whole of such Shareholder's holding in the Original Fund to Shares in the New Fund or refuse to effect any conversion from the Original Fund.
- 14.11 Nothing herein shall compel the Directors to convert Side Pocket Shares into any Shares of any other Fund or Class at the request of any Shareholder. Notwithstanding the foregoing, the Directors may in their sole discretion convert Side Pocket Shares into Shares of another Fund or Class either existing or established as provided herein PROVIDED THAT the Side Pocket Shares proposed to be converted have not previously been the subject of a request for redemption of Shares. The number of Shares of the New Fund to be issued on conversion of Side Pocket Shares shall be determined by the Directors in accordance with Clause 14.06 hereof PROVIDED THAT the reference to NAV shall be understood to mean the price at which Side Pocket Shares may be redeemed by the Directors in accordance with Clause 12.19 hereof.

## 15. DETERMINATION OF NET ASSET VALUE

- 15.1 The Directors shall with respect to each Valuation Day (or in the case of an open ended-Fund with limited liquidity or a closed-ended Fund, at least once a year) determine the Net Asset

Value of each Fund, or if there are different Classes of Shares within a Fund, each Class of Shares in accordance with the following provisions.

- 15.2 The Net Asset Value of each Fund shall be calculated as at the Valuation Point with respect to any Dealing Day by ascertaining the value of the assets of the Fund calculated pursuant to Clause 16.02 hereof, and deducting from such amount the liabilities of the relevant Fund, calculated pursuant to Clause 16.03 hereof. The Net Asset Value per Share of a Fund shall be determined with respect to any Dealing Day by dividing the Net Asset Value of the relevant Fund by the number of Shares in issue or deemed to be in issue in that Fund at the Valuation Point in respect of the relevant Dealing Day and rounding the resulting total to as many decimal places as the Directors may determine at their discretion, subject to any adjustment necessary to take account of assets and/or liabilities attributable to each Class of Shares including without limitation any Side Pocket Class.
- 15.3 The Net Asset Value of a Class of Shares shall be determined by calculating that portion of the Net Asset Value of the relevant Fund attributable to the relevant Class. The Net Asset Value per Share of a Class of Shares shall be determined by dividing the Net Asset Value of the Class by the number of Shares in issue in that Class and rounding the resulting total to as many decimal places as the Directors may determine at their discretion. Additional provisions dealing with the calculation of the Net Asset Value of Carried Interest Classes are set out in Clause 18 of this Instrument.
- 15.4 The Directors may at any time and from time to time temporarily suspend the determination of the Net Asset Value of a Fund and/or Class of Shares and the issue, redemption and conversion of Shares, in the following instances:
- (a) during the whole or part of any period (other than for ordinary holidays or customary weekends) when any of the exchanges or other markets on which the Fund's Investments are quoted, listed, traded or dealt are closed or during which dealings therein are restricted or suspended or trading is suspended or restricted; or
  - (b) during the whole or part of any period when circumstances outside the control of the ICAV or the AIFM exist as a result of which any disposal or valuation of investments of the Fund is not reasonably practicable or would be detrimental to the interests of Shareholders or it is not possible to transfer monies involved in the acquisition or disposition of Investments to or from the relevant account of the ICAV; or
  - (c) during the whole or any part of any period when any breakdown occurs in the means of communication normally employed in determining the value of any of a Fund's investments; or
  - (d) during the whole or any part of any period when for any reason the value of any of a Fund's Investments cannot be reasonably, promptly or accurately ascertained; or
  - (e) during the whole or any part of any period when subscription proceeds cannot be transmitted to or from the account of a Fund or the ICAV is unable to repatriate funds required for making redemption payments or when such payments cannot, in the opinion of the AIFM, be carried out at normal rates of exchange; or
  - (f) upon mutual agreement between the ICAV and the Depositary for the purpose of winding up the ICAV or terminating a Fund; or
  - (g) during any period when, as a result of political, economic, military or monetary events or any circumstances outside of the control, responsibility and power of the ICAV and the AIFM, disposal or valuation of a substantial portion of the Investments of the relevant Fund is not reasonably practicable without being seriously detrimental to the interests of the Shareholders of that Fund or if, in the opinion of the AIFM and the Directors, the Net Asset Value of the relevant Fund cannot be fairly calculated; or

- (h) if any other reason makes it impossible or impracticable to determine the value of a substantial portion of the Investments of the ICAV or a Fund.
- 15.5 Any suspension of valuation shall be notified by or on behalf of the Directors to the Central Bank immediately and in any event within the working day on which such suspension takes place.
- 15.6 No Shares will be issued or redeemed on any Dealing Day when the determination of the Net Asset Value is suspended. In such a case, a Shareholder may withdraw his application or conversion or redemption request, PROVIDED THAT a withdrawal notice is actually received by the Administrator before the suspension is terminated. Unless withdrawn, applications and redemption requests for Shares will be acted upon on the first Subscription Day or Redemption Day, as the case may be, after the suspension is lifted at the relevant Subscription Price or Redemption Price (as the case may be) prevailing on that day.
- 15.7 The Directors may notify appropriate regulatory and other authorities in accordance with applicable law, regulation, the Rulebook or a relevant regulatory authority.

## **16. VALUATION OF ASSETS**

- 16.1 The value of the assets of each Fund shall be determined as at the Valuation Point in accordance with Clause 16.02 hereof. The assets of each Fund shall be deemed to include the assets of any subsidiary of the ICAV established or acquired for the benefit of the relevant Fund and all references to the valuation of assets of a Fund shall be deemed to include references to any such subsidiary. The Directors shall be entitled to determine the rules that will apply to the valuation of assets and may delegate to the AIFM all of the powers and authorities and discretions described below including an absolute discretion to deduct an amount representing the assets attributable to any Side Pocket Classes issued in accordance with this Instrument.
- 16.2 In determining the Net Asset Value of each Fund, the assets shall be valued as follows (unless otherwise determined by the Directors) and provided in relation to a specific Fund in the relevant Supplement). Valuations shall be carried out by the AIFM or its duly authorised delegate or an External Valuer and the following shall be interpreted accordingly:-
  - (a) A Fund's assets are valued using available market quotations when such market quotations are "readily available" and reliable. When the exchange or market on which a security or other asset is traded does not open for trading for an entire trading day, and no other market prices are available, market quotations are not "readily available." Market quotations may not be reliable when there is a substantial time differential between the close of trading for the asset and the time as of which the relevant Fund values its assets and when significant events have occurred in the markets or in related instruments such as American Depositary Receipts. When market quotations are not readily available or are believed to be unreliable by the AIFM or its delegate, the relevant Fund's investments are valued at fair value using one or more other methods.
  - (b) The Securities and other assets for which market quotations are readily available and not determined by the AIFM or its delegate to be unreliable will be valued at their current market value based upon such market quotations. Equity securities held by a Fund which are traded on a recognised securities exchange or through a market system that provides contemporaneous transaction pricing information, whether U.S. or non-U.S. (an "Exchange") and including without limitation the NASDAQ National Market System ("NASDAQ"), are valued by the AIFM or its delegate at the latest sales price on that Exchange prior to the time as of which the assets of the Fund are valued. If an equity security is traded through or on more than one Exchange, the latest sale price on the Exchange where the security is primarily traded will be used. In the event that there are no sales involving an equity security held by the Fund on a day on which the Fund values such security, the mean of the last bid and ask price may be used as the value of such security, provided that the AIFM or its delegate is



not aware of any significant event (i.e., an event that will affect the value of a portfolio security) or other information that would cause such last bid or ask price to no longer reflect the fair value of the security. In the event that the last ask price is not available, such asset will be valued at fair value using one or more other methods.

- (c) Prices used to value a Fund's securities and other assets may be obtained from pricing agents or services approved by the AIFM or its delegate ("Pricing Services" and each a "Pricing Service"), provided that the AIFM or its delegate believes that prices obtained from such Pricing Services appear to have been determined in a manner consistent with the requirements of Fund's valuation process. Pricing Services that are not broker-dealers shall value assets for which market quotations are not readily available by securing recently quoted prices that they believe are representative of the market from broker-dealers and by other methods, which include consideration of: yields or prices of securities of comparable quality, coupon, maturity and type; indications as to values from dealers; and general market conditions. Pricing Services will be selected by the AIFM or its delegate based on accuracy, reliability and service.
- (d) The AIFM or its delegate will periodically review and test the prices provided by each Pricing Service utilized and will continue to utilize such Pricing Service only if it determines that (a) the prices provided by such Pricing Service are based upon market transactions and other methodologies reasonably designed to provide a reasonably accurate fair value for the investments of the Fund, and (b) such prices are reasonably reliable and accurate.
- (e) The AIFM or its delegate may obtain prices directly from one or more broker-dealers or market makers. When securities or other assets are priced through broker-dealers, the AIFM or its delegate will request an indicative quote or information necessary to compute a price (such as spreads and benchmarks), which will be accompanied by an authorized signature from the broker-dealer (unless the quote is obtained by email or other electronic means in which event a comparable confirmation of authorization shall be required).
- (f) The fair value of illiquid securities and other assets for which market quotations are not readily available or where available market quotations are determined by the AIFM or its delegate to be unreliable should be determined in good faith by the AIFM or its delegate. Such securities and other assets may include, but are not limited to, restricted securities, control blocks or any other security or asset for which available quotations are not reflective of fair value of the Fund's position or unreliable as determined by the AIFM or its delegate. The AIFM or its delegate may conclude that a market quotation is not readily available or is unreliable, for example, if a security or other asset does not have a price source due to its lack of liquidity, if the AIFM or its delegate believes a market quotation from a broker-dealer is unreliable (e.g., where it varies significantly from a recent trade), where the security or other asset is thinly traded or where there is a significant event subsequent to the most recent market quotation. For the purpose of these Portfolio Pricing Practices, a "significant event" is deemed to occur with respect to a particular security or other assets if the AIFM or its delegate determines, in its business judgment prior to or at the time of pricing a Fund's assets, that it is highly likely that the event would have caused a material change to the last closing market price of such security or other assets. Investments for which reliable market quotations are not readily available will be valued in accordance with the fair valuation methods set forth below, and are expected to comprise a substantial portion of each Fund's portfolio.
- (g) Cash on hand or on deposit will normally be valued at face value (together with interest declared or accrued but not yet received as at the relevant Valuation Point) unless in any case the AIFM is of the opinion that the same is unlikely to be received or paid in full, in which case the AIFM may make a discount to reflect the fair value thereof as at the Valuation Point. Certificates of deposit and similar investments shall

normally be valued by reference to the best price available for certificates of deposit or similar investments of like maturity, amount and credit risk at the Valuation Point.

- (h) Derivative contracts traded on a regulated market shall be valued at the settlement price as determined by the market. If the settlement price is not available, the value shall be the probable realisation value estimated with care and in good faith by (i) the AIFM or (ii) an External Valuer (including the Investment Manager) appointed by the AIFM for such purpose. Derivative contracts which are not traded on a regulated market and not cleared by a clearing counterparty (each an "OTC derivative") will be valued in accordance with market practice subject to the valuation provisions detailed in Article 11 of Regulation (EU\_ No. 648/2012 on OTC derivatives, central counterparties and trade repositories (EMIR) and the related Commission Delegated Regulation No 149/2013. Derivative contracts which are not traded on a regulated market and which are cleared by a central clearing counterparty shall be valued on the basis of a quotation provided by the relevant counterparty and verified periodically by a party independent of the counterparty selected for such purpose by the AIFM.
- (i) Units in collective investment schemes shall be valued at the latest available net asset value per unit or (if the bid and offer prices are published) the price midway between the last available offer and bid prices or, if listed or traded on an exchange, in accordance with (a) above.
- (j) In the case of a Fund which is not a money market fund, the AIFM may value securities having a residual maturity not exceeding six months using the amortised cost method of valuation (whereby the securities are valued at their acquisition cost, adjusted for amortisation of premium or accretion of discount on the securities provided) where such securities have no specific sensitivity to market parameters, including credit risk.
- (k) The ICAV and/or the AIFM may adjust the value of any investment in consultation with the Investment Manager and the Administrator if having regard to its currency, marketability, applicable interest rates, anticipated rates of dividend, maturity, liquidity or any other relevant considerations, they consider that such adjustment is required to reflect the fair value thereof.
- (l) Any value expressed otherwise than in the Base Currency of a Fund or the reference currency of a Class shall be converted into the Base Currency of the relevant Fund or the reference currency of the relevant Class at the exchange rate (whether official or otherwise) which the AIFM or its delegate shall determine to be appropriate.

- (m) Where the value of any investment is not ascertainable as described above, the value shall be the probable realisation value estimated by the AIFM with care and in good faith or by an External Valuer appointed for that purpose by the AIFM.
- (n) If any of the aforementioned valuation principles do not reflect the valuation method commonly used in specific markets or if any such valuation principles do not seem accurate for the purpose of determining the value of a Fund's assets, the AIFM may adopt different valuation principles in good faith and in accordance with generally accepted valuation principles and procedures.

16.3 In calculating the value of assets of each Fund save where otherwise determined by the Directors and disclosed in the relevant Supplement, the following principles will apply:-

- (i) Where the Valuation Day and the Dealing Day of a Fund fall on the same date, the following valuation principles shall apply for the purposes of calculating the Net Asset Value per Share at the relevant Valuation Point (save where otherwise disclosed in the Supplement):
  - every Share agreed to be issued by the Directors with respect to each Subscription Day shall be deemed to be in issue at the Valuation Point for the relevant Subscription Day and the assets of the relevant Fund shall be deemed to include not only cash and property being safekept by the Depositary but also the amount of any cash or other property to be received in respect of Shares agreed to be issued after deducting therefrom (in the case of Shares agreed to be issued for cash) or providing for preliminary charges.
- (ii) Where the Valuation Day and the Dealing Day of a Fund fall on the different dates, the following valuation principles shall apply for the purposes of calculating the Net Asset Value per Share at the relevant Valuation Point (save where otherwise disclosed in the Supplement):
  - every Share agreed to be issued by the Directors with respect to each Subscription Day shall be deemed not to be in issue at the Valuation Point for the relevant Subscription Day and the assets of the relevant Fund shall be deemed to include only cash and property safekept by the Depositary and shall not include the amount of any cash or other property to be received in respect of Shares agreed to be issued after deducting therefrom (in the case of Shares agreed to be issued for cash) or providing for preliminary charges.
  - Where notice of the redemption, reduction or cancellation of Shares has been given to the Depositary but such redemption, reduction or cancellation has not been completed, the Shares to be redeemed, reduced or cancelled shall be deemed to be in issue and the Net Asset Value of the Fund shall not be reduced by the amount payable upon such redemption, reduction or cancellation.

Additional or alternative valuation principles which are applied by the Directors in respect of a particular Fund in accordance with the requirements of the Central Bank and applicable law shall be as set out in the relevant Supplement.

16.4 The liabilities of each Fund or Class of Shares as at the Valuation Point shall be valued by reference to the prices or value as at the Valuation Point and shall be deemed to include:-

- (a) the total amount of any actual or estimated liabilities properly payable out of the assets of the relevant Fund and any and all outstanding borrowings of the ICAV in respect of the relevant Fund including, in the case of all interest on such liabilities, the total amount thereof accrued up to the relevant Valuation Day; in the case of fees and expenses payable on such liabilities (but excluding liabilities taken into account in

determining the value of the assets of the ICAV) the total amount thereof payable on or prior to the relevant Valuation Day; and in the case of unrealised capital gains any estimated liability for tax thereon;

- (b) such sum in respect of tax (if any) on net capital gains realised on the assets of the relevant Fund during the current Accounting Period prior to the valuation being made as in the estimate of the Directors will become payable;
- (c) the amount (if any) of any distribution declared by the Shareholders of the relevant Fund or the Directors pursuant to Clause 31.00 hereof in respect of the last preceding Accounting Period but not distributed in respect thereof;
- (d) the total amount (whether actual or estimated by the Directors or a competent person appointed by the Directors and approved for the purpose by the Depositary) of any liabilities for taxation leviable on income of the relevant Fund including income tax and corporation tax, if any, (but not taxes leviable on capital or on realised or unrealised capital gains);
- (e) the total amount of any actual or estimated liabilities for withholding tax (if any) payable on any of the Investments of the relevant Fund in respect of the current Accounting Period;
- (f) the remuneration of the Administrator, the Depositary, the Investment Manager, any Distributor and any other providers of services to the ICAV (including, without limitation, any performance related fee payable to the Investment Manager from time to time and described in the Prospectus), calculated and payable by reference to the Net Asset Value of the relevant Fund and accrued but remaining unpaid together with a sum equal to the value added tax chargeable thereon (if any) payable on or prior to the relevant Valuation Day;
- (g) the total amount (whether actual or estimated by the Directors or a competent person appointed by the Directors and approved for the purpose by the Depositary) of any other liabilities (other than the remuneration of the AIFM, the Administrator, the Depositary, the Investment Manager and the Distributor) properly payable out of the assets of the relevant Fund (including all establishment, operational and ongoing administrative fees, costs and expenses) on or prior to the relevant Valuation Day;

- (h) an amount as of the relevant Valuation Point representing the projected liability of the relevant Fund in respect of costs and expenses to be incurred by the relevant Fund in the event of a subsequent liquidation;
  - (i) an amount as of the relevant Valuation Point representing the projected liability of calls on Shares in respect of any options written by the relevant Fund or Class of Shares;
  - (j) for the purpose of calculating the Net Asset Value of the Fund or attributable to a Class of Shares the Directors may in their absolute discretion deduct an amount as of the relevant Valuation Point representing the assets attributable to any Side Pocket Class issued in accordance with Clause 5.06(b) hereof;
  - (k) any other liability of the type referred to in Clause 3.3 hereof.
- 16.5 Where hedging strategies are used in relation to a Fund or Class of Shares, the financial instruments used to implement such strategies shall be deemed to be assets or liabilities (as the case may be) of the relevant Fund as a whole but the gains/losses on and the costs of the relevant financial instruments will accrue solely to the relevant Class.
- 16.6 In the absence of bad faith, negligence or manifest error, every decision taken by the Directors, AIFM or their delegate in calculating the Net Asset Value of a Fund or the Net Asset Value per Shares or the Net Asset Value of a Class of Shares shall be final and binding on the ICAV, and present, past or future Shareholders.
- 16.7 The Directors or their delegate shall ensure that the Net Asset Value per Shares is made available promptly to Shareholders upon request.
- 16.8 Without prejudice to their general powers to delegate their functions herein specified, the Directors may delegate any of their functions in relation to the calculation of the Net Asset Value to a committee of the Directors or to any other duly authorised person including the AIFM.
- 16.9 In addition, appropriate provisions will be made to account for the charges and fees charged to the relevant Fund as well as accrued income on Investments. All matters concerning the allocation of income, deduction, gain, loss and credit among the Shareholders thereof, including taxes thereon, and accounting procedures not expressly provided for by the terms of this Instrument, shall be determined by the Directors or their delegate, whose determination shall be final and conclusive as to all of the Shareholders.
- 16.10 Notwithstanding that subscription monies, redemption monies and dividend amounts will be held in cash accounts in the name of and treated as assets of and attributable to a Fund:
- (a) any subscription monies received from an investor prior to the Subscription Day of a Fund in respect of which an application for Shares has been, or is expected to be, received will not be taken into account as an asset of the Fund for the purpose of determining the Net Asset Value of that Fund until subsequent to the Valuation Point in respect of the Subscription Day as of which Shares of the Fund are agreed to be issued to that investor;
  - (b) any redemption monies payable to an investor subsequent to the Redemption Day of a Fund as of which Shares of that investor were redeemed will not be taken into account as an asset of the Fund for the purpose of determining the Net Asset Value of that Fund; and
  - (c) from the date upon which it becomes payable, any dividend amount payable to a Shareholder will not be taken into account as an asset of the Fund for the purpose of determining the Net Asset Value of that Fund.

## 17. TRANSFER AND TRANSMISSION OF SHARES AND DEBENTURES

- 17.1 The transfer of shares shall be effected in such denomination as the Directors may from time to time decide in accordance with the following provisions. Shares or other interest of any Member in an ICAV shall be personal property, transferable subject to the provisions of the Act, in a manner provided for in this Instrument and shall not be of the nature of real property.
- 17.2 No transfer of Management Shares or Shares in a Carried Interest Class may be effected to a person or entity that is not an affiliate or employee of the Investment Manager without the prior written consent of the Directors.
- 17.3
- (a) Transfer of shares may be effected by transfer in writing or such other form as determined by the Directors accompanied by such evidence of ownership as the Directors may reasonably require to show the right of the transferor to make the transfer ("Instrument of Transfer"), signed by or on behalf of the transferor and every transfer shall state the full name and address of the transferor and transferee. A transfer of Shares may only be effected by transfer in writing to Qualifying Investors and subject to completion by the transferee of the Application Form for the relevant Fund and any other additional conditions as may be set out in the Supplement for the relevant Fund.
- (b) The Directors (or the AIFM where applicable) may from time to time specify a fee for the registration of instruments of transfer (PROVIDED THAT in relation to a transfer of Shares the maximum fee may not exceed 5% of the Net Asset Value of the Shares the subject matter of the transfer on the Dealing Day immediately preceding the date of the transfer) and which may be retained for the sole use and benefit of the ICAV or its delegate as the Directors in their absolute discretion may determine, which discretion may be delegated to the AIFM. The Directors (or AIFM, where applicable) reserve the right to reduce or waive any transfer fee and may distinguish between Members accordingly.
- 17.4 The Instrument of Transfer shall be signed by or on behalf of the transferor and need not be signed by the transferee. The signature on the Instrument of Transfer may be affixed manually or electronically and may be an actual signature or a facsimile signature or any form of signature approved by the Directors. The Directors shall not be bound to enquire as to the genuineness of any signature. The transferor shall be deemed to remain the holder of the share until the name of the transferee is entered in the Register in respect thereof.
- 17.5 Nothing herein shall prejudice the power of the ICAV to register as a Member any person to whom the rights to any shares in the ICAV has been transmitted by operation of law.
- 17.6 The Directors may, before the end of the period of two months commencing with the date of receipt of the Instrument of Transfer, decline to register the transfer in the following circumstances:
- if in consequence of such transfer, the transferor or the transferee would hold a number of Shares less than the Minimum Holding;
  - all applicable taxes and/or stamp duties have not been paid in respect of the instrument of transfer;
  - the instrument of transfer is not deposited at the registered office of the ICAV or such other place as the Directors may reasonably require, such relevant information and declarations as the Directors may reasonably require from the transferee including, without limitation, information and declarations of the type which may be requested from an applicant for Shares in the ICAV including as to requirements to prevent money laundering;

- they are aware or reasonably believe the transfer might result in legal, regulatory, pecuniary, taxation or material administrative disadvantage to the ICAV, a Fund or Class or Shareholders as a whole;
- if the registration of such transfer would: (i) result in a contravention of any provision of law (including any law that is for the time being in force in a country or territory other than Ireland); or (ii) result in a contravention of any provision of the Instrument; or (iii) would produce a result inconsistent with any provision of the Prospectus or any Supplement;
- for such other reason as may be provided in the Prospectus or Supplement in respect of a Fund;
- in consequence of such transfer, Shares would be held by a person who is, or who has acquired such Shares on behalf of, or for the benefit of, a US Person in contravention of applicable laws and regulations or the ICAV would be required to register as an "investment company" under the Investment Company Act or to register any class of its securities under the Securities Act or similar statute;
- would cause the Shares to become subject to registration under the Securities Act or the Fund to become subject to registration under the Investment Company Act, or to become subject to the requirement to register or become regulated with or by a regulator other than the Central Bank;
- would materially increase the risk that less than 50% of the aggregate voting interests and value of any Fund would be treated as being owned, directly or indirectly, by persons treated as "qualified residents" of the United States or the Republic of Ireland. For purposes of this restriction, "qualified residents" has the meaning set forth in Article 23 of the convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and capital gains currently in force between the United States and Ireland or residents or citizens of the United States; or
- such transfer would result in persons that are Benefit Plan Investors holding 25% or more of the value of any class of Shares in the Fund immediately after such transfer (such percentage determined in accordance with Section 3(42) of ERISA). The term "Benefit Plan Investor" is defined to include any (i) "employee benefit plan" (as defined in Section 3 (3) of ERISA) subject to Title I of ERISA, (ii) "plan" (as defined in Section 4975(e) (1) of the Code) subject to Section 4975 of the Code, including without limitation individual retirement accounts and Keogh plans, or (iii) entity whose underlying assets include plan assets by reason of such an employee benefit plan's or plan's investment in such entity, including without limitation, as applicable, certain insurance company general accounts.

17.7 If the Directors decline to register a transfer of any share they shall send to the transferee written notice of such refusal, PROVIDED THAT the Directors are not required to give notice to any person of a refusal to register a transfer where the giving of the notice would result in a contravention of any provision of law (including any law that is for the time being in force in a country or territory other than Ireland).

17.8 The registration of transfers may be suspended at such times and for such periods as the Directors may from time to time determine, PROVIDED ALWAYS that such registration of transfers shall not be suspended for more than thirty days in any year.

17.9 All Instruments of Transfer evidencing a transfer of shares which shall be registered shall be retained by the ICAV, but any Instrument of Transfer relating to a transfer of shares which the

Directors may decline to register shall (except in the case of fraud) be returned to the person depositing the same.

- 17.10 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 or other personal representative of the deceased where he was a sole or surviving holder, shall be the only person(s) recognised by the ICAV as having title to his interest in the shares, but nothing in this Clause shall release the estate of the deceased holder whether sole or joint from any liability in respect of any share solely or jointly held by him.
- 17.11 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 or otherwise by operation of law 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 shares or to elect to have some person nominated by him registered as the transferee thereof. If the person so becoming entitled elects to be registered himself, he shall deliver or send to the ICAV, a notice in writing signed by him stating that he so elects. If he shall elect to have his nominee registered, he shall signify his election by signing and delivering or sending to the ICAV an Instrument of Transfer of such share or shares in favour of his nominee. Any transfer by such person so entitled shall be as valid as if they had been a Member at the time of the execution of the Instrument of Transfer.
- 17.12 All the limitations, restrictions and provisions of this Instrument relating to the right to transfer and the registration of transfers of shares shall be applicable to any notice or Instrument of Transfer given or made pursuant to Clause 17.11 as if the death or bankruptcy of the Member or other event giving rise to the transmission had not occurred and the notice of Instrument of Transfer were an Instrument of Transfer signed by that Member.
- 17.13 A person so becoming entitled to a share in consequence of the death, insolvency or bankruptcy of a Member or otherwise by operation of law shall, upon production of such evidence of his title as the Directors may require, have the right to receive and may give a discharge for all moneys payable or other advantages due on or in respect of the share, but he shall not be entitled to receive notice of or to attend or vote at meetings of the ICAV, nor, save as aforesaid, to any of the rights or privileges of a Member unless and until he shall be registered as a Member in respect of the share PROVIDED ALWAYS that the Directors may at any time give notice requiring any such person to elect either to be registered himself or to transfer the share and if the notice is not complied with within ninety 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.
- 17.14 A certification within the meaning of the Act by an ICAV of any Instrument of Transfer shall be taken as a representation by the ICAV to any person acting on the faith of the certificate that there have been produced to the ICAV such documents as on the face of them show a prima facie title to the shares in the transferor named in the Instrument of Transfer but not as a representation that the transferor has any title to the shares.
- 17.15 No person whatsoever shall be entitled to be registered on the Register until such person has provided the Directors with such relevant information as they may reasonably require.
- 17.16 If the ICAV is required to deduct, withhold or account for tax including any penalties and interest thereon upon the transfer of shares by a Member the provisions of Clause 12.13 hereof shall apply mutatis mutandis as if repeated in full herein.
- 17.17 Any transfer of Debentures of the ICAV shall be effected in such form and manner as the Directors may from time to time decide, subject to and in accordance with the requirements of the Act.

## **18. CAPITAL DRAWDOWNS**

- 18.1 Where Shares are issued on a Capital Commitment basis only, the following provisions shall



apply in respect of applications to enter into Subscription Agreements made during the Initial Commitment Offer Period:

- (i) the Capital Commitment of each investor in respect of a Fund shall not be less than the amount stated in the Prospectus or relevant Fund unless the Board of Directors, upon recommendation from the Investment Manager in consultation with the AIFM, shall determine otherwise, provided always that such amount shall not be less than the applicable minimum regulatory Capital Commitment (which will be as stated in the Prospectus or relevant Supplement);
- (ii) investors who apply to enter into a Subscription Agreement in respect of Shares of any Class of a Fund during the Initial Commitment Offer Period may be required to pay an amount as determined by the Directors and advised in writing to Shareholders which may include without limitation an amount to cover the initial expenses of the Fund and/or such other amounts as may be provided for in the Prospectus or Supplement for the relevant Fund;
- (iii) any such payments must be received in cleared funds by no later than such time on the day falling such number of Business Days after such written notice is delivered to the relevant Shareholders prior to the Initial Closing Date as the Directors may determine and set out in the relevant Supplement (or such later day as the Directors may determine either generally or in specific circumstances) (the "**Initial Capital Drawdown Date**").

18.2 Where Shares are issued on a Capital Commitment basis only and where disclosed in the Supplement for the relevant Fund, the following provisions shall apply in respect of applications to enter into Subscription Agreements made on the Initial Closing Date or the date or dates during the Initial Commitment Offer Period following the Initial Closing Date on which Subscription Agreements may be accepted by the Directors in their discretion ("**Subsequent Closing**"). Any payments to be received in respect of a Subsequent Closing Date must be received in cleared funds by no later than such time on the day falling such number of Business Days after such written notice is delivered to the relevant Shareholders prior to the Subsequent Closing Date as the Directors may determine and set out in the relevant Supplement (or such later day as the Directors may determine either generally or in specific circumstances) (the "**Subsequent Capital Drawdown Date**"):

- (i) in order for each investor who applies to enter into a Subscription Agreement in respect of Shares of any Class of a Fund, or who increases its Commitment on a Subsequent Closing, to be treated as a Shareholder as if it had become one on the Initial Capital Drawdown Date (each such Shareholder to the extent that it subscribes for, or increases its Capital Commitment, a "**New Commitment Shareholder**"), the Directors may require any such New Commitment Shareholder to contribute to the Fund on the applicable Subsequent Capital Drawdown Date, its allocable share of (i) the capital contributed for all expenses of the Fund incurred prior to the admission (or increase) of such New Commitment Shareholder, plus interest at a rate per annum to be determined by the Directors, and set out in the relevant Supplement, on the aggregate amount of such expenses from the date such expenses were paid to the date of such New Commitment Shareholder's admission (or increase); (ii) the capital contributed for permitted investments held by the Fund on the applicable Subsequent Closing (PROVIDED THAT to the extent there has been a material change in value of the Fund's permitted investments prior to the admission date of a New Commitment Shareholder, then the Directors may determine that the amount to be contributed by such New Commitment Shareholder shall be adjusted to give effect to such change in value) plus interest at a rate per annum to be determined by the Directors, and set out in the relevant

Supplement, on the aggregate cost of such permitted investments for the period from the acquisition of such permitted investments (as disclosed in the relevant Supplement) to the date of such New Commitment Shareholder's admission (or increase); and (iii) the capital necessary for the Investment Manager to effectuate the applicable Rebalancing Transaction (as defined below) plus interest, calculated in accordance with Article 18.03 below, at a rate per annum to be determined by the Directors and set out in the relevant Supplement and applied to the aggregate cost of such Rebalancing Transaction (amounts contributed under (i), (ii) (iii), the "**Make-Up Contribution**").

- (ii) the Directors may determine that the amounts contributed in respect of any Make-Up Contributions and not used to effect a Rebalancing Transaction will be distributed to each Shareholder admitted on a date prior to the applicable Subsequent Closing pro rata based on the proportion that such Shareholder's Capital Commitment prior to the applicable Subsequent Closing bears to the aggregate Capital Commitments of all such Shareholders and will proportionally increase its Unfunded Commitment; provided, however, that the amount of any Make-Up Contribution representing interest shall not increase the Unfunded Commitment of such Shareholder and may be paid directly to such Shareholder. Amounts contributed in respect of any Make-Up Contribution will reduce the Unfunded Commitment of a New Commitment Shareholder and will be treated as a Capital Drawdown; provided, however, that the amount of any Make-Up Contribution representing interest shall not reduce the Unfunded Commitment of a New Commitment Shareholder and may not be treated as a Capital Drawdown.

18.3 Where, in respect of a Fund, for legal, regulatory, tax or other reasons, one or more parallel funds or separately-managed accounts are established by the Investment Manager with the expectation of making investments parallel to those of the Fund at any time prior to three months after the Final Closing Date ("**Parallel Funds**" and together with the relevant Fund , the "**Lending Funds**"), the Directors may on behalf of the relevant Fund, effect rebalancing transactions consisting of purchases and sales of investments and income earned thereon net of expenses associated with such investments (each such transaction, a "**Rebalancing Transaction**") among the Lending Funds so that as of such date the aggregate amount of capital in respect of the Lending Funds that has been drawn in respect of Investments more closely reflects the relative aggregate "Capital Commitments" of the Lending Funds. Any such Rebalancing Transactions shall be effected at the cost basis of all investments the subject of such Rebalancing Transaction plus interest at a rate per annum (to be determined by the Directors and set out in the relevant Supplement) for the period from the acquisition of such investments by the relevant Lending Fund to the date of such Rebalancing Transaction (PROVIDED THAT to the extent there has been a material change in value of an investment prior to the applicable Rebalancing Transaction, then, in lieu of any such interest in respect of such investment, the amount to be contributed by each New Commitment Shareholder shall be adjusted to give effect to such change in value). The amounts received by the relevant Fund will be distributed to the Shareholders pro rata based on their capital contributions and will proportionally increase each Shareholder's Unfunded Commitment;

provided, however, that any amounts representing interest shall neither increase or decrease any Shareholder's Unfunded Commitment nor shall such amounts be treated as a Capital Drawdown or a return of capital.

18.4 Unfunded Commitments may be called by the Directors in respect of the relevant Fund at any time, including on the Initial Capital Drawdown Date and any Subsequent Capital Drawdown Date during the Investment Period in any amount on not less than 10 days' (or such other period as the Directors may determine and set out in the Prospectus or relevant Supplement) prior written notice (a "**Call Notice**") to the Shareholders; provided, however, that (i) all Capital Drawdowns shall be on a pro rata basis in proportion to each Shareholder's respective Capital Commitment and (ii) all calls for Capital Drawdowns shall be made so that they are required to be funded on or prior to the termination of the Investment Period, except

as necessary to fund (A) the expenses and liabilities of the Fund's operations (including payment of any fees and the allocation of any Carried Interest) or to acquire the Shares of a Defaulting Member (as described below) (B) the obligation of the Fund to commit capital to fund investments for which the Fund has prior to the termination of the Fund's Investment Period made a commitment, letter of intent or proposal letter to invest and (C) its obligation to commit capital to fund investments in an amount equal to up to a percentage to be determined by the Directors (and set out in the Prospectus or relevant Supplement) of the aggregate Capital Commitments to protect or preserve value in then-existing investments of the Fund and (D) such other obligations as are required by the Supplement for the relevant Fund.

- 18.5 Each Call Notice shall include a statement setting forth (A) the amount of such Shareholder's proportionate share of such drawdown (in the applicable currency as set out in the Prospectus or relevant Supplement), (B) the date of such drawdown, and (C) the bank account of the Fund to which such drawdown is to be paid. Investors or Shareholders in receipt of a Call Notice are required to make payment in cleared funds to the account of the Fund specified in the Call Notice of an amount equal to the Capital Drawdown, such payment to be received no later than the date specified in the Prospectus or relevant Supplement or the Call Notice.
- 18.6 Capital Drawdowns will be applied to subscribe for the relevant Class of Shares to be issued in respect of the relevant Capital Drawdown Date. Shares issued with respect to Capital Drawdowns made on or before the Final Closing Date will be issued at a fixed price per Share of the relevant Class in respect of which Shares are issued as set out in the Prospectus or the relevant Supplement. Shares issued with respect to Capital Drawdowns made after the Final Closing Date shall be issued at the most recently published Net Asset Value per Share of the relevant Class at that time.
- 18.7 Fractions of Shares will be issued where any part of the Capital Drawdown represents less than the Subscription Price per Share for one Share provided however that fractions shall not be issued for less than such fraction of a Share as the Directors may determine and set out in the Prospectus or the relevant Supplement. Capital Drawdowns, representing less than such fraction will not be returned to the Shareholder and may be retained by the ICAV in order to defray administration costs.
- 18.8 If any Shareholder fails to make full payment of any portion of its Capital Commitment or any other payment required hereunder when due (a "**Defaulting Member**"), the ICAV on behalf of the relevant Fund may give such Defaulting Member written notice of its default in payment and in the event such default shall continue beyond such period following such notice as the Directors may determine and disclose in the relevant Supplement, the ICAV on behalf of the relevant Fund may, in its discretion, take or procure that its duly authorised delegate (including for the avoidance of doubt the Investment Manager") may take, any one or more of the following actions:
- (a) assist the Defaulting Member in finding a buyer (the "**Transferee**") for the Defaulting Member's Shares that will assume the Defaulting Member's obligations in respect of its Subscription Agreement (including assuming such Defaulting Member's obligation to make both defaulted and future Capital Drawdowns), subject to (i) the completion by such Transferee of a Subscription Agreement, (ii) any restrictions as regards the transfer of Shares and (iii) the completion of any required anti-money laundering requirements (the "**Conditions**").
  - (b) pursue and enforce all rights and remedies the ICAV on behalf of the relevant Fund may have against the Defaulting Member, including a lawsuit to collect the overdue amount and the costs (including attorneys' fees) and expenses of collecting such overdue amount, with interest calculated thereon commencing on the date such Capital Drawdown was due at a rate equal to the Base Rate (as defined in the Supplement for the relevant Fund) *plus*, at the Directors' discretion a rate of interest per annum as the Directors may determine and set out in the Prospectus or relevant Supplement, or, if greater, the annualized rate of total return per Share over the prior

such number of prior fiscal quarters as the Directors may determine and set out in the Prospectus or relevant Supplement (or since commencement of operations if less than the aforementioned number of fiscal quarters) (but not in excess of the highest rate *per annum* permitted by applicable law). In addition, the Defaulting Member may be required to reimburse the Fund for the costs of any interim financing obtained by the ICAV on behalf of the Fund due to the Defaulting Member's failure to timely make its Capital Drawdowns. Any such reimbursement shall be deemed not to constitute a Capital Drawdown and shall not reduce the Unfunded Capital Commitment of the Defaulting Member.

- (c) offer a Defaulting Member's Shares to the Shareholders (other than any Defaulting Member), which offer shall be made pro rata in accordance with the non-defaulting Shareholders' respective Capital Commitments (which may be at a price other than the Net Asset Value of such Shares). The terms of the offer, including but not limited to the purchase price, for such Shares will be determined in the discretion of the Directors, upon recommendation from the Investment Manager in consultation with the AIFM, as the lesser of;
- (i) the fair market value of its Capital Drawdowns net of expenses and organisational expenses accrued up until the date of the assignment and Default Related Expenses (as defined below), or
  - (ii) the purchase price paid by the Transferee net of expenses and organizational expenses accrued through the date of the assignment and Default Related Expenses.

**"Default Related Expenses"** shall mean all costs and expenses reasonably incurred in relation to the assignment on Default (including any borrowing costs which may be incurred directly or indirectly as a consequence to the Default). In the event that there should be an amount in excess of such amount outlined above, this excess amount shall be returned to the Defaulting Member.

*provided, however,* that the Directors may determine that such Defaulting Member shall receive not less than a certain percentage of the most recently determined Net Asset Value of such Shares as the Directors may determine and as may be set out in the Prospectus or relevant Supplement; and *provided, further,* that, in the case of a Defaulting Member that is an ERISA Investor, the Defaulting Member agrees to offer the Shares pursuant to such terms that the purchase of the Shares by the non-defaulting Shareholder would not be or give rise to a non-exempt prohibited transaction under Section 406 of ERISA or Section 4975 of the Code. If a non-defaulting Shareholder elects not to purchase all of the Shares offered to it, such unpurchased Shares may be reoffered *pro rata* to the non-defaulting Shareholders who have purchased all of the Shares offered to them until either all of such Shares are acquired or no non-defaulting Shareholder wishes to make a further investment. At the closing of such purchase (on a date and at a place designated by the ICAV), each purchasing Shareholder shall, as payment in full for the Defaulting Member's Shares being purchased, (A) deliver a non-interest bearing, non-recourse promissory note (in a form approved by the Shareholder) payable upon the earlier to occur of ten years after delivery of the note or liquidation of the Shareholder, secured only by the Defaulting Member's Shares being purchased by such Shareholder (excluding the portion of such Shares represented by contributions made by such Transferor with respect to such Shares), payable to the Defaulting Member in an amount equal to the purchase price of the portion of the Defaulting Member's Shares being purchased by such Shareholder, and (B) assume the portion of the Defaulting Member's obligation to make both defaulted and future Capital Drawdowns and other payments pursuant to its Subscription Agreement which are commensurate with the portion of the

Defaulting Member's Shares being purchased by such Shareholder. Upon the closing of such purchase, each purchasing Shareholder shall make a contribution of capital in an aggregate amount equal to that portion of the assumed Capital Commitment representing the defaulted Capital Commitment of the Defaulting Member, and the balance of the assumed Capital Commitment shall be added to such purchasing Shareholder's Capital Commitment for all purposes under its Subscription Agreement. The ICAV on behalf of the relevant Fund shall specify the procedures for making and accepting the offers contemplated herein and shall, in its discretion, set time limits for acceptance. All contributions of capital made by the purchasing Shareholders shall be "Capital Drawdowns" made pursuant to their Subscription Agreement and Shares shall be issued to such Shareholders accordingly. If all of the Defaulting Member's Shares are not purchased pursuant to the immediately preceding provisions, the ICAV on behalf of the relevant Fund may offer any remaining Shares to any other person on the same terms as originally offered to the Shareholders pursuant to such provisions, subject to the Conditions.

- (d) repurchase and cancel such Defaulting Member's Shares at a discount to the Net Asset Value of such Shares (notwithstanding Clause 12.00 of this Instrument); *provided, however*, that, in the case of a Defaulting Member that is an ERISA Investor, any such repurchase and cancellation would not be or give rise to a non-exempt prohibited transaction under Section 406 of ERISA or Section 4975 of the Code. The consideration to be paid to such Defaulting Member upon any repurchase or cancellation of such Shares will be determined in the discretion of the Directors upon recommendation from the Investment Manager in consultation with the AIFM, except as otherwise required by ERISA, to the extent applicable; *provided, however*, that such Defaulting Member shall receive not less than such percentage of the Net Asset Value of such Shares as the Directors may determine *upon* recommendation from the Investment Manager in consultation with the AIFM and disclose in the Supplement for the relevant Fund.
- (e) offer to the Shareholders (other than such Defaulting Member) for assumption by the non-defaulting Shareholders such Defaulting Member's Capital Commitment to make its Capital Drawdown which was not made ("**Defaulted Commitment**"), which offer shall be made *pro rata* in accordance with the non-defaulting Shareholders' respective Shares. If a non-defaulting Shareholder elects not to assume the entire portion of the Defaulted Commitment offered to it, such unassumed Defaulted Commitment shall be reoffered *pro rata* to the non-defaulting Shareholders who have elected to assume the entire portion of the Defaulted Commitment offered to them until either all of such Defaulted Commitment is assumed or no non-defaulting Shareholder wishes to make a further assumption of the Defaulted Commitment. At the closing of such offer (on a date and at a place designated by the Investment Manager), each assuming Shareholder shall make a Capital Drawdown in an amount equal to that portion of the Defaulted Commitment assumed by it which is then due or past due. The Investment Manager shall specify the procedures for making and accepting the offers so contemplated and shall, in its discretion, set time limits for acceptance. If the entire Defaulted Commitment is not assumed pursuant to the preceding provisions, the ICAV on behalf of the Fund may offer to any other person for assumption any remaining portion of the Defaulted Commitment, subject to Conditions. All Capital Drawdowns made by the non-defaulting Shareholders and other persons pursuant to this subparagraph (v) shall be "Capital Drawdowns", and the Shares of each of such Shareholders and other persons shall be adjusted accordingly. Such Defaulting Member's Capital Commitment shall be reduced by the aggregate amount of Defaulted Commitment assumed by the non-defaulting Shareholders and such other persons and for which payments have been actually received by the Shareholders.
- (f) reduce (effective on the date of the default) the Defaulting Member's Unfunded Commitment (to the extent it has not been assumed by another Shareholder or

person) to the amount of Capital Drawdowns actually made by such Defaulting Member (net of distributions paid to the Defaulting Member), and the aggregate Capital Commitment of such Defaulting Member shall be commensurately reduced; *provided, however*, that the Capital Commitments of the non-defaulting Shareholders shall not be reduced.

- (g) with respect to any Shareholder which is a feeder fund, the term "Defaulting Member" shall apply, on a look through basis to the individual limited partner/partner/shareholder/unitholder as the case may be in that feeder fund which has caused such a default such that a default by one limited partner/partner/shareholder/unitholder as the case may be in a feeder fund shall not cause a default of all of the Shares held by the feeder fund which is a Shareholder in the relevant Fund. In this case the Directors will only apply its remedies on Default in respect of a feeder fund which is the de facto Defaulting Member in respect of that pro rata portion of the required Capital Contribution to be made by the feeder fund to the relevant Fund as correspond to that (as the case may be) individual limited partner/partner/shareholder/unitholder's required capital contribution to the feeder fund and the remedies outlined above shall be applied on a proportionate basis.
- (h) No consent of any Shareholder shall be required as a condition precedent to any transfer, assignment, assumption or other disposition of a Defaulting Member's Shares or Capital Commitment, as the case may be. If all of the Defaulting Member's Shares and its Capital Commitments are purchased in the manner set out above, such Defaulting Member shall cease to be a Shareholder in the Fund and shall cease to have the power to exercise any rights or powers of a Shareholder.

## **19. INVESTMENT OBJECTIVES**

### **19.1**

- (a) The specific investment objectives and policies of each Fund will be set out in the relevant Supplement to the Prospectus and will be formulated by the Directors at the time of the creation of the relevant Funds. The investment objective of a Fund and material changes in the investment policy of a Fund may not be made without the prior written approval of all Shareholders of the relevant Fund or approval on the basis of an Ordinary Resolution of the Shareholders of the particular Fund duly convened and held. In the case of a closed-ended Fund where there is no opportunity for Shareholders to redeem their Shares or otherwise exit the Fund, the investment objective of a Fund may not be altered and material changes in the investment policy of a Fund may not be made without the prior written approval of all Shareholders of the relevant Fund or approval on the basis of a Special Resolution of the Shareholders of the particular Fund duly convened and held. In the case of a closed-ended Fund where there is an opportunity for Shareholders to redeem their Shares or otherwise exit the Fund, the investment objective of a Fund may not be altered and material changes in the investment policy of a Fund may not be made without the prior written approval of all Shareholders of the relevant Fund or approval on the basis of an Ordinary Resolution of the Shareholders of the particular Fund duly convened and held.
- (b) The ICAV and each Fund may invest in any asset, property, investment or instruments of any kind permitted subject to and in accordance with this Instrument, its Prospectus, the requirements of the Central Bank and the Act.
- (c) The ICAV may from time to time borrow or leverage for the account of a Fund and secure such borrowings by pledging, mortgaging, charging or otherwise encumbering or delivering by outright transfer, the assets of the relevant Fund.
- (d) The ICAV, subject to the Rulebook, the requirements of the Central Bank and the Regulations and the prior approval of the Central Bank, may establish or acquire any wholly owned subsidiary of, or dedicated trading vehicles for the ICAV for the benefit

of the ICAV as a whole or one or more Funds established or to be established by the ICAV (the investments, assets and shares of which are held by the Depositary or sub-depositary appointed by the Depositary or otherwise in accordance with the requirements of the Central Bank) and to capitalise any such subsidiary in any manner.

- (e) as the Directors of the ICAV may from time to time consider appropriate including by way of share capital, loan or otherwise.
- 19.2 The ICAV and each Fund may employ techniques and instruments of any kind permitted subject to and in accordance with this Instrument, its Prospectus, the requirements of the Central Bank and the Act.
- 19.3 For the purpose of providing margin or collateral in respect of transactions in and the use of derivative instruments and techniques and instruments, the ICAV in respect of any Fund shall be entitled:-
- (a) to transfer, deposit, mortgage, charge or otherwise encumber any Investments for the benefit of any counterparty;
  - (b) in the case of exchange traded derivative instruments and techniques and instruments to vest any such Investments in the relevant exchange or market or any company controlled by such exchange or market and used for the purpose of receiving margin and/or cover or in a counterparty or a nominee of such a counterparty or in a nominee of the Depositary; and/or
  - (c) to give or obtain the guarantee of a bank (and to provide any necessary counter-security therefor) and deposit such guarantee or cash, with an exchange or counterparty or any company controlled by such exchange or counterparty and used for the purpose of receiving margin and/or cover.
- 19.4 Classes of Shares may be denominated in various currencies, and Shares will be issued and redeemed in those currencies. The ICAV or its delegate may employ at Class level forward foreign exchange contracts and/or currency derivatives including inter alia futures contracts to seek to hedge, to the fullest extent practicable, the foreign exchange exposure of a Class of Shares denominated in a currency other than the Base Currency in order to neutralise, so far as possible, the impact of exchange rate fluctuations.
- 19.5 The ICAV or its delegate may employ at Fund level forward foreign exchange contracts and/or currency derivatives including inter alia futures contracts to seek to hedge, to the fullest extent practicable, a Fund's foreign exchange exposure to the assets of the Fund denominated in a currency other than the Base Currency in order to neutralise, so far as possible, the impact of exchange rate fluctuations.
- 19.6 The ICAV may seek to achieve its investment objective by investing all or part of its assets in an investment vehicle under the terms of a profit rights agreement of any kind (including those involving swaps, transfers, payments, interest, notes, loans or rights of any kind) or otherwise.

## **20. GENERAL MEETINGS**

- 20.1 All general meetings of the ICAV shall be held in Ireland.
- 20.2 Subject to Clauses 20.3 and 20.5, the ICAV shall in each year hold a general meeting as its annual general meeting in addition to any other meetings, where general or otherwise, it may hold in that year.
- 20.3 If the ICAV holds its first annual general meeting within 18 months after the date on which the registration order made by the Central Bank in respect of the ICAV comes into operation, the ICAV shall not be required to hold any other meeting as its annual general meeting in the year of its registration or in the following year.

- 20.4 Subject to Clauses 20.03 and 20.05, not more than 15 months may elapse between the date of one annual general meeting of the ICAV and the date of the next.
- 20.5 The Directors of the ICAV may, except whether otherwise required, elect to dispense with the holding of an annual general meeting by giving 60 days' written notice to all of the ICAV's Members. Any election made hereunder shall have 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. However, where an election made hereunder has effect for a year, one or more Members of the ICAV holding, or together holding, not less than 10 percent of the voting rights in the ICAV or the Auditors may require the ICAV to hold an annual general meeting in that year by giving notice in writing to the ICAV in the previous year or at least one month before the end of that year and the ICAV shall hold the required meeting.
- 20.6 All general meetings (other than annual general meetings) shall be called extraordinary general meetings.
- 20.7 The Directors may call an extraordinary general meeting whenever they think fit.
- 20.8 If at any time, there are not sufficient Directors capable of acting to form a quorum, any Director or Member of the ICAV may convene an extraordinary general meeting in the same manner as nearly as possible as that in which meetings may be convened by the Directors.
- 20.9 One or more Members of the ICAV holding, or together holding, at any time not less than 50 per cent of the voting rights in the ICAV may convene an extraordinary general meeting of the ICAV.
- 20.10 The Directors of the ICAV shall, at the request of one or more Members holding, or together holding, at the date of the making of the request, not less than 10 per cent of the voting rights in the ICAV, proceed to convene an extraordinary general meeting of the ICAV. The request shall state the objects of the meeting and shall be signed by those making the request and deposited at the registered office of the ICAV and may consist of several documents in like form each signed by one or more of those making the request. If the Directors do not within 21 days after the date of the deposit of the request proceed to convene a meeting to be held within 2 months after that date, those making the request, or any of them representing more than 50 per cent of the total voting rights of all of them, may themselves convene a meeting, but any meeting so convened shall not be held more than 3 months after the date the request was first made. Any reasonable expenses incurred by those making the request by reason of the failure of the Directors duly to convene a meeting shall be repaid to those making the request by the ICAV and any sum so repaid shall be retained by the ICAV out of any sums due or to become due from the ICAV by way of fees or other remuneration in respect of their services to such of the Directors as were in default.
- 20.11 A meeting convened by Members under Clause 20.09 or Clause 20.10 shall be convened in the same manner as nearly as possible as that in which meetings of Members are to be convened by Directors.

## **21. NOTICE OF GENERAL MEETINGS**

- 21.1 Each annual general meeting and extraordinary general meeting (called for the passing of a Special Resolution or Ordinary Resolution) shall be called by not less than fourteen Clear Days' notice which, in each case, shall specify 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 that the meeting is an annual general meeting) and shall be given in the manner hereinafter provided to such persons as are under the provisions of this Instrument or the conditions of issue of the shares held by them entitled to receive notices from the ICAV.



- 21.2 The Directors, the AIFM, the Investment Manager, the Administrator, the Auditors and the Depositary shall be entitled to receive notice of and attend and speak at any general meeting of the ICAV. The Directors may in their discretion consider requests from other parties.
- 21.3 In every notice calling a meeting of the ICAV, there shall appear with reasonable prominence a statement that a Member entitled to attend and vote is entitled to appoint one or more proxies to attend and vote instead of him and that a proxy need not also be a Member.
- 21.4 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.

## **22. PROCEEDINGS AT GENERAL MEETINGS**

- 22.1 All business shall be deemed special that is transacted at an extraordinary general meeting, as shall all business that is transacted at an annual general meeting (with the exception of the consideration of the accounts and balance sheet and the reports of the Directors and Auditors, the election of Directors and the election of Directors in the place of those retiring, and the reappointment of the retiring Auditors and the fixing of the remuneration of the Auditors).
- 22.2 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 of the ICAV, Fund(s) or Class(es) of Shares. A representative of a corporation authorised pursuant to Clause 23.12 of this Instrument and present at any meeting of the ICAV or at any meeting of a Fund or Class or Classes of Members shall be deemed to be a Member for the purpose of constituting a quorum.
- 22.3 If within half an hour after 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 and if at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting, the Member present shall be a quorum and in the case of a meeting of a Class convened to consider the variation of rights of Members in such Fund or Class the quorum shall be one Member holding shares of the Fund or Class in question or his proxy.
- 22.4 The chairman, if one is appointed or, if he is absent, the deputy chairman of the Directors, or failing him, some other Director nominated by the Directors shall preside as chairman at every general meeting of the ICAV, but if at any meeting neither the chairman nor the deputy chairman nor such other Director is present within fifteen minutes after the time appointed for holding the meeting, or if none of them be 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.
- 22.5 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 days or more ten Clear Days' notice at 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.
- 22.6 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 at least two Members present in person or by proxy or any Member or Members present in person or by proxy representing at least one tenth of the

shares in issue having the right to vote at the meeting. Unless a poll is so demanded, a declaration by the chairman that a resolution has been carried, or carried unanimously, or by a particular majority, or lost, or not carried by a particular majority, and an entry to that effect in the book containing the minutes of the proceedings of the ICAV shall be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against such resolution.

- 22.7 On a poll every Shareholder present in person or by proxy and entitled to vote shall have one vote in respect of each Shares held by him and every holder of Management Shares shall be entitled to one vote in respect of all Management Shares held by him. A Member entitled to more than one vote need not cast all his votes or cast all the votes he uses in the same way. 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 be entitled to a second or casting vote.
- 22.8 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.
- 22.9 The chairman may, in the event of a poll, appoint scrutinisers and may adjourn the meeting to some place and time fixed by him for the purpose of declaring the result of the poll.
- 22.10 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 days from the date of the meeting or adjourned meeting at which the poll was demanded.
- 22.11 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.
- 22.12 A demand for a poll may be withdrawn and no notice need be given of a poll not taken immediately.
- 22.13 A resolution in writing signed by all the Members of the ICAV or all the Shareholders of a Fund or Class for the time being entitled to attend and vote on such resolution at a general meeting (or being bodies corporate by their duly appointed representatives) shall be as valid and effective for all purposes as if the resolution had been passed at a general meeting of the ICAV, Fund or Class duly convened and held and may consist of several instruments in the like form each executed by or on behalf of one or more Members, and if described as a Special Resolution shall be deemed to be a special resolution within the meaning of this Instrument. In the case of a corporation a resolution in writing may be signed on its behalf by a director or the secretary thereof or by its duly appointed attorney or duly authorised representative.
- 22.14 Subject to the Central Bank's requirements, notwithstanding anything to the contrary in this Instrument, a resolution in writing that is described as being an Ordinary Resolution or a Special Resolution which is signed by a Member or Members who, at the time of the signing of the resolution concerned, represent more than 50%, in the case of an Ordinary Resolution or 75%, in the case of a Special Resolution, of the total voting rights of all the Members who, at that time, would have the right to attend and vote at a general meeting of the ICAV or relevant Fund or Class and in respect of which all Members of the ICAV or relevant Fund or Class (as the case may be) concerned entitled to attend and vote on the resolution have been circulated by the Directors (or other person proposing it) with the proposed text of the resolution, shall be as valid and effective for all purposes as if the Ordinary Resolution or Special Resolution, as the case may be, had been passed at a general meeting of the ICAV or relevant Fund or Class duly convened and held.

22.15 The provisions of this Clause and of Clauses 20.00, 21.00 and 23.00 shall, save to the extent expressly provided in this Instrument with respect to meetings of a Fund or Class, apply mutatis mutandis to separate meetings of each Fund or Class of Members.

### **23. VOTES OF MEMBERS**

23.1 Classes of Shares may be issued with such voting rights ("Voting Shares") or restrictions on voting rights, including no voting rights ("Non-Voting Shares"), as the Directors determine in their absolute discretion. The voting rights attaching to Shares may be set out in the Prospectus or relevant Supplement. Where required in accordance with the requirements of the Central Bank, Shareholders who hold Non-Voting Shares are entitled upon application to the ICAV to the re- designation of their Non-Voting Shares to Voting Shares, which Shares will in all other respects rank pari passu, without being subject to a fee. A Shareholder may at any time temporarily or permanently waive his right to such re-designation by notice in writing to the ICAV. On a show of hands every Shareholder (with applicable voting rights) present in person or by proxy shall be entitled to one vote and a holder of Management Shares shall be entitled to one vote in respect of all Management Shares.

23.2 On a poll every Shareholder present in person or by proxy shall be entitled to one vote in respect of each Share (with applicable voting rights) held by him and a holder of Management Shares shall be entitled to one vote in respect of all Management Shares held by him. A Shareholder entitled to more than one vote need not cast all his votes, or cast all the votes he uses in the same way.

23.3 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 in respect of the shares.

23.4 A Member of unsound mind in respect of whom an order has been made by any court having jurisdiction in lunacy, may vote whether on a show of hands or on a poll, by his committee, receiver, guardian or other person in the nature of a committee, receiver, guardian appointed by such court and such committee, receiver, guardian or other persons may on a poll vote by proxy, PROVIDED THAT such evidence as the Directors may require of the authority of the persons claiming to vote shall have been deposited at the Office not less than forty eight hours before the time for holding the meeting or adjourned meeting at which such person claims to vote.

23.5 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.

23.6 On a poll votes may be given either personally or by proxy. 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. 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 Member the choice of authorising his/her proxy to vote for or against each resolution.

23.7 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.

23.8 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 Office or at such other place as is specified for that purpose in the notice of meeting or in the instrument of proxy issued by the ICAV not less than such minimum time specified before

the time appointed for holding the meeting or adjourned meeting at which the person named in the instrument proposes to vote and in default the instrument of proxy shall not be treated as valid.

- 23.9 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.
- 23.10 The Directors may at the expense of the ICAV send, by post or otherwise, to the Members instruments of proxy (with or without prepaid postage for their return) for use at any general meeting or at any meeting of any Class of Members, either in blank or nominating in the alternative any one or more of the Directors or any other persons. If for the purpose of any meeting invitations to appoint as proxy a person or one of a number of persons specified in the invitations are issued at the expense of the ICAV, such invitations shall be issued to all (and not to some only) of the Members entitled to be sent a notice of the meeting and to vote thereafter by proxy.
- 23.11 A vote given in accordance with the terms of an instrument of proxy shall be valid notwithstanding the death or insanity of the principal or the revocation of the instrument of proxy, or of the authority under which the instrument of proxy was executed, or the transfer of the shares in respect of which the instrument of proxy is given, PROVIDED THAT no intimation in writing of such death, insanity, revocation or transfer shall have been received by the ICAV at the Office, before the commencement of the meeting or adjourned meeting at which the instrument of proxy is used.
- 23.12 Any body corporate which is a Member, may authorise by resolution of its directors or other governing body such person as it thinks fit to act as its representative at any meeting of the ICAV and the person so authorised shall be entitled to exercise the same powers on behalf of the body corporate which he represents as that body corporate could exercise if it were an individual Member and such body corporate shall for the purposes of this Instrument be deemed to be present in person at any such meeting if a person so authorised is present in person or by proxy thereat.
- 23.13 The Directors may at their discretion "pass through" to the Shareholders in a particular Fund all voting rights that the ICAV has with respect to underlying investments of that Fund by soliciting the vote of the Shareholders of the relevant Fund by way of (1) forwarding to Shareholders of the Fund any notices received in respect of the underlying investment relating to a vote of interest holders in that investment and (2) subject to and in accordance with the provisions of the Prospectus or relevant Supplement convening an extraordinary general meeting or seeking approval by way of written resolution on any matter that it is asked to vote on by or with respect to the underlying investment. The Directors will vote the ICAV's entitlements in respect of the underlying investment of the relevant Fund or provide consent via a written resolution as applicable, in proportion to the votes received from Shareholders of the Fund voting for or against the proposal put to them as aforesaid.

## **24. DIRECTORS**

- 24.1 The ICAV shall have at least two Directors.
- 24.2 A Director need not be a Member.
- 24.3 Directors are not required to retire on attaining a particular age.
- 24.4 24.04. The provisions of the Act relating to restrictions on directors of an insolvent company or disqualifying persons from being appointed or acting as a director or other officer, statutory auditor, receiver or liquidator, or being in anyway (directly or indirectly) concerned or taking part in the promotion, formation or management of a company shall apply to the ICAV.
- 24.5 A Director may vote and be counted in the quorum at a meeting to consider the appointment or the fixing or variation of the terms of appointment of any Director to any office or employment with the ICAV or any company in which the ICAV is interested, but a Director may not vote or be counted in the quorum on a resolution concerning his own appointment.
- 24.6 The Directors of the ICAV for the time being are entitled to such remuneration as may be determined by the Directors and disclosed in the Prospectus issued by the ICAV from time to time. The Directors may also be reimbursed all reasonable and properly vouched travel, hotel and other incidental expenses incurred in connection with the business of the ICAV or the discharge of their duties. The ICAV shall not make to any Director any payment by way of compensation for loss of office, or as consideration for or in connection with retirement from office, unless the following conditions are satisfied, (a) that particulars relating to the proposed payment (including its amount) are disclosed to Members, and (b) that the proposal is approved by Ordinary Resolution of the ICAV in a general meeting.
- 24.7 The Directors may in addition to such remuneration as is referred to in Clause 24.06 of this Instrument grant special remuneration to any Director who, being called upon, shall perform any special or extra services to or at the request of the ICAV.
- 24.8 Any Director may at any time by instrument in writing under his hand and deposited at the 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. Save as otherwise provided in this Instrument, an alternate Director shall be deemed for all purposes to be a Director and shall alone be responsible for his own acts and defaults and he shall not be deemed to be the agent of the Director appointing him.
- 24.9 The appointment of an alternate Director shall terminate if his appointor dies or ceases to be a Director or on the happening of any event with respect to the alternate Director which if he were a Director would cause him to vacate such office. However, if a Director retires by rotation or otherwise but is re-appointed or deemed to have been re-appointed at the meeting at which he retires, any appointment of an alternate Director made by him which was in force immediately prior to this retirement shall continue after his re-appointment.
- 24.10 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 attends a 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 and for the purposes of affixing the Seal (if applicable) 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 appointor 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.

- 24.11 An alternate Director shall be entitled to contract and be interested in and benefit from contracts or arrangements or transactions and to be repaid expenses and to be indemnified to the same extent *mutatis mutandis* as if he were a Director but he shall not be entitled to receive from the ICAV in respect of his appointment as alternate Director any remuneration except only such part (if any) of the remuneration otherwise payable to his appointor as such appointor may by notice in writing to the ICAV from time to time direct.
- 24.12 The office of a Director shall be vacated in any of the following events namely:-
- (a) if he resigns his office by notice in writing signed by him and left at the Office;
  - (b) if he becomes bankrupt or makes any arrangement or composition with his creditors generally;
  - (c) if he becomes of unsound mind;
  - (d) if he is absent from meetings of the Directors for six successive months without leave expressed by a resolution of the Directors, and the Directors resolve that his office be vacated;
  - (e) if he ceases to be a Director by virtue of, or becomes prohibited or restricted from being a Director by reason of, an order made under the provisions of any law or enactment;
  - (f) if he is requested by a majority of the other Directors (not being less than two in number) to vacate office;
  - (g) If he has agreed with the ICAV pursuant to the terms of his appointment to vacate his office in other circumstances;
  - (h) if he is removed from office by Ordinary Resolution of the ICAV in accordance with the provisions of the Act, as set out in Clause 24.13; or
  - (i) if he ceases to be approved to act as a Director by the Central Bank.
- 24.13 The ICAV may by Ordinary Resolution remove a Director before the end of the Director's period of office despite anything in this Instrument or in any agreement between the ICAV and the Director, in accordance with the provisions of the Act.
- 24.14 The Directors may, whether by standing resolution or otherwise, delegate all their powers to any duly authorised Officer or other person or committee subject to such terms and conditions as the Directors in their absolute discretion may resolve.
- 24.15 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. Directors are not required to retire by rotation.
- 24.16 The Members shall have the power at a general meeting of the ICAV to appoint any person to be a Director PROVIDED THAT a motion for the appointment of two or more persons as Directors of the ICAV by a single resolution shall not be made unless a resolution that it shall be so made has first been agreed to by the meeting without any vote being given against it.

## 25. TRANSACTIONS WITH DIRECTORS

- 25.1 A Director may hold any other office or place of profit under the ICAV (other than the office of Auditor) in conjunction with his office of Director on such terms as to tenure of office and otherwise as the Directors may determine.
- 25.2 No Director or intending Director shall be disqualified by his office from contracting with the ICAV either as vendor, purchaser or otherwise, nor shall any such contract or any contract or arrangement entered into by or on behalf of the ICAV in which any Director is in any way interested be liable to be avoided, nor shall any Director so contracting or being so interested be liable to account to the ICAV for any profit realised by any such contract or arrangement by reason of such Director holding that office or of the fiduciary relationship thereby established, but the nature of his interest must be declared by him. It shall be the duty of a Director of the ICAV who is in any way, whether directly or indirectly, interested in a contract or proposed contract with the ICAV to declare the nature of his or her interest at a meeting of the Directors of the ICAV. This Clause does not apply in relation to an interest that cannot reasonably be regarded as likely to give rise to a conflict of interest. The declaration required by this Clause to be made by a Director shall (a) in the case of a proposed contract, be made at the meeting of the Directors at which the question of entering into the contract is first taken into consideration, or if the Director was not at the date of that meeting interested in the proposed contract, at the next meeting of the Directors held after he or she became so interested, (b) in a case where the Director becomes interested in a contract after it is made, be made at the first meeting of the Directors held after the Director becomes so interested. A general notice in writing given to the Directors by any Director to the effect that (a) he is a shareholder of any specified company or firm, and is to be regarded as interested in any contract which may thereafter be made with that company or firm or (b) 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 or her (within the meaning of Part 4, Chapter 1 of the Act) shall (if such Director shall give the same at a meeting of the Directors or shall take reasonable steps to secure that the same is brought up and read at the next meeting of the Directors after it is given) be deemed a sufficient declaration of interest in relation to any contract or arrangement made.
- 25.3 Save as herein provided, a Director shall not vote in respect of any contract or arrangement or any proposal whatsoever in which he has any material interest otherwise than by virtue of his interests in shares or debentures or other securities of or otherwise in or through the ICAV. A Director shall not be counted in the quorum at a meeting in relation to any resolution on which he is debarred from voting.
- 25.4 A Director shall in the absence of some material interest other than that indicated below, be entitled to vote and be counted in the quorum in respect of any resolution concerning any of the following matters, namely:-
- (a) the giving of any security or indemnity to him in respect of money lent or obligations incurred by him at the request of or for the benefit of the ICAV or any of its subsidiaries or associated companies;
  - (b) the giving of any security, guarantee or indemnity to a third party in respect of a debt or obligation of the ICAV or any of its subsidiaries or associated companies for which he himself has assumed responsibility in whole or in part under a guarantee or indemnity or by the giving of security;
  - (c) any proposal concerning an offer of shares or debentures or other securities of or by the ICAV or any of its subsidiaries or associated companies for subscription or purchase in which offer he is or is to be interested as a participant in the underwriting or sub-underwriting thereof; or
  - (d) any proposal concerning any other company in which he is interested, directly or indirectly and whether as an *officer* or shareholder or otherwise howsoever PROVIDED THAT he is not the holder of or beneficially interested in five per

cent or more of the issued shares of any class of such company, or of any third company through which his interest is derived, or of any of the voting rights available to shareholders of the relevant company (any such interest being deemed for the purposes of this Clause to be a material interest in all circumstances).

- (e) any proposal concerning the purchase of any policy of insurance against directors' and officers' liability.
- 25.5 In accordance with the provisions of the Act, a Director has a duty to disclose payments made where in connection with the transfer of Shares in the ICAV payment is to be made to the Director by way of compensation for loss of office, or as consideration for or in connection with retirement from office.
- 25.6 Where proposals are under consideration concerning the appointment (including fixing or varying the terms of appointment) of two or more Directors to offices or employment with the ICAV or any company in which the ICAV is interested, such proposals may be divided and considered in relation to each Director separately and in such case each of the Directors concerned (if not 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.
- 25.7 If any question shall arise at any meeting as to the materiality of a Director's interest or as to the entitlement of any Director to vote and such question is not resolved by his voluntarily agreeing to abstain from voting, such question shall be referred to the chairman of the meeting and his ruling in relation to any Director shall be final and conclusive except in a case where the nature or extent of the interests of the Director concerned has not been fairly disclosed.
- 25.8 For the purpose of this Clause, an interest of a person who is connected with a Director (i.e. within the meaning of Part 4, Chapter 1, of the Act) shall be treated as an interest of the Director and, in the case of an alternate Director, an interest of his appointor shall be treated as an interest of the alternate Director.
- 25.9 Any Director may act by himself or through his firm in a professional capacity for the ICAV, and he or his firm shall be entitled to remuneration for professional services as if he were not a Director, PROVIDED THAT nothing herein contained shall authorise a Director or his firm to act as Auditor.
- 25.10 The Directors may from time to time appoint one or more of their body to be the holder of any executive office 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 at any time revoke any such appointment.
- 25.11 The Directors may entrust to and confer upon any Director holding any executive office any of the powers exercisable by them as Directors upon such terms and conditions and with such restrictions as they think fit, and either collaterally with or to the exclusion of their own powers, and may from time to time revoke, withdraw, alter or vary all or any of such powers.
- 25.12 Any Director may continue to be or become a director, managing director, manager or other officer or shareholder of any company promoted by the ICAV or in which the ICAV may be interested or associated in business, and no such Director shall be accountable for any remuneration or other benefits received by him as a director, managing director, manager, or other officer or shareholder of any such other company. The Directors may exercise the voting power conferred by the shares in any other company held or owned by the ICAV or exercisable by them as directors of such other company, in such manner in all respects as they think fit (including the exercise thereof in favour of any resolution appointing themselves or any of them directors, managing directors, managers or other officers of such company, or voting or providing for the payment of remuneration to the directors, managing directors, managers or other officers of such company).



- 25.13 In accordance with the provisions of the Act, the ICAV shall keep a register showing, in relation to each Director and Secretary of the ICAV, the number, description and amount of any shares in or Debentures of (a) the ICAV, or (b) any other body corporate which is the ICAV's subsidiary or holding company, or a subsidiary of the ICAV's holding company, which are held by, or in trust for, him or her, his or her spouse or any child of his or hers of which he or she has any right to become the holder (whether on payment or not). The register shall be kept at the same office as the register of Members is kept, and shall be open to inspection during normal business hours (subject to such reasonable restrictions as the Directors may determine and impose generally or in a general meeting so that not less than two hours in each day be allowed for inspection) by any Member or holder of debentures in the ICAV. The register shall also be produced at the commencement of the ICAV's annual general meeting and shall remain open and accessible during the continuation of the meeting to any person attending the annual general meeting.
- 25.14 The ICAV may by Ordinary Resolution suspend or relax the provisions of this Clause 25 to any extent or ratify any transaction not duly authorised by reason of a contravention hereof.

## **26. POWERS AND DUTIES OF DIRECTORS**

- 26.1 The business of the ICAV shall be managed by the Directors, who may exercise all such powers of the ICAV as are not required by the Act or by this Instrument to be exercised by the ICAV in general meeting, subject, nevertheless to the provisions of the Act, and to such directions, being not inconsistent with this Instrument or the Act, as may be given by the ICAV in general meeting, PROVIDED THAT no such direction given by the ICAV in general meeting shall invalidate any prior act of the Directors which would have been valid if such direction had not been given. The general powers given by this Clause shall not be limited or restricted by any special authority or power given to the Directors by this or any other Clause.
- 26.2 The acts of a Director of the ICAV shall be valid despite any defect which may be discovered in the relevant Director's appointment or qualification.
- 26.3 All cheques, promissory notes, drafts, bills of exchange and other negotiable or transferable instruments drawn on the ICAV, and all other receipts for moneys paid to the ICAV shall be signed, drawn, accepted, endorsed or otherwise executed, as the case may be, in such manner as the Directors shall from time to time by resolution determine.
- 26.4 The Directors may, whether by standing resolution, power of attorney or otherwise, delegate all their powers, authorities or discretions for such period and subject to such conditions as they may think fit including without limitation relating to the issue and redemption of Shares, the calculation of the Net Asset Value per Shares, the declaration of distributions and the management, investment management and administration of the ICAV, to any duly authorised company, firm or other person subject to such terms and conditions as the Directors in their absolute discretion may resolve and, subject to the Act, may also authorise any such company, firm or person to delegate all or any of the powers, authorities and discretions so delegated.
- 26.5 Subject as provided in this Clause, the Directors may exercise all the powers of the ICAV to invest all or any funds of the ICAV or the subscription proceeds of any Shares in any securities and other assets authorised by Clause 19.00 hereof.
- 26.6 A Director of the ICAV shall owe the principal fiduciary duties to the ICAV (and the ICAV alone) as set out in the Act.
- 26.7 If a Director of the ICAV considers in good faith that it is in the interests of the ICAV or relevant Fund for a transaction or engagement to be entered into and carried into effect, a Director may restrict his power to exercise an independent judgement in the future by agreeing to act in a particular way to achieve this.

26.8 In accordance with the provisions of the Act, the Directors may authorise any person(s) from time to time as an authorised signatory of the ICAV for the purpose of executing documents under the Seal (if applicable).

## **27. BORROWING POWERS**

27.1 Subject to any limits imposed by the Rulebook and any derogations or waivers therefrom permitted by the Central Bank from time to time, the Directors may exercise all powers of the ICAV to borrow money or securities and to transfer, mortgage or charge or pledge or transfer its undertaking, property and assets, or any part thereof and to issue bonds, notes, debentures, debenture stock or other securities whether outright or as security for any debts or obligations of the ICAV.

## **28. PROCEEDINGS OF DIRECTORS**

28.1 The Directors may meet together for the dispatch of business, adjourn and otherwise regulate their meetings as they think fit. The Directors may all meet together, or in part or form a committee to carry out any of their powers (subject to having a minimum quorum) Questions arising at any meeting shall be determined by a majority of votes. In 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.

28.2 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.

28.3 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 this Instrument, the continuing Directors or Director may act for the purpose of filling up vacancies in their number or of summoning general meetings of the ICAV, but not for any other purpose. If there be no Directors or Director able or willing to act, then any two Members may summon a general meeting for the purpose of appointing Directors.

28.4 The Directors may from time to time elect and remove a chairman and, if they think fit, a deputy chairman and determine the period for which they respectively are to hold office.

28.5 The chairman or, failing him, the deputy chairman shall preside at all meetings of the Directors, but if there is no chairman or deputy chairman, or if at any meeting the chairman or deputy chairman is not present within five minutes after the time appointed for holding the same, the Directors present may choose one of their number to be chairman of the meeting.

28.6 Any Director or alternate Director may participate in a meeting of the Directors or any committee of the Directors by means of conference telephone or other telecommunications equipment by means of which all persons in the meeting can hear each other speak and such participation in a meeting shall constitute presence in person at the meeting.

28.7 A resolution in writing signed 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.

28.8 A meeting of the Directors for the time being at which a quorum is present shall be competent to exercise all powers, authorities and discretions for the time being exercisable by the Directors.

28.9 The Directors may delegate any of their powers or authorities or the exercise of discretion to committees consisting of such members of their body 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 28.02 and shall be governed by the provisions of this Instrument 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.

- 28.10 Pursuant to the provisions of Clause 28.09, the Directors may delegate their powers relating to the declaration of distributions to a committee consisting of two or more Directors.
- 28.11 All acts done by any meeting of Directors, or of a committee of Directors or by any person acting as a Director shall, notwithstanding it be afterwards discovered that there was some defect in the appointment 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.
- 28.12 The Directors shall cause minutes to be made of:-
- (a) all appointments of officers made by the Directors;
  - (b) the names of the Directors present at each meeting of the Directors and of any committee of Directors; and
  - (c) all resolutions and proceedings of all meetings of the ICAV and of the Directors and of committees of Directors.

Minutes may be made of any other matters as the Directors see fit.

- 28.13 Any such minutes as are referred to in Clause 28.12 of this Instrument, 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 their proceedings.
- 28.14 Where minutes have been made of the proceedings at any general meeting of the ICAV or meeting of directors or committee of directors then, until the contrary is shown, the meeting shall be deemed to have been duly held and convened, and all proceedings at the meeting to have been duly had, and all appointments of directors or liquidators shall be deemed to be valid.
- 28.15 The Directors, from time to time and at any time by power of attorney under the Seal (if applicable) or otherwise, may appoint any company, firm or person or any fluctuating body of persons, whether nominated directly or indirectly by the Directors, to be the attorney or attorneys of the ICAV for such purposes and with such powers, authorities and discretions (not exceeding those vested in or exercisable by the Directors under this Instrument) and for such period and subject to such conditions as they may think fit. Any such power of attorney may contain such provisions for the protection of persons dealing with any such attorney as the Directors may think fit and may also authorise any such attorney to sub-delegate all or any of the powers, authorities and discretions vested in him. Notwithstanding the generality of the foregoing, the Directors may appoint an attorney for the purpose of exercising their power to allot relevant securities pursuant to this Instrument.

## **29. SECRETARY**

- 29.1 The Secretary shall be appointed by the Directors. Anything required or authorised to be done by or to the Secretary may, if the office is vacant or there is for any other reason no Secretary capable of acting, be done by or to any assistant or deputy Secretary or if there is no assistant or deputy Secretary capable of acting, by or to any officer of the ICAV authorised generally or specially in that behalf by the Directors PROVIDED THAT any provisions of this Instrument requiring or authorising anything to be done by or to a Director and the Secretary shall not be satisfied by its being done by or to the same person acting both as Director and as, or in the place of, the Secretary.

### 30. THE SEAL

- 30.1 Where the ICAV provides itself with a Seal, the Directors shall provide for its safe custody. The Seal shall be used only by the authority of the Directors or of a committee of Directors authorised by the Directors in that behalf. Where the ICAV provides itself with a Seal, the fixing of the Seal must be authenticated by two authorised signatories (as permitted by the Act) or by a Director alone PROVIDED THAT such signature is attested by a witness.
- 30.2 Where the ICAV does not provide itself with a Seal as permitted by the Act, or where the ICAV does have a Seal, any document shall have the same effect as executed under the Seal if it is expressed (in whatever form of words) to be executed by the ICAV by two authorised signatories (as permitted by the Act) or by a Director alone PROVIDED THAT such signature is attested by a witness.

### 31. DISTRIBUTIONS

- 31.1 The Directors may declare or make such distributions or make distributions on any Class of Shares in the ICAV or in any Fund or Series that appear to the Directors to be justified provided always that no distribution shall exceed the amount recommended by the Directors.
- 31.2 Holders of Management Shares shall not be entitled to receive any distributions in respect of such Management Shares.
- 31.3
- (a) The Directors may if they think fit declare and pay such distributions in respect of any Class of Shares in the ICAV or in any Fund as appear to the Directors to be justified, subject to any policy statement in relation to distributions in the Prospectus or any Supplement with respect to any Fund or Class of Shares;
  - (a) The Directors may in their absolute discretion differentiate between the Shares in any Fund and Shares in different Classes within the same Fund as to the distributions declared on such Shares.
- 31.4 The distribution policy for each Class of Shares and Fund will be specified in the Prospectus or relevant Supplement.
- 31.5 Subject to Clause 31.01 each Fund may pay periodic distributions to the Shareholders, having regard to such distribution priorities as the Directors may determine in their sole discretion and set out in the Prospectus or relevant Supplement. Without limitation the Directors may determine in respect of one or more Funds that distributions shall be made in the following priority:
- (i) *Return of Capital Drawdowns and Expenses:* Up to 100% of distributions to the Shareholders in respect of a Class until they have received cumulative distributions in respect of such Class equal to the amount of their total Capital Drawdowns paid into the Fund;
  - (ii) *Preferred Return:* Up to 100% of distributions to the Shareholders in respect of a Class until each Shareholder has received an amount sufficient to provide such Shareholder pursuant to this paragraph (ii) on a cumulative basis (taking into account prior distributions to such Shareholder) a return equal to such percentage per annum return on the amounts described in (i) above as the Directors may determine and set out in the Prospectus or relevant Supplement (the "**Preferred Return**");
  - (iii) *Carried Interest Allocation:* A percentage of distributions payable on a Class may be allocated to a Carried Interest Class or paid to the Investment Manager or one of its affiliates and the balance to the Shareholders until the an amount equal to cumulative distributions of a rate of interest determined

by the Directors and set out in the Prospectus and relevant Supplement with respect to all amounts distributed to the Shareholders of the Class pursuant to paragraph (ii) and this paragraph (iii) has been allocated to the Carried Interest Class or paid to the Investment Manager or the relevant affiliate;

- (iv) The Investment Manager, employees or its affiliates will be entitled to receive a distribution (a "**Tax Distribution**") in an amount designed to pay its (or its director indirect owners') liabilities for taxes (including in respect of quarterly estimated taxes) in respect of such allocations. In determining the amount of any Tax Distribution, it shall be assumed that the items of income, gain, deduction, loss and credit in respect of the ICAV were the only such items entering into the computation of tax liability of the Investment Manager for the taxable year (or portion thereof) in respect of which the Tax Distribution was made and that the Investment Manager was subject to tax at the highest marginal effective rate of income tax applicable to an individual resident in Ireland, taking account of any difference in rates applicable to ordinary income, capital gains and dividends and any allowable deductions; provided, however, to the extent such allocated income, gain, deduction, and loss are not subject to income tax, such allocated income, gain, deduction and loss shall be excluded from the computation of a Tax Distribution; and
- (v) A percentage of distributions may be paid to the Shareholders in respect of a Class in proportion to their Capital Drawdowns and the balance by way of allocation to the Carried Interest Class or payment to the Investment Manager or the relevant affiliate (together with amounts allocated to the Carried Interest Class or paid to the Investment Manager or his affiliate pursuant to paragraph (iii), the "**Carried Interest**").

#### 31.6

- (a) The Directors may make distributions by way of compulsory redemption of Shares or by paying distributions in cash to Shareholders.
- (b) The Directors may also make distributions in kind to one or more Shareholders subject to the consent of the relevant Shareholder. In this event, the ICAV may, if requested, sell any asset or assets proposed to be distributed in kind and distribute to such Shareholder the cash proceeds less the costs of such sale, which shall be borne by the relevant Shareholder.

31.7 All Shares, unless otherwise determined by the Directors or issued on terms providing that they shall rank for distributions as and from or after a particular date or to a particular extent, shall rank for distribution as from the beginning of the Accounting Period in which they are issued.

31.8 Any resolution of the Directors declaring a distribution on any Shares may specify that the same shall be payable to the persons registered as Shareholders of such Shares at the close of business on a particular date, notwithstanding that it may be a date prior to that on which the resolution is passed, and thereupon the distributions shall be payable to them in accordance with their respective holdings so registered, but without prejudice to the rights inter se of transferors and transferees of such Shares in respect of such distribution.

31.9 The ICAV may transmit any distributions in respect of any Shares at the risk and cost of the relevant Shareholder by cheque sent by ordinary post to the registered address of the holder, or, in the case of joint holders, to the person whose name and address appears first on the Register or to such person and address as the Shareholder or joint Shareholders may direct, by wire or electronic transfer at the risk and cost of the relevant Shareholder to a designated account payment of every such cheque and transmission by wire or electronic transfer shall constitute a good discharge to the ICAV and the ICAV shall not be responsible for any loss arising in respect of such payment or transmission.

31.10 No distribution or amount payable to any Shareholder shall bear interest against the ICAV. All unclaimed distributions and other amounts payable as aforesaid may be invested or otherwise made use of for the benefit of the relevant Fund until claimed. Payment by the ICAV of any unclaimed distribution or other amount payable in respect of Shares into a separate account shall not constitute the ICAV a trustee in respect thereof. Any distribution unclaimed after six years from the date when it first became payable or on the winding up of the ICAV or a Fund, if earlier, shall be forfeited automatically and shall revert to the relevant Fund, without the necessity for any declaration or other action by the ICAV.

31.11 At the request of any Shareholder in a particular Fund or Class, the Directors may apply all distributions to a Shareholder in the issue to that Shareholder of such number of additional Shares in the relevant Fund or Class as are as nearly as possible equal in value to but not in excess of the amount of such distributions at the date of issue of such additional Shares and otherwise on such terms as the Directors from time to time may resolve provided however that subject to Clause 31.12 hereof such Shareholder shall be entitled to revoke such request with respect to all Shares in the relevant Fund or Class held by him and instead receive a cash distribution in respect of such Shares.

31.12

(a) Subject to Clause 31.12(b) hereof the Directors may determine that Shareholders will be entitled to receive in lieu of any distribution (or part thereof) in respect of any Shares in any Fund or Class an issue of additional Shares in proportion to the number of Shares held by them in the relevant Fund or Class credited as fully paid and 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 distribution shall be as nearly as possible equal in value to but not in excess of the amount of such distribution at the date of issue of such additional Shares;
- (ii) for such purpose the Directors shall capitalise a sum equal to the aggregate value of distributions in respect of which additional Shares are proposed to be issued and apply the same in paying up in full the appropriate number of additional Shares for issue to the relevant Shareholders credited as fully paid up;
- (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 distribution (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 may think fit in the case of Shares becoming distributable in fractions so that fractional entitlements are disregarded or rounded up or the benefit of fractional entitlements accrues to the ICAV or the ICAV issues fractions of Shares; and
- (v) the Directors may on any occasion determine that Shares in lieu of distributions shall not be issued to a Shareholder with a registered address in any territory in which, in the absence of a registration statement or other special formalities, the issue of additional Shares would or might be unlawful and in such event the provisions aforesaid shall be read and construed subject to such determination

(b)

- (i) An applicant for or transferee of Shares may subject to Clause 31.12 hereof elect by service of notice in writing on the ICAV, at the time of application for or other acquisition of Shares, to receive cash in lieu of additional Shares in

satisfaction of the whole of any distributions that may be payable on all Shares of the particular Fund or Class which may thereafter be registered in his name and may on the giving of one month's notice in writing to the ICAV or such lesser period as the Directors may determine revoke any election so made with respect to distributions declared after the expiration of such notice period.

- (ii) An election made pursuant to this Clause shall be personal to the Shareholder concerned in his capacity as a holder and, in respect of any Shares transferred, shall automatically cease to have effect upon registration of the transfer or transmission of the relevant Shares but shall continue in effect in respect of Shares retained.

31.13

- (a) Where the amount of any distribution payable to an individual Shareholder would be less than €10.00 (or its foreign currency equivalent), the Directors in their sole discretion may determine that such amount shall not be distributed but shall be retained and reinvested within and for the benefit of that proportion of the relevant Fund or Class.
- (b) Where the amount of any distribution payable to an individual Shareholder would be less than €10.00 (or its foreign equivalent), the Directors in their sole discretion may determine not to pay any such distribution and instead issue and credit to the account of the relevant Shareholder such number of Shares in the relevant Fund or Class as are as nearly as possible equal in value to but not in excess of the amount of such distributions. A sales charge shall not be deducted from such amount.

31.14 If several persons are registered as joint holders any one of them may give receipts for distributions or monies payable to them in respect of Shares.

31.15 If the ICAV is required to deduct, withhold or account for tax including any penalties and interest thereon upon the payment of a distribution to a Shareholder (whether in cash or otherwise), the provisions of Clause 12.13 hereof shall apply mutatis mutandis as if repeated in full herein.

## **32. ACCOUNTS**

32.1 The Directors shall keep or cause to be kept adequate accounting records in accordance with the requirements of the Act and so as to enable the accounts of the ICAV and each Fund to be prepared.

32.2 The accounting records shall be kept at the Office, or at such other place or places as the Directors shall think fit. If accounting records are kept at a place outside of Ireland, there shall be sent to and kept at a place in Ireland and be at all reasonable times open to inspection by the Directors such information and returns relating to the business dealt with in the accounting records so kept as will:-

- (a) disclose with reasonable accuracy the financial position of that business at intervals not exceeding 6 months, and
- (b) enable to be prepared in accordance with the Act the ICAV's balance sheet, its profit and loss account or income and expenditure account and any other document containing information which is required by the Act.

32.3 The accounting records and any information and returns containing information required pursuant to the Act, shall be kept by the ICAV for a period of at least 6 years after the latest date to which they relate. The accounts shall at all times be open to the inspection of the Directors and officers of the ICAV, but no person, other than a Director, officers of the ICAV or the Auditors shall be entitled to inspect the accounting records of the ICAV.

32.4 The Directors of the ICAV shall prepare accounts for each financial year as at each Accounting Date. The accounts shall include the following:

- (a) a balance sheet or statement of the assets and liabilities attributable to each Fund;
- (b) a detailed income and expenditure account for the financial year; and
- (c) such other information provided for in the Act.

The annual accounts shall give a true and fair view of the assets, liabilities and financial position of each Fund at the end of the financial year and of the profit or loss of each Fund for the financial year.

32.5 The annual accounts of each Fund shall contain, so far as the information is contained in the Fund's accounting records or the Fund has the right to obtain it from the persons concerned -

- (a) the aggregate amount of the Directors' emoluments,
- (b) the aggregate amount of Directors', or former directors', pensions, and
- (c) the aggregate amount of any compensation to Directors or former directors in respect of loss of office.

32.6 The accounts may be prepared in accordance with generally accepted accounting practice in Ireland, international financial reporting standards, or an alternative body of accounting standards (as prescribed by the Act).

32.7 Separate accounts may be prepared and presented in respect of a Fund or Funds and all references in this Clause 32.00 to the ICAV be read as, where appropriate, referring to the Fund or Funds in respect of which the separate accounts are to be prepared.

32.8 The accounts of each Fund shall for each financial year include a report from the Directors dealing, so far as is material for the appreciation of the state of the Fund's affairs (and, if it has subsidiaries, of the affairs of the Fund and its subsidiaries as a group), with:-

- (a) any change during the financial year in the nature of the business of the Fund or of the Fund's subsidiaries in the classes of business in which the Fund has an interest whether as a member of another Fund or a company or otherwise, and
- (b) the amount, if any, which they recommend should be paid by way of distribution and the amount, if any, which they propose to carry to reserves.

The Directors' report shall be approved by the Board of Directors and signed on behalf of the ICAV by any two Directors.

The Directors' report shall contain the information prescribed in accordance with the Act.

32.9 The Directors shall cause to be audited by the Auditors a report to the Members as of the Accounting Date in each year. A copy of the Auditor's report shall be attached to the annual accounts of the relevant Fund and Director's report for the financial year to which the report relates. In preparing the Auditors' report, the Auditor shall (a) consider whether the information given in the Directors' report relating to the financial year is consistent with the accounts prepared by the ICAV for that year in respect of the relevant Fund; and (b) state in the report whether, in the Auditor's opinion that information is, or is not, consistent with those accounts. The Auditors' report shall state clearly the Auditors' opinion as to - (a) whether the annual accounts give a true and fair view of (i) in the case of a balance sheet, of the assets, liabilities and financial position of the relevant Fund at the end of the financial year, (ii) in the case of a profit and loss account, of the profit or loss of the relevant Fund for the financial



year, and (b) whether the annual accounts have been properly prepared in accordance with the relevant financial reporting framework.

- 32.10 Copies of the said annual accounts shall be made available and/or sent by the ICAV to all Members at least once in every year but not later than six months after the end of the period to which they relate.

### **33. AUDITORS**

- 33.1 The ICAV shall at each annual general meeting appoint an Auditor or Auditors to hold office until the conclusion of the next annual general meeting.
- 33.2 The first Auditors shall be appointed by the Directors before the first general meeting, and they shall hold office until the conclusion of the first annual general meeting. Where no appointment is made by the Directors before the first general meeting, the first Auditors may be appointed in general meeting.
- 33.3 On the date on which the holding of an annual general meeting is dispensed with in accordance with the Act, any Auditor or Auditors appointed in accordance with Clause 33.02 cease to hold office and the Directors shall immediately reappoint the Auditor or Auditors or appoint a new auditor or auditors.
- 33.4 Where the ICAV has dispensed of the requirement to hold annual general meetings in accordance with Clause 20.05 the Directors shall appoint the Auditor or Auditors.
- 33.5 Where, in any case, no Auditors are appointed as required by Clause 33.04, the Central Bank may appoint a person to fill the vacancy.
- 33.6 The appointment and removal of Auditors and the determination of eligibility for appointment as Auditors to the ICAV shall be governed by the provisions of the Act.
- 33.7 The remuneration of the Auditors who are appointed by the ICAV in general meeting shall be approved by the ICAV in general meeting or in such manner as the ICAV in general meeting may determine.
- 33.8 The remuneration of the Auditors of who are appointed by the Directors or the Central Bank shall be fixed by the Directors or the Central Bank (and be payable by the ICAV in the case where it is fixed by the Bank).
- 33.9 The Auditors shall at all times have the right of access to the ICAV's accounting records and shall be entitled to require from the Directors and officers of the ICAV such information and explanations as the Auditors consider necessary for the performance of their duties.
- 33.10 The Auditors shall be entitled to attend any general meeting of the ICAV and to receive all notices of, and other communications relating to, any general meeting which any Member is entitled to receive and to be heard at any general meeting at which any business of the meeting concerns them as Auditors. The right of an Auditor to attend and be heard at a general meeting is exercisable in the case of a body corporate or partnership by an individual authorised by it in writing to act as its representative at the meeting.

### **34. NOTICES**

- 34.1 Communications and notices will generally be posted to the Investment Manager's password-protected investor portal. An email will then be sent to the Member's designated email address or addresses to notify the Member that a new document has been posted to the investor portal. To the extent required by the ICAV Act, written notice will be provided to Members of any refusal to register a transfer of Shares or any decision to dispense with the convening of an AGM. Any notice or other document required to be served upon or sent to a Member or the first named of joint Members shall be deemed to have been duly given as follows:

<b>MEANS OF DISPATCH</b>	<b>DEEMED RECEIVED</b>
Delivery by Hand	The day of delivery or next following working day if delivered outside usual business hours.
Post	48 hours after posting.
Fax	The day on which a positive transmission receipt is received.
Electronically	The day on which the electronic transmission has been sent to the electronic information system designated by a Member either (i) providing a communication or notice, or (ii) notifying them that a document has been posted to the investor portal.
Publication	The day of publication in a daily newspaper or other medium circulating in the country or countries where Shares are marketed.
Via Exchange (if applicable to listed Shares)	The day on which the announcement or publication is released by the exchange.

34.2 Service of a notice or document on the first named of several joint Members shall be deemed effective service on himself and the other joint Members.

34.3 Any notice or document sent by post to or left at the registered address of a Member or delivered via electronic mail to an email address or via facsimile transmission to a facsimile number provided by a Member in pursuance of this Instrument shall notwithstanding that such

Member be then dead or bankrupt and whether or not the ICAV or its delegate has notice of his death or bankruptcy be deemed to have been duly served, sent or delivered and such service shall be deemed a sufficient service on or receipt by all persons interested (whether jointly with or as claiming through or under him) in the shares concerned.

34.4 Any certificate or notice or other document which is sent in accordance with this Clause or dispatched by or on behalf of the ICAV or its delegate in accordance with the Member's instructions shall be so sent, left or dispatched at the risk of such Member.

34.5 Any notice in writing or other document in writing required to be served upon or sent to the ICAV shall be deemed to have been duly given if sent by post to the Office or left at the Office or in accordance with any procedures specified in the Prospectus with respect to service of notice to the ICAV in specific circumstances.

## **35. WINDING UP**

35.1 The ICAV may be wound up if:

- (a) at any time after the first anniversary of the registration of the ICAV, the Net Asset Value of the ICAV falls below such figure as may be determined by the Directors and may be disclosed in the Prospectus, on each Dealing Day for such period as may be determined by the Directors, or upon the termination of the appointment of the Investment Manager for any reason, and the Members resolve to wind up the ICAV by Ordinary Resolution; or
- (b) the Depositary desires to retire or the ICAV desires to remove the Depositary from office and no replacement Depositary, subject to the prior approval of the Central Bank and Clause 4.02(b), is appointed within such time frame agreed by the ICAV in the applicable Depositary Agreement and the Members resolve to wind up the ICAV by Ordinary Resolution; or
- (c) the AIFM desires to retire or the ICAV desires to remove the AIFM from office and no replacement AIFM, subject to the prior approval of the Central Bank, is appointed within such time frame agreed by the ICAV in the applicable AIFM Agreement or otherwise as determined by the Directors and the Members resolve to wind up the ICAV by Ordinary Resolution; or
- (d) when it becomes illegal or in the opinion of the Directors of the ICAV impracticable or inadvisable to continue operating the ICAV; or
- (e) the Members resolve by Ordinary Resolution that the ICAV cannot by reason of its liabilities continue its business and that it be wound up.

35.2 In all cases other than those set out in Clause 35.01 above, the Members may resolve to wind up the ICAV by Special Resolution in accordance with the summary approval procedure as provided for in the Act.

35.3 In the event of a winding up the liquidator shall firstly apply the assets of the ICAV in satisfaction of creditors' claims in such manner and order as he thinks fit. The liquidator shall in relation to the assets available for distribution among Members make such transfers thereof to and from the Funds or Classes as may be necessary in order that the effective burden of creditors' claims may be shared between the Members of different Funds or Classes in such proportions as the liquidator in his discretion deems equitable.

35.4 The assets available for distribution among the Members shall be applied in the following priority:

- (i) firstly, in the payment to the Shareholders of each Class or Fund of a sum in the Base Currency (or in any other currency selected by the liquidator and at such rate of exchange as determined by the liquidator) as nearly as possible equal to the Net Asset Value of the Shares of the relevant Class or Fund held by such Shareholders respectively as at the date of commencement of winding up;
- (ii) secondly, in the payment to the holders of Management Shares of sums up to the consideration paid therefore out of the assets of the ICAV not comprised within a Fund PROVIDED THAT if there are insufficient assets to enable such payment in full to be made, no recourse shall be had to the assets comprised within any of the Funds;
- (iii) thirdly, in the payment to the Shareholders of each Class or Fund of any balance then remaining in the relevant Fund, such payment being made in proportion to the number of Shares held in the relevant Class or Fund; and
- (iv) fourthly, any balance then remaining and not attributable to a Fund or Class shall be apportioned between the Funds and Classes pro-rata to the Net Asset Value of the relevant Funds or attributable to each Class immediately prior to any distribution to Members and the amounts so apportioned shall be paid to Members pro-rata to the number of shares in that Fund or Class held by them.

35.5 The liquidator may with the authority of an Ordinary Resolution of the ICAV divide among the Shareholders (pro rata to the value of their respective shareholdings in the ICAV) in specie the whole or any part of the assets of the ICAV, and whether or not the assets shall consist of property of a single kind PROVIDED THAT any Shareholder shall be entitled to request the sale of any asset or assets proposed to be so distributed and the distribution to such Shareholder of the cash proceeds of such sale. The costs of any such sale shall be borne by the relevant Shareholder. The liquidator may, with the like authority, vest any part of the assets in trustees upon such trusts for the benefit of Shareholders as the liquidator shall think fit, and the liquidation of the ICAV may be closed and the ICAV dissolved, but so that no Shareholder shall be compelled to accept any asset in respect of which there is any liability. Further the liquidator may with like authority transfer the whole or part of the assets of the ICAV to a company or collective investment scheme (the "**Transferee Company**") on terms that Shareholders in the ICAV shall receive from the Transferee Company shares or units in the Transferee Company of equivalent value to their shareholdings in the ICAV.

35.6 Notwithstanding any other provision contained in this Instrument, should the Directors at any time and in their absolute discretion resolve that it would be in the best interests of the Shareholders to wind up the ICAV, then any such winding up shall be commenced in accordance with the summary approval procedure as provided for in the Act. Any liquidator appointed to wind up the ICAV shall distribute the assets of the ICAV in accordance with the provisions of this Clause 35.00.

## 36. INDEMNITY

36.1 Every person or body corporate who is or has been a Director or Secretary of the ICAV or any person or body corporate who is or has acted as Auditor of the ICAV and such person's heirs, administrators and executors, shall be indemnified and secured harmless out of the assets and profits of the ICAV from and against all actions, costs, debts, claims, demands, suits, proceedings, decrees, charges, losses, damages, expenses, liabilities or obligations of any kind, which they or any of them, their or any of their heirs, administrators or executors shall or may incur or sustain by reason of any contract entered into or any act done, concurred in, or omitted in or about the execution of their duty or supposed duty in their respective offices or trusts, except such (if any) as they shall incur or sustain by or through their own negligence, default, breach of duty or breach of trust, and the amount for which such indemnity is provided shall immediately attach as a lien on the property of the ICAV and have priority as between the Members over all other claims. None of the foregoing shall be answerable for the

acts, receipts, neglects, or defaults of the other or others of them, or for joining in any receipt for the sake of conformity, or for any bankers, brokers, or other persons into whose hands any money or assets of the ICAV may come, or for any defects of title of the ICAV to any property purchased, or for insufficiency or deficiency of or defect of title of the ICAV to any security upon which any moneys of or belonging to the ICAV shall be placed out or invested, or for any loss, misfortune or damage resulting from any such cause as aforesaid, or which may happen in the execution of their respective offices or trusts, or in relation thereto, unless the same shall happen by or through their own negligence, default, breach of duty or breach of trust. The ICAV may indemnify any Director, Secretary, or any auditor against any liability incurred by him in defending proceedings, whether civil or criminal, in which judgment is given in his favour or in which he is acquitted. The rights of indemnification herein provided shall be severable, shall not affect any other rights to which any Director, Secretary or auditor may now or hereafter be entitled and shall have effect in so far as they are not avoided by section 190 of the Act. A Director for the purposes of this Clause shall include any alternate Director appointed by a Director from time to time in accordance with this Instrument.

- 36.2 The Administrator, the Depositary, the AIFM, the Investment Manager and the Distributor and any other service provider to the ICAV or a Fund shall be entitled to such indemnity from the ICAV out of the assets of the relevant Fund upon such terms and subject to such conditions and exceptions and with such entitlement to have recourse to the assets of the relevant Fund with a view to meeting and discharging the cost thereof as shall be provided under the Administration Agreement, the Depositary Agreement, the Investment Management Agreement and any distribution agreement (as applicable).
- 36.3 The ICAV, the AIFM, the Investment Manager, the Administrator, the Depositary and the Distributor or any of their directors, officers, employees or agents will not be responsible or liable for the authenticity of subscription or related instructions from Shareholders reasonably believed to be genuine and shall not be liable for any losses, costs or expenses arising out of or in conjunction with any unauthorised or fraudulent instructions. The foregoing parties shall be entitled to rely absolutely on any Standing Redemption and Payment Instructions and on any declaration received from a Shareholder as to residence or otherwise of such Shareholder 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.
- 36.4 The ICAV, the AIFM, the Investment Manager, the Administrator, the Depositary and the Distributor shall incur no liability to the Shareholders for doing or (as the case may be) failing to do any act or thing which by reason of any provision of any present or future law or regulation made pursuant thereto, or of any decree, order or judgment of any court, or by reason of 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) either they or any of them shall be directed or requested to do or perform or to forbear from doing or performing. If for any reason it becomes impossible or impracticable to carry out any of the provisions of this Instrument none of the ICAV, the AIFM, the Investment Manager, the Administrator, the Distributor or the Depositary shall be under any liability therefor or thereby.
- 36.5 For the avoidance of doubt, no Director (including any alternate Director) shall be liable for the acts or omissions of any other Director.
- 36.6 In accordance with Section 190 of the Act, the Directors shall have the power to purchase and maintain for the benefit of any persons who are or were at any time Directors, Secretary or Auditors of the ICAV insurance against any liability incurred by such persons in respect of any act or omission in the execution or discharge of their duties or in the exercise of their powers, and the Directors shall be entitled to vote and be counted in the quorum in respect of any resolution concerning the purchase of such insurance. A Director for the purposes of this

Clause shall include any alternate Director appointed by a Director from time to time in accordance with this Instrument.

- 36.7 The ICAV may enter into trading or other agreements upon terms which include the granting by the ICAV on behalf of one or more Funds of an indemnity to the ICAV's counterparty without limitation as may be determined by the Directors (or the ICAV's delegate) in their sole discretion.

### **37. DESTRUCTION OF DOCUMENTS**

37.1 The ICAV may destroy:-

- (a) any distribution mandate 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, variation, cancellation or notification was recorded by the ICAV;
- (b) any instrument of transfer of shares which has been registered at any time after the expiry of six years from the date of registration thereof; and
- (c) any other document on the basis of which an entry in the Register is made at any time after the expiry of ten years from the date an entry in the Register was first made in respect of it; and it shall conclusively be presumed in favour of the ICAV that every instrument of transfer so destroyed was a valid and effective instrument duly and properly registered and that every other document hereinbefore mentioned so destroyed was a valid and effective document in accordance with the recorded particulars thereof in the books or records of the ICAV PROVIDED ALWAYS that:-
  - (i) the foregoing provisions of this Clause shall apply only to the
  - (ii) destruction of a document in good faith and without express notice to the ICAV that the preservation of such document was relevant to a claim;
  - (iii) nothing contained in this Clause shall be construed as imposing upon the ICAV any liability in respect of the destruction of any such document earlier than as aforesaid or in any case where the conditions of proviso (i) above are not fulfilled; and
  - (iv) references in this Clause to the destruction of any document include references to its disposal in any manner.

### **38. AMENDMENT OF THIS INSTRUMENT**

This Instrument shall not be amended other than in accordance with the requirements of the Central Bank and only when such amendment(s) have been approved by the Members or certified by the Depositary in accordance with the provisions of the Act.

### **39. GOVERNING LAW**

This Instrument and any non-contractual obligations arising out of or in connection with this Instrument shall be governed by and construed in accordance with the laws of the Republic of Ireland.

### **40. ESTABLISHMENT OF SUBSIDIARIES**

The ICAV may establish or acquire any wholly owned subsidiary of, or dedicated trading vehicles for the ICAV for the benefit of the ICAV as a whole or one or more Funds established or to be established by the ICAV in accordance with the requirements of the Central Bank (the investments, assets and shares of which are held by the Depositary or sub-custodian appointed by the Depositary or otherwise in accordance with the requirements of the Central

Bank) and to capitalise any such subsidiary in any manner as the Directors of the ICAV may from time to time consider appropriate including by way of share capital, loan or otherwise.

#### 41. MERGER / SCHEMES OF AMALGAMATION

- 41.1 The ICAV and/or each Fund may, in accordance with the requirements of the Central Bank of Ireland and the sanction of a special resolution of the Shareholders of the relevant Fund and/or Funds conferring either a general authority on the Directors or an authority in respect of any particular arrangement, merge or enter into a scheme of amalgamation with another Fund of the ICAV or a fund providing equivalent protection to Shareholders or transfer the whole or any part of the assets of the ICAV or the relevant Fund to another Fund or fund providing equivalent protection to Shareholders on terms that Shareholders shall receive, in compensation from the other fund, shares of equivalent value to their shareholding in the ICAV.
- 41.2 Subject to the terms and conditions as may be set out in the scheme of amalgamation, the Directors shall have the power to automatically redeem the Shares of any Shareholder(s) who does not vote, either in favour of or against, the Special Resolution to approve any scheme of amalgamation and merger referred to in Clause 41.1 above.

#### 42. US TAX MATTERS

- 42.1 Solely for United States income tax purposes, there shall be established and maintained by or on behalf of the each Fund for each Shareholder a capital account (a "**Capital Account**") in accordance with the provisions of section 704 of the Code and the Treasury Regulations promulgated thereunder and in accordance with applicable Irish law and regulation.
- 42.2 As of the last day of each Accounting Period, the balance in each Shareholder's Capital Account shall be adjusted by (a) increasing such balance by (i) such Shareholder's allocable share of each item of the Fund's income and gain for such Accounting Period and (ii) the Capital Drawdowns, if any, made by such Shareholder during such Accounting Period and (b) decreasing such balance by (i) the amount of cash or other property distributed to such Shareholder during such Accounting Period and (ii) such Shareholder's allocable share of each item of the Fund's loss and deduction for such Accounting Period
- 42.3 Except as otherwise provided herein, each book item of income, gain, loss or deduction of the Fund (determined in accordance with U.S. tax principles as applied to the maintenance of capital accounts in accordance with the provisions of Treasury Regulations section 1.704-1 (b)(2)(iv)) shall be allocated among the Capital Accounts of the Shareholders with respect to each Accounting Period, as of the end of such Accounting Period, in a manner that as closely as possible gives economic effect to the Clauses herein governing distributions and liquidation rights and the other relevant provisions of these Clauses.
- 42.4 Except as otherwise required by applicable law, each tax item of income, gain, loss or deduction of the Fund shall be allocated among the Shareholders for U.S. federal, state and local income tax purposes in the same manner that each corresponding book item is allocated to the Shareholders' Capital Accounts. Tax credits and tax credit recapture shall be allocated in accordance with the Shareholders' interests in Fund as provided in Treasury Regulations section 1.704-1 (b)(4)(ii). Creditable foreign tax expenditures shall be allocated in accordance with the principles of Treasury Regulations sections 1.704-1 (b)(3)(iv) and 1.704-1 (b)(4)(viii).\
- 42.5 The Directors shall designate a tax matters partner for purposes of Section 6231(a)(7) of the Code and *Treasury Regulations Section 301.6231 (a)(7)-2.* and any similar provisions under any other state or local or non-U.S. tax laws (the "**Tax Matters Partner**"). Each Shareholder, upon the request of the Tax Matters Partner, shall execute, certify, acknowledge, deliver, swear to, file and record at the appropriate public offices such documents as may be necessary or appropriate to evidence such designation.

- 42.6 To the extent possible under the New Partnership Audit Procedures, the Tax Matters Partner shall be the "Partnership Representative" of the ICAV (within the meaning of Section 6223 of the New Partnership Audit Procedures\*) (the "**Partnership Representative**"). The Partnership Representative shall have all of the same rights under this Instrument as the Tax Matters Partner has. The Partnership Representative intends to make an election under Section 6226 of the New Partnership Audit Procedures to the extent the Partnership Representative is legally able to do so or, if such election cannot permissibly be made, to take all commercially reasonable actions as may be legally permissible so that, to the greatest extent possible, no Shareholder shall bear liability for taxes, interest, and penalties imposed on the ICAV under Section 6225 of the New Partnership Audit Procedures that such Shareholder would not have been responsible for if the law in effect on June 1, 2016 continued to remain effective and Section 6225 were not effective. The Partnership Representative will similarly take all commercially reasonable actions as may be legally permissible so that, to the greatest extent possible, no Shareholder shall bear liability for taxes, interest, and penalties imposed on any underlying fund under Section 6225 of the New Partnership Audit Procedures that such Shareholder would not have been responsible for if the law in effect on June 1, 2016 continued to remain effective and Section 6225 were not effective.
- 42.7 To the extent such actions are not available, the Partnership Representative may, in its discretion, apportion any taxes (and related interest, penalties, claims, liabilities and expenses) imposed on the Fund, either directly or indirectly through an underlying fund, pursuant to the New Partnership Audit Procedures among the Shareholders. The Partnership Representative may withhold any such amounts from distributions made to such Shareholders. If and to the extent that the Partnership Representative does so withhold, such Shareholders shall be deemed for all purposes of this Instrument to have received a payment from the Fund as of the time that such withholding occurs, which payment shall be deemed to be a distribution with respect to such Shareholders' Shares. In the event the Fund is required to withhold in respect of any Shareholder, to the extent such withholding is in an amount greater than the amount that is distributable to such Shareholder at that time or the Fund previously distributed to the Shareholder amounts that are subsequently determined to be subject to withholding, such Shareholder shall reimburse the Fund for the excess of the withholding tax paid on its behalf. If such Shareholder fails to so reimburse the Fund, such excess will be treated as an advance repayable with interest out of the first available amounts that would otherwise be payable to such Shareholder.
- 42.8 The ICAV in respect of one or more Funds or all Funds shall elect under Treasury Regulations section 301.7701-3(a) and under any corresponding provision of state or local law to be treated as a partnership and shall not revoke or modify such election.
- 42.9 No Shareholder shall take any position for U.S. federal income tax purposes that is inconsistent with a position taken by the ICAV; provided, however, that to the extent a Shareholder reasonably believes that it is required by applicable law to take such an inconsistent position, including, without limitation, its intention to (i) file a notice of inconsistent treatment under section 6222(b) of the Code, (ii) file a request for administrative adjustment of Fund items (iii) file a petition with respect to any Fund item or other tax matters involving the Fund, or (iv) enter into a settlement agreement with the Secretary of the Treasury with respect to any Fund items, such Shareholder shall notify the Tax Matters Partner in a timely manner of such inconsistent position. Upon receipt of any such notification, the Tax Matters Partner, if it agrees with such Shareholder's position, may in its sole discretion elect to make such filing or enter into such agreement, as applicable and practicable, on behalf of the Fund. The cost of any audits or adjustments of a Shareholder's tax return shall be borne solely by the affected Shareholder.
- 42.10 The ICAV shall be entitled to withhold and deduct taxes from any and all payments made with respect to the Shares as required by applicable law.
- 42.11 If and to the extent that the ICAV shall be required to withhold or pay any such withholding or other taxes with respect to the Shares such amounts shall be treated as having been paid to the Shareholder in respect of which the ICAV made such withholding or deduction.



We, the 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 subscribe our names to this Instrument of Incorporation.

Names, Addresses and  
Descriptions of Subscribers

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Director  
For and on behalf of:  
Walkers Global Shareholding Services Limited  
5<sup>th</sup> Floor  
The Exchange  
George's Dock  
IFSC  
Dublin 1  
Ireland

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Director  
For and on behalf of:  
Walkers Ireland Shareholding Services Limited  
5<sup>th</sup> Floor  
The Exchange  
George's Dock  
IFSC  
Dublin 1  
Ireland

Dated this \_\_\_\_\_ 2018

Witness to the above signatures:

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Name  
5<sup>th</sup> Floor  
The Exchange  
George's Dock  
IFSC  
Dublin 1  
Ireland