

**IRISH COLLECTIVE ASSET-MANAGEMENT VEHICLES ACT 2015**  
**INSTRUMENT OF INCORPORATION**  
**OF**  
**ACER TREE FUNDS ICAV**  
**AN UMBRELLA FUND WITH SEGREGATED LIABILITY BETWEEN SUB-FUNDS**  
**("X")**

(As amended by Shareholder Resolution dated 21 May 2020)



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**INSTRUMENT OF INCORPORATION  
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AN UMBRELLA FUND WITH SEGREGATED LIABILITY BETWEEN SUB-FUNDS**

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## 1. INTERPRETATION AND POWERS

1.1 In this Instrument, any reference to a "Section" shall be deemed to be reference to the specified Section of this Instrument.

1.2 The provisions of this Instrument are subject to the overall provisions of the Act and to the degree that any provision or provisions of this Instrument are inconsistent with the Act, the Act shall supersede the relevant provision or provisions.

1.3 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>Words</b>	<b>Meanings</b>
<b>"Accounting Date"</b>	31 December in each year in respect of the ICAV or each Fund (as the case may be) or such other date as the Directors may from time to time decide;
<b>"Accounting Period"</b>	a financial year of the ICAV or the Funds (as the case may be) ending on an Accounting Date and being the period in respect of which the accounts of the ICAV are made up and commencing on the date immediately succeeding the last day of the last financial year;
<b>"Act"</b>	the Irish Collective Asset-management Vehicles Act 2015 and every modification, consolidation, re-enactment or amendment thereof for the time being in force and every applicable regulation made thereunder and for the time being in force;
<b>"Administration Agreement"</b>	any agreement for the time relating to the appointment and duties of the Administrator;
<b>"Administrator"</b>	any person, firm or company appointed in accordance with the Central Bank from time to time and for the time being responsible for the provision of administration, fund accounting and related services to the ICAV;
<b>"AIF Rulebook"</b>	any alternative investment fund rulebook or any similar measures issued by the Central Bank governing Irish-domiciled AIFs such as the ICAV, as same may be updated, amended or replaced from time to time;
<b>"AIFM"</b>	the entity designated in accordance with the requirements of the Central Bank (as disclosed in the Prospectus) to act as the alternative investment fund manager of the ICAV and to assume responsibility for ensuring compliance with the AIFMD Regulations;
<b>"AIFM Agreement"</b>	any agreement relating to the appointment and duties of an external AIFM;
<b>"AIFMD"</b>	Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulation (EC) No 1060/2009 and (EU) No 1095/2010;

<b>"AIFMD Regulations"</b>	the European Union (Alternative Investment Fund Managers Directive) Regulations (SI No. 257 of 2013) as may be amended from time to time;
<b>"Annual Report"</b>	an annual report means a report prepared in accordance with Section 31 hereof;
<b>"Auditors"</b>	the auditors for the time being of the ICAV or such other firm of registered auditors as may from time to time be appointed as auditors of the ICAV;
<b>"Base Currency"</b>	the currency of account in which the Shares of the ICAV or of any Fund are designated as specified in the Prospectus;
<b>"Board"</b>	the board of Directors of the ICAV for the time being and any duly constituted committee thereof;
<b>"Business Day"</b>	such day or days as the Directors may determine and disclose in the Prospectus;
<b>"Capital Contribution(s)"</b>	means, with respect to any Shareholder, all cash or in specie contributions made by such Shareholder to the relevant Fund under this Instrument;
<b>"Central Bank"</b>	the Central Bank of Ireland or its successor;
<b>"Class" or "Classes"</b>	Shares of the ICAV representing an interest in the ICAV designated as a class of Shares for the purposes of attributing different portions of the Net Asset Value to such Shares to accommodate different subscriptions, conversion and redemption charges, dividend arrangements, base currencies, asset allocations, dealing arrangements and/or fee arrangements specific to such Shares;
<b>"Company"</b>	any person or partnership or other body of persons, whether incorporated or not incorporated, and whether domiciled in Ireland or elsewhere including companies formed and registered under the Companies Act 2014 or an existing company within the meaning of that legislation;
<b>"Dealing Day"</b>	such Business Day or Business Days as the Directors may determine in relation to any particular Fund and specify in the Prospectus as a subscription date, in respect of a subscription for Shares, or a redemption date, in respect of a redemption or transfer of Shares;
<b>"Debenture"</b>	includes debenture stock, bonds and any other securities of the ICAV whether constituting a charge on the assets of the ICAV or not;
<b>"Declaration"</b>	a valid declaration in a form prescribed by the Irish Revenue Commissioners for the purpose of section 739D TCA (as may be amended upon from time to time);

<b>"Defaulting Shareholder"</b>	a Shareholder who fails to comply with the terms and/or conditions of issue of its Shares or any agreement with the ICAV;
<b>"Depository"</b>	any corporation appointed by the ICAV from time to time and for the time being to act as depository of the Investments in accordance with the requirements of the AIFMD Regulations;
<b>"Depository Agreement"</b>	any agreement for the time being subsisting relating to the appointment and duties of the Depository;
<b>"Directors"</b>	the directors of the ICAV for the time being or, as the case may be, the directors assembled as the Board or a committee of the Board in accordance with the provisions of this Instrument;
<b>"Duties and Charges"</b>	includes but is not limited to all stamp duty and other duties, taxes, governmental charges, imposts, levies, exchange costs and commissions, transfer fees and expenses, agents' fees, brokerage fees, commissions, bank charges, transfer fees, registration fees, and other duties and charges, whether payable in respect of the constitution, increase or reduction of all of the cash and other assets of the ICAV or the creation, acquisition, issue, conversion, exchange, purchase, holding, repurchase, redemption, sale or transfer of Shares or Investments by or on behalf of the ICAV which may have become or will become payable in respect of or prior to or upon the occasion of any transaction, dealing or valuation;
<b>"Euro", "€" or "EUR"</b>	the lawful currency from time to time of the member states of the European Union participating in European Monetary Union as envisaged by the Treaty of Rome dated 25 March 1957 as amended;
<b>"Exempt Investor"</b>	has the meaning set out in the Prospectus;
<b>"External Valuer"</b>	a legal or natural person independent of the ICAV or the AIFM and any other person with close links to the ICAV or the AIFM who may be appointed by the ICAV or the AIFM to value its assets in accordance with Article 18(4) and 18(5) of AIFMD;
<b>"FATCA"</b>	<p>(a) sections 1471 to 1474 of the U.S. Internal Revenue Code of 1986 or any associated regulations or other official guidance;</p> <p>(b) any intergovernmental agreement, treaty, regulation, guidance or other agreement between the Government of Ireland (or any Irish government body) and the US, UK or any other jurisdiction (including any government bodies in such jurisdiction), entered into in order to comply with, facilitate, supplement, implement or give effect to: (a) the legislation, regulations or guidance described in paragraph (i) above; or (b) any similar regime, including any automatic exchange of</p>

information regime arising from or in connection with the OECD Common Reporting Standard; and

- (c) any legislation, regulations or guidance in Ireland that give effect to the matters outlined in the preceding paragraphs;

<b>"Feeder Fund"</b>	means any feeder fund that may be designated as such in the Prospectus or relevant Supplement;
<b>"Fractional Share"</b>	a fractional Share issued in accordance with Section 7.9;
<b>"Fund"</b>	any sub-fund of the ICAV from time to time established pursuant to Section 1.9(b) and which may comprise one or more Classes;
<b>"ICAV"</b>	Acer Tree Funds ICAV, an undertaking registered under the Act and whose name appears on the heading to this Instrument being a body registered as such under the Act;
<b>"Initial Offer Period"</b>	the period (if any) during which Shares of any Fund or Class may be offered by the ICAV for purchase or subscription at the Initial Offer Price;
<b>"Initial Offer Price"</b>	the price determined by the Directors at which any Shares may be offered for purchase or subscription during an Initial Offer Period as disclosed in the Prospectus;
<b>"Instrument"</b>	this instrument of incorporation of the ICAV for the time being in force and as may be modified from time to time;
<b>"Investments"</b>	any investment or other asset of any description in which the ICAV is entitled to trade or invest in accordance with the provisions of this Instrument and the AIFMD Regulations;
<b>"Investment Advisor"</b>	each and any successor person or persons appointed by the AIFM, Investment Manager and/or the ICAV from time to time in accordance with the requirements of the Central Bank and for the time being responsible for the provision of investment management and/or investment advisory services;
<b>"Investment Management Agreement"</b>	any agreement for the time being in relation to the appointment and duties of the Investment Manager;
<b>"Investment Manager"</b>	each and any successor person or persons appointed from time to time in accordance with the requirements of the Central Bank and for the time being responsible for the provision of investment management and/or investment advisory services to the ICAV or a Fund;
<b>"in writing"</b>	written, printed, lithographed, photographed, telexed, e-mailed, telefaxed or represented by any other substitute

for writing or partly one and partly another;

**"Irish Resident"**

any corporate entity resident, or other person resident, or ordinarily resident, in the Republic of Ireland for the purposes of Irish tax as set out in the Prospectus;

**"Knowledgeable Investor"**

an investor with an exemption from the minimum subscription requirement as it is an investor who has satisfied one of the following conditions:

- (a) the investor is the AIFM or a company appointed to provide investment management or advisory services to the ICAV;
- (b) the investor is a Director or a director of the AIFM or a company appointed to provide investment management or advisory services to the ICAV;
- (c) the investor is an employee or former employee of the AIFM or the Investment Manager or any company appointed to provide investment management or advisory services to the ICAV and is directly involved in the investment activities of the ICAV or is a senior employee or former senior employee of the AIFM or the Investment Manager or company appointed to provide investment management to the ICAV who has experience in the provision of investment management services;

provided that in the case of Investments by an investor set out in (a), (b) or (c) above, the investor certifies in writing that: (i) he/she is availing of the exemption from the minimum subscription requirements of €100,000 and that he meets the minimum criteria to be classed as a "Knowledgeable Investor" as defined above; (ii) he is aware that the ICAV is marketed solely to Qualifying Investors and are normally subject to a minimum subscription of €100,000; (iii) he/she is aware of the risks involved in investing in the ICAV, and (iv) he/she is aware that inherent in such investments is the potential to lose up to all sums invested; and, in the case of investors at (c) above, provided further that the ICAV is satisfied that the investor satisfies the conditions at (c) above. Investments by an investor set out in (b) and (c) above are not affected in the event that the investor subsequently resigns from the qualifying directorship/employment;

**"Legislation"**

the Act, AIFMD, the AIFMD Regulations, the AIF Rulebook and all notices, guidance, regulations and rulebooks issued by the Central Bank thereunder which are or may be, applicable to the ICAV, as may be amended from time to time;

**"Minimum Holding"**

a holding of Shares of any Fund or Class in the ICAV the number of which or the value of which by reference to the Redemption Price for such Fund or Class is not less than such amount as may be determined by the



	Directors from time to time provided that the minimum subscription for Shares in the ICAV or in any Fund shall be such amount as is specified in the Prospectus;
<b>"Month"</b>	a calendar month;
<b>"Net Asset Value"</b>	the amount determined as being the net asset value of the ICAV, a Fund, a Class or a Share on any particular Valuation Day pursuant to Section 12;
<b>"Net Asset Value per Share"</b>	the amount determined as being the Net Asset Value per Share for any particular Valuation Day pursuant to Section 12;
<b>"Office"</b>	the registered office of the ICAV;
<b>"Official Seal"</b>	a seal which the ICAV, at its discretion, may keep in accordance with the provisions of section 34 of the Act;
<b>"Ordinary Resolution"</b>	a resolution passed by a simple majority of the votes cast by Shareholders entitled to vote thereon in person or by proxy at general meeting of the ICAV or Fund or on matters affecting the relevant Class, as the case may be, or a resolution in writing signed by the Shareholders entitled to vote thereon;
<b>"Performance Allocation"</b>	a performance based allocation of the net profits or gains from a Fund, Share Class or Series to the Performance Allocation Shares as more particularly described in the Prospectus;
<b>"Performance Allocation Shares"</b>	means Shares issued by a Fund that are entitled to a Performance Allocation as described in Clause 5.5 of this Instrument;
<b>"Performance Fee"</b>	a performance fee in such amount as shall be disclosed in the Prospectus;
<b>"Performance Period"</b>	a calculated period in respect of which a Performance Fee or Performance Allocation may become payable shall be agreed between the ICAV and the AIFM or any Investment Manager which shall be disclosed in the Prospectus;
<b>"Preliminary Expenses"</b>	the preliminary expenses incurred in connection with the registration and establishment of the ICAV or a Fund, the obtaining by the ICAV of authorisation and designation from the Central Bank and the initial offer of Shares pursuant to the Prospectus including the costs and expenses of preparing, publishing and distributing the Prospectus and any pre-establishment expenses or costs undertaken by the Fund in relation to the acquisition of Investments and all professional and legal fees and costs incurred in connection therewith;
<b>"Prospectus"</b>	the prospectus of the ICAV or supplement in respect of a Fund prepared in connection with the promotion of the Shares to the public and including, where the context so admits or requires, any supplement or amendment to the Prospectus, and as same may be

modified or supplemented from time to time. For the avoidance of doubt, references to the Prospectus in this Instrument shall include references to the Supplement(s);

**"Qualifying Investor"**

means:

- (a) an investor who is a professional client within the meaning of Annex II of Directive 2004/39/EC (Markets in Financial Instruments Directive (MiFID)); or
- (b) an investor who receives an appraisal from an EU credit institution, a MiFID firm or a UCITS management company that the investor has the appropriate expertise, experience and knowledge to adequately understand the investment in the ICAV; or
- (c) an investor who certifies that they are an informed investor providing the following:
  - (i) 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; and
  - (ii) who certifies in writing to the ICAV that it meets the minimum criteria and that it is aware of the risk involved in the proposed investment and the fact that inherent in such investments is the potential to lose all of the sum invested;  
  
(Within the EU, Qualifying Investor AIFs may only be marketed to Professional Investors unless the Member State in question permits, under the laws of that Member State, AIFs to be sold to other categories of investors and this permission encompasses investors set out in categories (b) and (c) above); or
- (d) any Knowledgeable Investor, provided that any such person or institution is not:
  - (i) any person, corporation, or entity which cannot acquire or hold Shares or to whom Shares cannot be issued, sold or transferred without violating applicable laws or regulations; or
  - (ii) a depositary, nominee or trustee for any person, corporation or entity described in (i) above;

The minimum subscription for Qualifying Investors is €100,000 (or its equivalent in other currencies) (except

for Knowledgeable Persons), or where disclosed in the relevant Supplement, €500,000 (or its equivalent in other currencies). The aggregate of an investor's investments in different Funds 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. However, the Directors have full discretion to limit investment in any Fund by an investor who would meet the above criteria, if their investment would result in the legal or beneficial ownership of such Shares by a person in contravention of any restrictions on ownership as set out herein or might result in legal, regulatory, pecuniary, taxation or material administrative disadvantage to the ICAV or Class or Shareholders as a whole.

Qualifying Investors must also certify in writing to the ICAV that they meet the minimum criteria specified above 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

**"Recognised Market"**

- (d) in relation to any investment (not being a commodity, option or futures contract), any stock exchange, over-the-counter market or other securities market;
- (e) in relation to any particular option, futures contract or index futures contract, any exchange or market on which such option, futures contract or index futures contract is regularly traded;
- (f) in relation to forward foreign exchange contracts, the interbank market;

in each case in any part of the world and includes in relation to any particular investment, any one or more responsible persons, firms or associations in any part of the world so dealing in the investment as to be expected generally to provide, in the opinion of the Directors, a satisfactory market for such investment and in such case the relevant investment shall be deemed to be the subject of an effective permission to deal on the Recognised Market deemed to be constituted by such persons, firms or associations;

**"Redemption Price"**

the price at which Shares shall be redeemed by the ICAV at the request of Shareholders pursuant to Section 10 and calculated in accordance with Section 10.4;

**"Register"**

the register in which the names of Shareholders are listed;

**"Seal"**

the common seal of the ICAV which the Directors may determine to keep in accordance with the provisions of

section 33 of the Act;

<b>"Secretary"</b>	any person, firm or corporation appointed by the Directors from time to time and for the time being performing any of the duties of the secretary of the ICAV, who may be one of the Directors. All references to a secretary include references to joint secretaries;
<b>"Series"</b>	in relation to each Class, a series of that Class;
<b>"Shares"</b>	unless the context otherwise requires, Shares (including Performance Allocation Shares) of no par value in the capital of the ICAV, designated in one or more Funds entitling the holder thereof to (i) participate in or receive the profits and income arising from the acquisition, holding, management or disposal of the assets of the ICAV or in one or more Funds as provided for in this Instrument; (ii) vote at a general meeting of the ICAV or any meeting of Shareholders of that Class of Shares; (iii) such other rights as may be provided for in this Instrument in relation to Shares of that Class or Series, subject to the Central Bank regulations and conditions imposed under section 27 of the Act;
<b>"Shareholder"</b>	a person who is registered as the holder of Shares in the Register for the time being kept by or on behalf of the ICAV, as the context may require;
<b>"Side Pocket Class"</b>	a particular Class of Shares in a Fund as determined by the Directors in accordance with this Instrument;
<b>"Side Pocket Share"</b>	a Share, designated in one or more Side Pocket Classes, issued in accordance with this Instrument;
<b>"Special Resolution"</b>	a resolution passed by not less than 75% of the votes cast by the Shareholders entitled to vote thereon in person or by proxy at a general meeting or a resolution in writing signed by the Shareholders entitled to vote thereon;
<b>"Subscriber Shares"</b>	shares issued at one Euro each and initially designated as 'Subscriber Shares' for which the subscribers to this Instrument agree to subscribe and entitling the holders to attend and vote at general meetings of the ICAV as provided for in this Instrument but not to participate in the profits and assets of the ICAV except for a return of paid up capital on a winding-up of the ICAV as provided for in this Instrument;
<b>"Subscription Price"</b>	the price at which Shares shall be allotted pursuant to Section 7 of this Instrument and calculated in accordance with Section 8 of this Instrument;
<b>"Supplement"</b>	means in relation to a Fund, the supplement published in respect of that Fund;
<b>"Taxation"</b>	means any tax, levy, import, duty or other charge or withholding of a similar nature (including penalty of interest payable in connection with any failure to pay or

1.4	<p>l n "TCA" t h "Underlying Fund" "Underlying Funds"  l n s t r u "United States" or "US" e n t "Valuation Day"  r e f e r e "Valuation Point" c e  t</p>	<p>any delay in paying any of the same);</p> <p>the Taxes Consolidation Act, 1997 (as may be amended from time to time);</p> <p>or professionally managed investment vehicles, whether open or closed-ended, regulated or unregulated including without limitation, investment companies, investment trusts, ICAVs and investment limited partnerships in which the assets of the ICAV may be invested or to which the assets of the ICAV may be allocated in accordance with the investment objectives and policies of the ICAV;</p> <p>The United States of America, its territories and possessions including the States and the District of Colombia;</p> <p>such Business Day or Business Days as the Directors may from time to time determine in relation to a particular Fund and specify in the Prospectus provided that in the case of open-ended Funds only, there shall be at least one Valuation Day per calendar quarter and in the case of open-ended Funds with limited liquidity and closed-ended Funds one such day per annum;</p> <p>such time or times on a Valuation Day in such place or places as the Directors may from time to time determine in relation to a particular Fund;</p>	<p>o enactments and to articles and sections of enactments shall include reference to any modifications or re-enactments thereof for the time being in force.</p>
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1.5 In this Instrument, unless there is 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 and whether incorporated, registered, formed, resident, domiciled or carrying on business in Ireland or elsewhere;
- (d) the word "may" shall be construed as permissive and the word "shall" shall be construed as imperative;
- (e) all reference to times of day are to the local time in Ireland; and
- (f) references to enactments and to sections of enactments shall include reference to any modifications or enactments thereof for the time being in force

1.6 Where for the purposes of this Instrument or for any other purpose any amount in one currency is required to be transferred into another currency, the Directors may effect such transfer using such official rates as are quoted by Irish associated banks at the relevant time except where otherwise in this Instrument specifically provided.

Unless specifically defined in this Instrument or the context otherwise requires, words or expressions contained in this Instrument shall bear the same meaning as in the Act but

excluding any statutory modification thereof not in force when this Instrument became binding on the ICAV.

**1.7 Name**

The name of the ICAV is Acer Tree Funds ICAV.

**1.8 Registered office**

The ICAV has its Office in Ireland as disclosed in the Prospectus to which all communications and notices may be addressed. The ICAV shall give notice in writing of any change in the situation of the Office or head office of the ICAV to the Central Bank in accordance with the requirements of the Act.

**1.9 Sole Object**

- (a) The ICAV's sole object shall be the collective investment of funds in property and giving Shareholders the benefit of the results of the management of its funds.
- (b) The ICAV is established as an umbrella fund and may establish Funds that are open-ended, open-ended with limited liquidity or closed-ended. The ICAV may take any measures and carry out any operations including the exercise of ancillary powers listed hereafter in the pursuit of the accomplishment and development of its sole object to the full extent permitted by the AIF Rulebook.

**1.10 Powers of the ICAV**

The powers of the ICAV to attain the said object are:

- (a) to seek registration pursuant to the Act as a collective asset-management vehicle;
- (b) to seek authorisation and act as an internally managed AIF pursuant to the Act and the AIFMD Regulations or to appoint an external AIFM to the ICAV and to seek approval in respect of each Fund, each in accordance with the requirements of the Central Bank and applicable law;
- (c) to delegate activities to third parties, for the purpose of the more efficient conduct of the ICAV's business pursuant to the Act; including, but not limited to, management companies, investment managers, investment advisers, administrators and distributors;
- (d) to carry on business as a collective asset-management vehicle and for that purpose to subscribe for, purchase or otherwise acquire or invest in, finance, hold and dispose of or realise, either in the name of the ICAV, in the name of any one or more wholly owned subsidiary or intermediate vehicles (including, but not limited to, companies, partnerships, trusts, special purpose vehicles) of the ICAV in accordance with the Central Bank's requirements or in that of any nominee, any interest in any real estate (whether leasehold, freehold or otherwise) or real estate related interest and any shares, stocks, warrants, units, participation certificates, partnership interests, mortgages, debentures, debenture stock, bonds, obligations, collateralized obligations, loans, loan stock, notes, loan notes, promissory notes, structured notes, structured bonds, structured debentures, commercial paper, certificates of deposit, bills of exchange, trade bills, treasury bills, futures contracts, swap contracts, contracts for differences, commodities of every description (including precious metals and oil), variable or floating rate securities, securities in respect of which the return and/or redemption amount is calculated by reference to any index, price or rate, options contracts, forward rate agreements, policies of assurance and insurance, currencies, money market instruments and financial instruments and securities of whatsoever nature created, issued or guaranteed by any company wherever incorporated or carrying on business or by any partnership, trust, unit trust, mutual

fund or other collective investment scheme of whatsoever nature wherever formed or registered or carrying on business or issued or guaranteed by any government, government instrumentality, political subdivisions, sovereign ruler, commissioners, public body or authority supreme, dependant, state, territorial, commonwealth, municipal, local or otherwise in any part of the world units of or participation in any unit trust scheme, mutual fund or other collective investment scheme in any part of the world and whether or not fully paid up, and any present or future rights and interest to or in any of the foregoing, and from time to time to acquire, invest in, and vary, exchange, grant, sell and dispose of options over any of the foregoing and to subscribe for the same subject to such terms and conditions (if any) as may be thought fit and to exercise and enforce all rights and powers conferred by or incidental to the ownership or holding of any of the foregoing or of any legal or equitable interest therein 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;

- (e) to deposit money, securities and any other property of whatsoever nature to or with such person, and on such terms as may seem expedient and to discount, buy and sell bills, notes, warrants, coupons and other negotiable or transferable instruments, securities or documents of whatsoever nature;
- (f) to employ, utilise, acquire or dispose of derivative instruments and techniques of all kinds whether for investment purposes and/or in connection with any financing arrangement entered into by the ICAV and/or for the efficient management of the ICAV's assets as may be permitted by the Central Bank and, in particular, but without prejudice to the generality of the foregoing, to enter into, accept, issue and otherwise deal with sale and repurchase and reverse repurchase agreements, futures contracts of any type, options, securities lending agreements, short sales agreements, when-issued, delayed delivery and forward commitment agreements, foreign currency spot and forward rate exchange contracts, forward rate agreements, synthetic agreements for foreign exchange, range forward contracts, break forward contracts, participating forward contracts, currency, interest rate or asset swaps, swaptions, collars, floors and caps, contracts for difference, and other foreign exchange or interest rate hedging and investment arrangements or any other derivative contracts permitted by the Central Bank;
- (g) where required for the direct pursuit of the business of the ICAV, to acquire by purchase, lease, exchange, fee farm grant, hire or otherwise any estate or interest (whether immediate or reversionary and whether vested or contingent) in any lands, tenements or hereditaments of any tenure and wheresoever situate and whether vested or contingent, any lands, tenements or hereditament of any tenure, and whether subject or not to any charges or encumbrances and whether or not such acquisition be by way of investment or otherwise, and to hold, manage and deal with the said lands, tenements or hereditaments and to carry out any works thereto and to sell, lease, let, mortgage or otherwise dispose of any estate or interest therein;
- (h) where required for the direct pursuit of the business of the ICAV, to acquire by purchase, lease, exchange, hire or otherwise any personal property of whatsoever nature wheresoever situate or any interest therein and to hold, manage and deal with the said property and sell, lease, let, mortgage or otherwise dispose of the said property;
- (i) to establish or acquire, in accordance with the requirements of the Central Bank, any wholly owned subsidiary or subsidiaries of the ICAV for the benefit of the ICAV as a whole or one or more Funds and to capitalise any such subsidiary in any manner as the Directors may from time to time consider appropriate including by way of share capital, loan or otherwise;
- (j) to carry on all kinds of financial, trust, agency, broking and other operations including the underwriting, issuing on commission or otherwise of stock and securities of all kinds;

- (k) to accumulate capital for any of the purposes of the ICAV, and to appropriate any of the ICAV's assets to specific purposes, either conditionally or unconditionally and to admit any Class or section of those who have any dealings with the ICAV to any share in the profits thereof or to any other special rights, privileges, advantages or benefits;
- (l) to receive money on loan and to borrow or raise money in any currency in any manner and to secure or discharge any debt or obligation of or binding on the ICAV in any manner and in particular, but without limitation, by the issue of debentures in accordance with section 38 of the Act and to secure with or without consideration the repayment of any money borrowed, raised or owing by mortgage, charge, debenture, debenture stock, bond, indemnity, lien or security of whatsoever nature against the whole or any part of the ICAV's undertaking, property or assets (whether present or future) and also by a similar mortgage, charge, debenture, debenture stock, bond, indemnity, lien or security of whatsoever nature to secure or guarantee the performance of any obligation or liability undertaken by the ICAV or by any other company or investment vehicle or person;
- (m) to guarantee the payment of money by or the performance of any contracts, liabilities, obligations, or engagements of any company, investment vehicle, firm or person (including, without limitation, any unincorporated association, partnership, limited partnership, trust, unit trust, mutual fund or other collective investment scheme in any part of the world) and to grant guarantees and indemnities of every description, and to undertake obligations of every description;
- (n) to create, maintain, invest and deal with any reserve or sinking funds for redemption of obligations of the ICAV or for any other purpose of the ICAV;
- (o) to enter into any arrangements with any government or authority supreme, dependent, municipal, local or otherwise in any part of the world and to obtain from any such government or authority any rights, concessions and privileges that may seem conducive to the objects of the ICAV or any of them;
- (p) to employ any person for the purposes of the business carried on by the ICAV or to employ or enter into any contract for services with any person, firm, company, investment vehicle 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 and to provide alternative investment fund management, administration, depositary, investment management and advisory and distribution services to the ICAV;
- (q) to take out, acquire, surrender and assign policies of assurance with any insurance company or companies it may think fit payable at fixed or uncertain dates or upon the happening of any contingency whatsoever and to pay the premiums thereon;
- (r) to promote and aid in the promoting, constitute, form or organise any company or companies, unincorporated associations, syndicates, partnerships, limited partnerships, trusts, unit trusts, mutual funds or collective investment schemes of all kinds in any part of the world and to subscribe for shares or units therein or other securities thereof for the purpose of carrying on any business which the ICAV is authorised to carry on and/or for the purpose of its or their acquiring all or any of the property, rights and liabilities of the ICAV and/or for the purpose of advancing directly or indirectly the objects of the ICAV, and/or for any other purpose which may seem directly or indirectly calculated to benefit the ICAV and to pay any or all of the expenses of or incidental thereto;
- (s) to amalgamate or enter into partnership or into any arrangement for sharing profits, union of interest, joint venture, reciprocal concessions or co-operation with any person or company or investment vehicle carrying on, engaged in, or about to carry on or engage 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, sell, re-issue, or otherwise deal with shares or stock in or securities or obligations of, and to subsidise or otherwise assist any such securities or obligations or any dividends upon any such shares or stock;

- (t) to merge or enter into a scheme of amalgamation, redomiciliation or convert into another type of corporate vehicle or partnership subject to the Central Bank's requirements;
- (u) to establish and/or carry on any other business or businesses which may seem to the ICAV capable of being conveniently carried on in connection with any business which the ICAV is authorised to carry on, or may seem to the ICAV calculated directly or indirectly to benefit the ICAV or to enhance the value of or render profitable any of the ICAV's properties or rights;
- (v) to acquire and carry on all or any part of the business, goodwill or property, and to undertake any liabilities of any person, firm, association, company, investment vehicle, unincorporated association, partnership, limited partnership, trust, unit trust or other collective investment scheme possessed of property suitable for any of the purposes of the ICAV, or carrying on or proposing to carry on any business which the ICAV is authorised to carry on, and as the consideration for the same to pay cash or to issue any fully or partly paid up shares, debentures, or obligations of the ICAV or undertake all or any of the liabilities of such person, firm association, company, unincorporated association, partnership, limited partnership, trust, unit trust or other collective investment scheme;
- (w) to create, issue, make, draw, accept, endorse, discount, negotiate and otherwise deal with redeemable debentures or bonds or other obligations, bills of exchange, promissory notes, letters of credit or other negotiable or mercantile instruments;
- (x) to the extent provided by law to obtain and hold, either alone or jointly with any person or company or investment vehicle in any part of the world, insurance cover in respect of any risk of the ICAV, its directors, officers, employees and agents;
- (y) to distribute among the Shareholders of the ICAV in specie any assets of the ICAV or any proceeds of sale or disposal of any assets of the ICAV and in particular to repay any surplus or premiums on any shares of the ICAV;
- (z) to sell, let, lend, develop, dispose of or otherwise deal with the undertaking, property or assets of the ICAV or any part thereof or all or any part of the property, rights or privileges of the ICAV upon such terms as the ICAV may think fit, with power to accept as the consideration, any shares, stocks, units, debentures, mortgages, indemnities, liens, pledges, hypothecations, securities or obligations of whatsoever nature of or interest in any other company, investment vehicle, unincorporated association, partnership, limited partnership, trust, unit trust or other collective investment scheme or any mortgage, pledge or hypothecation of such interests;
- (aa) to remunerate any companies, firms or persons for services rendered or to be rendered to the ICAV including in particular, but without limitation, services rendered or to be rendered in placing or assisting to place or guaranteeing the placing of any of the shares in the ICAV's capital or any debentures or other securities of the ICAV or in or about the promotion of the ICAV or the conduct of its business and whether by cash payment or by the allotment to him or them of stocks, shares, debentures, bonds or other securities of the ICAV, credited as paid up in full in part or otherwise;
- (bb) to pay out of the funds of the ICAV all expenses of or incidental to or incurred in connection with the formation and registration of the ICAV and the promotion of the ICAV and the raising of money for the ICAV and the issue of its capital or any Class thereof, including brokerage and commissions for obtaining applications for or taking,

placing or procuring the underwriting of shares, stocks, debentures, bonds or other securities of the ICAV and any other expenses which the Directors shall consider to be in the nature of preliminary expenses;

- (cc) to pay for any property or rights acquired by the ICAV either in cash or by the issue of fully or partly paid shares of the ICAV;
  - (dd) to procure the ICAV to be registered or recognised in any part of the world;
  - (ee) to exercise all or any of the powers aforesaid in any part of the world through branches or offices or otherwise and as principals, agents, contractors, trustees or otherwise, and by or through trustees, agents, attorneys, sub-contractors or otherwise, and either alone or in conjunction with others and to contract for the carrying on of any operation connected with the ICAV's business by any person or company or investment vehicle in any part of the world;
  - (ff) to apply for, purchase or otherwise acquire any patents, trademarks, copyright, designs, licenses, 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;
  - (gg) to transfer any assets of the ICAV or any Fund to a third party, including but not limited to any prime broker, which third party may reuse such assets, in accordance with applicable law and the requirements of the Central Bank;
  - (hh) to withhold or deduct from any payment to be made to a shareholder of the ICAV any amount for or on account of any taxes imposed or required to be withheld by any jurisdiction or, where no payment is due to be made, to appropriate or cancel the number of shares required to meet any such tax liability; and
  - (ii) to do all such other things as the ICAV may deem incidental or conducive to the attainment of any of the objects of the ICAV.
- 1.11 Each of the powers of the ICAV (whether enumerated or not) is to be interpreted and exercised as ancillary to the sole object but separate from and ranking equally to any other ancillary power.

## **2. PRELIMINARY**

- 2.1 The business of the ICAV shall be commenced as soon after the date on which the registration order made by the Central Bank in respect of the ICAV comes into operation or such later date as the Directors think fit.
- 2.2 The Preliminary Expenses shall be payable by the ICAV out of its assets and the amount so payable 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 Preliminary Expenses of the ICAV shall be allocated between Funds on such basis as the Directors may from time to time in their discretion determine and shall be subject to such adjustment following the establishment of new Funds as the Directors may determine. Any Preliminary Expenses attributable to the Fund and/ or one or more Classes shall be allocated between Classes on such basis as the Directors may from time to time in their discretion determine and shall be subject to adjustment following the establishment of new Classes as the Directors may determine. The ICAV may reimburse the AIFM for any and all Preliminary Expenses initially paid by them or any of them on behalf of the ICAV.
- 2.3 The ICAV may also bear the following expenses:

- (a) all taxes, duties, charges and expenses which may be payable on the assets, income and expenses chargeable to the ICAV including all taxes and expenses which may be incurred in connection with the acquisition and disposal of Investments and all other assets of the ICAV;
- (b) fees and expenses of any professional advisors, including but not limited to those of auditors, accountants, lawyers, consultants and any other advisors which may be engaged from time to time
- (c) fees and expenses payable to any placement agent, structuring agent, paying agent, representative, correspondent bank, Distributor or sub-distributor of the Shares;
- (d) all expenses incurred in registering the ICAV with any governmental agencies or regulatory authorities and maintaining the registration of the ICAV with such governmental agencies or regulatory authorities (including local Securities Dealers Associations) and the cost of listing and maintaining a listing of Shares on any stock exchange;
- (e) sub-custodian fees;
- (f) costs in connection with indebtedness of the Fund, including financing costs and debt service;
- (g) banking, stockbroking or corporate finance fees including interest on borrowings, expenses, fees and charges of clearing agents and interest on debt balances and other bank charges;
- (h) fees and expenses of (to the extent permitted by the Central Bank) offering preferred interests or debt instruments and enhancing or assuring the credit quality thereof;
- (i) taxes or duties imposed by any fiscal or regulatory authority, including the annual fees of the Central Bank;
- (j) fees and expenses relating to short-term investments of cash and investments in portfolio companies including the due diligence, structuring, negotiation, acquisition, syndication, holding, restructuring, recapitalisation and disposition thereof or relating to proposed portfolio investments which are not consummated;
- (k) all expenses incurred in connection with publication and supply of information to Shareholders and in particular, but without limitation, the cost of printing and distributing any interim financial statements (if applicable) and the annual audited financial statements as well as any other reports to the Central Bank or to any other regulatory authority or the Shareholders and the cost of preparing, publishing and distributing the Prospectus and any other offering documents for Shares and the cost of all stationery, printing and postage costs in connection with the preparation and distribution of any information, communications or reports to Shareholders as well as any translation costs related to the preparation of these matters, including the cost of publication of notices in local newspapers or publications in any relevant jurisdiction;
- (l) expenses relating to Shareholders' meetings;
- (m) insurance which the ICAV may purchase and/or maintain for the benefit of and against any liability incurred by any Director of the ICAV in the performance his or her duties;
- (n) custody, distribution and transfer expenses;
- (o) administration, valuation and appraisal expenses;

- (p) due diligence and negotiation expenses;
- (q) expenses relating to exploring, initiating, defending or settling claims made by or against a Fund, including any litigation (whether actual or threatened and including any judgement or settlements paid in connection with such litigation) involving the ICAV, the Funds or any entities through which they invest;
- (r) filings and registrations;
- (s) proxy and consent solicitation expenses;
- (t) costs in valuing assets;
- (u) compliance expenses;
- (v) portfolio transaction expenses;
- (w) costs of responding to regulatory inquiries and reporting to regulatory authorities;
- (x) costs and expenses of preparing and maintaining the books and records of the ICAV and the Funds and the entities through which they invest;
- (y) expenses relating to organising companies through or in which investments in portfolio companies will be made;
- (z) expenses (including legal fees and expenses) incurred in connection with the bankruptcy or reorganisation of any portfolio company
- (aa) expenses incurred in relation to ICAV secretarial fees and maintaining the places of business of the ICAV and the Funds;
- (bb) such expenses as are approved by the AIFM as being reasonably related to the organisation, offering (including any out-of-pocket expenses incurred by any placement agents that are subject to reimbursement), capitalisation or administration of the Fund and any Investments.
- (cc) any other expenses, including clerical costs of issue or redemption of Shares;
- (dd) the total costs of any amalgamation or reconstruction relating to the ICAV or a Fund;
- (ee) all fees payable in respect of investments in collective investment schemes
- (ff) costs of winding up and liquidating the ICAV and/or the Funds or any entities through which they invest;
- (gg) expenses incurred in connection with a Shareholder that defaults in respect of a capital drawdown or any payment due to a Fund;
- (hh) expenses associated with a Fund's indemnification obligations;
- (ii) any fees, costs or expenses of the ICAV in accordance with the Instrument; and
- (jj) any fees incurred in respect of specific tax advice received in respect of particular assets of the a Fund in each case plus any applicable VAT.
- (kk) any extraordinary expenses;

2.4 Any such expenses may be deferred and amortised by the ICAV, in accordance with standard accounting practice, at the discretion of the Directors. All recurring expenses will be charged

against the current income of the ICAV or the relevant Fund, and if need be, against the assets of the ICAV or the relevant Fund as the Directors may from time to time decide.

2.5 In each of the foregoing matters plus any applicable value added tax.

### **3. ALTERNATIVE INVESTMENT FUND MANAGER**

3.1 The ICAV shall forthwith after its registration and before it obtains authorisation by the Central Bank and subject to the prior approval of the Central Bank designate an AIFM to act as the alternative investment fund manager of the ICAV and to assume responsibility for ensuring compliance with the Regulations. The AIFM may be external or the ICAV may choose to be designated as an internally managed AIFM.

3.2 Any contract or agreement appointing an external AIFM and any variation to any such contract or agreement then in force made after the issue of Shares shall be in accordance with applicable requirements of the Central Bank. The Central Bank may, pursuant to the Regulations, replace the AIFM where it appears to the Central Bank to be desirable in the interests of Shareholders or potential Shareholders.

3.3 The terms of appointment of an external AIFM may authorise such AIFM to appoint (with powers of sub-delegation) agents or delegates (including an Investment Manager and/or an Investment Advisor) at the expense of and payable out of the assets of the relevant Fund of the ICAV or otherwise provided that any such appointment shall terminate forthwith on termination of the appointment of the AIFM. The AIFM will also be entitled to entrust and confer upon any such delegate any of the relevant powers, duties, discretions and/or functions exercisable by the AIFM including the right to remuneration payable by the ICAV and indemnification by and out of the assets of the relevant Fund of the ICAV and with such powers of delegation and such restrictions as the AIFM thinks fit and either collectively with or to the exclusion of its powers.

3.4 The external AIFM for the time being may be subject to removal in any of the following events:

- (a) if the AIFM becomes incapable of performing its duties or obligations under the AIFM Agreement due to any change in law or regulatory practice; or
- (b) if the AIFM goes into liquidation (except a voluntary liquidation for the purpose of reconstruction or amalgamation upon terms previously approved in writing by the ICAV), or if a receiver is appointed in respect of any of the assets of the AIFM; or
- (c) if the AIFM ceases to be appropriately authorised as an alternative investment fund manager or in the event that the AIFM ceases to be permitted by the Central Bank to provide the services to the ICAV; or
- (d) if the ICAV considers it in the best interests of Shareholders to do so;
- (e) if the Central Bank directs the removal of the AIFM; or
- (f) following such other event(s) as the Directors may determine and agree with the AIFM,

provided that any replacement AIFM and the appointment of any replacement AIFM shall have been approved by the Central Bank.

3.5 In the event of an external AIFM desiring to retire as AIFM the Directors shall use their best endeavours to find a corporation willing to act as AIFM and having the qualifications to act as AIFM in accordance with the requirements of the Central Bank and upon so doing the ICAV shall appoint such corporation to be AIFM in place of the former AIFM or shall seek authorisation as an internally-managed AIFM. Save as provided in Section 3.5 hereof, the AIFM may not retire or be removed from office until (i) the Directors shall have found a corporation (including the ICAV itself) willing to act as AIFM and such corporation shall have

been designated as the AIFM in place of the former AIFM and shall have been approved by the Central Bank; or (ii) revocation of authorisation of the ICAV has been granted by the Central Bank.

- 3.6 Without prejudice to the generality of Section 23, the ICAV and / or the external AIFM may after its registration and subject to the approval of the Central Bank appoint or procure that a person, firm or corporation shall be appointed to act as Investment Manager and the Directors or external AIFM may delegate and entrust to and confer upon the Investment Manager so appointed any of the powers, duties, discretions and/or functions exercisable by them as Directors or external AIFM, upon such terms and conditions (including the right to remuneration payable by the ICAV) and with such powers of delegation and such restrictions as they think fit and either collaterally with or to the exclusion of their own powers. The exercise by the Investment Manager of any or all of the powers from time to time entrusted to or conferred upon the Investment Manager in accordance with this Section 3.6 shall at all times remain subject to the supervision of the Directors and / or the external AIFM and the Directors and / or the external AIFM shall at all times retain the right to issue directions to the Investment Manager regarding the exercise by the Investment Manager of the said powers.
- 3.7 The terms of appointment of any Investment Manager may authorise such Investment Manager to appoint (with powers of sub-delegation) one or more sub-investment managers or other agents and to delegate any of its functions and duties to any person or persons so appointed, provided that such appointment or appointments shall first have been approved by the Central Bank and provided further that any such appointment shall terminate forthwith on termination of the appointment of the Investment Manager.

#### **4. DEPOSITARY**

- 4.1 The ICAV shall appoint a Depositary. An application for approval of a Depositary shall be made in writing to the Central Bank in such manner and form as may be specified by the Central Bank and shall contain or be accompanied by such other information as the Bank may specify for the purpose of determining the application.
- 4.2 The ICAV shall entrust its assets to a Depositary for the safe-keeping and such Depositary shall perform such other duties upon such terms as the Directors may from time to time determine pursuant to the provisions of the Depositary Agreement.
- 4.3 Any contract or agreement entered into by the ICAV with any Depositary and any variation to any such contract or agreement then in force made after the issue of Shares shall be in accordance with the requirements of the Central Bank. The Central Bank may, at its discretion, replace the Depositary.
- 4.4 The terms of appointment of any Depositary shall include the right to remuneration payable by the ICAV and 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 provided that any such appointment shall terminate forthwith on termination of the appointment of the Depositary.
- 4.5 In the event of the Depositary desiring to retire or the ICAV desiring to remove the Depositary from office the Directors shall use their best endeavours to find a corporation willing to act as Depositary and having the qualifications to act as Depositary in accordance with the Central Bank's requirements and being approved by the Central Bank and upon so doing the Directors shall appoint such corporation to be Depositary in place of the former Depositary. Save as provided in Section 4 hereof, the Depositary may not retire or be removed from office until (i) 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 and shall have been approved by the Central Bank; or (ii) the authorisation of the ICAV has been withdrawn by the Central Bank.
- 4.6 If within a period of 90 days, or such period as may be agreed between the ICAV and the Depositary from time to time, in which the Depositary notifies the ICAV of its desire to retire in

accordance with the terms of the Depositary Agreement, or from the date on which the ICAV notifies the Depositary of its desire to remove the Depositary, no new Depositary shall have been appointed:

- (a) the ICAV shall redeem all Shares in issue (other than Subscriber Shares) in accordance with the provisions of Section 9.3 hereof; and
- (b) the Secretary at the request of the Directors or the Depositary shall forthwith convene an extraordinary general meeting of the Shareholders of the ICAV at which there shall be proposed a Ordinary Resolution to wind up the ICAV and, if such Ordinary Resolution is passed in accordance with the Act, the liquidator shall distribute the assets of the ICAV in accordance with the provisions of Section 35 hereof; and
- (c) the Depositary's appointment will terminate with effect from the date on which the authorisation of the ICAV is revoked by the Central Bank after redemption of the Shares.

#### **4.7 Discharge of Liability**

The Depositary is permitted to enter into contractual arrangements with third parties and sub-custodians appointed by the Depositary as safekeeping agents, to transfer and discharge its liabilities in respect of loss of financial instruments as defined in the Legislation held in safekeeping by such third party or sub-custodian provided the provisions setting out its responsibility in the Depositary Agreement are satisfied.

### **5. SHARE CAPITAL AND SHARE CLASSES**

- 5.1 Shares may be issued on a fully paid or partially paid basis as provided for in the Prospectus and shall have no par value. The share capital of the ICAV shall at all times be equal to the value for the time being of the issued share capital of the ICAV. 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.
- 5.2 The liability of the Shareholders is limited to the amount, if any, unpaid on the shares respectively held by them subject and without prejudice to any other liability to which a Shareholder may be subject as provided by or under the Act.
- 5.3 The minimum authorised share capital of the ICAV is €2.00 (two euro) represented by 2 (two) Subscriber Shares issued at €1.00 (one euro) each. The maximum authorised share capital of the ICAV, as may be amended by the Directors from time to time and notified to Shareholders, is 500,000,000,002 Shares of no par value represented by 2 subscriber shares of one Euro each and 500,000,000,000 (five hundred billion) Shares of no par value, initially designated as unclassified Shares.
- 5.4 The Directors are hereby generally and unconditionally authorised to exercise all the powers of the ICAV to issue Shares, Subscriber Shares and Debentures within the meaning of section 38 of the Act.
- 5.5 Where specified in a Supplement, a Fund may also issue Performance Allocation Shares which (i) are reserved for the AIFM, the Investment Manager, the Investment Advisor and/or any affiliated or connected entities thereto; and (ii) shall be issued to and subscribed automatically by the AIFM upon the launch of any Fund and be limited to one Performance Allocation Share per Fund; and (iii) shall be entitled to receive Performance Allocations as set out in the Prospectus or relevant Supplement.
- 5.6 The unclassified Shares are available for issue as Shares of the ICAV. Shares may be issued partly paid or on a fully paid basis as provided for in the Prospectus. On or before the issue of any Shares in any Fund the Directors shall determine the currency and Class, if applicable, in which the Shares shall be designated. The ICAV may differentiate between Classes, including without limitation, as to the level of fees payable in respect of such Class or to the

level of distributions declared or payable on such Class, dealing procedures, hedging policies, or as to assets of a Fund attributable to each such Class. Any such new Class may be established with a fixed Share Price during the Initial Offer Period in accordance with the requirements of the Central Bank. The creation of further Classes will be notified in advance to the Central Bank. Classes may be hedged or unhedged as designated by the Directors at the time of their issue. The costs and/or gains/losses of hedging will accrue solely to the relevant Class.

- 5.7 Subject and without prejudice to Clause 5.6 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 ICAV and other than in the case of a non-voting Class of Shares, to vote at any general meeting of the ICAV, Fund or Class of Participating Shares in respect of which such Participating Shares have been issued and such other rights as may be provided in respect of Participating Shares of the ICAV or a particular Class in each case as more particularly described in the Prospectus subject always to the requirements of the Central Bank and the Act.
- 5.8 All monies payable on or in respect of a Share (including without limitation, the subscription and redemption monies and dividends in respect thereof) shall be paid in the currency in which such Share is designated or in such other currency or currencies as the Directors may determine.
- 5.9 The Directors may delegate to any duly authorised Director or officer of the ICAV, or to any duly authorised person including, without limitation, the Administrator, the duties of accepting the subscription for, receiving payment for, and allotting and issuing new Shares in any Fund.
- 5.10 Without prejudice to the generality of this Instrument, the Directors may, subject to this Instrument and in accordance with the requirements of the Central Bank, create and issue at their discretion from time to time a Side Pocket Class to which assets and liabilities of the Funds may be allocated at the discretion of the Directors as investments that are illiquid or otherwise difficult to value or realise (the "**Illiquid Investments**") plus any ancillary assets related to such Illiquid Investment such as hedging arrangements as well as such additional cash or other assets representing a reserve for related commitments and contingencies as the Directors in their discretion determine. Side Pocket Shares shall be redeemable by the ICAV and/ or by the holders thereof only when so determined by the Directors. This may 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 this Instrument and/ or in accordance with the Prospectus. Unless otherwise described in this Section, a Side Pocket Class shall have the same rights and characteristics as any other Share. Shares in Classes other than the Side Pocket Class shall not participate in the assets and liabilities attributable to the Side Pocket Class shall be segregated from and shall not form part of other assets of the Fund. The liabilities of or attributable to a Side Pocket Class shall be discharged solely out of the assets of that Side Pocket Class. The Directors may also, subject to this Instrument and the Act and in accordance with the Central Bank's requirements, establish Side Pocket Classes into which assets which are illiquid when purchased may be placed.
- 5.11 In accordance with the requirements of the Central Bank, a Shareholder may be excused from participating in certain investments of the Funds where provided for in the Prospectus. If a Shareholder requests to be excused from a particular investment in accordance with the terms of the Prospectus, the Directors or the AIFM, in their discretion may excuse such Shareholder from participating in such investment by compulsorily exchanging the relevant Shareholder's Shares for Shares of a new Class or Series which does not participate in the relevant investment. In such circumstances, such Shareholder shall not have an interest in such investment or the income, profits and losses therefrom (including distributions with respect thereto).



- 5.12 With respect to any Shareholder that is a Feeder Fund of the relevant Fund, such Feeder Fund will, to the extent an investor in such Feeder Fund is excused from participating in a new investment pursuant to the applicable governing documents of such Feeder Fund, be excused. With respect to any Shareholder that is a Feeder Fund of the relevant Fund, subject to the requirements of the Central Bank, if an investor in such Feeder Fund is excused from an investment, the Directors or the AIFM, in their discretion may compulsorily exchange the relevant portion of the applicable Shareholder's Shares for Shares of a new Class or Series which does not participate in the relevant investment or the income, profits and losses therefrom (including distributions with respect thereto).
- 5.13 The ICAV is established as an umbrella fund and may establish Funds that are open-ended, open-ended with limited liquidity or closed-ended.
- 5.14 The Directors are hereby authorised from time to time to re-designate any existing Fund or Class in the ICAV and merge such Fund or Class with any other Fund or Class in the ICAV, provided that Shareholders in such Funds or classes are first notified by the ICAV. Subject to the requirements of the Central Bank, the Directors may also resolve to merge a Fund or Class in the ICAV with a class of shares in any other qualifying investor alternative investment fund, alternative investment fund or undertaking for the collective investment of transferable securities whether authorised by the Central Bank of Ireland or in any other Member State of the European Union, provided that such merger or transfer occurs at the Net Asset Value per Share at the relevant Valuation Point.
- 5.15 For the purpose of enabling shares of one Fund or Class to be re-designated or converted into shares of another Fund or Class, the ICAV may 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.
- 5.16 The records and accounts of each Fund shall be maintained separately and the assets and liabilities of each Fund shall be allocated in the following manner:
- (a) the proceeds from the issue of shares representing a Fund shall be applied in the books and records of the ICAV to that Fund, and the assets and liabilities and income and expenditure attributable thereto shall be applied to such Fund, subject to the provisions of this Section;
  - (b) where any asset is derived from another asset, such derivative asset shall be applied in the books of the ICAV to the same Fund as the assets from which it was derived and in each valuation of an asset, the increase or diminution in value 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 conjunction with an asset of a particular Fund, such a 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, such asset or liability, subject to the approval of the Depositary, shall be allocated to all the Funds pro rata to the Net Asset Value of each Fund or on such other basis approved by the Depositary having taken into account the nature of the assets and liabilities;
  - (e) subject as otherwise in this Instrument provided, the assets held in each Fund shall belong exclusively to that Fund and shall not be used to discharge directly or indirectly the liabilities of or claims against any other Fund and shall not be available for any such purpose;

provided that when issuing a Class of Shares in regard to any Fund, the Directors may allocate commission, Duties and Charges and ongoing expenses on a basis

which is different from that which applies in the case of Shares in other Classes in the Fund.

- 5.17 Notwithstanding anything contained in this Instrument, any such Investments or transactions must be clearly attributable to a particular Class only.
- 5.18 Subject as otherwise provided herein, the Investments held in each Fund shall be applied solely in respect of the Shares of the Class (or Classes as the case may be) to which such Fund appertains.
- 5.19 The ICAV may pay any brokerage or commission in connection with the allotment or issue of Shares.
- 5.20 No person shall be recognised by the ICAV as holding any Shares on trust and the ICAV shall not be bound by or required to recognise (even when having notice thereof) any equitable, contingent, future or partial interest in any Shares or (except only as this Instrument otherwise provide or as by law required) any other right in respect of any Share, except an absolute right of title thereto in the registered holder.

## **6. REGISTRATION**

- 6.1 Shares are issued in fully registered book-entry form only. Share certificates will not be issued by the ICAV and a Shareholder in the ICAV shall have his title to Shares evidenced by having his name, address, the number of Shares held by him or her, date of entry and cessation of membership of the ICAV and the number and the Fund entered in the Register. The Directors shall refuse to make any entry on the Register in respect of any Shares held by any person whose name has not already been entered on the Register where such person holds a number of Shares less than the minimum holding specified in the Prospectus in accordance with the requirements of the Central Bank. To be entered on the register, Shareholders must apply for or acquire Shares to the value of not less than the minimum subscription amount as set out in Prospectus in accordance with the requirements of the Central Bank, certify that they meet the Qualifying Investor criteria as set out in the AIF Rulebook and certify 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 involved.
- 6.2 Written confirmation confirming entry on the Register shall be issued to all Shareholders within such period as the Directors may determine from time to time (as disclosed in the Prospectus). The Shareholder's name will not be entered in the Register until the full purchase price has been paid to the ICAV and a confirmation note has been issued to the Shareholder.
- 6.3 Registration will only be accepted in the name of companies, trusts, partnerships or individuals. Shares purchased for individuals under 18 years of age must be registered in the name of a parent or guardian, but may be designated with the minor's initials for identification.
- 6.4 The ICAV shall not be bound to register more than four persons as the joint holders of any Share or Shares.
- 6.5 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 provisions:
  - (a) the joint holders of any Shares shall be jointly and severally liable in respect of all payments which are to be made in respect of such Shares;
  - (b) any one of several joint holders of a Share may give effectual receipts for any dividend, bonus or return of capital payable in respect of such Share to the joint holder;
  - (c) any notice given to one of several joint holders of Shares shall be deemed notice given to all the joint holders; and

- (d) the vote of any one of several joint holders of the Share who tenders a vote whether by person or by proxy shall be accepted to the exclusion of votes of the other joint holders.

## **7. ALLOTMENT, ISSUE AND CONVERSION OF SHARES**

7.1 Shares issued on or prior to the first Dealing Day of each Class will be issued at the Initial Offer Price as specified in the Prospectus. The ICAV shall only launch Share Classes at a fixed price after the Initial Offer Period where it has been confirmed to the Central Bank that existing Shareholders in the relevant Fund are not prejudiced.

7.2 All issues of Shares thereafter shall be effected or made with effect from a Dealing Day at the Net Asset Value per Share (plus any Duties and Charges that may apply) of the applicable Fund and Class (or if Shares of a new Fund are being issued, at such offer price as may be determined by the Directors, or their delegates or as set forth in the Prospectus for that Fund) as of the Valuation Point immediately prior to the relevant Dealing Day. All allotments and all issues of Shares pursuant to subscription orders received on or prior to the relevant Dealing Day for a Fund, shall be effected or made with effect from the relevant Dealing Day and/or such later day or days as may be contemplated in the Prospectus. The ICAV may provisionally allot and/or issue Shares on a Dealing Day on the basis that the Shares shall be issued on receipt by the ICAV or its authorised agent of cleared funds from the subscriber for the relevant Shares or, if provisionally issued, shall be cancelled in the event that the ICAV or its authorised agent does not receive cleared funds from the subscriber for the relevant Shares within a reasonable time as specified in the Prospectus. The Directors, in their absolute discretion, may waive such charge in whole or in part. In addition, the Directors will have the right to sell all or part of the applicant's holding of Shares in the Fund or any other Fund of the ICAV, in order to meet these charges. No interest will be paid by the ICAV on monies received early.

7.3 The ICAV shall from time to time decide the denomination in which Shares will be issued.

7.4 Subject as hereinafter provided, on receipt by the ICAV or its authorised agent during the Initial Offer Period and/or prior to the initial issue of Shares:

- (a) an application for Shares in a Fund in such form as the Directors may from time to time determine and as specified in the Prospectus;
- (b) such information and declarations as to the applicant's identity, status, residence and otherwise as the Directors or their authorised agent may from time to time require; and
- (c) payment for the Shares in such manner and at such time and place as the Directors from time to time may specify, provided that if payment is made in a currency other than the currency designated for the Shares, the ICAV shall convert or arrange for the conversion of the monies received into the currency designated for the Shares and shall be entitled to deduct therefrom all expenses incurred in connection with the conversion,

the ICAV may allot and issue such Shares on the first Dealing Day following the close of the relevant Initial Offer Period at the Initial Offer Price for each such Share in such Fund provided that if any such application is received after such time following the close of the relevant Initial Offer Period as the Directors may determine, the ICAV will refuse the application or defer the allotment or issue of such Shares until the next succeeding Dealing Day and provided further that if the information and declarations required pursuant to sub-paragraph (b) of this Section 7.4 and cleared funds representing the subscription monies in respect of the Shares and the original application form are not received by the ICAV within such period as the Directors may determine the Directors shall cancel any provisional allotment and/or issue of Shares in respect thereof and if so cancelled the relevant application monies shall be returnable to the applicant at his risk (after deducting such amount, if any, as the

Directors may in their absolute discretion think fit, any such amount so deducted being retained by the ICAV for its own benefit) and until return it may be made use of by the ICAV for its own benefit. If payment in cleared funds in respect of a subscription has not been received in full by the time specified in the Prospectus, the ICAV may charge the applicant interest at such rate (if any) as is set out in the Prospectus and which charge may be payable to the ICAV. The Directors, in their absolute discretion, may waive such charge in whole or in part. In addition, the Directors will have the right to sell all or part of the applicant's holding of Shares in the Fund or any other Fund of the ICAV in order to meet those charges. No interest will be paid on monies received early.

7.5 Subject as hereinafter provided, on receipt by the ICAV or its authorised agent after the Initial Offer Period and/or after the initial issue of Shares of:

- (a) an application for Shares in a Fund in such form as the Directors may from time to time determine; and
- (b) such information and declarations as to the applicant's identity, status, residence and otherwise as the Directors or their authorised agent may from time to time require; and
- (c) payment for the Shares in such manner and at such time and place as the Directors from time to time may specify,

the ICAV may allot and issue such Shares on the relevant Dealing Day at the Subscription Price for each such Share of such Fund on terms that if the ICAV receives payment for the Shares in a currency other than the Base Currency of the Fund the ICAV shall convert or arrange for the conversion of monies received into the currency designated for the Shares and shall be entitled to deduct therefrom all expenses incurred in the conversion and on terms that the allotment and/or issue of Shares may take place provisionally if cleared funds have not been received by the ICAV or its authorised agent, provided that the application referred to in sub-paragraph (a) of this Section 7.5 has been received by the ICAV or its authorised agent and provided further that if the information and declarations required pursuant to sub-paragraph (b) of this Section 7.5 and cleared funds representing the subscription monies and the original application form are not received by the ICAV within such period and at such time and place as the Directors may determine the Directors shall cancel any provisional allotment of Shares in respect thereof and if so cancelled the relevant application monies shall be returnable to the applicant at his risk (after deducting such amount, if any, as the Directors may in their absolute discretion think fit, any such amount so deducted being retained by the ICAV for its own benefit) and until returned, it may be made use of by the ICAV for its own benefit. Applications received by or on behalf of the ICAV up to such time on a Dealing Day as the Directors may determine shall, unless the Directors determine otherwise, be deemed to have been received on that Dealing Day. Such applications as are received by or on behalf of the ICAV after such time on a Dealing Day as the Directors may determine shall be deemed to have been received by or on behalf of the ICAV on the following Dealing Day. If payment in cleared funds in respect of a subscription has not been received in full by the time specified in the Prospectus, the ICAV may charge the applicant interest at such rate (if any) as is set out in the Prospectus and which charge may be payable to the ICAV. The Directors, in their absolute discretion, may waive such charge in whole or in part. In addition, the Directors will have the right to sell all or part of the applicant's holding of Shares in the Fund or any other Fund of the ICAV in order to meet those charges. No interest will be paid on monies received early.

7.6 If at any time the Directors determine, in their sole discretion, that an incorrect number of Shares was issued to a Shareholder because the Net Asset Value per Share in effect on the Dealing Day was incorrect, the Directors may adjust such Shareholder's Shares by increasing

or decreasing them, as appropriate, to such number of Shares as would have been issued at the correct Net Asset Value per Share.

- 7.7 The ICAV will make available to prospective Shareholders such information as may be reasonably required by the Legislation in respect to an investment in the Fund.
- 7.8 Payment for Shares shall be made at such time and place and to such person on behalf of the ICAV as the Directors may from time to time determine and in such currency or currencies as the Directors may determine to be appropriate to receive subscriptions.
- 7.9 The Directors shall be entitled to issue Fractional Shares up to such number of decimal places as the Directors may determine and disclose in the Prospectus where the net subscription monies received by the ICAV are insufficient to purchase an integral number of Shares, provided however that Fractional Shares shall not carry any voting rights and provided further that the Net Asset Value per Share of a Fractional Share of any Share shall be adjusted by the amount which such Fractional Share bears to an integral Share at the time of issue of such Fractional Share and any dividend payable on such Fractional Shares shall be adjusted in like manner.
- 7.10 No allotment or issue of Shares shall be made in respect of an application which would result in the applicant holding less than the Minimum Holding. No allotment or issue of Shares shall be made to any person who has not subscribed for the minimum subscription amount as set out in the AIF Rulebook and who has not certified that he is a Qualifying Investor.

The ICAV may (at the option of the Directors) satisfy any application for the allotment or issue of Shares by procuring the transfer to the applicant of fully paid Shares. In any such case, references in this Instrument to allotting and issuing Shares shall, where appropriate, be taken as references to procuring the transfer of Shares.

- 7.11 The ICAV shall be entitled to receive any Investments from an applicant for Shares and to hold such Investments or to sell, dispose of or otherwise convert such Investments into cash and to apply such cash (net of any expenses incurred in the conversion) for the purpose of allotting and issuing Shares in the ICAV in accordance with the provisions of this Instrument.
- 7.12 Subject to the provisions of the Act, the Directors may in their absolute discretion allot and issue Shares in any Fund in consideration for, or on terms providing for settlement to be made by, the vesting in the Depositary of any Investments provided that the Directors are satisfied that:
- (a) the nature of assets to be transferred would qualify as Investments in accordance with the investment objective, policy and restrictions of the relevant Fund;
  - (b) the number of Shares to be issued will not be more than the number which would have been issued for settlement in cash having valued the Investments to be exchanged in accordance with Section 13;
  - (c) all fiscal duties and charges arising in connection with the vesting of such Investments in the Depositary are paid by the person to whom the Shares are to be issued or, at the discretion of the Directors, partly by such person and partly out of the assets of the Fund;
  - (d) the Depositary is satisfied that the terms of such exchange will not be such as are likely to result in any material prejudice the existing Shareholders;
  - (e) the nature of the assets to be transferred would qualify as investments in accordance with the investment objectives, policies and restrictions of the relevant Fund; and
  - (f) the Investments have been vested in the Depositary or its sub-depositary, nominee or agent.

- 7.13 No Shares shall be allotted or issued on any Dealing Day on which the determination of Net Asset Value of the Shares is suspended pursuant to Section 12.4.
- 7.14 The Directors may require any person to whom Shares are to be allotted to pay to the ICAV an initial charge in respect of each Share to be allotted of such amount as may be determined by the Directors but not exceeding in respect of each Share to be allotted such amount as the Directors may determine and disclose in the Prospectus.
- 7.15 The Directors may in their absolute discretion refuse to accept any application for Shares or accept any application in whole or in part without assigning any reason therefor.
- 7.16 Any outstanding Class of Shares may, in the discretion of the Directors be redesignated and converted (after the payment or accrual of all applicable fees and expenses) into Shares of another Class at the prevailing Net Asset Value per Share of such other Class.
- 7.17 Except where dealings in the relevant Shares have been temporarily suspended in the circumstances described in Section 12.4 and to the extent that Shareholders will be entitled on any Dealing Day to convert any or all of their Shares of any Fund ("Original Fund") into Shares in any other Fund ("New Fund") on such terms and such switching fee (if any) as are disclosed in the Prospectus.
- 7.18 The Directors may issue Shares in exchange for investments in accordance with the particular investment objective and policies of the Fund. No Shares may be issued in exchange for such investments unless the Directors are satisfied that (i) the number of Shares issued will not be more than the number which would have been issued for settlement in cash having valued the investments to be exchanged in accordance with the valuation provisions set out in the Instrument and summarised herein; and (ii) all fiscal duties and charges arising in connection with the vesting of such investments in the Depositary for the account of the Fund are paid by the person to whom the Shares in the Fund are to be issued and the Depositary is satisfied that (a) the terms of such exchange shall not materially prejudice the Shareholders and (b) that the investments have been vested in the Depositary.
- 7.19 Shareholders of any Class of Shares within a Fund may switch to another Class within this Fund or to the same or another Class of another Fund as the Directors may permit.

If the switch would result in the Shareholder holding a number of Shares in the original Class or Fund with a value of less than the Minimum Holding, the Directors may, in their discretion, convert the whole of the applicant's holding of Shares in the Class or Fund or refuse to effect any switch. No switches will be made during any period in which the rights of Shareholders to require the redemption of their Shares are suspended. The general provisions on procedures for redemptions will apply equally to switching.

The number of Shares to be issued in the new Class and/or Fund will be calculated in accordance with the following formula:

$$A = \frac{(B \times C \times D) - E}{F}$$

Where

A = number of Shares of the new Class and/or Fund to be allotted.

B = number of Shares of the original Class or Fund to be redeemed.

C= Net Asset Value per Share of the original class at the Valuation Point on the relevant Dealing Day.

D= currency exchange rate factor (if any) as determined by the ICAV.

E = the conversion charge (if any) of up to 5% of the Net Asset Value of the Shares to be issued in the New Class.

F = the Net Asset Value per Share of the New Fund at the Valuation Point on the relevant Dealing Day.

## **8. SUBSCRIPTION PRICE**

- 8.1 The Initial Offer Price per Share at which the allotment of Shares shall be made shall be determined by the Directors and adding thereto such sum as the Directors in their absolute discretion may from time to time determine as an appropriate provision for Duties and Charges in respect of the allotment and issue of the Shares and making such other adjustment thereto as the Directors may from time to time determine subject always to the resulting total being adjusted up to the nearest unit of the currency in which such Shares are designated where the amount so determined is equal to or greater than half of the relevant unit or down to the nearest unit where the said amount is less than half of that unit (A "unit" for these purposes being the smallest fraction of the relevant currency which is legal tender in the country of issue of that currency).
- 8.2 The Subscription Price per Share at which the allotment of Shares shall be made following the Initial Offer Period shall be ascertained by determining the Net Asset Value per Share of the applicable Class (or if Shares of a new Class are being issued, at such offer price as may be determined by the Directors, or their delegates) of Shares in the relevant Fund in accordance with Section 12 and 13 as at the Valuation Point on or with respect to the relevant Dealing Day and adding thereto such sum as the Directors in their absolute discretion may from time to time determine as an appropriate provision for Duties and Charges in respect of the allotment and issue of the Shares and making such other adjustment thereto as the Directors may from time to time determine subject always to the resulting total being rounded to 4 decimal places or such other number as may be determined by the Directors.
- 8.3 by dividing the Net Asset Value of the relevant Fund or attributable to a Class by the total number of shares in issue or deemed to be in issue in the Fund or Class at the Valuation Point and rounding the resulting total to 4 decimal places or such other number as may be determined by the Directors.
- 8.4 The Directors may, when calculating the Subscription Price add a subscription charge or on any Dealing Day when there are net subscriptions, adjust the Subscription Price by adding an anti-dilution levy to cover dealing costs and to preserve the value of the underlying assets of the ICAV.

## **9. QUALIFIED HOLDERS, COMPULSORY TRANSFER AND COMPULSORY REDEMPTION**

- 9.1 The Directors may impose such restrictions as they may think necessary for the purpose of ensuring that no Shares in the ICAV are acquired or held directly or beneficially by:
- (a) 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;
  - (b) or for the benefit of a person who is not a Qualifying Investor (other than persons which benefit from an exemption from the minimum subscription requirement and qualifying investor criteria as set out in Section 7.10);
  - (c) any person who the Directors, or the Administrator acting on the ICAV's instructions, suspect are not compliant with FATCA or may cause the ICAV or the relevant Fund to become non-compliant with FATCA;
  - (d) any person who fails to comply with the terms and/or conditions of the issue and/or settlement of its Shares or any agreement with the ICAV to subscribe for further

Shares or any person who otherwise becomes classified by the Directors as a Defaulting Shareholder in accordance with the terms of the relevant Supplement;

- (e) any person who, in the reasonable opinion of the Directors, would preclude the relevant Fund from making an investment or any type of Investments or render the making of any investment or any type of Investments more difficult or burdensome for the relevant Fund;
- (f) any person who holds less than the Minimum Holding or who does not supply any information or declaration required under this Instrument;
- (g) any person or persons in circumstances (whether directly or indirectly affecting such person or persons and whether taken alone or in conjunction with any other person or persons, connected or not, or any other circumstance appearing to the Directors to be relevant) which in the opinion of the Directors might (i) prejudice the tax status or residence of the ICAV or its Shareholders; or (ii) cause the ICAV, its Shareholders, any Fund or any Class any legal regulatory, pecuniary, tax, fiscal or material administrative disadvantage; or (iii) cause the ICAV or any Fund to be required to comply with the registration or filing requirements in any jurisdiction with which it would not otherwise be required to comply or (iv) would cause the assets of a relevant Fund to become "plan assets" for the purposes of ERISA;
- (h) any person, where the Directors believe, in their sole discretion, that the holding of Shares by such person would not be in the best interests of the relevant Fund, the ICAV or the other Shareholders;

and the Directors may reject in their discretion any application for Shares or any transfer of Shares to any persons who are so excluded from purchasing or holding Shares and at any time redeem or require the transfer of Shares held by Shareholders who are so excluded from purchasing or holding Shares in accordance with this Section 9 or take such other action as may be permissible to discontinue the business relationship with such persons.

In addition to the foregoing, the Directors may redeem, repurchase, appropriate or cancel such number of Shares as is required: (i) in the event of any liability or charge to Taxation arising in respect of Shares or any Shareholder, to meet the appropriate liability or charge to Taxation of such Shareholder and to account for such appropriate tax to the relevant tax authorities; (ii) to give effect to the terms upon which Shares were issued to the Shareholder as described in the Prospectus with respect to those Shares (including, for the avoidance of doubt, any equalisation policy) and (iii) in the case of Funds that are loan originating Funds, in the event that the diversification requirements imposed by the Central Bank and set out in the relevant Supplement are breached and Shareholders do not approve the continuation of the relevant Fund at the level of diversification that has been achieved within the timeframe imposed by the Central Bank.

9.2 In addition to Section 9.1, no transfer of Shares shall be recorded on the Register if:

- (a) if in the opinion of the Directors the transfer would be unlawful or result or be likely to result in any adverse regulatory, tax or fiscal consequence or material administrative burden to the ICAV or the Shareholders;
- (b) in the absence of satisfactory evidence of the transferee's identity; or
- (c) if the transfer is a "chargeable event" giving rise to an obligation on the ICAV to deduct appropriate tax, the ICAV is satisfied that it can levy the aggregate tax on this proposed transferor by way of forfeiture of such number of Shares of the proposed transferor as are necessary to discharge such liability and unless the ICAV receives a valid Declaration from the proposed transferee.

Where disclosed in the Prospectus, the Directors shall have power (but shall not be under any duty) to impose such restrictions as they may think necessary for the purposes of ensuring



that no Shares in the ICAV are acquired or held by any person in breach of the law or requirements of any country or governmental authority.

- 9.3 Shareholders are required to notify the ICAV immediately in the event that
- (a) they become Irish Residents;
  - (b) they cease to be Exempt Investors;
  - (c) they cease to be a Qualifying Investor or hold Shares on behalf of an investor who ceases to be a Qualifying Investor;
  - (d) the Declaration made by or on their behalf is no longer valid;
  - (e) they hold Shares for the account or benefit of (i) Irish Residents; or (ii) Irish Residents who cease to be Exempt Investors and in respect of which the Declaration made on their behalf is no longer valid; or
  - (f) they otherwise hold Shares in breach of any law or regulation or otherwise in circumstances having or which may have adverse tax, fiscal, legal, regulatory, pecuniary liability or disadvantage or material administrative disadvantage to the ICAV or the Shareholders as may be set out in more detail in the Prospectus from time to time.
- 9.4 The Directors may upon an application for Shares or at any other time and from time to time require such evidence to be furnished to them in connection with the matters stated in Section 9.1 or 9.2 as they shall in their discretion deem sufficient and if such evidence is not forthcoming may refuse to accept such application or, if Shares have already been issued to any person of whom such a request is made, such person shall be deemed upon the expiration of thirty days from the making of such request, to have requested the redemption of all of his Shares whereupon if he shall have been issued with a certificate for his Shares he shall be bound to deliver the certificate to the ICAV forthwith and the Directors shall be entitled to appoint any person to sign on his behalf such documents as may be required for the purpose of the redemption. To any such redemption the provisions of Section 11 shall apply subject to Section 9.9 below and save that the deemed request to redeem the Shares may not be withdrawn notwithstanding that the determination of the relevant Net Asset Value may have been suspended under Section 12.
- 9.5 If a person becomes aware that he is holding or owning Shares in contravention of Section 9 he shall forthwith in writing request the ICAV to redeem such Shares in accordance with Section 9 or shall transfer such Shares to a person duly qualified to hold the same unless he has already received a notice under Section 9.6.
- 9.6 Where the Directors become aware that a Shareholder is holding Shares in breach of any law or regulation or otherwise in circumstances as set out under Section 9.1 above, the Directors may: (a) direct such Shareholder to dispose of the relevant Shares to a person who is qualified or entitled to own or hold the Shares or (b) redeem the Shares at the Net Asset Value per Share as at the Dealing Day immediately following the date of notification to the Shareholder.
- 9.7 If any such person upon whom such a notice is served as aforesaid does not within thirty days after such notice has been served transfer such Shares or request in writing the ICAV to redeem the Shares he shall be deemed forthwith upon the expiration of the said thirty days to have so requested the redemption of all his Shares the subject of such notice and the Directors shall be entitled to appoint any person to sign on his behalf such documents as may be required for the purpose of the redemption. To any such repurchase the provisions of Section 10 shall apply subject to Section 9.7 below and save that the deemed request to redeem the Shares may not be withdrawn notwithstanding that the determination of the relevant Net Asset Value may have been suspended under Section 12.

- 9.8 Settlement shall be effected (subject to any requisite official consents first having been obtained) by depositing the redemption monies or proceeds of sale in a bank for payment to the person entitled upon such consents being obtained. Upon deposit of such redemption monies as aforesaid such person shall have no further interest in such Shares or any of them or any claim in respect thereof except the right to claim without recourse to the ICAV the redemption monies so deposited (without interest) upon such consents being obtained.
- 9.9 Any person or persons to whom Section 9 shall apply shall indemnify the Directors, the ICAV, the AIFM, the Investment Manager, the Depositary, the Administrator and the Shareholders (each an "Indemnified Party") from any claims, demands, proceedings, liabilities, damages, losses, costs and expenses directly or indirectly suffered or incurred by such Indemnified Party arising out of or in connection with the failure of such person to comply with his obligations pursuant to this Section 9. The ICAV may apply the proceeds of any compulsory redemption contemplated under Section 9 for the purpose of discharging any taxation or withholding tax arising as a result of the holding or beneficial ownership of Shares by a Shareholder including any interest or penalties payable thereon.

## 10. REDEMPTION OF SHARES

- 10.1 Subject to the provisions of the Act and as hereinafter provided, the ICAV may redeem its own outstanding fully paid Shares of any Class at any time in accordance with the rules and procedures set out herein. The Directors have the power to determine the times on which Shares in open-ended Funds with limited liquidity will be repurchased by the ICAV together with any minimum repurchase quotes and such terms will be set out in the Prospectus. Notwithstanding this right, certain Funds may be established in accordance with Section 29 hereof with no right of redemption, subject to the requirements of the Central Bank.
- 10.2 Subject to the provisions of the Act and as hereinafter provided, a Shareholder in an open-ended Fund may, at any time irrevocably request the ICAV to redeem all or any part of his Shares at the Redemption Price for each such Share as hereinafter determined and the ICAV shall on receipt by it or by its authorised agent of such request redeem or procure the redemption of such Shares at not less than the Redemption Price provided always that any such redemption shall be effected on the following terms and conditions:
- (a) a request for redemption of Shares shall be in such form as the ICAV shall prescribe and shall be delivered by the Shareholder to the Office or to such office of such person from time to time designated by the ICAV as its agent for the redemption of Shares on or before such time as shall from time to time be designated by the Board whether on or prior to the relevant Dealing Day and shall be accompanied by such proper evidence as the Directors may at their absolute discretion require in relation to succession or assignment, if applicable;
  - (b) save for closed ended funds (details which are set out in section 29) or open ended funds with limited liquidity redemption facilities will be provided on at least a quarterly basis and, upon request, the ICAV will redeem at least 10% of its Net Asset Value on a monthly basis or 25% of its Net Asset Value on a quarterly basis (the "**Specified Percentage**").
  - (c) subject as hereinafter provided the Shareholder shall not be entitled to revoke or withdraw a request for redemption of his Shares duly given in accordance with this Section 10.2;
  - (d) the redemption of Shares pursuant to this Section 10.2 shall be effected on the Dealing Day following the day on which the redemption request is delivered in accordance with (a) above or on such other day as the Directors may determine and specify in the Prospectus or on such other Dealing Day as the Directors at the request of such Shareholder may in their absolute discretion agree provided that all Shareholders are notified in advance of such additional Dealing Day. Redemption requests received by or on behalf of the ICAV up to such time on a Dealing Day as the Directors may determine shall, unless the Directors determine otherwise, be

deemed to have been received on that Dealing Day. Such redemption requests as are received by or on behalf of the ICAV after such time on a Dealing Day as the Directors may determine shall be deemed to have been received by or on behalf of the ICAV on the following Dealing Day;

- (e) the Redemption Proceeds (less an appropriate provision for Duties and Charges in respect of the Shares being redeemed) shall be dispatched to the Shareholder by the ICAV or its duly authorised agent within such number of Dealing Days after the day on which redemption of the relevant Shares is effected as the Directors may determine and as shall be specified in the Prospectus and which will not, in the case of open-ended funds, be greater than 90 calendar days (95 calendar days in respect of the Funds that invest in Underlying Funds) from the dealing deadline;
- (f) any amount payable to a Shareholder in connection with the redemption of Shares under this Section 9.3 shall be paid in the Base Currency of the relevant Shares or in such other currency as the Directors shall have determined as appropriate at the rate of exchange for conversion on the date of payment provided that the certificate of the Directors as to the conversion rate applicable and as to the cost of conversion shall be conclusive and binding on all persons and provided further that the cost of conversion, if any, shall be debited from the converted payment and any such amount shall unless otherwise agreed with the ICAV or its duly authorised agent be paid by electronic bank transfer to the account designated by the relevant Shareholder;
- (g) if the determination of the Net Asset Value per Share is suspended on any Valuation Day by reason of a declaration or notice by the Directors pursuant to Section 12.4 hereof the right of the applicant Shareholder to have his Shares redeemed pursuant to this Section 10.2 shall be similarly suspended and during the period of suspension he may, with the approval of the ICAV, withdraw the request for redemption of his Shares (if any). Any withdrawal of a request for redemption under the provisions of this Section 10.2 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 the redemption of the Shares shall be made on the Dealing Day next following the end of the suspension or on such other Dealing Day following the end of the suspension as the Directors at the request of the applicant may agree;
- (h) on a redemption of Shares, the ICAV shall be entitled to charge a redemption fee of up to 5.00% of the Net Asset Value per Share in an amount and on such terms as may be determined by the Directors with the approval of the Depositary and disclosed in the Prospectus; and
- (i) any amount payable to a Shareholder in connection with the redemption or purchase of Shares under this Section 10.2 may, at the discretion of the Directors and with the consent of the Shareholder concerned, be paid by the transfer to such Shareholder of the assets of the ICAV in specie, provided that the nature of the assets and the type of assets to be transferred to each Shareholder shall be determined by the Directors on such basis as the Directors in their sole discretion shall deem equitable and not prejudicial to the interests of the remaining Shareholders, and for the foregoing purposes the value of assets shall be determined on the same basis as used in calculating the Redemption Price of the Shares being so repurchased subject to the approval of the Depositary.

10.3 Shares which are redeemed by the ICAV shall be cancelled.

10.4 The Redemption Price for a Share shall be the Net Asset Value per Share as at the Valuation Point on or with respect to the relevant Dealing Day (as determined in accordance with Section 12) less such sum as the Directors in their absolute discretion, may from time to time determine as an appropriate provision for Duties and Charges in relation to realisation or cancellation of the Share to be redeemed as at the relevant Valuation Point and subject

always to the resulting total being rounded to 4 decimal places or such other number as may be determined by the Directors.

- 10.5 Upon the redemption of Shares being effected pursuant to this Section 9.3, the applicant Shareholder shall cease to be entitled to any rights in respect thereof (excepting always the right to receive a dividend which has been declared in respect thereof prior to such redemption being effected) and accordingly his name shall be removed from the Register with respect thereto and such Shares shall be treated as cancelled and the amount of the issued share capital shall be reduced accordingly.
- 10.6 If any Shareholder requests the redemption of Shares equal to 5% or more (as may be stated in the Prospectus) of the Net Asset Value of the Shares in issue in any Fund on any Dealing Day, the Directors may in their absolute discretion, distribute underlying investments equivalent to the value of the Shareholder's Shares rather than cash which action shall be in good faith, provided that any such distribution shall not materially prejudice the interest of other Shareholders and provided further that the asset allocation is subject to the approval of the Depository. In such circumstances, the Shareholder will have the right to instruct the Directors to procure the sale of such underlying investments on its behalf in which case the Shareholder will receive the proceeds net of all fiscal duties and charges incurred in connection with the sale of such underlying investments. If any Shareholder requests the redemption of Shares below 5% of the Net Asset Value of the Shares in issue in any Fund on any Dealing Day, the Directors may in their absolute discretion and with the consent of the redeeming Shareholder distribute the underlying investment equivalent to the value of the Shareholder's Shares rather than cash which action shall be in good faith, provided that any such distribution shall not materially prejudice the interest of other Shareholders and provided further that the asset allocation is subject to the approval of the Depository.
- 10.7 If outstanding redemption requests in any open-ended Fund from Shareholders on any Dealing Day aggregate to an amount in excess of the Specified Percentage (as described at Section 10.2(b)) of the Net Asset Value of all of the Shares in issue on any Dealing Day, the Directors shall be entitled subject to the terms of the Prospectus to refuse to redeem such number of Shares in any Fund in issue on that Dealing Day (as discussed at Section 10.2(b)) in respect of which redemption requests have been received in excess of Specified Percentage (as discussed at Section 10.2(b)) as the Directors shall determine. If the Directors refuse to redeem Shares for these reasons, the requests for redemption shall be reduced rateably and the Shares to which each redemption request relates which are not redeemed shall be redeemed on each subsequent Dealing Day in priority to any request received thereafter, provided that the ICAV shall not be obliged to redeem more than Specified Percentage outstanding on any Dealing Day, until all the Shares to which the original request related have been redeemed. A Shareholder may withdraw his redemption request by notice in writing to the Administrator if the Directors exercise their discretion to refuse to redeem any Shares to which the request relates.
- 10.8 If outstanding redemption requests in any open-ended Fund with limited liquidity aggregate to an amount in excess of the percentage disclosed in the prospectus (which may be applied on an individual Shareholder basis instead of, or in addition to, an aggregate redemption amount within a Fund) the Directors shall be entitled subject to the terms of the Prospectus to refuse to redeem such number of Shares in any Fund in issue on that Dealing Day in respect of which redemption requests have been received in excess of such percentage as the Directors shall determine. If the Directors refuse to redeem Shares for these reasons, the requests for redemption shall be reduced rateably and the Shares to which each redemption request relates which are not redeemed shall be redeemed on each subsequent Dealing Day in priority to any request received thereafter, provided that the ICAV shall not be obliged to redeem more than the percentage disclosed in the Prospectus outstanding on any Dealing Day, until all the Shares to which the original request related have been redeemed. A Shareholder may withdraw his redemption request by notice in writing to the Administrator if the Directors exercise their discretion to refuse to redeem any Shares to which the request relates.

- 10.9 Requests for redemption which have been carried forward from an earlier Dealing Day pursuant to this Instrument shall (subject always to the foregoing limits) be complied with in priority to later requests.
- 10.10 If a redemption of Shares by the ICAV would result in the issued share capital of the ICAV falling below such minimum amount as the ICAV may be obliged from time to time to maintain pursuant to any applicable statute or law the ICAV shall be entitled to defer the redemption of the minimum number of Shares sufficient to ensure compliance by the ICAV with the applicable statute or law. Redemption of such Shares may be deferred until such time as the ICAV is being wound up, or until the ICAV procures the issue of sufficient Shares to ensure that the redemption can be effected. The Directors shall be entitled to select the Shares in respect of which redemption is to be deferred in accordance with this Section 10.10 in such manner as shall appear to the Directors, with the approval of the Depository, to be fair and reasonable.
- 10.11 Where satisfaction of a redemption request would result in a Shareholder holding a number of Shares in the ICAV less than or with a value less than the Minimum Holding for the ICAV, the Directors shall be entitled, at their discretion, to treat the application for redemption as an application for the redemption of all of that Shareholder's Shares in the ICAV, unless the Directors otherwise determine.
- 10.12 Where provided for in the Prospectus, the Directors may, when calculating the price at which shares may be redeemed, (the "**Redemption Price**") Price, on any Dealing Day when there are net redemptions, adjust the Redemption Price by deducting an anti-dilution levy to cover dealing costs and to preserve the value of the underlying assets of the ICAV.
- 10.13 Where the ICAV has redeemed any Debentures then:
- (a) unless any provision to the contrary, whether express or implied, is contained in the Instrument or in any contract entered into by the ICAV, or
  - (b) unless the ICAV has, by passing a resolution to that effect or by passing a resolution to that effect or by some other act, shown its intention that Debentures shall be cancelled,
- the ICAV shall have the power to re-issue the Debentures by re-issuing the same Debentures or by issuing other Debentures in their place.
- The ICAV has the right to compulsorily redeem all or some of the Shares held by a Shareholder at the Net Asset Value per Share less Duties and Charges as at the Valuation Point immediately prior to the date such redemption is to take effect if the Directors shall determine in their absolute discretion to do so.
- 10.14 In the case of closed-ended Funds that are loan originating Funds, a redemption request may be accepted and distributions may be made during the life of the loan originating Fund to the extent that there is unencumbered cash or liquid assets available for distribution or redemption purposes and that such distributions or redemptions will not endanger the regulatory compliance or liquidity related obligations of the loan originating Fund (or as otherwise may be permitted by the Central Bank). Unless the assets of the loan originating Fund are valued by reference to prevailing market prices, a redemption request cannot be accepted without the approval of Shareholders by way of a Special Resolution.
- 10.15 Any Fund established that offers redemptions on a less than quarterly basis (or such other timeframe indicated by the Central Bank) or provides for a period of more than 90 days (or such other timeframe indicated by the Central Bank) between the Dealing Deadline and the payment of the Redemption Price will be classified as "Open-Ended with limited liquidity".

## **11. TOTAL REDEMPTION**

- 11.1 The ICAV may redeem all (but not some) of the Shares of the ICAV or the Shares of any Class or of any Fund then in issue upon the occurrence of any of the events set out in Section 36 and/or in any circumstances as may be set out in the Prospectus and/or where the Directors believe it is in the best interests of the Shareholders.
- 11.2 The redemption of the Shares by the ICAV pursuant to this Section 11 shall be effected at the Redemption Price calculated in accordance with Section 11.3 hereof and for the purposes of the calculation of the said Redemption Price the day on which the Shares are repurchased shall be the relevant Dealing Day for the purposes of Section 11.3 hereof.
- 11.3 The Redemption Price per Share at which Shares shall be redeemed by the ICAV pursuant to this Section 11 shall be the Net Asset Value per Share as at the Valuation Day immediately prior to the relevant Dealing Day (as determined in accordance with Section 12.1 less such sum as the Directors in their absolute discretion may from time to time determine as an appropriate provision for Duties and Charges in relation to the realisation or cancellation of the Share to be repurchased and subject always to the resulting total being adjusted up to the nearest unit of the currency in which such Shares are designated where the amount so determined is equal to or greater than half of the relevant unit or down to the nearest unit where the said amount is less than half of that unit (A "unit" for these purposes being the smallest fraction of the relevant currency which is legal tender in the country of issue of that currency).
- 11.4 If all the Shares are to be redeemed as aforesaid, redemption proceeds may be paid by way of distribution in specie where the Shareholders so resolve by way of Special Resolution by dividing amongst the Shareholders in specie all or part of the assets of the ICAV according to the number of the Shares then held by each person holding Shares; provided, however that if a Shareholder so requests, the Directors shall liquidate or otherwise dispose of the assets and distribute the cash proceeds thereof, net of liabilities, to such Shareholder instead of a distribution of assets in specie.
- 11.5 If all the Shares are to be repurchased as aforesaid and the whole or any part of the business or property of the ICAV or any of the assets of the ICAV are proposed to be transferred or sold to another company or investment vehicle (hereinafter called the "Transferee") the Directors may, with the sanction of a Special Resolution conferring either a general authority on the Directors or an authority in respect of any particular arrangement, receive in compensation or part compensation for such transfer or sale shares, units, policies or other like interests or property in or of the Transferee for distribution among the 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.

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

- 12.1 The Net Asset Value of each Fund, or each Class of Shares, shall be determined in accordance with the following provisions unless otherwise provided for in the Prospectus or relevant Supplement which may include alternative or additional valuation principles to those provided herein to the fullest extent permitted in accordance with the Central Bank's requirements.
- 12.2 In calculating the Net Asset Value attributable to each Fund or Class:
- (a) where Investments have been agreed to be purchased or sold but such purchase or sale has not been completed, such Investments shall be included or excluded and the gross purchase or net sale consideration excluded or included as the case may require as if such purchase or sale had been duly completed;
  - (b) in the case of the Valuation Day and Dealing Day falling upon the same date, every Share agreed to be issued or allotted but not issued by a Fund on the relevant

Valuation Day shall be deemed to be in issue and the assets of the Fund shall be deemed to include any cash or other property in the hands of the Depositary and any amounts of any cash or other property to be received in respect of such Share;

- (c) in the case of the Valuation Day and Dealing Day falling upon different dates, every Share agreed to be issued or allotted but not issued by a Fund on the relevant Valuation Day shall be deemed not to be in issue and the assets of the Fund shall be deemed to include any cash or other property in the hands of the Depositary and shall not include any amounts of any cash or other property to be received in respect of such Share;
- (d) any redemption monies payable to an investor subsequent to the Dealing Day of a Fund as of which Shares of that investor were redeemed and such redemption is completed will not be taken into account as an asset of the Fund for the purpose of determining the Net Asset Value of that Fund;
- (e) any dividend 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 with effect from the date upon which such dividend becomes payable. there shall be added to a Fund's assets any actual or estimated amount of any Taxation of a capital nature which may be recoverable by the ICAV;
- (f) there shall be added to a Fund's assets a sum representing any interest or dividends or other income accrued but not received in respect of such assets;
- (g) there shall be added to a Fund's assets the total amount (whether actual or estimated) of any claims for repayment of any Taxation levied on income of a Fund and for double Taxation relief in relation to the assets of the Fund;
- (h) there shall be added to a Fund's assets, the total amount (whether actual or estimated) of any realised and/or unrealised gains of the Fund in respect of such assets; and
- (i) there shall be added to a Fund's liabilities, the total amount (whether actual or estimated) of any realised and/or unrealised losses of the Fund in respect of such assets.

The Net Asset Value per Share with respect to a Series of a Fund initially will be equal to the Net Asset Value per Share of such Series as of the date of its creation. The various Series will be issued at different dates and accordingly the Net Asset Value per Share of one Series will differ from the Net Asset Value per Share of another Series. The Net Asset Value per Share for each Series within each Class (prior to any applicable Performance Fee or Performance Allocation accrual) is determined by attributing in each Performance Period any appreciation or depreciation of the Net Asset Value of the relevant Fund among the different Series pro rata in accordance with the Net Asset Value of each class at the beginning of the applicable Performance Period, prior to any year-to-date accrued Performance Fee or Performance Allocation, if applicable, and then dividing the Net Asset Value of such Class by the number of outstanding Shares therein. Shares within a Series will have the same Net Asset Value per Share. The portion of the Performance Fee or Performance Allocation, if applicable, accrued to a particular Series, including without limitation, any Side Pocket Classes will then be debited against the Net Asset Value of that Class.

### 12.3

- (a) Values expressed in a currency other than the Base Currency will be converted into the Base Currency at the latest available exchange rate as determined by the Administrator as of the relevant Valuation Day:

- (b) in calculating the number of Shares in issue:
  - (i) every Share agreed to be issued or allotted but not issued by the ICAV on the Valuation Day shall be deemed to be in issue; and
  - (ii) where notice of a reduction of the share capital by cancellation of Shares has been given by the Directors to the Administrator but such cancellation has not been completed prior to or on the relevant Valuation Day, the Shares to be cancelled shall be deemed not to be in issue unless the Valuation Day and Dealing Day fall upon different dates in which case such Shares to be cancelled shall be deemed to be in issue and the Net Asset Value of the Fund or Class shall not be reduced by the amounts payable in respect of such redemption..

#### 12.4 Temporary Suspension of Dealings

The Directors, the AIFM or the External Valuer may at any time temporarily suspend the determination of the Net Asset Value of any Fund or Class and the issue, redemption or conversion of Shares of any Fund or Class during the whole or any part of the period:

- (a) any period during which one or more underlying funds of a Fund has suspended the determination of its or their Net Asset Value(s) and/or has suspended redemptions or withdrawals and/or has imposed liquidity constraints which are then continuing;
- (b) any period when any Recognised Market on which a substantial portion of the Investments are quoted, listed, traded or dealt in is closed otherwise than for customary weekend or ordinary holidays, or during which dealings in any such Recognised Market are restricted or suspended or trading on any relevant futures exchange or market is restricted or suspended;
- (c) any period when, as a result of political, military, economic or monetary events or other circumstances beyond the control, responsibility and power of the Directors, the disposal or valuation of Investments cannot, in the opinion of the Directors, be effected or completed normally or without prejudicing the interests of Shareholders or if the Net Asset Value cannot be fairly calculated or if such disposal would be materially prejudicial to the Shareholders in general;
- (d) any breakdown in the means of communication normally employed in determining the value of any Investments or during any period when for any other reason the value of Investments cannot, in the opinion of the Directors, be promptly or accurately ascertained;
- (e) any period when a Fund is unable to repatriate funds for the purposes of making redemption payments or during which the realisation of Investments, or the transfer or payment of the funds involved in connection therewith cannot, in the opinion of the Directors, be effected at normal prices or normal rates of exchange;
- (f) any period when in which the redemption of Shares would, in the opinion of the Directors, result in a violation of applicable laws;
- (g) any period where any emergency exists as a result of which disposal by the ICAV of Investments which constitute a substantial portion of the assets of any Fund is not practically feasible;
- (h) any period in which notice has been given to Shareholders of a resolution to wind up a Fund; or
- (i) during any period when the Directors consider it to be the best interests of the Funds or Shareholders, provided always that no such suspension may be effected in circumstances where such determination, issue, redemption or conversion is required



by a lender (or agent or trustee on behalf of any lender) in connection with any loan or other credit afforded to the ICAV or any security granted by the ICAV in connection with such loan or credit.

- 12.5 Details of any such suspension will also be notified to all Shareholders who have requested issue or redemption of Shares of any class or exchange of Shares of one class to another in such manner as may be directed by the Directors. Notice of any such suspension shall be provided without delay and in any event within the working day on which such suspension took effect to the Central Bank and any other competent authority. Where possible, reasonable steps will be taken to bring any period of suspension to an end as soon as possible. Shareholders who have requested the issue or redemption of Shares of any class will have their subscription or redemption request dealt with on the first Valuation Day after the suspension has been lifted unless applications or redemptions requests have been withdrawn prior to the lifting of the suspension.

### **13. VALUATION OF ASSETS**

- 13.1 Valuation will be carried out as often as each Fund deals and at least once a year for Funds which are open-ended with limited liquidity or closed-ended. The value of the assets of a Fund shall be determined as follows and in accordance with valuation methodology set out in the Prospectus or according to such alternative method of valuation in relation to any particular asset as the AIFM or the External Valuer consider appropriate if the AIFM considers that the method of valuation herein provided for does not provide a fair or appropriate valuation of that asset and that the proposed alternative method of valuation will not materially prejudice shareholders.

- 13.2 The assets of the ICAV and each of the Funds shall be deemed to include inter alia:

- (a) Subscription monies receivable for Shares allocated, all cash in hand, on deposit, or on call including any interest accrued thereon and all accounts receivable;
- (b) All bills, demand notes, certificates of deposit and promissory notes;
- (c) All bonds, forward currency transactions, time notes, shares, stock, convertibles, units of or participation in collective investment schemes, debentures, debenture stock, subscription rights, warrants, futures contracts, option contracts, swap contracts, contracts for difference, fixed rate securities, floating rate securities, securities in respect of which the return and/ or repurchase amount is calculated by reference to any index, price or rate, financial instruments and other investments and securities owned or contracted for in respect of the ICAV, other than rights and securities issued by it;
- (d) All stock and cash dividends and cash distributions to be received in respect of the Fund and not yet received by the ICAV but declared to stockholders on record on a date on or before the day as of which the Net Asset Value is being determined;
- (e) All interest accrued on any interest in loans or loan participations interest-bearing securities owned by the ICAV except to the extent that the same is included or reflected in, the principal value of such loan or security;
- (f) All other Investments of a Fund;
- (g) The establishment costs attributable to the ICAV and the cost of issuing and distributing Shares of the ICAV insofar as the same have not been written off; and
- (h) All other assets of each Fund of every kind and nature including prepaid expenses as valued and defined from time to time by the Directors, the AIFM or the External Valuer.

13.3 The AIFM or External Valuer must ensure that the Prospectus discloses the method of valuation (if any) will be availed of. The Prospectus may provide for different methods or amend the methods set out here.

13.4 The liabilities of the ICAV shall be deemed to include any and all actual or estimated liabilities of whatsoever nature of the ICAV (except liabilities taken into account in determining the value of the assets of the ICAV under Section 13.2 above) including, without limitation to the generality of the foregoing:

- (a) all administrative and professional fees and expenses payable and/or accrued including, without prejudice to the generality of the foregoing, all remuneration, fees, costs and expenses payable by the ICAV and/or accrued and/or estimated to be payable by the ICAV to the Depositary, the Administrator, the Investment Manager, the Investment Advisor and the legal advisors of the ICAV and to any other person, firm or corporation providing services to the ICAV and all other projected expenses (including any operational expenses) as the Directors, the AIFM or the External Valuer consider fair and reasonable and properly payable out of the assets of the ICAV and all value added tax chargeable, if any, in respect of the provision of any of the foregoing services to the ICAV;
- (b) any and all outstanding borrowings and all accrued interest payable thereon including without limitation and all costs, fees and other amounts payable in connection therewith, without prejudice to the generality of the foregoing, an amount representing the aggregate maximum amount payable by the ICAV in respect of any debentures, debenture stock, loan stock, loan notes, bonds or other debt obligations created or issued by the ICAV;
- (c) all bills, notes and accounts payable;
- (d) all expenses payable and/or accrued (the latter on a day-to-day basis);
- (e) all known liabilities, including the amount of any unpaid interest distribution declared upon the Shares in a Fund, contractual obligations for the acquisition of investments or other property for the payment of money and outstanding payments on any Shares previously redeemed;
- (f) the total amount of any actual or estimated liabilities for any and all tax of whatsoever nature and howsoever arising on the income or deemed income and realised capital gains of the Fund as at the relevant Valuation Day;
- (g) the total amount of any actual or estimated liabilities for withholding tax (if any) payable on any of the Investments in respect of the current Accounting Period;
- (h) an appropriate provision for all taxes and contingent liabilities as determined from time to time by the Directors, the AIFM or the External Valuer;
- (i) all other liabilities of the Fund of whatsoever kind and nature except liabilities represented by Shares in the ICAV; and
- (j) the total amount (whether actual or estimated by the Directors, the AIFM or the External Valuer) of any other liabilities properly payable out of the assets of the Fund.

In determining the amount of such liabilities, the Directors, the AIFM or the External Valuer may calculate administrative and other expenses of a regular or reoccurring nature on an estimated figure for yearly or other periods in advance and accrue same in equal proportions over any such period.

13.5 Without prejudice to their general powers to delegate their functions, the AIFM may delegate any of their functions in relation to the calculation of Net Asset Values and Net Asset Values per Share, to the Administrator. In the absence of bad faith or manifest error, every decision

taken by the AIFM or any duly authorised person on behalf of the ICAV in calculating a Net Asset Value or Net Asset Value per Share, shall be final and binding on the ICAV and on present, past and future Shareholders.

13.6 In calculating the Net Asset Value, the following principles will apply

- (a) The AIFM or an External Valuer shall be entitled to value the assets of any Fund using the amortised cost method of valuation. Where an amortised cost valuation method is utilised, an Investment is valued at its cost of acquisition adjusted for amortisation of premium or accretions of discount rather than at current market value:
  - (i) the amortised cost method of valuation may only be used in relation to Funds which comply with the Central Bank's requirements for money market funds and where a review of the amortised cost valuation vis-a-vis market valuation will be carried out in accordance with the Central Bank's guidelines;
  - (ii) money market instruments in a non-money market fund may be valued on an amortised basis in accordance with the Central Bank's requirements.
- (b) In the case of Funds that are loan originating funds, the AIFM or an External Valuer will value loans and/or participations in loans at fair value based upon the principles and methods of valuation adopted by the AIFM or an External Valuer. Where market quotations are not available (and it is expected that market values for loans and/or participations in loans in which a Fund invests will not typically be readily available), an income approach will be utilised by the AIFM or an External Valuer which will employ a valuation methodology to convert future cash flows or earnings to a single current (discounted) amount. This valuation methodology will take account of a range of factors including:
  - (i) comparable market multiples;
  - (ii) the value of the collateral for the loan and the security interest to that collateral;
  - (iii) the ability of a company or other issuer in which a Fund makes an Investment (a "Portfolio Company"), to service its debt; and
  - (iv) analysis of the Portfolio Company's financial ratios and results, the market conditions in its market, sector and/or industry, and a comparison against similar metrics of the Portfolio Company's peers;
- (c) the value of an Investment which is quoted, listed or normally dealt in on a Recognised Market, shall (save in the specific cases set out in paragraphs (i), (ii) and (iii) below or as otherwise set out in the Prospectus or the relevant Supplement) be the latest available quoted price on such Recognised Market as at the Valuation Point, provided that:
  - (i) if an Investment is quoted, listed or normally dealt in on more than one Recognised Market, the relevant Recognised Market shall be the Recognised Market from which the Investment was purchased unless the AIFM or External Valuer determines, on the date of purchase, an alternate Recognised Market provides the fairest criteria of value for the Investment and will notify the Administrator accordingly, in which case such alternate Recognised Market shall be treated as the relevant Recognised Market; and
  - (ii) in the case of any Investment which is quoted, listed or normally dealt in on a Recognised Market but in respect of which for any reason, prices on that market may not be available at any relevant time, or, in the opinion of the AIFM or the External Valuer, may not be representative, the value therefor

shall be the probable realisation value thereof estimated with care and in good faith by the AIFM or the External Valuer;

- (iii) in the case of any Investment which is quoted, listed or normally dealt in on a Recognised Market but which was acquired or traded at a premium or at a discount outside or off the relevant Recognised Market, the level of premium or discount at the date of the valuation may be taken into account when valuing such Investment; and
- (d) the value of any Investment which is not quoted, listed or normally dealt in on a regulated market or in respect of which the AIFM or External Valuer determine that the latest available market quotation is not representative of its fair market value, shall be valued at its probable realisation value as determined by the AIFM or External Valuer with care and in good faith;
- (e) the value of any Investment which is a unit of or participation in a collective investment scheme shall be calculated at the latest available net asset value of such unit/participation or if bid and offer prices are published, the mid price or, if listed or traded on an exchange, in accordance with (c) above or if unavailable and if appropriate in the opinion of the AIFM or the External Valuer, the estimated net asset value per unit/participation as provided by the relevant scheme or if unavailable at its probable realization value estimated with care and in good faith by the AIFM or the External Valuer. Unless otherwise disclosed in the Prospectus, where estimated values are used, these shall be final and conclusive notwithstanding any subsequent variation in the net asset value of the relevant scheme. In addition, if events have occurred which may have resulted in a material negative change in the net asset value of such shares or units since the date on which the last net asset value was calculated, the value of such shares or units may be adjusted in order to reflect, in the reasonable opinion of the AIFM or the External Valuer, such negative change of the relevant scheme;

13.7 The assets of each Sub-Fund will be valued as follows:

- (a) cash deposits and similar investments shall be valued at their face value together with accrued interest unless in the opinion of the AIFM or the External Valuer any adjustment should be made to reflect the fair value thereof. The value of any cash on hand or on deposit, bills and demand notes and accounts receivable, prepaid expenses, cash dividends and interest declared or accrued and not yet received is deemed to be the full amount thereof, unless in any case the same is unlikely to be paid or received in full, in which case the value thereof is arrived at after making such discount as may be considered appropriate in such case to reflect the true value thereof.;
- (b) the value of derivative instruments traded on a Recognised 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 the AIFM or an External Valuer 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 EU Regulation 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.
- (c) 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;

- (d) In the case of a private equity/venture capital Fund, and except where otherwise provided in the Prospectus, the value of any private equity/venture capital investment made by such a Fund shall be determined by the AIFM or the External Valuer in its reasonable discretion in accordance with the International Private Equity and Venture Capital Valuation Guidelines ("IPEV") as adopted by the European Private Equity and Venture Capital Association ("EVCA") (or any replacement thereof endorsed by EVCA);
- (e) Property will be valued as of the Valuation Point for each Dealing Day in every year, or such other Valuation Point as the AIFM or the External Valuer may in its discretion decide taking account of market conditions, in the following manner:
- (i) full valuations will be carried out on an annual basis as at a Valuation Point (with desktop valuations for each additional valuation within the relevant annual period where there is more than one Valuation Point per year) by by one of the AIFM or the External Valuer or the Independent Valuer in accordance with guidelines published by (in Ireland) the Royal Institute of Chartered Surveyors (RICS) Appraisal and Valuation Standards (application in Ireland), i.e. the Red Book, (in the United Kingdom), the RICS Appraisal and Valuation Standards, i.e. the Red Book, (in all other countries), the RICS Appraisal and Valuation Standards with relevant applications in each country or if such standards do not exist in a given country, the valuation standards formulated and published by the International Valuation Standards Committee, all as may be amended from time to time; where a counterparty valuation is used, it must be provided on at least a monthly basis and approved or verified at least monthly by a party independent of the counterparty, which may be the AIFM or the External Valuer;
  - (ii) when a valuation is carried out, the AIFM, the External Valuer or the Independent Valuer must issue a signed and dated valuation identifying the Property and stating:
    - (A) market value of the Property;
    - (B) market rental value of the Property;
    - (C) aggregated rental income;
    - (D) extent to which it is occupied;
    - (E) for development properties, the extent to which any allowance has been made in the valuation for any agreed sale or guaranteed rental when the development is completed.
  - (iii) Where negotiations have been entered into to buy, sell or develop land or buildings, these will be disregarded unless there is a legally binding agreement;
  - (iv) Properties will be valued at open market value;
  - (v) Included in the valuation are reasonable estimates of costs which would be incurred by the ICAV in disposing of a Property, such as commissions and legal fees which shall be at normal commercial rates;
- (f) notwithstanding any of the foregoing sub-paragraphs, the AIFM or the External Valuer may adjust the value of any Investment or permit some other method of valuation to be used if, having regard to currency, applicable rate of interest, maturity, marketability and/or such other considerations as it may deem relevant, it considers that such adjustment is required to reflect the fair value thereof;

- (g) notwithstanding any of the foregoing paragraphs, the AIFM or the External Valuer may adjust the value of any Investment or permit some other method of valuation to be used if, having regard to currency, applicable rate of interest, maturity, marketability and/or such other considerations as it may deem relevant, it considers that such adjustment is required to reflect the fair value thereof;
  - (h) if in any case a particular value is not ascertainable as above provided or if the AIFM or the External Valuer shall consider that some other method of valuation better reflects the fair value of the relevant Investment then in such case the method of valuation of the relevant Investment shall be such as the Directors, the AIFM or the External Valuer shall decide;
  - (i) values of assets and liabilities expressed in a currency other than the Base Currency of the relevant Fund will be converted by the Administrator into the Base Currency of the ICAV at the latest available exchange rate at the Valuation Point;
  - (j) notwithstanding the foregoing, where at any time of any valuation any asset of the ICAV has been realised or contracted to be realised there shall be included in the assets of the ICAV in place of such asset the net amount receivable by the ICAV in respect thereof provided that if such amount is not then known exactly then its value shall be the net amount estimated by the AIFM or the External Valuer as receivable by the ICAV;
  - (k) the AIFM or the External Valuer, may, in order to comply with any applicable accounting standards, present the value of any assets of the ICAV in financial statements to Shareholders in a manner different to that set out in this Instrument;
  - (l) in determining the value of the assets there shall be added to the assets any interest or dividends accrued but not received and any amounts available for distribution but in respect of which no distribution has been made and there shall be deducted from the assets all liabilities accrued unless the Administrator has been notified by the AIFM that such interest or dividend is likely to be withheld or otherwise remain unpaid on the due date; and
  - (m) notwithstanding the foregoing, where at any time of any valuation any asset of the ICAV has been realised or contracted to be realised there shall be included in the assets of the ICAV in place of such asset the net amount receivable by the ICAV in respect thereof provided that if such amount is not then known exactly then its value shall be the net amount estimated by the AIFM or the External Valuer as receivable by the ICAV.
- 13.8 In valuing the assets, the AIFM or the relevant External Valuer as applicable, may in their absolute discretion, permit any other method of valuation to be used if they consider that such alternative method of valuation is necessary and better reflects value in accordance with good accounting practice or in a particular market or prevailing market conditions and is in accordance with the valuation policy of the ICAV.
- 13.9 The value of an Investment may be adjusted by the AIFM where such an adjustment is considered necessary to reflect its fair value estimated with care and good faith by the AIFM or the relevant External Valuer, in the context of currency, marketability, dealing costs and/or such other considerations which are deemed relevant. The rationale for adjusting the value must be clearly documented.
- 13.10 Every decision taken by the AIFM or any duly authorised person on behalf of the AIFM in calculating the Net Asset Value of a Fund or Class or the Net Asset Value per Share shall be final and binding on the ICAV and on present, past or future Shareholders.
- 13.11 Any variation from the methods used to value the assets of a Fund shall be explained and justified (including the reason for the change of the methods, and details on the new methods and the rationale for using them). If required the Directors shall ensure that the Prospectus is

updated accordingly, and if they deem appropriate, procure that Shareholders are notified of such variation(s). The variations and justifications for same shall also be documented in an updated version of the AIFM's valuation policies and procedures.

- 13.12 The method of valuation to be used for each asset of the Fund(s) will be outlined in the Prospectus. The Prospectus may provide for different methods or amend the methods set out here.

#### **14. TRANSFER AND TRANSMISSION OF SHARES AND DEBENTURES**

- 14.1 A Shareholder shall be entitled to transfer or dispose of his Shares in the ICAV or Debentures of the ICAV to any person at such price and upon such terms as he sees fit provided always that a Shareholder shall not be entitled to transfer his Shares and Debentures, except with the consent of the Directors or to a person otherwise disqualified from holding Shares under the terms of this Instrument or otherwise disqualified as a result of any law or regulation of any country or government/authority.
- 14.2 No transfer of Performance Allocation Shares may be effected without the prior written consent of the ICAV.
- 14.3 Subject to the requirements of the Central Bank, all transfers of Shares and Debentures shall be effected by transfer in writing in any usual or common form or in any other form as is required to prove the right of the transferor to the transfer the Shares or Debentures approved by the Directors from time to time and every form of transfer shall state the full name and address of the transferor and transferee.
- 14.4 The instrument of transfer of a Share or Debenture shall be signed by or on behalf of the transferor and if applicable by the transferee and shall be delivered to the ICAV so that the transferee is entitled to enter the transfer in the Register. The transferor shall be deemed to remain the holder of the Share or Debenture until the name of the transferee is entered in the Register in respect thereof.
- 14.5 The Directors may from time to time specify a fee for the registration of instruments of transfer provided that the maximum fee may not exceed 5% of the Net Asset Value of the Shares subject to the transfer on the Dealing Day immediately preceding the date of the transfer.
- 14.6 The Directors may decline to register any transfer of Shares or Debentures unless the instrument of transfer is deposited at the Office or such other place as the Directors may reasonably require, and such other evidence as the Directors may reasonably require to show the right of the transferor to make the transfer and to show the identity of the transferee and the Directors may decline to register a transfer of Shares or Debentures:
- (a) in the absence of satisfactory evidence that the proposed transferee is not and will not be holding units on behalf of, directly or indirectly, a disqualified person or if the transfer is in breach of U.S. securities laws;
  - (b) if in the opinion of the Directors the transfer would be unlawful or result or be likely to result in any adverse legal regulatory, pecuniary, tax or fiscal consequences or material administrative burden to the ICAV or the Shareholders as a whole;
  - (c) all applicable taxes and/or stamp duties have not been paid in respect of the instrument of transfer;
  - (d) in the absence of satisfactory evidence of the transferee's identity;
  - (e) if the ICAV would be required to comply with any registration or filing requirements in any jurisdiction with which it would not otherwise be obliged to comply;
  - (f) where the ICAV is required to redeem, appropriate or cancel such number of Shares as is required to meet the appropriate tax of the Shareholder on such transfer.

- (g) if the proposed transferee has not certified in writing to the ICAV or its delegate that it is a Qualifying Investor and that it is aware of the risk involved in investment in the ICAV and of the fact that inherent in the investment is the potential to lose all of the sum invested;
- (h) the proposed transfer would result in a contravention of any provision of the Instrument or would produce a result inconsistent with any provision of the Prospectus;
- (i) if the transferee, if not an existing Shareholder, has not completed an application form as specified in the Prospectus to the satisfaction of the Directors; or
- (j) where the Directors believe, in their discretion, that it is in the best interests of the ICAV or the Shareholders to do so.

A proposed transferee may be required to provide such representations, warranties or documentation as the Directors may require in relation to the above matters.

- 14.7 The ICAV shall give the transferee written notice of any refusal to register a transfer of Shares or Debentures. The ICAV is not required to register a transfer or give notice to any person of a refusal to register a transfer where registering the transfer or giving 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 the State).
- 14.8 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.
- 14.9 All instruments of transfer which shall be registered shall be retained by the ICAV, but any instrument of transfer which the Directors may decline to register shall (except in the case of fraud) be returned to the person depositing the same.
- 14.10 In the case of the death of a Shareholder, the survivors or survivor where the deceased was joint holder, and the executors or administrators of the deceased where he was a sole or surviving holder, shall be the only person recognised by the ICAV as having title to his interest in the Shares, but nothing in this Section 14 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.
- 14.11 Any guardian of an infant Shareholder and any guardian or other legal representative of a Shareholder under legal disability and any person entitled to a Share in consequence of the death, insolvency or bankruptcy of a Shareholder shall, upon producing such evidence of his title as the Directors may require, have the right either to be registered himself as the holder of the Share or to make such transfer thereof as the deceased or bankrupt Shareholder could have made, but the Directors shall, in either case, have the same right to refuse or suspend registration as they would have had in the case of a transfer of the Share by the infant or by the deceased, insolvent or bankrupt Shareholder or by the Shareholder under legal disability before such disability.
- 14.12 A person so becoming entitled to a Share in consequence of the death, insolvency or bankruptcy of a Shareholder shall 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 Shareholder unless and until he shall be registered as a Shareholder 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.



14.13 No person shall be entitled to be registered as a Shareholder until such time as the relevant application form has been completed to the satisfaction of the ICAV.

## **15. HEDGING POWERS**

15.1 The Directors may exercise all the powers of the ICAV to employ techniques and instruments for hedging and investment purposes in relation to the Investments or any of them or any other assets or any borrowing by the ICAV.

15.2 Without limitation to the generality of Section 15.1, the Directors, on behalf of the ICAV, may employ techniques and instruments intended to provide protection against exchange risks in the context of the management of its assets and liabilities.

## **16. GENERAL MEETINGS**

16.1 All general meetings of the ICAV shall be held in Ireland and in accordance with the Act.

16.2 The Directors of the ICAV have elected to dispense with the holding of an annual general meeting in accordance with section 89(4) of the Act from the date the registration order made by the Central Bank with respect to the ICAV comes into operation and to continue indefinitely unless an annual general meeting is convened in accordance with Section 16.3. Shareholders are hereby notified of this fact for all purposes of section 89 of the Act.

16.3 The ICAV will be required to hold an annual meeting where:

(a) one or more Shareholders holding, or together holding, not less than 10% of the voting rights in the ICAV; or

(b) 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. For the avoidance of doubt, such request cannot be made until one year from the date on which the registration order made by the Central Bank in respect of the ICAV comes into operation.

16.4 In circumstances where the ICAV is required to hold an annual general meeting it will comply with the relevant requirements of section 89 of the Act.

16.5 All general meetings (other than annual general meetings) shall be called extraordinary general meetings.

16.6 The Directors may call an extraordinary general meeting whenever they think fit. If at any time in the case of the ICAV, there are not sufficient Directors capable of forming a quorum, any Director or Shareholder may convene an extraordinary general meeting of the ICAV in the same manner as nearly as possible as that in which meetings may be convened by the Directors.

16.7 One or more Shareholders holding, or together holding, at any time not less than 50% of the voting rights in the ICAV may convene an extraordinary general meeting of the ICAV.

16.8 The Directors shall, at the request of one or more Shareholders holding, or together holding, at the date of making of the request, not less than 10% of the voting rights of the ICAV, proceed to convene an extraordinary general meeting of the ICAV.

16.9 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.

- 16.10 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% 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.
- 16.11 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.
- 16.12 For the purposes of Sections 16.8 to 16.11, the Directors shall, in the case of a meeting at which a resolution is to be proposed as a special resolution, be deemed not to have duly convened the meeting if they do not give such due notice of it.
- 16.13 A meeting convened under Sections 16.8 to 16.11 shall be convened in the same manner as nearly as possible as that in which meetings are to be convened by Directors.

## **17. NOTICE OF GENERAL MEETINGS**

- 17.1 At least 14 calendar days' notice specifying the place, the day and the hour of the meeting, and in the case of special business the general nature of such business (and in the case of an annual general meeting (if any) specifying the meeting as such) shall be given in the manner hereinafter mentioned 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.
- 17.2 The Directors, the Depositary, the Administrator, the AIFM, the Investment Manager, the Investment Advisor and the Auditors shall be entitled to receive notice of and attend and speak at any general meeting of the ICAV.
- 17.3 In every notice calling a meeting of the ICAV, there shall appear with reasonable prominence a statement that a Shareholder 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 Shareholder.
- 17.4 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.

## **18. PROCEEDINGS AT GENERAL MEETINGS**

- 18.1 No business shall be transacted at any general meeting unless a quorum is present. Two Shareholders present either in person or by proxy shall be a quorum for a general meeting. A representative of a corporation authorised pursuant to Section 19.11 of this Instrument and present at any meeting of the ICAV shall be deemed to be a Shareholder for the purpose of a quorum.
- 18.2 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 Shareholders, 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. One Shareholder present either in person or by proxy shall be a quorum for any such adjourned meeting.

The Chairman or, if absent, the deputy chairman of the Directors, or failing him, some other Director nominated by the Directors or any member or their representative nominated by the members 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 nominated Director or any nominated member or their representatives be 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 or any member or their representatives present shall choose some Director or any member or their representative present to be chairman.

- 18.3 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 than ten calendar days' notice at the least specifying the place, the day and the hour of the adjourned meeting, shall be given as in the case of the original meeting but it shall not be necessary to specify in such notice the nature of the business to be transacted at the adjourned meeting. Save as aforesaid, it shall not be necessary to give any notice of an adjournment or of the business to be transacted at the adjourned meeting.
- 18.4 At any general meeting, a resolution put to the vote of the meeting shall be decided on a show of hands and every Shareholder present in person or by a proxy shall have one vote in respect of each Share, as the case may be, held by him; provided however that in relation to a resolution which in the opinion of the Directors affects more than one Class or gives or may give rise to a conflict of interest between the Shareholders of respective Classes, such resolution shall be deemed to have been duly passed only if, in lieu of being passed at a single meeting of Shareholders if all those Classes, such resolution shall have been passed at a separate meeting of Shareholders of each Class.
- 18.5 A poll 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.
- 18.6 The chairman may, in the event of a poll, appoint scrutineers and may adjourn the meeting to some place and time fixed by him for the purpose of declaring the result of the poll.
- 18.7 In the case of an equality of votes the chairman of the meeting at which the poll takes place shall be entitled to a second or casting vote.
- 18.8 A poll on the election of a chairman and a poll on a question of adjournment shall be taken forthwith. A poll 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.
- 18.9 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.
- 18.10 A demand for a poll may be withdrawn and no notice need be given of a poll not taken immediately.
- 18.11 A resolution in writing signed by all the Shareholders 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 duly convened and held, and if described as a Special Resolution shall be deemed to be a special resolution within the meaning of this Instrument.
- 18.12 If at any time the Share capital is divided into different Classes of Shares, the rights attached to any Class (unless otherwise provided by the terms of issue of the Shares of that Class or unless otherwise provided herein) may, whether or not the ICAV is being wound up, be varied, amended or abrogated with the consent in writing of the holders of three-fourths of the issued Shares of that Class, or with the sanction of a Special Resolution passed at a separate general meeting of the holders of the Shares of that Class, to which the provisions of this Instrument relating to general meetings (including, without limitation, Section 18.14) shall mutatis mutandis apply, save for any variation, amendment or abrogation which, in the view of the Directors, does not materially prejudice the interests of all or any relevant Shareholders.

Any such variation, amendment or abrogation will be set out in the Prospectus or the relevant Supplement issued in connection with the relevant Fund.

- 18.13 A Director shall be entitled, notwithstanding that he is not a Shareholder, to attend and speak at any general meeting and at any separate meeting of the Shareholders. The Auditors shall be entitled to attend any general meeting and to be heard on any part of the business of the meeting which concerns them as Auditors.
- 18.14 The ICAV shall as soon as may be, cause minutes of all proceedings of general meetings of the ICAV to be entered into books kept for that purpose. Any such minute if purporting to be signed by the person chairing the meeting or by the person chairing the next following meeting, shall be evidence of the proceedings. Where minutes have been made in accordance with this Section 18.14 of the proceedings at any general meeting of the ICAV, 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. The ICAV, shall, if required by the Director of Corporate Enforcement, produce to the Director for inspection the book or books kept in accordance with this Section 18.14 and shall give to the Director such facilities for inspecting and taking copies of the contents of the book or books as the Director may require.

## **19. VOTES OF SHAREHOLDERS**

- 19.1 Subject to any special rights or restrictions for the time being attached to any Shares:
- (a) on a show of hands, every Shareholder who is present in person or by proxy at a meeting of Shareholders shall have one vote; and
  - (b) on a poll, every Shareholder who is present in person or by proxy at a meeting of Shareholders shall have one vote in respect of each Share held by him.
- 19.2 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.
- 19.3 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.
- 19.4 On a poll votes may be given either personally or by proxy.
- On a poll, a Shareholder entitled to more than one vote need not, if he votes, cast all his votes or cast all the votes he is entitled to in the same way.
- 19.5 The instrument appointing a proxy shall be in writing under the hand of the appointer or of his attorney duly authorised in writing, or if the appointer 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 the usual form or in such form as the Directors may approve provided always that such form shall give the holder the choice of authorising his/her proxy to vote for or against each resolution.
- 19.6 Any person (whether a Shareholder or not) may be appointed to act as a proxy. A Shareholder may appoint more than one proxy to attend on the same occasion.
- 19.7 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 forty eight hours 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.

- 19.8 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 in cases where the meeting was originally held within twelve months from such date.
- 19.9 The Directors may, at the expense of the ICAV, send, by post or otherwise, to the Shareholders instruments of proxy (with or without prepaid postage for their return) for use at any general meeting, 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 Shareholders entitled to be sent a notice of the meeting and to vote thereat by proxy.
- 19.10 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.
- 19.11 Any body corporate which is a Shareholder 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 Shareholder 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 thereat.

## **20. FAIR TREATMENT OF SHAREHOLDERS**

- 20.1 The ICAV shall ensure or where externally managed, shall procure that the AIFM shall ensure that their decision-making procedures and their organisational structures provides for the fair treatment of all Shareholders.
- 20.2 Notwithstanding the foregoing, certain investors or Shareholders may be accorded preferential treatment with respect to their investment in a Fund by the ICAV, the AIFM and/or an Investment Manager. Any preferential treatment which may be afforded to one or more Shareholders shall be disclosed in the Prospectus (or otherwise disclosed to investors prior to their investment in the relevant Fund), and shall be subject to the overriding principal that it shall not result in an overall material disadvantage to Shareholders as a whole.
- 20.3 In addition to the foregoing, such Shareholders afforded preferential treatment with respect to their investment in a Fund by the ICAV, the AIFM and/or an Investment Manager may:
- (a) have commercial arrangements or economic links, including but not limited to managed accounts, separate advisory or intermediary arrangements, share subscription/commitment agreements or similar arrangements with the ICAV, the AIFM or the Investment Manager or an affiliated entity of any of these; or
  - (b) have legal or group connections with the ICAV, the AIFM or an Investment Manager (or an affiliated entity of any of these); or
  - (c) be a director, officer, principal, partner or employee of the ICAV, the AIFM or the Investment Manager (or an affiliated entity of either of these).

- 20.4 Such preferential treatment may include (but is not limited to) altering, modifying or changing rights or restrictions which apply to shares and/or management/investment management fees and/or Performance Fees, the obligations of the Shareholder or granting informational rights about the ICAV or any Fund, such as estimated Net Asset Value prices and/or transparency (including portfolio transparency) information and provision of regulatory reports or accounting material.
- 20.5 Where a Feeder Fund has been established by the ICAV or the AIFM in respect of a Fund, certain provisions applicable to the Shareholders of that Fund may be applied on a look-through basis to the shareholders of the Feeder Fund, such as voting rights, redemption rights and such other rights as may be specified in the Prospectus or determined by the Directors or the AIFM.

## **21. DIRECTORS**

- 21.1 The number of the Directors shall not be less than two nor more than nine.
- 21.2 At a general meeting a motion for the appointment of two or more persons as Directors by a single resolution shall not be made unless a resolution that it shall be so made has been first agreed to by the meeting without any vote being given against it.
- 21.3 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.
- 21.4 A Director need not be a Shareholder.
- 21.5 Any appointment of a Director is subject to the requirements of the Central Bank, including its prior approval.
- 21.6 The Directors shall have power at any time and from time to time to appoint any person approved by the Central Bank to be a Director, either to fill a casual vacancy or as an addition to the existing Directors.
- 21.7 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 and may be reimbursed all reasonable travel, hotel and other expenses incurred in connection with the business of the ICAV or the discharge of their duties and may be entitled to additional remuneration if called upon to perform any special or extra services to or at the request of the ICAV.
- 21.8 The Directors may in addition to such remuneration as is referred to in Section 21.7 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 in general meeting.
- 21.9 Any Director may at any time by writing under his hand and deposited at the Office, or delivered at a Board meeting, appoint any person (including another Director) to be his alternate Director and may in like manner at any time terminate such appointment.
- 21.10 The appointment of an alternate Director shall terminate on the happening of any event which if he were a Director would cause him to vacate such office or if his appointer ceases to be a Director.
- 21.11 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 appointer as a Director and for the purposes of the proceedings at such meeting the provisions of this Instrument shall apply as if he, instead of his appointer, were a Director. If he shall be himself a Director or shall attend any such meeting as an alternate for more than one Director his voting rights shall be cumulative provided however that he shall

count as one for the purposes of determining a quorum. If his appointer is for the time being temporarily unable to act his signature to any resolution in writing of the Directors shall be as effective as the signature of his appointer. To such extent as the Directors may from time to time determine in relation to any committee of the Board, the foregoing provisions of this Section 21.11 shall also apply mutatis mutandis to any meeting of any such committee of which his appointer is a member. An alternate Director shall not, save as aforesaid or as otherwise in this Instrument provided, have power to act as a Director nor shall he be deemed to be a Director for the purposes of this Instrument. If the Director appointing an alternate shall die or otherwise cease to hold the office of director, the appointment of the alternate hereunder shall thereupon cease and terminate.

- 21.12 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 appointer as such appointer may by notice in writing to the ICAV from time to time direct.
- 21.13 The ICAV may at any time and from time to time by power of attorney appoint any person or persons or corporation to be the attorney or attorneys of the ICAV for any lawful purpose and with such powers, authorities and discretions and for such period and subject to the conditions as the Directors on behalf of the ICAV may from time to time think fit. Any such delegates or attorneys may be authorised by the ICAV to sub-delegate all or any of the powers, authorities and discretions for the time being vested in them.
- 21.14 The provisions of the Act relating to restrictions on directors of an insolvent company or disqualified persons from being appointed or acting as a director or other officer, statutory auditor, receiver or liquidator, or being in any way (directly or indirectly) concerned or taking part in the promotion, formation or management of a company apply to the ICAV.
- 21.15 The office of a Director shall be vacated on 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 in the opinion of a majority of the Directors, he becomes incapable by reason of discharging his duties as a Director;
  - (f) 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;
  - (g) if he be requested by a majority of the other Directors (not being less than two in number) to vacate office;
  - (h) if he is removed from office by an Ordinary Resolution in accordance with section 62 of the Act; or
  - (i) the Shareholder of the ICAV have passed an ordinary resolution to remove such Director, despite anything in this Instrument or in any contract between the ICAV and the Director, in accordance with the provisions of the Act.

## 22. TRANSACTIONS WITH DIRECTORS

- 22.1 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 and may act in a professional capacity to the ICAV, on such terms as to remuneration and otherwise as the Directors may determine.
- 22.2 Subject to the provisions of the Act, and provided that he has disclosed to the Directors the nature and extent of any material interest of his prior to the conclusion of such transaction, a Director notwithstanding his office:
- (a) may be a party to, or otherwise interested in, any transaction or arrangement with the ICAV or in which the ICAV is interested; and
  - (b) shall not be accountable, by reason of his office, to the ICAV for any benefit which he derives from any such office or employment or from any such transaction or arrangement or from any interest in any body corporate which enters into any such transaction or arrangement and no such transaction or arrangement shall be liable to be avoided on the ground of any such interest or benefit.
- 22.3 No Director or intending Director shall be disqualified by his office from contracting with the ICAV either as vendor, purchaser, professional advisor 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 at the Board meeting at which the question of entering into the contract or arrangement is first taken into consideration, or if the Director was not at the date of that meeting interested in the proposed contract or arrangement, then at the next Board meeting held after he becomes so interested, and in a case where the Director becomes interested in a contract or arrangement after it is made, then at the first Board meeting held after he becomes so interested. A general notice in writing given to the Directors by any Director to the effect that he is a shareholder, officer or employee of any specified company or investment vehicle or a partner or employee in any specified firm, and is to be regarded as interested in any contract or arrangement which may thereafter be made with that company or investment vehicle or firm, shall be deemed a sufficient declaration of interest in relation to any contract or arrangement made.
- 22.4 For the purposes of this Section 22:
- (a) a general notice in writing given to the Directors that a Director is to be regarded as having an interest of the nature and extent specified in the notice in any transaction or arrangement in which a specified person or class of persons is interested shall be deemed to be a disclosure that the Director has an interest in any such transaction of the nature and extent so specified;
  - (b) an interest of which a Director has no knowledge and of which it is unreasonable to expect him to have knowledge shall not be treated as an interest of his; and
  - (c) an interest of a person who is the spouse or a minor child of a Director shall be treated as an interest of the Director and, in relation to an alternate Director, an interest of his appointer shall be treated as an interest of the alternate Director.
- 22.5 Save as otherwise provided by the provisions of this Section 22 and unless the majority of the Directors acting through the Board otherwise determine, a Director shall not be entitled to vote at any Board meeting or a committee of the Board in respect of any contract or arrangement or any proposal whatsoever in which he has any material interest. However, a Director may vote and be counted in the quorum in respect of any resolution concerning any such contract, arrangement or proposal including, without limitation to the generality of the foregoing, any resolution concerning any of the following matters, namely:



- (a) the giving of any security, guarantee 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;
  - (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 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 for subscription, purchase or exchange in which offer he is or is to be interested as a participant in the underwriting or sub-underwriting thereof;
  - (d) any proposal concerning any other company or investment vehicle or firm in which he is interested, directly or indirectly and whether as an officer, shareholder, partner, employee, agent or otherwise howsoever provided that he is not the holder of 5 per cent or more of the issued shares of any class of such company or of the voting rights available to such members of such company .
- 22.6 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 or investment vehicle 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 shall be entitled to vote and be counted in the quorum in respect of each resolution except that concerning his own appointment.
- 22.7 If any question shall arise at any Board meeting or of a committee of Board 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 other than himself 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.
- 22.8 The Shareholders may by Ordinary Resolution suspend or relax the provisions of Sections 22.5 to 22.7 inclusive to any extent or ratify any transaction not duly authorised by reason of a contravention thereof.
- 22.9 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.
- 22.10 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 such appointment.
- 22.11 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.
- 22.12 Any Director may continue to be or become a director, managing director, manager or other officer or shareholder of any company or collective investment scheme 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 or collective investment scheme. 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 or collective

investment scheme, 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 collective investment scheme, or voting or providing for the payment of remuneration to the directors, managing directors, managers or other officers of such company or collective investment scheme).

## **23. POWERS OF DIRECTORS**

- 23.1 The business of the ICAV shall be managed by the Directors, who may exercise all such powers of the ICAV as are not by the Act, AIFMD Regulations or by this Instrument required to be exercised by the ICAV in general meeting, but no regulations made by the ICAV in general meeting shall invalidate any prior act of the Directors which would have been valid if such regulations had not been made. The general powers given by this Section shall not be limited or restricted by any special authority or power given to the Directors by this or any other section.
- 23.2 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.
- 23.3 The Directors may exercise all the powers of the ICAV to invest all or any funds of the ICAV as authorised by this Instrument.
- 23.4 The Directors may invest in collective investment undertakings with which the ICAV is linked by common management and control or by substantial direct or indirect holding provided that the said collective investment undertaking has investment policies consistent with the investment policies of the ICAV. No such investment may be made unless the manager of the relevant collective investment undertaking has agreed to waive any preliminary or initial charge which it might otherwise be entitled to charge for its own benefit in respect of such investment.

## **24. BORROWING POWERS**

The Directors and/or the AIFM on behalf of the ICAV where an external AIFM is appointed may, in accordance with the Act and the requirements of the Central Bank, exercise all the powers of the ICAV to borrow money (including the power to borrow for the purpose of repurchasing Shares) and to mortgage, charge or pledge its undertaking, property and assets or any part thereof and to issue debentures, debenture stock bonds and other securities whether outright or as security for any debt, liability or obligation of the ICAV, provided that all borrowing powers are within the limits and conditions laid down by the Central Bank.

## **25. PROCEEDINGS OF DIRECTORS**

- 25.1 The ICAV shall be managed and controlled in Ireland and all Board meetings of the ICAV shall be held in Ireland.
- 25.2 The Directors may meet together for the dispatch of business, adjourn and otherwise regulate their meetings as they think fit. Questions arising at any meeting shall be determined by a majority of votes. A Director may, and the Secretary on the requisition of a Director shall, at any time summon a Board meeting.
- 25.3 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.
- 25.4 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 not reduced below the minimum number fixed by or in accordance with the provisions of this Section 25. 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 shareholders may summon a general meeting for the purpose of appointing Directors.

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.

- 25.5 The chairman or, failing him, the deputy chairman shall preside at all meetings of the Directors, but if there be no chairman or deputy chairman, or if at any meeting the chairman or deputy chairman be not present within thirty minutes after the time appointed for holding the same, the Directors present may choose one of their number to be chairman of the meeting.
- 25.6 A resolution in writing signed by all the Directors for the time being entitled to receive notice of a Board meeting and to vote thereat shall be as valid and effectual as a resolution passed at a Board meeting duly convened. Any such resolution 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.
- 25.7 A Board meeting for the time being at which a quorum is present shall be competent to exercise all powers and discretions for the time being exercisable by the Directors.
- 25.8 The Directors may delegate any of their powers 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 Section 25.3 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.
- 25.9 The Directors may, whether by standing resolution or otherwise, delegate their powers relating to the issue and re-purchase of Shares and the calculation of Net Asset Value and Net Asset Values per Share and all management and administrative duties in relation to the ICAV to the Administrator subject to such terms and conditions as the Directors in their absolute discretion may resolve.
- 25.10 All acts done by any meeting of Directors, or of a committee of Directors or by any person acting as a Director or authorised by the Directors 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.
- 25.11 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 Board meeting 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.
- 25.12 Any such minutes as are referred to in Section 25.11, 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.
- 25.13 Any Director may participate in a Board meeting by means of a conference telephone or other telecommunication equipment by means of which all persons participating in the meeting can hear each other speak and such participation in a meeting shall constitute presence in person at the meeting and such meeting shall be deemed to have been convened in the place from

which the conference telephone call or similar telecommunication is initiated provided always that the quorum must be constituted in accordance with Section 25.3.

## **26. CHAIRMAN**

- 26.1 The Directors may from time to time appoint one or more of their body to act as chairman of the ICAV ("Chairman") and (subject to the restriction on the maximum aggregate remuneration payable to the Directors under Section 21.7) may fix his or their remuneration.
- 26.2 Every Chairman shall be liable to be dismissed or removed from his position as Chairman by the Directors and another person appointed in his place. The Directors may, however, enter into an agreement with any person who is or is about to become a Chairman with regard to the length and terms of his employment, but so that the remedy of any such breach of such agreement shall be in damages only and he shall have no right or claim to continue in such office contrary to the will of the Directors or of the ICAV in general meeting.

## **27. SECRETARY**

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. The Secretary shall be appointed by the Directors for such term, at such remuneration and on such conditions as they may think fit; and any Secretary so appointed may be removed by them. The Directors shall have a duty to ensure that the person appointed as Secretary has the skills necessary to discharge his or her statutory and other legal duties and such other duties as may be delegated to the Secretary by the Directors (including in the case of the appointment of one of the Directors as Secretary).

## **28. THE SEAL**

- 28.1 The ICAV may have a Seal and/or an Official Seal in accordance with section 33 and section 34 respectively of the Act.
- 28.2 A document has the same effect as if executed under Seal if it is expressed (in whatever form of words) to be executed by the ICAV and it is signed on behalf of the ICAV by:
- (a) 2 authorised signatories of the ICAV which for the purpose of this Section 28.2 include any Director, the Secretary and any person authorised by the Directors in accordance with this Instrument, or
  - (b) by a Director in the presence of a witness who attests the signature.
- 28.3 The Directors may determine to provide the ICAV with a Common Seal and Official Seal from time to time. The Directors may from time to time as they see fit determine the persons and the number of such persons who shall authenticate the affixing of a Seal and/or an Official Seal, and until otherwise so determined the affixing of a Seal and/or an Official Seal shall be authenticated by two Directors or by one Director and the Secretary, or some other person duly authorised by the Directors, and the Directors may authorise different persons for different purposes.

## **29. CLOSED-ENDED FUNDS**

- 29.1 The ICAV may establish Funds which are closed-ended and there may be no opportunity for Shareholders to redeem Shares in advance of the end of the closed end period in respect of

such Funds unless otherwise provided for in accordance with the requirements of the Central Bank.

- 29.2 The ICAV may establish closed-ended Funds including those which may make capital calls in such amounts and at such frequency as the ICAV or the AIFM may deem necessary and on such terms as may be set out in the Prospectus which may include specific terms in relation to equalisation amongst Shareholders making commitments to invest in a Fund or make initial Capital Contributions to a Fund on different dates (and terms relating to any interest or other fees payable by Shareholders in such circumstances), terms relating to any Performance Allocation which may be allocable to Performance Allocation Shares which may be issued in respect of such Funds, terms relating to any excusal provisions which may be offered to Shareholders, terms relating to defaulting Shareholders who fail to make Capital Contributions in accordance with the terms of the Prospectus (each a "**Defaulting Shareholder**"), terms relating to the establishment of any investment period during which investments may be made by a Fund, terms relating to the circumstances under which distributions may be made to Shareholders during the life of a Fund, terms governing the re-investment of realised investment proceeds, terms relating to the use of alternative investment vehicles or other special purpose vehicles ("**AIVs**") as a means through which investments may be made, including, but not limited to, terms relating to the transfer of any uncalled capital commitments from a Fund to such AIV's and any other customary terms applicable to closed-ended Funds. For the avoidance of doubt, a Shareholder that is a Feeder Fund will only be considered a "Defaulting Shareholder" with respect to the portion of its Shares attributable to the defaulting investor(s) in such Feeder Fund;
- 29.3 The ICAV may delegate the authority to make capital calls to the AIFM or a delegate thereof. Unless otherwise provided for in the Prospectus, a Shareholder must contribute the amount specified on the relevant capital call notice (each, a "**Capital Call Notice**") by the due date specified on the relevant Capital Call Notice. Capital calls will be made on the terms and subject to the conditions set out in the Prospectus. Capital Contributions made by a Shareholder in respect of a duly made capital call will proportionately reduce such Shareholder's unfunded capital commitments. Shareholders will generally be required to fund their Capital Contributions on a pro rata basis based on the relative size of their capital commitments. However, from time to time, Shareholders may be required to contribute capital on a non-pro rata basis where explicitly provided for under the terms of the Prospectus.
- 29.4 The closed end period for such Funds will be the lesser of (i) the period from the initial closing date until the termination date as set out in the Prospectus or (ii) a specific duration from the initial closing date, subject to extension as set out below and as set out in the Prospectus in respect of such a Fund.
- 29.5 On the expiry of the closed end period of the Fund, one of the following options will be exercised by the ICAV:
- (a) The ICAV will wind-up the Fund and apply to the Central Bank for revocation of the Fund's approval; or
  - (b) The Fund will repurchase all outstanding Shares at the relevant Redemption Price and the ICAV will apply to the Central Bank for revocation of the Fund's approval; or
  - (c) The ICAV will convert the Fund into an open-ended Fund, the details of which will be disclosed in the Prospectus; or
  - (d) The closed-ended period of the Fund will be extended by up to such further additional periods as disclosed in the Prospectus. Any such optional extensions shall be at the discretion of the ICAV, with the prior approval of the Shareholders by a Special Resolution cast by Shareholders (on a one Share one vote basis) at a meeting of the Shareholders during the last year of the closed-ended period and during each of the additional years, if applicable. The ICAV shall, as soon as possible (a) following the defeat of such resolution or (b) on or prior to the expiry of the extended closed-ended period, taking into account the best interests of the Shareholders, liquidate the Fund's

portfolio of investments and shall return the net proceeds thereof, as and when such proceeds become available, to Shareholders through distribution payments. The Fund shall then be wound-up and the ICAV shall apply to the Central Bank for revocation of the Fund's approval.

- 29.6 If there is proposed to be a change in the closed-ended period of any such Fund, or any increase to the maximum stated fees charged by the AIFM or the Investment Manager, or a redemption fee imposed, this may only be done with the prior approval of the Shareholders by a Special Resolution or by an Ordinary Resolution where Shareholders are given an opportunity to redeem or otherwise exit the Fund.
- 29.7 In the case of closed-ended Funds that are loan originating Funds, a redemption request may be accepted and distributions may be made during the life of the loan originating Fund to the extent that there is unencumbered cash or liquid assets available for distribution or redemption purposes and that such distributions or redemptions will not endanger the regulatory compliance or liquidity related obligations of the loan originating Fund (or as otherwise may be permitted by the Central Bank). Unless the assets of the loan originating Fund are valued by reference to prevailing market prices, a redemption request cannot be accepted without the approval of Shareholders by way of a Special Resolution.
- 29.8 In the case of closed-ended Funds that are not loan originating Funds, a redemption request may be accepted and distributions may be made during the life of the Fund in accordance with such terms as may be set out in the Prospectus subject to compliance with the requirements of the Central Bank as may be amended from time to time.

### **30. DIVIDENDS AND PARTICIPATION**

- 30.1 The ICAV may declare dividends on the Shares provided that no dividend shall exceed the amount recommended by Directors.
- 30.2 Notwithstanding anything to the contrary in this Instrument, the Subscriber Shares shall not entitle the holders thereof to participate in all or any part of the profits or assets of the ICAV or to receive any dividends or other distributions from the ICAV provided always that, notwithstanding any other provision of this Instrument, on the winding-up or other dissolution of the ICAV, the ICAV shall redeem all of the Subscriber Shares then in issue at €1.00 per Subscriber Share.
- 30.3 The Directors may from time to time if they think fit pay such interim dividends on Shares of any Fund or Class as appear to the Directors to be justified by the profits of the relevant Fund.
- 30.4 Subject to Section 30.1 the amount available for distribution by the ICAV in respect of any Accounting Period shall be a sum equal to the aggregate of the net income received by the ICAV in respect of Investments (whether in the form of dividends, interest or otherwise) and/or the net realised capital gains and the net unrealised capital gains of the ICAV during the Accounting Period and/or out of the capital of the ICAV, subject to such adjustments as may be appropriate under the following headings:
- (a) addition or deduction of a sum by way of adjustment to allow for the effect of sales or purchases, cum or ex-dividend;
  - (b) addition of a sum representing any interest or dividend or other income accrued but not received by the ICAV at the end of the Accounting Period and deduction of a sum representing (to the extent that an adjustment by way of addition has been made in respect of any previous Accounting Period) interest or dividends or other income accrued at the end of the previous Accounting Period;
  - (c) addition of the amount (if any) available for distribution in respect of the last preceding Accounting Period but not distributed in respect thereof;

- (d) addition of a sum representing the estimated or actual repayment of tax resulting from any claims in respect of corporation tax relief or double Taxation relief or otherwise;
  - (e) deduction of the amount of any tax or other estimated or actual liability properly payable out of the income of the ICAV;
  - (f) deduction of a sum representing participation in income paid upon the cancellation of Shares during the Accounting Period;
  - (g) deduction of such sum as the ICAV with the approval of the Auditors may think appropriate in respect of the Preliminary Expenses and Duties and Charges, including, without limitation, all fees and expenses payable to the Depositary, the Administrator, the Investment Manager and the Investment Advisor and all expenses of and incidental to any amendments to this Instrument for the purpose of securing that the ICAV conforms to legislation coming into force after the date of registration hereof and any other amendments made pursuant to a resolution of the ICAV, expenses comprising all costs, charges, professional fees and disbursements bona fide incurred in respect of the computation, claiming or reclaiming of all Taxation reliefs and payments, and any interest paid or payable on borrowings provided always that the ICAV shall not be responsible for any error in any estimates of corporation tax repayments or double Taxation relief expected to be obtained or of any sums payable by way of Taxation or of income receivable, and if the same shall not prove in all respects correct, the Directors shall ensure that any consequent deficiency or surplus shall be adjusted in the Accounting Period in which a further or final settlement is made of such tax repayment or liability or claim to relief or in the amount of any such estimated income receivable, and no adjustment shall be made to any dividend previously declared;
  - (h) deduction of any amounts declared as a distribution but not yet distributed; and
  - (i) deduction of any amounts which the Directors in their sole and absolute discretion determine to be re-invested in Investments for the benefit of the ICAV.
- 30.5 The Directors may, with the sanction of an Ordinary Resolution or individual Shareholder approval (if permitted in accordance with the Prospectus and the requirements of the Central Bank), distribute in kind among Shareholders, by way of dividend or otherwise, any of the assets of the ICAV.
- 30.6 All Shares shall, unless otherwise determined by the Directors, rank for dividend as from the beginning of the Accounting Period in which they are issued.
- 30.7 Any resolution of the Directors declaring a dividend may specify that the same shall be payable to the persons registered as the holders of Shares of those Classes entitling the holders thereof to receipt of such a dividend 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 dividend shall be payable to them in accordance with their respective holdings so registered, but without prejudice to the right inter se in respect of such dividend of transferors and transferees of Shares.
- 30.8 The ICAV may transmit any dividend or other amount payable in respect of any Share by cheque or warrant sent by ordinary post to the registered address of the holder, or, in the case of joint holders, of one of them or to such person and address as the holder or joint holders may direct, and shall not be responsible for any loss arising in respect of such transmission.
- 30.9 No dividend or other amount payable to any holder of Shares shall bear interest against the ICAV. All unclaimed dividends and other amounts payable as aforesaid may be invested or otherwise made use of for the benefit of the ICAV until claimed. Payment by the ICAV of any unclaimed dividend or other amount payable in respect of a Share into a separate account shall not constitute the ICAV a trustee in respect thereof. Any dividend unclaimed after six

years from the date when it first became payable shall be forfeited automatically, without the necessity for any declaration or other action by the ICAV and will revert to the ICAV.

- 30.10 At the option of any Shareholder entitled to dividends, the Directors may apply all dividends declared on the Shares held by such Shareholder towards the issue of additional Shares in the ICAV to that Shareholder at their Net Asset Value per Share as at the date on which such dividends are declared and on such terms as the Directors from time to time may resolve.
- 30.11 The Directors may provide that Shareholders will be entitled to elect to receive in lieu of any dividend (or part thereof) an issue of additional Shares credited as fully paid and subject to the following provisions:
- (a) the number of additional Shares (excluding any fractional entitlement) to be issued in lieu of any amount of dividend shall be equal in value to the amount of such dividend at the date the dividend was declared;
  - (b) the dividend (or that part of the dividend in respect of which a right of election has been accorded) shall not be payable on Shares in respect of which the Share election has been duly exercised ("**Elected Shares**"), and in lieu thereof additional Shares shall be issued to the holders of the Elected Shares on the basis determined aforesaid and for such purpose the Directors shall capitalise a sum equal to the aggregate value of the dividend in respect of which elections have been made and apply the same in paying up in full the appropriate amount of unissued Shares;
  - (c) the additional Shares so issued shall rank *pari passu* in all respects with the fully-paid Shares of the relevant Class then in issue save only as regards participation in the relevant dividend (or Share election in lieu);
  - (d) the Directors may do all acts and things considered necessary or expedient to give effect to any such capitalisation, with full power to the Directors to make such provision as they think fit in the case of Shares becoming distributable in fractions so that fractional entitlements are disregarded or rounded up or the benefit of fractional entitlements accrues to the ICAV or the ICAV issues Fractional Shares; and
  - (e) the Directors may on any occasion determine that rights for election shall not be made available to any Shareholder with registered addresses in any territory where in the absence of a registration statement or other special formalities the circulation of an offer of rights of election would or might be unlawful, and in any such event, the provisions aforesaid shall be read and construed subject to such determination.
- 30.12 At the discretion of the Directors, dividends may be paid in a currency other than the currency of denomination of the relevant Fund at the exchange rate applicable on the relevant distribution date.

## **31. ACCOUNTS**

- 31.1 The Directors shall cause to be kept such books of account as are necessary in relation to the conduct of its business or as are required by the Act so as to enable the accounts of the ICAV to be prepared.
- 31.2 Separate Annual Report(s) may be prepared and presented in respect of a Fund or Funds and all references to the Annual Report of ICAV shall be read, where appropriate, referring to the Fund or Funds in respect of which the separate Annual Report is to be prepared.
- 31.3 The books of account shall be kept at the Office, or at such other place or places as the Directors shall think fit (provided that if the books of account are kept at a place outside of the State, the requirements of section 112(1) of the Act are complied with) and shall at all times be open to the inspection of the Directors, but no person, other than a Director or Auditor shall be entitled to inspect the books, accounts, documents or writings of the ICAV, except as provided by the Act or authorised by the Directors or by the ICAV in general meeting.



- 31.4 A balance sheet and a profit and loss account of the ICAV or the Funds (as the case may be) shall be made out as at each Accounting Date and shall be audited by the Auditors and such balance sheet shall contain a general summary of the assets and liabilities of the ICAV or the Funds. The balance sheet of the ICAV or the Funds shall be accompanied by a report of the Directors as to the financial state and condition of the ICAV or the Funds, and the amount (if any) which they have carried or propose to carry to reserve, together with a profit and loss account. The balance sheet and the report of the Directors and the profit and loss account shall be signed on behalf of the Directors by at least two of the Directors. The Auditors' report shall be attached to the balance sheet. The Auditors' report shall be made available to the Shareholders.
- 31.5 Once at least in every year the Directors shall cause to be audited and certified by the Auditors an Annual Report relating to the management of the ICAV or the Funds (as the case may be). The Annual Report shall include the balance sheet and profit and loss account of the ICAV or the Funds (as the case may be) duly audited by the Auditors, a detailed income and expenditure account for the financial year, other information provided for in the Schedule of the Act, and the Directors' report and the Auditors' report as provided for in Section 31.4 and shall be in a form approved by the Central Bank and shall contain such information required by it.
- 31.6 In the case of the ICAV, a copy of the Annual Report shall be sent by the ICAV to all Shareholders and in the case of a Fund, to the Fund's Shareholders, at least once in every year but not later than six months after the end of the period to which it relates or such other period as may be determined by the Directors in accordance with the Central Bank's requirements.
- 31.7 The Auditor's certificate appended to the Annual Report and statement referred to in herein shall declare that the accounts or statement attached respectively thereto (as the case may be) have been examined with the books and records of the ICAV or the Funds and that the Auditors have obtained all the information and explanations they have required and the Auditors shall report whether the accounts are in their opinion properly drawn up in accordance with such books and records and present a true and fair view of the state of affairs of the ICAV or the Funds, and whether the accounts are in their opinion properly drawn up in accordance with the provisions hereof.
- 31.8 The ICAV may, at its discretion, prepare half yearly financial statements, which should consist of a statement of assets under management and a profit and loss account for the period and such other information as the Central Bank may from time to time require and a copy of each half yearly statements, if produced, shall be sent to Shareholders not later than two months from the period to which it relates. The intention to produce a half yearly report of otherwise shall be disclosed in the Prospectus.

## **32. AUDIT**

- 32.1 The Directors shall appoint the Auditors save in circumstances where an annual general meeting is convened in which case the ICAV shall appoint the Auditors at that meeting.
- 32.2 Where, in any case, no Auditors are appointed as required by this Section 32, the Central Bank may appoint a person eligible for appointment as auditor under section 123 of the Act to fill the vacancy.
- 32.3 In accordance with Section 133 of the Act, a resolution at a general meeting of an ICAV removing an Auditor before the Auditor's period of office expires or appointing as auditor a person other than the retiring Auditor is not effective unless notice of the intention to move it has been given to the ICAV at least 28 days before the date of the meeting at which it is moved. On receipt of notice of the intended resolution the ICAV shall without delay send a copy to the person proposed to be removed and, as required, to the person proposed to be appointed and to the retiring Auditor. The Auditor proposed to be removed, or the retiring Auditor, may make with respect to the intended resolution representations in writing to the ICAV (not exceeding a reasonable length) and request their notification to the Shareholders.

- 32.4 The ICAV (except where the above representations referred to above) are received by the ICAV too late for it to do so) shall in any notice of the resolution given to the Shareholders, state that the representations have been made and send a copy of the representations to each of the Shareholders and to whom notice of the meeting is or has been sent.
- 32.5 A Director or officer of the ICAV shall not be capable of being appointed as an Auditor.
- 32.6 The Directors or the ICAV in general meeting may fill any casual vacancy in the office of Auditor, but while any such vacancy continues the surviving or continuing Auditor or Auditors (if any) may act.
- 32.7 The remuneration of the Auditors shall be approved by the ICAV in general meeting or in such manner as the Directors may determine.
- 32.8 The Auditors shall examine such books, accounts and vouchers as may be necessary for the performance of their duties.
- 32.9 The report of the Auditors to the Shareholders on the audited accounts of the ICAV shall state whether, in the Auditors' opinion, the balance sheet and profit and loss account give a true and fair view of the state of the ICAV's affairs and of its profit and loss for the period in question.
- 32.10 The ICAV shall furnish the Auditors with a list of all books kept by the ICAV and the Auditors shall at all reasonable times have the right of access to the books and accounts and vouchers of the ICAV and shall be entitled to require from the Directors and officers of the ICAV such information and explanations as may be necessary for the performance of their duties.
- 32.11 The Auditors shall be entitled to attend any general meeting of the ICAV at which any accounts which have been examined or reported on by them are to be laid before the ICAV and to make any statement or explanations they may desire with respect to the accounts and notice of every such meeting shall be given to the Auditors in the manner prescribed for the Shareholders.
- 32.12 The Auditors shall, subject to applicable law, be eligible for re-election.

### **33. NOTICES**

- 33.1 Any notice or other document required to be served upon or sent to a Shareholder may be served by the ICAV on a Shareholder:
- (a) By handing same to him or his authorised agent;
  - (b) By leaving the same at his registered address;
  - (c) By sending the same by post in a pre-paid cover addressed to him at his registered address; or
  - (d) Where permitted by law, by transmitting the same by facsimile or otherwise electronically in accordance with Section 34 of this Instrument.
- 33.2 In the case of joint holders of a Share, all notices shall be given to that one of the joint holders whose name stands first in the Register in respect of the joint holding, and notice so given shall be sufficient notice to all the joint holders. Any notice or other document, served by post, shall be deemed to have been served twenty four hours after the time that the letter containing the same is posted and in proving such service, it shall be sufficient to prove that the letter containing the notice or document was properly addressed and duly posted. Any notice or other document, served by delivery, shall be deemed to have been served at the time of delivery and in proving such service, it shall be sufficient to prove that the letter containing the notice or document was properly addressed and duly delivered. Notice may also be given by way of advertisement containing the full text of the notice in at least one

leading international newspaper and one daily newspaper in Dublin, Ireland or such other publication as the Directors may from time to time determine circulating in any country where the Shares of the ICAV are being issued and such notice shall be deemed to have been served at noon on the day on which such advertisement appears. The signature to any notice to be given by the ICAV may be written or printed.

- 33.3 Any notice or document sent by post to or left at the registered address of a Shareholder shall notwithstanding that such Shareholder be then dead or bankrupt and whether or not the ICAV has notice of his death or bankruptcy be deemed to have been duly served or sent and such service shall be deemed a sufficient service on receipt by all persons interested (whether jointly with or as claiming through or under him) in the Shares concerned.
- 33.4 Any certificate or notice or other document which is sent by post to or left at the registered address of the Shareholder named therein or dispatched by the ICAV, the Depositary, the Administrator, the Investment Manager or the Investment Advisor, in accordance with his instructions shall be so sent left or dispatched at the risk of such Shareholder.
- 33.5 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.

#### **34. USE OF ELECTRONIC COMMUNICATION**

- 34.1 Notwithstanding anything to the contrary in this Instrument, whenever any person (including without limitation the ICAV, a Director, the Secretary, a Shareholder or any officer) is required or permitted to give information in writing such information may be given or received by electronic means or in electronic form, whether as an electronic communication or otherwise. The use of such electronic communication shall conform to any regulations which may from time to time be made by the Directors. The Directors may at any time vary or revoke any regulations made pursuant to this Section.
- 34.2 Regulations made by the Directors pursuant to this Section may include measures designed to:
- (a) ensure the security of electronic communication;
  - (b) establish and authenticate the identity of the giver or recipient, as the case may be, of the information; and
  - (c) record consent of the giver or recipient of the information by electronic means or in electronic form.
- 34.3 For the avoidance of doubt, any giver or recipient of information who has opted to give or receive information by electronic means or in an electronic form may at any time by notice given in conformity with regulations made by the Directors, opt to give or receive the information in any one of the other forms permitted by Instrument.
- 34.4 Without prejudice to the generality of Sections 34.1, 34.2 and 34.3, the Directors may arrange to enable electronic communications by the ICAV with any Shareholder or any other person as the case may be of:
- (a) notices of annual or extraordinary general meetings;
  - (b) the appointment of a proxy;
  - (c) balance sheet profit and loss account and group accounts and the Directors' and Auditors' reports;
  - (d) confirmations of subscriptions and redemptions; and

- (e) the Net Asset Value;

**PROVIDED THAT** Shareholders with whom the ICAV has arranged to enable such electronic communications elect to receive these documents in this fashion and that a hard copy of these documents continues to be available.

### **35. WINDING UP**

35.1 Following termination of the ICAV or Funds in accordance with Section 36 of the Instrument, the following provisions apply to the winding up of the ICAV:

- (a) Subject to the provisions of the Act, the liquidator shall firstly apply the assets of each Fund in such manner and order as he thinks fit in satisfaction of creditors' claims relating to that Fund.
- (b) The liquidator shall apply the assets of each Fund in satisfaction of liabilities incurred on behalf of or attributable to such Fund and shall not apply the assets of any Fund in satisfaction of any liabilities incurred on behalf of or attributable to any other Fund.
- (c) The assets available for distribution among the Shareholders shall then 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 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 case of the winding up of the ICAV, in the payment to the holders of non-participation shares of sums up to the consideration paid in respect thereof 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, in proportion to the number of Shares held the relevant Class or Fund; and
  - (iv) fourthly, in the case of the winding up of the ICAV, any balance then remaining and not attributable to any Fund or Class shall be apportioned between the Funds and Classes pro-rata to the Net Asset Value of each Fund or Class immediately prior to any distribution to Shareholders and the amounts so apportioned shall be paid to Shareholders pro-rata to the number of Shares in that Fund or Class held by them.
- (d) The ICAV may be wound up in accordance with the provisions of Part 11 of the Companies Act, 2014 relating to the winding up of companies subject to any necessary modifications and the specific modifications contained in the Act which apply as if the ICAV were an investment company.
- (e) If the ICAV shall be wound up, the liquidator may, with the authority of an ordinary resolution of the ICAV or where relevant Fund, divide among the Shareholders (pro-rata to the value of their respective shareholdings in the ICAV or where relevant Fund) in specie the whole or any part of the assets of the ICAV or where relevant Fund 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 assets 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 like authority, vest any part of the assets of the ICAV or where relevant Fund in trustees upon such trusts for the benefit of

Shareholders as the liquidator shall think fit and the liquidation of the ICAV or Fund may be closed and the ICAV or the Fund dissolved, provided 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 or Fund to another entity or collective investment scheme in exchange for which Shareholders in the ICAV or Fund shall receive an interest in such entity or collective investment scheme in an equivalent value to their shareholdings in the ICAV or the Fund.

- (f) Notwithstanding any other provision contained in this Instrument, should the Directors at any time and in their absolute discretion resolve, in accordance with the summary approval procedure as provided for in the Act, that it would be in the best interests of the Shareholders to wind up the ICAV or, where relevant, a Fund, then any such winding up shall be commenced subject to the written approval of all Shareholders of the ICAV, or where relevant a Fund, or on the basis of 75% of votes cast at a meeting of the Shareholders of the ICAV, or where relevant a Fund, duly convened. Any liquidator appointed to wind up the ICAV shall distribute the assets of the ICAV in accordance with the provisions of this Instrument.

### **36. TERMINATION OF THE ICAV OR A FUND OR A CLASS**

36.1 The ICAV or where relevant a Fund may be terminated by the Directors, in their sole discretion, in any of the following events:

- (a) in the context of an open-ended Fund (including open-ended Funds with limited liquidity) following a Special Resolution of the Shareholders approving the termination of the Fund;
- (b) in the context of a closed-ended Fund, at the end of the closed-ended period;
- (c) in the case of a Fund that is a loan-originating Fund, in the event of that the diversification requirements imposed by the Central Bank and set out in the Relevant Supplement are breached and Shareholders do not approve the continuation of the relevant loan-originating Fund at the level of diversification that has been achieved within the timeframe imposed by the Central Bank;
- (d) on the sale of the last of a Fund's Investments;
- (e) all of the Shares of a Fund or a Class or the ICAV have been redeemed;
- (f) if the Net Asset Value of a Fund or a class falls below the Minimum Holding which may be specified in the Relevant Supplement;
- (g) if the Depositary has served notice of its intention to retire under the terms of the Depositary Agreement (and has not revoked such notice) and no new Depositary has been appointed by the ICAV with the approval of Central Bank within six months from the date of service of such notice;
- (h) if the AIFM or the Investment Manager in the case of the relevant Fund has served notice of its intention to retire under the terms of the AIFM Agreement or the Investment Management Agreement (as applicable) (and has not revoked such notice) and no new AIFM or Investment Manager in the case of the relevant Fund has been appointed by the ICAV with the approval of the Central Bank within six months from the date of service of such notice;
- (i) if the ICAV shall cease to be authorised or the Fund shall cease to be approved by the Central Bank under the AIFMD Regulations or if the Directors reasonably believe that the ICAV is likely to cease to be authorised by the Central Bank having taken legal advice in that regard;

- (j) if any law shall be passed which renders it illegal or in the reasonable opinion of the Directors, in consultation with the AIFM, impracticable or inadvisable to continue the ICAV; or
  - (k) if the Directors in their absolute discretion consider termination of a Class, a Fund or the ICAV appropriate and in the best interests of the Shareholders and have provided the requisite notice period provided for in the Prospectus.
- 36.2 The decision of the Directors in any of the events specified herein shall be final and binding on all the parties concerned but the Directors shall be under no liability on account of any failure to terminate the relevant Fund pursuant to this Section or otherwise.
- 36.3 The Directors shall give notice of a termination of a Class, a Fund or the ICAV to the Shareholders in the relevant Class, Fund or the ICAV and by such notice affix the date at which such termination is to take effect, which date shall be for such period after the service of such notice as the Directors shall in their sole and absolute discretion determine. In such circumstances and unless otherwise stated in the notice, all of the Shareholders of that Class, the Fund or the ICAV will be deemed to have had requested that their Shares in the Fund be redeemed by the Directors on the termination date selected by the Directors and otherwise in accordance with the redemption procedure set out in the Prospectus.
- 36.4 With effect on and from the date as at which any Fund is to terminate or such other date as the Directors may determine:
- (a) No Shares of the relevant Class or Fund or the ICAV (as applicable) may be issued or sold by the ICAV;
  - (b) The AIFM shall, on the instructions of the Directors, realise all the Investments then compromised in the relevant Fund (which realisation shall be carried out and completed in such manner and within such period after the termination of the relevant Fund or the ICAV as the Directors think advisable); and
  - (c) The Depositary shall, on the instructions of the Directors from time to time, distribute to the Shareholders of the relevant Class, Fund or the ICAV in proportion to their respective interests in the relevant Class or Fund or the ICAV all net cash proceeds derived from the realisation of Investments of the relevant Class, Fund or the ICAV and available for the purpose of such distribution, provided that the Depositary shall not be bound (except in the case of the final distribution) to distribute any of the monies for the time being in its hands the amount of which is insufficient to pay EUR1 or its equivalent in the relevant currency in respect of each Share of the relevant Fund and provided also the Depositary shall be entitled to retain out of any monies in its hands full provision for all costs, charges, expenses, claims and demands incurred, made or apprehended by the Depositary or the Directors in connection with or arising out of the termination of the relevant Fund and out of the monies so retained to be indemnified and saved harmless against any such costs, charges, expenses, claims and demands.

## **37. INDEMNITY**

- 37.1 The Directors, Secretary and other officers or servants for the time being of the ICAV, for the time being acting in relation to any of the affairs of the ICAV and each of them, and each of their 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, charges, losses, damages and expenses, 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 respectively, or as a result of a breach of their duty under section 79(1)(a), (c), (d), (e), (f) or (g) of the Act 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 Shareholders 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 sake of conformity, or for any bankers, brokers, or other person 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 respectively.

- 37.2 Subject to section 85 of the Act, where a Director acts in breach of his or her duty under section 79(1)(a), (c), (d), (e), (f) or (g), he or she shall be liable to do either or both (as corresponding common law rule or equitable principle relating to bodies corporate with respect to the matter would have required) of the following things:
- (a) account to the ICAV for any gain which he or she makes directly or indirectly from the breach of duty; or
  - (b) indemnify the ICAV for any loss or damage resulting from that breach.
- 37.3 The Directors shall have the power to grant such indemnity to the Depositary, the Administrator, the AIFM or any other service provider from the ICAV upon such terms and subject to such conditions and exceptions and with such entitlement to have recourse to the assets of the ICAV with a view to meeting and discharging the cost thereof as shall be provided under the Depositary Agreement, the Administration Agreement, the AIFM Agreement or any investment management agreement or distribution agreement (as applicable), provided that no such indemnity shall extend to any matters arising from the negligence or fraud of the AIFM, the Depositary or the Administrator or such other standards as may be determined by the Board.
- 37.4 The ICAV, the Directors, the AIFM, the Depositary and the Administrator shall be entitled to rely absolutely on any declaration received from a Shareholder as to residence or otherwise of such Shareholder and shall not incur any 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. Notwithstanding any other provision of this Section the Depositary shall be liable to the ICAV and the Shareholders for any loss of financial instruments held in its custody, for all other losses suffered by the ICAV and/or the Shareholders as a result of the Depositary's negligent or intentional failure to properly fulfil its obligations or such other standard as determined by the Directors and agreed with the Depositary in accordance with the Legislation and the Central Bank's requirements.
- 37.5 The ICAV, the Directors, the AIFM, the Depositary and the Administrator 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 neither the ICAV nor the Director nor, subject to the terms of the Depositary Agreement, the Administration Agreement, the AIFM Agreement and the Investment Management Agreement (as applicable), the Depositary nor the Administrator nor the AIFM, nor the Investment Manager, shall be under any liability therefore or thereby. Notwithstanding any other provision of this Section the

Depository shall be liable to the ICAV and the Shareholders for any loss of financial instruments held in its custody, for all other losses suffered by the ICAV and/or the Shareholders as a result of the Depository's negligent or intentional failure to properly fulfil its obligations or such other standard as determined by the Directors and agreed with the Depository in accordance with the Legislation and the Central Bank's requirements.

### **38. DESTRUCTION OF DOCUMENTS**

- (a) The ICAV may destroy:
- (i) any dividend 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;
  - (ii) 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
  - (iii) 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:
    - (1) the foregoing provisions of this Section shall apply only the destruction of a document in good faith and without express notice to the ICAV that the preservation of such document was relevant to a claim;
    - (2) nothing contained in this Section 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 (a) above are not fulfilled; and
    - (3) reference in this Section to the destruction of any document includes references to its disposal in any manner.

### **39. UNTRACED SHAREHOLDERS**

39.1 The ICAV shall be entitled to repurchase any Share of a Shareholder or any Share to which a person is entitled by transmission and to forfeit any dividend which is declared and remains unpaid for a period of six years if and provided that:

- (a) for a period of six years no cheque, confirmation of ownership of Shares sent by the ICAV through the post in a pre-paid letter addressed to the Shareholder or to the person entitled by transmission to the Share at his address on the Register or the last known address given by the Shareholder or the person entitled by transmission to which cheques, confirmations of the ownership of Shares are to be sent, has been cashed or acknowledged and no communication has been received by the ICAV from the Shareholder or the persons entitled by transmission;
- (b) at the expiration of the said period of six years by notice sent by pre-paid letter addressed to the Shareholder or to the person entitled by transmission to the Shareholder at his address on the Register or to the last known address given by the Shareholder or the person entitled by transmission or by advertisement in a national daily newspaper published in Ireland or in a newspaper circulating in the area in



which the address referred to in Section 39.1(a) is located the ICAV has given notice of its intention to repurchase such Share;

- (c) during the period of three months after the date of the advertisement and prior to the exercise of the power of repurchase the ICAV has not received any communication from the Shareholder 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 repurchase such Share, if it is required to do so under the rules of such stock exchange.

39.2 The proceeds of such repurchase shall be held in a separate interest bearing account for one year after which period the monies shall form part of the assets of the ICAV.

#### **40. DEALINGS BY ADMINISTRATOR, AIFM AND DEPOSITARY**

40.1 Any person being the AIFM, the Depositary or the Administrator and any delegate, associate or affiliate of the AIFM, the Depositary or the Administrator may:

- (a) subject to Section 7, become the owner of Shares and hold, dispose or otherwise deal with Shares;
- (b) deal in property of any description on its own notwithstanding the fact that property of that description is included in the property of the ICAV; or
- (c) act as principal or agent in the sale or purchase of property to or from the ICAV without having to account to the ICAV, to the Shareholders or to any other person for any profits or benefits made by or derived from or in connection with any such transaction, provided that such transaction is carried out as if negotiated at arm's length and is in the best interest of Shareholders and:
  - (i) a certified valuation of such transaction by a person approved by the Depositary as independent and competent has been obtained;
  - (ii) such transaction has been executed on best terms on organised investment exchanges under their rules; or
  - (iii) where (a) and (b) are not practical, such transaction has been executed on terms which the Depositary is satisfied conform with the principle that such transactions be carried out as if negotiated at arm's length and in the best interest of Shareholders.

#### **41. SUBSIDIARY COMPANIES**

The ICAV may, with the prior approval of the Central Bank, establish one or more wholly owned subsidiaries to invest in investments which are permitted under the investment policy of the ICAV for the time being in force and under the Act provided that the reasons for establishing any such subsidiaries are justified as being in the interests of Shareholders. Any assets of any such subsidiary shall be held by the Depositary or its nominees or otherwise in accordance with the requirements of the Central Bank.

#### **42. TAXATION**

In the event of any chargeable event pursuant to section 739D TCA, in respect of Shares held by an Irish Resident who is not an Exempt Investor or any Shareholder whether an Irish Resident or not in respect of which a Declaration is not in place or in the event any other Taxation becomes payable or any other chargeable event occurs pursuant to any other provision of Taxation law applicable to the ICAV or the Shareholders, the ICAV shall be entitled to:

- (a) deduct from any payment to be made to such Shareholder an amount equal to the tax chargeable pursuant to section 739E TCA or any other provision of Taxation law applicable to the ICAV or the Shareholders (hereinafter the "appropriate tax"); or
- (b) redeem appropriate or cancel such number of Shares as are required to meet the appropriate tax of such Shareholder and to account for such appropriate tax to the relevant tax authority. In the event that the ICAV is not required to pay such appropriate tax to the relevant tax authority immediately the ICAV shall arrange for the appropriate tax to be lodged to an account in the name of the Depository for the account of the ICAV pending payment to the relevant tax authority.

### **43. U.S. TAX MATTERS AND ALLOCATION PROVISIONS**

43.1 Each Fund of the Company will be treated as a separate entity for U.S. federal income tax purposes. A Fund may elect, pursuant to section 301.7701-3 of the U.S. Treasury Regulations, to be classified as a partnership for U.S. federal income tax purposes and not as an association taxable as a corporation. If such an election is made with respect to a Fund, then the provisions of this Section 43 will apply to such Fund. As a result:

- (a) this Section contains certain provisions appropriate to such classification, (a) including, but not limited to, provisions concerning the allocation of income, deduction, gain, loss or credit and the establishment of capital accounts;
- (b) the Shareholders of such Fund will be treated as partners for U.S. federal income tax purposes; and
- (c) this section shall apply only for U.S. federal income tax purposes, and for no other purposes.

43.2 Definitions. The following definitions shall apply for purposes of this Section 43.

"Adjusted Capital Account Balance" means, with respect to any Shareholder for any period, the balance, if any, in such Shareholder's US Capital Account as of the end of such period, after giving effect to the following adjustments:

- (a) credit to such US Capital Account any amounts that such Shareholder is obligated to restore or is deemed obligated to restore as described in the penultimate sentence of Treasury Regulations Section 1.704-2(g)(1) and in Treasury Regulations Section 1.704-2(i)(5); and
- (b) debit to such US Capital Account the items described in Treasury Regulations Sections 1.704-1(b)(2)(ii)(d)(4), (5) and (6).

"Adjusted Capital Account Deficit" means, with respect to any Shareholder for any financial year, the deficit balance, if any, in such Shareholder's US Capital Account as of the end of such financial year, after giving effect to the following adjustments:

- (c) credit to such US Capital Account any amounts that such Shareholder is obligated to restore or is deemed obligated to restore as described in the penultimate sentence of Treasury Regulations Section 1.704-2(g)(1) and in Treasury Regulations Section 1.704-2(i)(5); and
- (d) debit to such US Capital Account the items described in Treasury Regulations Sections 1.704-1(b)(2)(ii)(d)(4), (5) and (6).

The foregoing definition of Adjusted Capital Account Deficit is intended to comply with the provisions of Treasury Regulations Section 1.704-(1)(b)(2)(ii)(d) consistently therewith.

"Adjusted Fair Market Value" of an item of Fund asset means the greater of (i) the fair market value of such asset valued in accordance with the Fund's valuation policy or (ii) the amount of

any nonrecourse indebtedness to which such asset is subject within the meaning of Code Section 7701(g).

"Book Basis" means, with respect to any asset of the Fund, the adjusted basis of such asset for U.S. federal income tax purposes; provided, however, (a) if any asset is contributed to the Fund, the initial Book Basis of such asset shall equal its fair market value on the date of contribution, and (b) if the US Capital Accounts of the Shareholders are adjusted pursuant to Treasury Regulations Section 1.704-1(b) to reflect the fair market value of any asset of the Fund, the Book Basis of such asset shall be adjusted to equal its respective fair market value as of the time of such adjustment in accordance with such Treasury Regulation. The Book Basis of all assets of the Fund shall be adjusted thereafter by depreciation as provided in Treasury Regulations Section 1.704-1(b)(2)(iv)(g) and any other adjustment to the basis of such assets other than depreciation or amortisation.

"Book Value" means, with respect to any item of the Fund's property, the book value of such property within the meaning of Treasury Regulations Section 1.704-1(b)(2)(iv)(g)(3).

"Fund Minimum Gain" means, with respect to the Fund, partnership minimum gain determined pursuant to Treasury Regulations Section 1.704-2(d).

"Nonrecourse Deduction" means a nonrecourse deduction determined pursuant to Treasury Regulations Section 1.704-2(c).

"Nonrecourse Liability" has the meaning assigned to it in Treasury Regulations Section 1.704-2(b)(3).

"Shareholder Nonrecourse Debt" means any liability of the Fund to the extent that (i) the liability is nonrecourse for purposes of Treasury Regulations Section 1.1001-2 and (ii) a Shareholder or a Related Person bears the economic risk of loss under Treasury Regulations Section 1.752-2.

"Shareholder Nonrecourse Debt Minimum Gain" means minimum gain attributable to Partner Nonrecourse Debt pursuant to Treasury Regulations Section 1.704-2(i)(2).

"Shareholder Nonrecourse Deduction" means any item of Book loss or deduction that is attributable to a Partner Nonrecourse Debt pursuant to Treasury Regulations Section 1.704-2(i).

"US Profit" and "US Loss" means for each taxable year or other period, an amount equal to the Fund's taxable income or tax loss for the year or other period, determined in accordance with Code Section 703(a) (including all items of income, gain, loss or deduction required to be stated separately under Code Section 703(a)(1)), with the following adjustments:

- (a) any income of the Fund that is exempt from U.S. federal income tax and not otherwise taken into account in computing Profit or Loss will be added to taxable income or tax loss;
- (b) any expenditures of the Fund described in Code Section 705(a)(2)(B) or treated as Code Section 705(a)(2)(B) expenditures under Treasury Regulations Section 1.704-1(b)(2)(iv)(i), and not otherwise taken into account in computing Profit or Loss, will be subtracted from taxable income or tax loss;
- (c) gain or loss resulting from any disposition of Fund assets with respect to which gain or loss is recognised for U.S. federal income tax purposes will be computed by reference to the Book Basis of the property, notwithstanding that the adjusted Tax Basis of the property differs from its Book Basis;
- (d) in lieu of depreciation, amortisation and other cost recovery deductions taken into account in computing taxable income or tax loss, there will be taken into account

depreciation for the taxable year or other period as determined in accordance with Treasury Regulations Section 1.704-1(b)(2)(iv)(g);

- (e) any items specially allocated pursuant to this Instrument shall not be considered in determining Profit or Loss; and
- (f) any increase or decrease to US Capital Accounts as a result of any adjustment to the Book Value of Fund assets pursuant to Treasury Regulations Section 1.704-1(b)(2)(iv)(f) or (g) shall constitute an item of Profit or Loss as appropriate.

"Related Person" means, with respect to a Shareholder, a person that is related to such Shareholder pursuant to Treasury Regulations Section 1.752-4(b).

"Revaluation Event" means (i) a liquidation of the Fund (within the meaning of Treasury Regulations Section 1.704-1(b)(2)(ii)(g)); (ii) a contribution of more than a de minimis amount of money or other property to the Fund by a new or existing Shareholder or a distribution of more than a de minimis amount of money or other property to a retiring or continuing Shareholder where such contribution or distribution alters the ratio of the Adjusted Capital Account of any Shareholder to the sum of the Adjusted Capital Account Balances of all the Shareholders, determined as of the date of such contribution or distribution; or (iii) such other time as determined by the Directors in their absolute discretion.

"Special Allocations" has the meaning given in Section 43.6.2 below.

"Tax Basis" means, with respect to any item of the Fund's property, the adjusted basis of such property as determined in accordance with the Code.

### 43.3 US Capital Accounts

#### 43.5.1 Establishment and Maintenance

- (a) A separate Capital Account will be established and maintained for each Shareholder (a "US Capital Account"). Each Shareholder's US Capital Account shall be adjusted as follows:
  - i. the amount of any cash and the Book Value of any property of any Shareholder contributed to the capital of the Fund (net of any liabilities assumed by the Fund or which are secured by any property contributed by such Shareholder) shall be credited to the US Capital Account of that Shareholder;
  - ii. the amount of cash and the Book Value of any property distributed by the Fund to any Shareholder (net of any liabilities assumed by the Shareholder or which are secured by any property distributed to such Shareholder by the Fund) shall be debited against the US Capital Account of that Shareholder; and
  - iii. the US Net Income and US Net Loss (and other items of income, gain, loss, deduction or credit) of the Fund allocated to any Shareholder in accordance with Clause 43.5.1(b), 43.6.1, 43.6.2, 43.6.3 or 43.6.4 shall be credited to and debited against, respectively, the US Capital Account of that Shareholder.
- (b) Provisions of this Instrument relating to the maintenance of US Capital Accounts are intended to comply with Code Section 704(b) and the Treasury Regulations promulgated thereunder and shall be interpreted and applied in a manner consistent with such statutory and regulatory provisions. Without limiting the foregoing, any allocations for a particular financial year pursuant to the allocation provisions set forth in this Section which would violate the requirements of Code Section 704(b) and the Treasury Regulations promulgated thereunder shall not be made and there shall instead be made allocations generally provided herein as determined by the Directors. The Directors also shall (i) make any adjustments that are necessary or appropriate to maintain equality between the US Capital Accounts of the

Shareholders and the amount of capital reflected on the Fund's balance sheet, as computed for book purposes, in accordance with Treasury Regulations Section 1.704-1(b)(2)(q) and (ii) make any appropriate modifications in the event unanticipated events might otherwise cause this Clause 14 not to comply with Code Section 704(b) and the Treasury Regulations promulgated thereunder.

#### 43.4 Revaluation of Fund Property

- (a) Upon the occurrence of a Revaluation Event, the Directors may revalue all property of the Fund (whether tangible or intangible) for book purposes to reflect the Adjusted Fair Market Value of the Fund's property immediately prior to the Revaluation Event. In the event that Fund's property is so revalued, the US Capital Accounts of the Shareholders will be adjusted in accordance with Treasury Regulations Section 1.704-1(b)(2)(iv)(f).
- (b) Upon the distribution of the Fund's property to a Shareholder, if the Fund's property is not revalued pursuant to 43.4(a) the property to be distributed will be revalued for book purposes to reflect the Adjusted Fair Market Value of such property immediately prior to such distribution, and the US Capital Accounts of all Shareholders will be adjusted in accordance with Treasury Regulations Section 1.704-1(b)(2)(iv)(e).

#### 43.5 Restoration of Negative Balances

No Shareholder with a deficit balance in its US Capital Account will have any obligation to the Fund, to any other Shareholder or to any third party to restore or repay said deficit balance.

#### 43.6 Allocation of Profits and Losses

##### 43.6.1 Profits and Losses

Except as otherwise provided in this Section, all items of income, gain, loss, deduction and credit comprising the US Profits or US Losses of the Fund for each financial year will be allocated among the Shareholders in accordance with Sections 30 and 35 of this Instrument, the objective of which is to allocate such items in accordance with each Shareholder's economic interest in the respective item, as determined by the Directors pursuant to Code Sections 704(b) and (c) and the related Treasury Regulations. Unless the Directors determine otherwise, allocations will be made among the Shareholders such that the Capital Account of each Shareholder, immediately after giving effect to such allocations, shall equal (proportionately), as nearly as possible, (i) the amount of the distributions that would be made to such Shareholder if (A) the Fund were dissolved and terminated, (B) its affairs were wound up and each of its remaining assets were sold for its Book Value (limited with respect to each Nonrecourse Liability to the Book Value of the assets securing such liability), (C) all liabilities of the Fund were satisfied; and (D) the net assets of the Fund were distributed to the Shareholders in accordance with Sections 30 and 35 of this Instrument immediately after making the allocation, minus (ii) the Shareholder's share of Fund Minimum Gain and Shareholder Nonrecourse Debt Minimum Gain, computed immediately before the hypothetical sale of assets, minus (iii) any obligation of the Shareholder to make any Capital Contribution at the time pursuant to this Instrument.

##### 43.6.2 Special Allocations

- (a) Notwithstanding any other provision of this Section 43.6, if there is a net decrease in Fund Minimum Gain or Shareholder Nonrecourse Debt Minimum Gain (determined in accordance with the principles of Treasury Regulation Sections 1.704-2(d) and 1.704-2(i)) during any Fund taxable year, each Shareholder shall be specially allocated items of the Fund's income and gain for such year (and, if necessary, subsequent years) in an amount equal to its respective share of such net decrease during such year, determined pursuant to Treasury Regulations Sections 1.704-2(g) and 1.704-2(i)(5). The items to be so allocated shall be determined in accordance with Treasury Regulations Section 1.704-2(f). This Clause 44.4.2(a) is intended to comply with the

minimum gain chargeback requirement in such Regulations Section and shall be interpreted consistently therewith including that no chargeback shall be required to the extent of the exceptions provided in Treasury Regulations Section 1.704-2(f) and 1.704-2(i)(4).

- (b) Notwithstanding any other provision of this Section 43.6 other than Clause 43.6.2(a) above, in the event any Shareholder unexpectedly receives any adjustments, allocations, or distributions described in Treasury Regulation Section 1.704-1(b)(2)(ii)(d)(4), (5) or (6), items of the Fund's income and gain shall be specially allocated to such Shareholder in an amount and manner sufficient to eliminate, to the extent required by the Treasury Regulations, the Adjusted Capital Account Deficit created by such adjustments, allocations or distributions as promptly as possible; provided, that, an allocation pursuant to this Section 43.6.2(b) shall be made only if and to the extent that a Shareholder would have an Adjusted Capital Account Deficit in excess of such sum after all other allocations provided for in this Section 43.6.2 have been tentatively made as if this Section were not in this Instrument.
- (c) In the event any Shareholder has an Adjusted Capital Account Deficit at the end of any financial year, each such Shareholder shall be specially allocated items of the Fund's income and gain in the amount of such excess as quickly as possible; provided, that, an allocation pursuant to this Section 43.6.2(c) shall be made only if and to the extent that a Shareholder would have an Adjusted Capital Account Deficit in excess of such sum after all other allocations provided for in this Section have been made as if Section 43.6.2(b) and this Section 43.6.2(c) were not in this Instrument.
- (d) Nonrecourse Deductions from a particular investment for any financial year or other period shall be specially allocated in proportion to the US Profits from such investment allocated to the Shareholders, respectively or, if there are no US Profits for such financial year or other period from such Investment, Nonrecourse Deductions shall be allocated to the Shareholders in proportion to their respective interests in the Fund.
- (e) Any Shareholder Nonrecourse Deductions for any financial year or other period shall be specially allocated to the Shareholder who bears the economic risk of loss with respect to the Shareholder Nonrecourse Debt to which such Shareholder Nonrecourse Deductions are attributable in accordance with Treasury Regulations Section 1.704-2.
- (f) Deductions in respect of management fees and other expenses that are funded by Capital Contributions will be allocated to the Shareholders in accordance with their funded Capital Contributions made to pay such fees and expenses.
- (g) All special allocations described in this Clause 43.6.2 (the "Special Allocations") are intended to comply with Code Section 704 and the related Treasury Regulations. In the event that the Directors determine a Special Allocation described above does not comply with the Code or applicable Treasury Regulations, the Directors will make such allocation in a manner consistent with the Code and Treasury Regulations as described in Clause 43.6.4 below. To the extent consistent with the manner in which US Profits and US Losses are intended to be shared among Shareholders, any Special Allocations shall be taken into account in determining subsequent allocations of US Profits and US Loss, so that the cumulative amount of US Profit and US Loss allocated among the Shareholders shall equal those amounts that would have been allocated in the absence of any Special Allocations.

#### 43.6.3 Other Allocations

If during any taxable year of the Fund there is a change in any Shareholder's interest in the Fund, allocations of US Profits and US Losses for such taxable year will take into account the

varying interests of the Shareholders in the Fund in any manner determined by the Directors consistent with the requirements of Code Section 706.

#### 43.6.4 Reallocation

If the Directors determine that the Code or any Treasury Regulations require allocations of items of income, gain, loss, deduction or credit different from those set forth in this Section 43.6, the Directors are hereby authorised to make new allocations in reliance on the Code and such Treasury Regulations, and no such new allocation will give rise to any claim or cause of action by any Shareholder.

#### 43.7 Allocation of Tax Items

43.7.1 For each financial year, items of income, deduction, gain, loss or credit that are recognised for U.S. federal income tax purposes shall be allocated among the Shareholders pursuant to Treasury Regulations Section 1.704-1(b) in such manner as to reflect equitably amounts credited to or debited from each Shareholder's US Capital Account for the current and prior financial years. Allocations under this Section 43.7.1 shall be made pursuant to the principles of Code Section 704(c) and in conformity with Treasury Regulations Sections 1.704-1(b)(2)(iv)(f), 1.704-1(b)(4)(i) and 1.704-3 promulgated thereunder, or the successor provisions to such Section and Regulations, such that, to the extent possible, realised gains and losses are allocated to those who were Shareholders in the periods during which such gains and losses accrued in proportion to their holdings during such period. In the absolute discretion of the Directors, the Fund may aggregate realised gains and losses for this purpose in any manner permitted by Treasury Regulations Section 1.704-3.

43.7.2 Notwithstanding anything in Section 43.7.1 to the contrary, in the event that a Shareholder withdraws all or part of its US Capital Account (including by reason of death), the Directors may, in their absolute discretion, specially allocate items of the Fund's gain or loss to that Shareholder for tax purposes to reduce the amount, if any, by which the amount distributable to the Shareholder upon the withdrawal differs from that Shareholder's adjusted basis for its withdrawn interest, or otherwise reduce any discrepancy between amounts previously allocated to the Shareholder's US Capital Account and amounts previously allocated to that Shareholder for U.S. federal income tax purposes.

43.7.3 All matters concerning the valuation of assets of the Fund, the allocation of profits, gains and losses among the Shareholders, including taxes thereon, and accounting procedures not expressly provided for by the terms of this Instrument shall be determined by the Directors, whose determination shall be final and conclusive as to all of the Shareholders.

43.7.4 The Shareholders acknowledge and are aware of the income tax consequences of the allocations made by this Section 43.7 and hereby agree to be bound by the provisions of this Section 43.7 in reporting their shares of items of income, gain, loss, deduction and credit for U.S. federal, state and local income tax purposes.

#### 43.8 Partnership Representative

The Directors shall designate the "partnership representative" within the meaning of Code Section 6223(a) and shall, to the extent necessary, appoint the "designated individual" within the meaning of Treasury Regulation Section 301.6223-1(b)(3)(i), and as such will have sole authority to make elections and otherwise act on behalf of the Fund in any audit proceeding. Each Shareholder (or former Shareholder) agrees to indemnify the Fund for any taxes (and related interest, penalties or other charges or expenses) payable by the Fund and attributable to such Shareholder's (or former Shareholder's) Shares in the Fund, as reasonably determined by the Directors. The foregoing obligation shall survive the withdrawal of any Shareholder, the dissolution and liquidation of the Fund, or both. Any cost or expense incurred by the partnership representative (or its designated individual) in its role as such, shall be treated as an operational expense of the Fund.

#### 43.9 Tax Treatment

The Shareholders intend that the Fund shall be treated as a partnership for U.S. federal income tax purposes. The Shareholders agree to take all actions, including the amendment of this Instrument and the execution of other documents, including IRS Form 8832, as may be required to qualify for and receive such treatment as a partnership for U.S. federal tax purposes. The Shareholders, the Directors and the Fund shall take no action that would cause the Fund to be classified as other than a partnership for U.S. federal income tax purposes.

#### **44. APPROVAL FOR CHANGE OF NAME**

If the ICAV proposes to change the name by which it is incorporated, it shall not do so unless the change is approved by the Central Bank as being neither undesirable nor misleading on an application of this Section.

#### **45. MODIFICATION OF THE INSTRUMENT**

45.1 The Directors and the Depositary shall, subject to the prior approval of the Central Bank, be entitled to modify, alter or add to the provisions of this Instrument in such manner and to such extent as they may consider necessary or expedient for any purpose other than one which would result in the ICAV ceasing to comply with the terms of the Regulations; provided that,

(a) the Depositary has certified in writing that in its opinion such modification, alteration or addition does not prejudice the interests of the Shareholders and does not relate to any such matter as may be specified by the Central Bank as one in the case of which an alteration may be made only if approved by the Shareholders; or

(b) such modification, alteration or addition has been approved by Ordinary Resolution.

45.2 Within 21 days after the date of the making of such modification, alteration or addition in the Instrument, the ICAV shall deposit with the Central bank a copy of the Instrument so altered or containing the alterations.

45.3 In this Section, the terms "modification, alteration or addition" do not include a change in the name of the ICAV the requirements for which are set out in Section 44 of this Instrument.

#### **Names, addresses and descriptions of subscribers:**

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

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

Dated this 2020



Witness to the above signatures:

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