

Irish Collective Asset-management Vehicles Acts 2015 - 2020

INSTRUMENT OF INCORPORATION

of

WPEF VI FEEDER 2 ICAV

(a closed-ended ICAV)

A VARIABLE CAPITAL COLLECTIVE INVESTMENT CORPORATE BODY

(as adopted by written resolution of the Shareholders on 6 December 2023 pursuant to section 31(1)(b) of the Irish Collective Asset-management Vehicles Act 2015)

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1 Definitions

1.1 Unless otherwise defined in this Section 1.1, capitalised terms used in this Instrument shall have the meaning ascribed to them in the Master Fund LPA. The following words shall bear the meanings set opposite to them unless inconsistent with the subject or context:

“**Accounting Period**” means, unless otherwise determined by the Directors, a financial period of the ICAV commencing in the case of the first such period on the date of registration with the Central Bank and terminating on 31 December or such other date as the Directors may from time to time determine or (in the case of the final Accounting Period) the date when Feeder 2 LP is terminated.

“**Act**” means the Irish Collective Asset-management Vehicles Acts 2015 - 2020 and every modification or re-enactment thereof for the time being in force.

“**Administrator**” means any person, firm or corporation appointed by the ICAV from time to time and for the time being responsible for the provision of administration, fund accounting and related services to the ICAV.

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

“**AIF Rulebook**” means the rulebook issued by the Central Bank as may be amended from time to time which sets out the Central Bank’s regulatory regime for AIFs and other relevant entities that fall to be regulated under the AIFMD.

“**AIFM Agreement**” means any agreement for the time being subsisting between the ICAV and the Manager relating to the appointment and duties of the Manager.

“**AIFMD**” means the Alternative Investment Fund Managers Directive (Directive 2011/61/EU) (as amended) and includes as appropriate Commission Delegated Regulation (EU) 231/2013 of 19 December 2012.

“**AIFM Regulations**” means the European Union (Alternative Investment Fund Managers) Regulations 2013 (S.I. 257 of 2013) as may be amended from time to time, and all applicable Central Bank regulations made, conditions imposed or derogations granted thereunder.

“**AIFM Rules**” means any rules or conditions from time to time made by the Central Bank pursuant to the Act and the AIFM Regulations, and, including without limitation, the AIF Rulebook.

“**Annual Report**” means a report prepared in accordance with Section 36 hereof.

“**Auditors**” means the auditors for the time being of the ICAV.

“**Base Currency**” means the base currency of the ICAV as specified in the Prospectus, or such other currency as may be determined by the Directors and disclosed in the Prospectus.

“**Business Day**” means such day or days as the Directors from time to time may determine in relation to the ICAV and specify in the Prospectus.

“**Capital Call**” means any capital call made by the ICAV to request payment for shares pursuant to a Capital Commitment.

“Capital Commitment” means an amount committed to the ICAV by a Shareholder as set forth in the subscription agreement to which such Shareholder is party or equivalent agreement.

“Central Bank” means the Central Bank of Ireland or any successor thereto.

“Class Currency” means the currency in which a Share class is designated, as disclosed in the Prospectus, unless otherwise determined by the Directors.

“Dealing Day” means such day or days as the Directors from time to time may determine in relation to the ICAV and specify in the Prospectus.

“Default Notice” a notice served on a Shareholder by the Manager pursuant to Section 34.1.

“Default Charges” has the meaning given at Section 34.3.

“Defaulting Shareholder” has the meaning given at Section 34.1.

“Depository” means any person, firm or corporation appointed and for the time being responsible for the safekeeping of all of the assets of the ICAV.

“Depository Agreement” means any agreement for the time being subsisting between the ICAV and the Depository relating to the appointment and duties of such Depository.

“Director” means any director of the ICAV from time to time.

“Distributor” means any person, firm or corporation appointed by the ICAV from time to time and for the time being responsible for the provision of distribution and related services to the ICAV.

“Eligible Investor” means:

- (a) An investor who certifies in writing that they are a professional client under MiFID and that they are aware of the risk involved in the proposed investment and of the fact that inherent in such investments is the potential to lose all of the sum invested; 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 an investment in Shares; or
- (c) An investor who certifies that they are an informed investor by confirming that:
 - (i) they have such knowledge of and experience in financial and business matters as would enable the investor to properly evaluate the merits and risks of the prospective investment in the Shares; or
 - (ii) 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; or

- (d) Such other person or persons as may be permitted to acquire Shares in accordance with the AIF Rulebook.

“Exempt Investor” means the Irish Residents specified as exempt investors in the Prospectus.

“Feeder Partnership” means WPEF VI Feeder 2 ILP, an Irish investment limited partnership established under the laws of Ireland, whose principal place of business is at 2nd Floor, Block 5, Irish Life Centre, Abbey Street Lower, Dublin, D01 P767, Ireland, and any other any investment vehicle established for the purpose of investing, directly or indirectly through an Intermediate Feeder Vehicle, in parallel with any other Master Limited Partner into the Master Fund and designated by the Manager as a “Feeder Partnership”.

“Fractional Share” means a fractional share in the ICAV issued in accordance with Section 12.4.

“ICAV” means an Irish collective asset-management vehicle registered pursuant to the Act. References to **“the ICAV”** shall be to the ICAV to which this Instrument relates.

“ICAV Assets” means the assets of the ICAV from time to time.

“Indemnified Person” means the ICAV, the Manager and its Affiliates and respective agents, employees, consultants, directors, shareholders, partners, officers and other persons connected to WPEF VI (excluding, for the avoidance of doubt, Investors).

“Initial Offer Period” means the period determined by the Directors during which Shares of any class are offered by the ICAV for purchase or subscription at the Initial Price.

“Initial Price” means the price at which any Shares of any class are first offered for purchase or subscription.

“Instrument” means this instrument of incorporation, including the Schedules, as amended from time to time.

“Intermediate Feeder Vehicle” means the ICAV and any other Feeder Vehicle established for the purpose of enabling another Feeder Vehicle to invest indirectly in parallel with any other Master Limited Partner into the Master Fund and designated by the Manager as an “Intermediate Feeder Vehicle”.

“Investment” means any of the investments of the ICAV as more particularly set out in the Prospectus.

“in writing” means written, printed, lithographed, photographed, telexed, telefaxed or represented by any other substitute for writing, whether electronic or otherwise, or partly one and partly another.

“Irish Resident” means any company resident or other person resident or ordinarily resident, in the Republic of Ireland for the purposes of Irish tax.

“Knowledgeable Investor” means such investors, as specified in the Prospectus from time to time, who are permitted to acquire Shares in accordance with the requirements of the Central Bank.

“Manager” means the person, firm or corporation appointed and from time to time acting as the alternative investment fund manager of the ICAV (if any) pursuant to the AIFM Regulations, which may be the ICAV itself, or another service provider to the ICAV.

“Master Fund” means Waterland Private Equity Fund VI C.V., a limited partnership (*commanditaire vennootschap*) (as such term is interpreted under the laws of the Netherlands) established under the laws of the Netherlands, whose principal place of business is at Brediusweg 16, 1401 AG Bussum, the Netherlands.

“Master Fund LPA” the limited partnership agreement constituting the Master Fund, as amended from time to time.

“Master General Partner” means WPEF VI GP B.V. in its capacity as general partner (*beherend vennoot*) of the Master Fund, and any successor general partner of the Master Fund in such capacity.

“Master Fund Manager” means Waterland Private Equity Investments B.V. in its capacity as manager of the Master Fund, and any successor manager of the Master Fund in such capacity.

“Minimum Subscription” means the minimum subscription from time to time specified in the Prospectus.

“month” means calendar month.

“Net Asset Value” means the amount determined for any particular Valuation Day pursuant to Section 19 and Schedule 2 hereof.

“Non-US Person” means (a) a natural person who is not a resident of the United States, (b) a partnership, corporation or other entity, other than an entity organised principally for passive investment, organised under the laws of a non-US jurisdiction and which has its principal place of business in a non-US jurisdiction, (c) an estate or trust, the income of which is not subject to United States income tax regardless of source, (d) an entity organised principally for passive investment such as a pool, investment company or other similar entity, provided that units of participation in the entity held by persons who do not qualify as Non-US Persons or otherwise as qualified eligible persons represent in the aggregate less than 10% of the beneficial interest in the entity and that such entity was not formed principally for the purpose of facilitating investment by persons which do not qualify as Non-US Persons in a commodity pool with respect to which the commodity pool operator is exempt from certain requirements of Part 4 of the CFTC’s regulations by virtue of its participants being Non-US Persons, (e) a pension plan for employees, officers or principals of an entity organised and with its principal place of business outside the United States; and/or such other person or entity as may be determined by the Directors and disclosed in the Prospectus.

“Officer” means any Director or the Secretary.

“Ordinary Resolution” means a resolution of the ICAV or of any class of Shares in the ICAV, as appropriate, passed by a simple majority of the votes cast by the members of the ICAV or of any class of Shares in the ICAV, as appropriate, in person or by proxy at a general meeting of the ICAV or of any class of Shares in the ICAV, as appropriate.

“**Prospectus**” means the prospectus from time to time issued by the ICAV in relation to the ICAV and any addendum designed to be read and construed together with and to form part of the prospectus.

“**Recognised Market**” means any stock exchange, over-the-counter market or other securities market in any part of the world.

“**Register**” means the register in which are listed the names of Shareholders.

“**Secretary**” means any person, firm or corporation appointed by the ICAV to perform any of the duties of the secretary of the ICAV.

“**Share**” or “**Shares**” means a share or shares in the ICAV representing interests in the ICAV.

“**Shareholder**” or “**Shareholders**” means a person or persons registered as a holder of Shares.

“**Signed**” includes a signature or representation of a signature affixed by mechanical or other means.

“**Special Resolution**” means a resolution of the ICAV or of any class of Shares in the ICAV, as appropriate, passed by not less than 75 per cent of the of the votes cast by the members of the ICAV or any class of Shares in the ICAV, as appropriate, in person or by proxy at a general meeting of the ICAV or any class of Shares in the ICAV, as appropriate.

“**Subscriber Shares**” means the Shares which the subscribers to the Instrument of the ICAV agree to subscribe for as more particularly hereinafter set forth after their names.

“**TCA 1997**” means the Taxes Consolidation Act 1997.

“**US Person**” means a person other than a Non-US Person.

“**Valuation Day**” means each Dealing Day and such days as are determined by the Directors at their discretion and set out in the Prospectus or otherwise notified to Shareholders. There shall be at least one Valuation Day each calendar year.

“**Valuation Point**” means such time on a Valuation Day as the Directors shall determine and specify in the Prospectus, being the time as of which the value of assets and liabilities of the ICAV shall be calculated.

1.2 Reference to enactments and to articles and sections of enactments shall include reference to any modifications or re-enactments thereof for the time being in force.

1.3 Unless repugnant to the context:

1.3.1 words importing the singular number shall include the plural number and vice versa;

1.3.2 words importing the masculine gender only shall include the feminine gender;

1.3.3 words importing persons only shall include companies or associations or bodies of persons, whether corporate or not; and

1.3.4 the word “may” shall be construed as permissive and the word “shall” shall be construed as imperative.

1.4 Nothing in this Instrument shall be construed so as to prohibit the ICAV, the Manager, the Depositary, the Administrator or any other service provider to the ICAV from complying with any applicable law, rule and/or regulation including but not limited to the AIFMD and any applicable AIFM Rules. Furthermore, the terms of the appointment of any Manager, Depositary, the Administrator and other service provider shall be in accordance with applicable law, rule and/or regulation including but not limited to the AIFMD and any applicable AIFM Rules.

2 Name of the ICAV

2.1 The name of the ICAV is WPEF VI Feeder 2 ICAV.

2.2 No change in the name of the ICAV shall be made without the prior approval of the Central Bank and any such change shall be in accordance with the Act and the requirements of the Central Bank.

3 Constitution and Type of Vehicle

3.1 The ICAV is a variable capital investment corporate body established pursuant to the Act.

3.2 The ICAV is, for the purposes of the AIFM Rules, categorised as an AIF scheme.

3.3 The registered office of the ICAV is situated in Ireland.

3.4 The ICAV shall execute and file an entity classification election on IRS Form 8832 with the US Internal Revenue Service pursuant to US Regulations Section 301.7701-3 electing that the ICAV be classified as a partnership or disregarded entity for US federal income tax purposes (and not as an association taxable as a corporation), and thereafter shall take such additional actions as it deems necessary or appropriate in order to maintain such classification.

4 Object

4.1 The sole object of the ICAV shall be the collective investment of its funds in property and giving members the benefit of the results of the management of its funds. The ICAV shall achieve this object solely through investing in the Master Fund with a view to producing profits for distribution in accordance with this Instrument and the Master Fund LPA. The ICAV shall invest as permitted by the Central Bank in accordance with the AIFM Regulations and the AIFM Rules for the purpose of giving to Shareholders the benefit of the results of the management of its funds, as further described in the Prospectus. Subject to Section 4.6, the ICAV may take any measure and carry out any operations which it may deem useful or necessary to the accomplishment and development of its purpose to the full extent permitted by applicable law.

4.2 For the purposes of achieving its object, subject to Section 4.6, the ICAV shall also have the following powers:

4.2.1 To subscribe for an interest as a limited partner of the Master Fund, take such actions, exercise such rights and perform such obligations as may be vested in

or conferred on the ICAV as a limited partner of the Master Fund, and enforce the provisions of the Master Fund LPA on behalf of the ICAV and the Shareholders;

- 4.2.2 In the event that a Shareholder is a Feeder Partnership, to effect the subsequent closing payments envisaged by clause 3.4 of the Fund Agreement relating to such Feeder Partnership;
- 4.2.3 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;
- 4.2.4 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;
- 4.2.5 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;
- 4.2.6 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;
- 4.2.7 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 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 administration, custodian, investment management and advisory and distribution services to the ICAV;
- 4.2.8 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;
- 4.2.9 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;
- 4.2.10 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, 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;

- 4.2.11 To the extent provided by law to obtain and hold, either alone or jointly with any person or company in any part of the world, insurance cover in respect of any risk of the ICAV, its directors, officers, employees and agents;
 - 4.2.12 To distribute among the members 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;
 - 4.2.13 To pay fees, costs, expenses and indemnification payments of the ICAV out of the assets of the ICAV and/or seek payment or reimbursement of the same by the Master Fund pursuant to Section 6.3;
 - 4.2.14 To enforce security and exercise liens, charges, seize collateral or pledged assets, appoint administrators, liquidators, receivers and reinsurers and generally to act to protect the assets of the ICAV;
 - 4.2.15 To grant security or pledge to the Master General Partner and/or Manager (in its capacity as risk and portfolio manager of the Master Fund) in respect of (A) the ICAV's and the Manager's right (whether through power of attorney or otherwise) to initiate, call and enforce, and the ICAV's right to receive and collect, payments with respect to each Shareholder and (B) any deposit account of the ICAV into which payments and related obligations of each Shareholder are to be made, including giving the Master General Partner and/or Manager (in its capacity as risk and portfolio manager of the Master Fund) the right (whether through power of attorney or otherwise) to issue and enforce payment directions with respect to any amounts unpaid on the Shares held by Shareholders and exercise related rights, remedies and powers of the ICAV or the Manager;
 - 4.2.16 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;
 - 4.2.17 To procure the ICAV to be registered or recognised in any part of the world;
 - 4.2.18 To do all such other things as may be deemed requisite, incidental or conducive to the attainment of the objects of the ICAV; and
 - 4.2.19 To do all such other things in any part of the world, whether as principals, agents, contractors, trustees or otherwise, and either by or through trustees, agents, sub-contractors or otherwise and either alone or in partnership or conjunction with any person, ICAV or company, and to contract for the carrying on of any operation connected with the ICAV's business by any person, ICAV or company.
- 4.3 Each of the powers of the ICAV (whether enumerated or not) is to be interpreted and exercised as ancillary to the main object but separate from and ranking equally to any other power.
- 4.4 Subject to the provisions of the Act, the business of the ICAV shall be commenced as soon after the registration of the ICAV as the Directors think fit.

4.5 The ICAV may pursue its investment objectives by utilising an intermediate investment vehicle, such as a trust, ICAV or company and by advancing monies for investment by such trust, ICAV or company by way of loan, subscription for equity capital or otherwise, provided that where the ICAV uses an ICAV or company as an intermediate vehicle, the ICAV shall maintain beneficial ownership of all of the issued share capital of such ICAV or company and the Shares in such ICAV or company and the assets of such ICAV or company shall be kept under the control of the Depositary or its sub-custodians.

4.6 The ICAV is a conduit vehicle through which each Shareholder will be deemed to direct the ICAV to acquire a corresponding interest in the Master Fund. Each Shareholder agrees that, by investing in the ICAV, such Shareholder shall be deemed to direct the ICAV to invest the amount of its investment into the Master Fund. The Shareholders further acknowledge and agree that, notwithstanding anything herein to the contrary, it is not intended that the Directors, the Manager or any of its Affiliates shall have the power to amend the investment policy of the ICAV without the consent of the Shareholders, with the ICAV having been established solely for the purpose of effecting each Shareholder's indirect investment into the Master Fund.

5 **Base Currency**

The accounts of the ICAV shall be prepared in the Base Currency.

6 **Expenses**

6.1 The charges and expenses of the ICAV may be discharged out of the assets of the ICAV, in accordance with Section 6 hereof.

6.2 All recurring expenses will be charged against current income or against realised capital gains, and, if need be, against assets of the ICAV as the Directors may from time to time decide.

6.3 Notwithstanding the foregoing or anything to the contrary in this Instrument, all fees, costs, expenses and indemnification payments relating to the ICAV (a) which would otherwise be charged to or borne by the ICAV shall be borne by the Master Fund and (b) to the extent initially charged to the ICAV, shall be reimbursed to the ICAV by the Master Fund.

7 **Depositary, Manager, Administrator and other Delegates**

7.1 The ICAV shall forthwith after its registration by the Central Bank and before the issue of any Shares, other than the Subscriber Shares, appoint a person, firm or corporation to act as Depositary with responsibility for the safe-keeping of all of the assets of the ICAV.

7.2 The terms of appointment of any Depositary may authorise such Depositary to avail of a contractual discharge of liability under the conditions set out in the AIFM Regulations.

7.3 The ICAV's property (subject to any exceptions permitted by the Central Bank) shall be entrusted to the Depositary for safekeeping. The types of assets and geographical regions in which the ICAV may invest shall be set out in the Prospectus.

7.4 The appointment of the Depositary shall be subject to the approval of the Central Bank. The Central Bank may in its discretion replace the Depositary with another corporation willing to act as Depositary where the Central Bank deems it necessary to do so.

- 7.5 The termination of the appointment of the Depositary is only permitted upon the appointment of a successor Depositary or upon the revocation of the authorisation of the ICAV.
- 7.6 If the Depositary shall have given to the ICAV notice of its desire to retire from its appointment or the appointment of the Depositary is terminated pursuant to the terms of this Instrument and no successor shall have been appointed in accordance with this Instrument within 90 days from the giving of such notice, the Directors shall, subject to the approval of the Central Bank, repurchase the Shares or appoint a liquidator who shall wind up the ICAV and shall apply, thereafter, to the Central Bank to revoke the authorisation of the ICAV whereupon the Depositary's appointment shall terminate.
- 7.7 The ICAV has the power to appoint an entity to act as the Manager and the Directors may entrust to and confer upon the entity so appointed any of the powers, duties, discretions and/or functions exercisable by them as Directors, upon such terms and conditions (including the right to remuneration payable by the ICAV) and with such powers of delegation and such restrictions as they think fit. The appointment of the Manager (and of any replacement Manager) shall be in accordance with the requirements of the Central Bank. The Central Bank may in its discretion replace the Manager with another entity willing to act as Manager where the Central Bank deems it necessary to do so. In all other cases, the termination of the appointment of the Manager shall be consistent with the terms of the contract pursuant to which it was appointed and the protection of Shareholders.
- 7.8 The ICAV has the power to also appoint a person, firm or corporation to act as Administrator. The appointment of the Administrator shall be in accordance with the requirements of the Central Bank.
- 7.9 The ICAV has the power to appoint a person, firm or corporation to act as Distributor. The appointment of the Distributor shall be in accordance with the requirements of the Central Bank.
- 7.10 The Manager shall be entitled to receive an investment management fee payable out of the assets of the ICAV at an annual rate which will not exceed 5% of the Net Asset Value of the ICAV, including any servicing fees (plus value added tax, if any, thereon). This fee shall accrue and be payable in such manner as is disclosed in the Prospectus. Any further increase above 5% of the Net Asset Value of the ICAV is subject to the approval of the Shareholders in accordance with the provisions of Section 23 hereof.
- 7.11 The Administrator shall be entitled to a fee payable out of the assets of the ICAV in respect of the administrative and transfer agency services provided to the ICAV in an amount which will not exceed 2% of the Net Asset Value of the ICAV subject to such minimum amount and per class of Share as shall be disclosed in the Prospectus (plus value added tax, if any, thereon). This fee shall accrue and be payable on such terms as may be provided for in the Prospectus.
- 7.12 The Depositary will be entitled to a fee in respect of its trustee and sake-keeping services out of the assets of the ICAV held on behalf of the ICAV in an amount which will not exceed 2% of the Net Asset Value of the ICAV subject to such minimum amount and per class of Share per ICAV as shall be disclosed in the Prospectus (plus value added tax, if any, thereon). The trustee and custody fees shall accrue and be payable on such terms as may be provided for in the Prospectus. For the purpose of securing payment of its fees and

expenses, in the event of non-payment of such fees and expenses the ICAV may permit the Depositary to charge the assets of the ICAV which are maintained in the ICAV's accounts.

- 7.13 The ICAV may contractually agree with the Depositary that if at any time any and all obligations or liabilities to the Depositary for any unpaid sum due to the Depositary or any sub-custodian or securities system for or in connection with services rendered hereunder whether by way of an extension of credit or otherwise (including without limitation the purchase or sale of any foreign exchange or any agreement for the purchase or sale of foreign currency) shall not have been honoured and shall be overdue, the Depositary and any sub-custodian or securities system may have the right, on such terms as may be agreed between the ICAV and the Depositary, to retain or set-off, against such obligations or liabilities, any assets of the ICAV that the Depositary or any sub-custodian or securities system may hold directly or indirectly for the account of the ICAV, in any currency (including without limitation time deposits and all securities held hereunder) and, to the extent that there is insufficient cash available for this purpose to sell or otherwise realise any such assets and to apply the proceeds of any such sale or realisation in the satisfaction of such obligations or liabilities.

8 Share Capital

- 8.1 The actual value of the paid up share capital of the ICAV shall at all times be equal to the Net Asset Value of the ICAV as determined in accordance with Sections 19 and 20 hereof.
- 8.2 The share capital of the ICAV shall be equal to the value for the time being of the issued share capital of the ICAV. The ICAV may issue up to 500,000,000,000 (five hundred billion) Shares of no par value and 2 (two) Subscriber Shares of no par value issued at €1.00 each. The maximum issued share capital of the ICAV shall be 500,000,000,002 (five hundred billion and two) Shares of no par value and the minimum issued share capital of the ICAV shall be €2 represented by two Subscriber Shares of no par value issued for €1 each.
- 8.3 The Directors are hereby generally and unconditionally authorised to exercise all the powers of the ICAV to issue Shares in the ICAV provided that the total amount of issued share capital does not exceed the maximum issued share capital set out in Section 8.2 above.
- 8.4 The Subscriber Shares shall not participate in the dividends or assets of the ICAV.
- 8.5 Shares may be issued with such voting rights and rights to participate in the dividends and assets of the ICAV as the Directors from time to time may determine in consultation with the Master Fund Manager and set forth in the Prospectus.
- 8.6 The liability of the Shareholders shall be limited to the amount, if any, unpaid on the Shares respectively held by them without prejudice to any other liability to which a Shareholder may be subject as provided by or under the Act. The Shareholders shall not be liable for the debts of the ICAV.
- 8.7 The Directors may from time to time, with the consent of the Master Fund Manager, determine to provide Shareholders in certain classes with preferential treatment (including but not limited to, in relation to information disclosed to such Shareholders and redemption and dealing terms for such classes). Any preferential treatment will be set out in the Prospectus (so as to ensure the fair treatment of all Shareholders) which shall describe any instance where a class receives preferential treatment, a description of that preferential

treatment and the types of Shareholders who will be permitted to subscribe for such classes and, where relevant, their legal or economic links to the ICAV (or the Manager).

9 **Classes of Shares**

9.1 The Directors may designate the Shares into such classes as they may from time to time determine with such rights or restrictions attaching thereto as they may from time to time determine, in accordance with the requirements of the Central Bank and with the consent of the Master Fund Manager. The Directors may from time to time, with the consent of the Master Fund Manager, re-designate any existing class of Shares in the ICAV and merge such class of Shares with any other class of Shares in the ICAV, provided that Shareholders in such class or classes are first notified by the ICAV and given the opportunity to have the Shares repurchased. With the prior consent of the Directors, Shareholders may convert Shares in one class of Shares into Shares of another class in the ICAV in accordance with the provisions of Section 12.9 hereof.

9.2 For the purpose of enabling Shares of one class to be re-designated or converted into Shares of another class, the ICAV may take such action as may be necessary to vary or abrogate the rights attached to Shares of one class to be converted so that such rights are replaced by the rights attached to the other class into which the Shares of the original class are to be converted.

9.3 Any outstanding classes of Shares of the ICAV may, in the discretion of the Directors after obtaining the consent of the Master Fund Manager, be re-designated 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.

10 **Register of Shareholders**

10.1 A Shareholder shall have his title to Shares evidenced by having his name, address and number of Shares held by him entered in the Register which shall be maintained in the manner required by law, provided that no person holding less than the Minimum Subscription shall be entered on the Register as a Shareholder. No person shall be registered as a Shareholder of the ICAV unless; such person has subscribed for or acquired shares by transfer to the value of not less than the minimum amount as set out in the AIF Rulebook relating to funds marketing solely to Eligible Investors (currently €100,000 or the foreign currency equivalent), and; shall have certified that he is an Eligible Investor (or a Knowledgeable Investor) and that he is aware of the risks involved in the proposed investment and of the fact that inherent in such is the potential to lose all of the sum invested.

10.2 The ICAV shall not issue Share certificates to a Shareholder whose name appears in the Register but, in such case, a statement of Shareholding (a "**holding statement**") in respect of Shares for which no certificates are to be issued shall be sent to each holder of such Shares in such form as the Directors may decide if so requested by a Shareholder. A holding statement shall be a written confirmation of entry on the Register. A holding statement shall not constitute a document of title to the Shares to which it relates and shall confirm the entry of the Shares in question on the Register.

10.3 The Directors shall cause to be entered in the Register the following particulars:

- 10.3.1 the name and address of each Shareholder (save that in the case of joint holders, the address of the first named holder only need be entered);
 - 10.3.2 a statement of the number of Shares held by each Shareholder, which statement shall distinguish each Share by its number (if any) and the class of Shares (if any) to which the Share belongs, and of the amount paid or agreed to be considered as paid on such Shares;
 - 10.3.3 the date on which each person was entered in the Register as a Shareholder, and
 - 10.3.4 the date on which any person ceased to be a Shareholder.
- 10.4 The Register:
- 10.4.1 shall be kept in such manner as to show at all times the Shareholders of the ICAV for the time being and the Shares respectively held by them; and
 - 10.4.2 shall be kept available for inspection in accordance with the Act.
- 10.5 The Directors shall not be bound to register more than four persons as the joint holders of any Share or Shares. In the case of a Share held jointly by several persons, the Directors shall not be bound to issue therefor more than one confirmation of ownership and the issue of a confirmation of ownership for a Share to the first named of several joint holders shall be sufficient delivery to all.
- 10.6 Where two or more persons are registered as the holders of any Shares they shall be deemed to hold the same as joint tenants, subject to the following provisions:
- 10.6.1 the joint holders of any Shares shall be liable, severally, as well as jointly, in respect of all payments which ought to be made in respect of such Shares;
 - 10.6.2 any one of such joint holders may give effectual receipts for any dividend, bonus or return of capital payable to such joint holders;
 - 10.6.3 only the first-named of the joint holders of a Share shall be entitled to receive notices from the ICAV to attend general meetings of the ICAV. Any notice given to the first-named of joint holders shall be deemed notice given to all the joint holders;
 - 10.6.4 the vote of the first-named of joint holders who tenders a vote whether in person or by proxy shall be accepted to the exclusion of the votes of the other joint holders; and
 - 10.6.5 for the purpose of the provisions of this section, the first-named shall be determined by the order in which the names of the joint holders stand in the Register.

11 Dealing Days

Subject as hereinafter provided, all issues and repurchases of Shares shall be effected or made with effect from a Dealing Day provided that the ICAV may provisionally allot Shares

on a Dealing Day on the basis that the Shares shall be issued on receipt of cleared subscription monies and in the event that the ICAV does not receive the cleared subscription monies in respect of such allotment within the period specified in the Prospectus or within such other reasonable time period as may be determined by the Directors, such provisional allotment may be cancelled.

12 Issue of Shares and Conversion of Shares

12.1 Subject as hereinafter provided, the ICAV on or with effect from any Dealing Day on receipt by it of the following:

12.1.1 an application for Shares in such form as the ICAV from time to time may determine; and

12.1.2 such declarations as to the applicant's status, residence and otherwise as the ICAV from time to time may require; and

12.1.3 payment for the Shares within the usual time limits in such manner as the ICAV from time to time may specify;

may issue or allot Shares at the Net Asset Value then obtaining for each Share in such class or at such other price as may be disclosed in the Prospectus from time to time. Any such issue of Shares shall be in accordance with the requirements of this Instrument, the Prospectus and the requirements of the Central Bank.

12.2 No issue shall be made in respect of an application which would result in the applicant investing less than the Minimum Subscription or in the Shares being held by a person who is not an Eligible Investor or a Knowledgeable Investor (save in both cases in respect of the holder(s) of the Subscriber Shares).

12.3 All information required under the AIFM Rules as specified in the Prospectus will be made available to prospective investors prior to subscriptions being accepted.

12.4 The Directors shall be entitled to issue Fractional Shares in any class where the subscription monies received by the ICAV are insufficient to purchase an integral number of Shares in that class.

12.5 The Directors may determine to issue Shares which are only partly paid at the time of issue, subject to such conditions as may be specified in the Prospectus.

12.6 The Directors may delegate to the Administrator or to any duly authorised Officer or other person, the duties of accepting the subscription for, receiving payment for and allotting or issuing new Shares.

12.7 The Directors in their absolute discretion may refuse to accept any application for Shares in the ICAV or any application to convert Shares in any class to Shares in another class or may accept any such application in whole or in part.

12.8 No person shall be recognised by the ICAV as holding any Shares on trust and the ICAV shall not be bound by or recognise (even when having notice thereof) any equitable, contingent, future or partial interest in any Shares or (except only as otherwise provided

herein or as by law may be required) any other right in respect of any Share, except an absolute right of title thereto in the registered holder.

- 12.9 Subject as hereinafter provided, a holder of Shares of any class (the “**Original Shares**”) may, with the prior consent of the Directors, from time to time convert all or any portion of such Shares (“**Conversion**”) having such minimum value at the time of Conversion as may be determined by the Directors from time to time into Shares of another class (the “**New Shares**”) either existing or agreed to be brought into existence on such terms as are disclosed in the Prospectus. Any Original Shares may also, in the discretion of the Directors, be converted into New Shares at the prevailing Net Asset Value per Share of such other New Shares in circumstances set out in the Prospectus.

13 **Rights in Scheme Property**

- 13.1 The assets of the ICAV shall belong exclusively to the ICAV and no Shareholder shall have any interest in the underlying assets of the ICAV.

- 13.2 The rights which attach to each Share of any given class are as follows:

13.2.1 the right, in accordance with this Instrument, to participate in or receive profits or income arising from the acquisition, holding, management or disposal of ICAV property;

13.2.2 the right, in accordance with this Instrument, to vote at any annual general meeting of Shareholders of the ICAV or at any meeting of the Shareholders of a class of Shares; and

13.2.3 such other rights as may be provided for in this Instrument in relation to Shares of that class, subject to the regulations and conditions imposed by the Central Bank.

14 **Price Per Share**

- 14.1 The Initial Price per Share at which the Shares of any class shall be allocated or issued and the Initial Price and the Initial Offer Period shall be determined by the Directors. The commission payable on the Initial Price shall be determined by the Directors and the Master Fund Manager.

- 14.2 The price per Share for any class of Shares on any Dealing Day following the Initial Offer Period shall be the Net Asset Value per Share in such class applicable in the case of issues of Shares in such class as determined in accordance with Section 19 and Schedule 2 or such other price as may be determined by the Directors and disclosed in the Prospectus from time to time.

- 14.3 Shares may only be issued at fixed price after the Initial Offer Period where it has been confirmed to the Central Bank by the ICAV that existing Shareholders of the ICAV will not be prejudiced.

- 14.4 The Directors may require an applicant for Shares to pay to the ICAV in addition to the price per Share such commission and duties and charges in respect of the Shares as the Directors and the Master Fund Manager from time to time may determine.

14.5 No Shares shall be issued on any Dealing Day on which the determination of the Net Asset Value of such Shares is suspended pursuant to Section 19.4 hereof.

15 **Qualified Holders**

15.1 The ICAV may from time to time impose such restrictions as it thinks necessary for the purposes of ensuring that no Shares of the ICAV are acquired or held by any person in circumstances:

15.1.1 which constitute a breach of the law or governmental regulation (or any interpretation of a law or regulation by a competent authority) of any country or territory; or

15.1.2 which would (or would if other Shares were acquired or held in like circumstances) result in the ICAV incurring any liability to taxation or suffering any other adverse consequence (including a requirement to register under any securities or investment or similar laws or governmental regulation of any country or territory); or

15.1.3 which constitutes a breach of this Instrument or the Prospectus as to eligibility or entitlement to hold such Shares and, in this connection, the ICAV may, inter alia, reject at its discretion any subscription for, sale or transfer of, Shares or any conversion.

15.2 Details of the specific restrictions imposed by the ICAV, the provisions applicable to a Shareholder who acquires or comes to hold or own Shares in one of the relevant circumstances listed in Section 15.1 above (or where the ICAV has reason to believe this to be the case), the Shareholder's obligations and the ICAV's rights and powers in this regard are set out in Schedule 1 to this Instrument.

16 **Transfer and Transmission of Shares**

16.1 All transfers of Shares shall be effected by a transfer in writing in any usual or common form and every form of transfer shall state the full name and address of the transferor and transferee.

16.2 The instrument of transfer shall be signed by or on behalf of the transferor and need not be signed by the transferee, and shall meet such requirements as may be specified in the Prospectus or as may otherwise be required by the Directors to prove the right of the transferor to transfer the Shares. The transferor shall be deemed to remain the holder of the Share until the name of the transferee is entered in the Register in respect thereof.

16.3 A transfer of Shares may not be registered if such transfer would result in the transferor or the transferee holding a number of Shares less than the Minimum Subscription. Only transferees who are a Fund Vehicle and who certify that they are Eligible Investors or Knowledgeable Investors and that they are aware of the risk involved in the proposed investment and that inherent in such investment is the potential to lose all of the sum invested, shall be entered on the Register as a Shareholder and shall be permitted to invest in the ICAV. The Directors shall not register a transfer of Shares unless the transferee is a Fund Vehicle (which is also an Eligible Investor or Knowledgeable Investor), and has provided such evidence of identity and / or status as the ICAV or its delegates may require.

- 16.4 The Directors may decline to register any transfer of Shares unless the instrument of transfer is deposited at the registered office of the ICAV or at such other place as the Directors may reasonably require, with such other evidence as the Directors may reasonably require to show the right of the transferor to make the transfer. The Directors may decline to register a transfer where the transfer would result in a contravention of any provision of this Instrument or would produce a result inconsistent with any provision of the Prospectus or where the transferee fails to provide the necessary declarations as to tax residency as may be requested by the ICAV.
- 16.5 If the Directors decline to register a transfer of any Share they shall, within two months after the date on which the instrument of transfer was lodged with the ICAV, give to the transferee written notice of the refusal. For the avoidance of doubt, the Directors are 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 any law (including any law that is for the time being in force in a country or territory other than the State).
- 16.6 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.
- 16.7 A person so becoming entitled to a Share in consequence of the insolvency or bankruptcy of a Shareholder shall have the right to receive and may give a discharge for all monies payable or other advantages due on or in respect of the Share, but he shall not be entitled to receive notice of or to attend or vote at meetings of the ICAV, nor save as aforesaid, to any of the rights or privileges of a 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 (90) days the Directors may thereafter withhold all moneys payable or other advantages due in respect of the Share until the requirements of the notice have been complied with.

17 **Repurchase of Shares**

- 17.1 The ICAV may repurchase its own outstanding fully paid Shares at any time in accordance with the conditions imposed by the Central Bank and the rules and procedures set out herein and in the Prospectus. The ICAV is closed-ended and Shareholders have no right to request the repurchase of their Shares, subject to any conditions set down by the Central Bank. Where the ICAV does offer a redemption opportunity by declaring a Dealing Day for redemptions, a Shareholder may irrevocably request the ICAV to repurchase all or any part of his Shares in the ICAV by forwarding a request for repurchase of Shares to the ICAV in accordance with the provisions of the Prospectus and, save as otherwise provided in the Prospectus, a repurchase request shall be effective on the Dealing Day following receipt of the repurchase request.
- 17.2 A request for repurchase of Shares shall be in such form as the ICAV shall prescribe, shall be irrevocable (without the consent of the ICAV) and shall be filed by a Shareholder in written form at the registered office of the ICAV, or at the office of the person or entity from time to time designated by the ICAV as its agent for the repurchase of Shares, and, at the request of the ICAV shall be accompanied by proper evidence of succession or assignment satisfactory to the ICAV, if applicable.

- 17.3 On receipt of a request for repurchase of Shares duly completed the ICAV shall repurchase the Shares as requested on the Dealing Day on which the repurchase request is effective subject to any suspension of this repurchase obligation pursuant to Section 19.3 hereof. Shares in the capital of the ICAV which are repurchased by the ICAV shall be cancelled.
- 17.4 The repurchase price per Share in any class of Shares shall be the Net Asset Value per Share in that class applicable in the case of a repurchase of such Share obtaining on the Dealing Day on which the repurchase request is effective, less such commission and duties and charges as may be set out in the Prospectus such commission and shall not exceed 5% of the Net Asset Value of the Shares subject to repurchase.
- 17.5 Payment to a Shareholder under this Section will be made in the relevant Class Currency.
- 17.6 On repurchase of part only of the Shares held by any Shareholder, the Directors shall procure that evidence of ownership shall be issued free of charge for the balance of such Shares if so requested by a Shareholder.
- 17.7 In the event that a repurchase of part only of a Shareholder's holding of Shares leaves the Shareholder holding less than the Minimum Subscription the Directors may, if they think fit, repurchase the whole of that Shareholder's holding.
- 17.8 A distribution in respect of a redemption may also be made in kind, at the discretion of the Directors, after consultation with the Manager, provided that where the redemption request represents less than 5% of the Net Asset Value, the redemption in kind will only be made with the consent of the redeeming Shareholder. The assets to be transferred shall be selected at the discretion of the Directors with the approval of the Depositary and taken at their value used in determining the redemption price of the Shares being so repurchased. As a result, such distributions will only be made if the Depositary is satisfied that the terms of the distribution will not be such as are likely to result in any material prejudice to the Shareholders in the ICAV. Shareholders will bear any risks of the distributed securities and may be required to pay a brokerage commission or other costs in order to dispose of such securities. If a Shareholder so requests, the Manager shall sell the assets to be distributed to that Shareholder and distribute the net cash proceeds to the Shareholder. The cost of the sale shall be charged to the relevant Shareholder.
- 17.9 Redemptions in specie will only be accepted by the ICAV where the Depositary is satisfied that the terms of the exchange will not be such as are likely to result in any material prejudice to Shareholders in the ICAV.
- 17.10 At any time after the issue of Shares, the ICAV shall be entitled to repurchase the Subscriber Shares or to procure the transfer of the Subscriber Shares to any person who may be a qualified holder of Shares in accordance with Section 15 hereof.
- 17.11 In the event that the ICAV is required to account for, deduct or withhold tax on a disposal of Shares by a Shareholder (whether upon a repurchase of Shares, a transfer of Shares or otherwise) or upon payment of a distribution to a Shareholder (whether in cash or otherwise), the Directors shall be entitled to require the compulsory repurchase and cancel of all or part of the Shares of such Shareholder for the purposes of obtaining sufficient monies to discharge any such tax liability. The Directors shall instruct the Depositary to place the repurchase proceeds received in respect of such a repurchase of Shares in a separate

account so that such monies are separately identifiable for the purposes of discharging any applicable tax liability as aforesaid.

- 17.12 Where the ICAV receives a request for the repurchase of Shares from any Shareholder in respect of which the ICAV is required to account for, deduct or withhold taxation, the ICAV shall be entitled to deduct from the proceeds of repurchase such amount of taxation as the ICAV is required to account for, deduct or withhold and shall arrange to discharge the amount of taxation due.
- 17.13 Where the ICAV proposes to amend the maximum annual fee charged by the Manager disclosed in the Prospectus and paid directly out of the assets of the ICAV, the approval of such increase shall be by 75% of votes cast in favour of the increase where there is no realistic opportunity to redeem a shareholding, and in all other circumstances, by 50% of the votes cast.
- 17.14 At the end of the closed-ended period of the ICAV as may be disclosed in the Prospectus, relevant Shareholders may be given the opportunity to vote on a Special Resolution to extend such closed-ended period in accordance with the requirements of the Central Bank. In the event that no such Special Resolution is passed at the end of the closed-ended period, or any extended closed-ended period, if applicable, then the ICAV undertake one of the following actions:
- (a) redeem all outstanding Shares and thereafter will apply to the Central Bank for revocation of the ICAV's authorisation;
 - (b) convert to an open-ended ICAV, the relevant details of which will be disclosed in the Prospectus; or
 - (c) obtain Shareholder approval to extend the closed-ended period for a further finite period.

18 **Total Repurchase**

- 18.1 The ICAV may redeem all of its Shares or the Shares of any class in issue if:
- 18.1.1 the redemption of the Shares in a class is approved by a resolution in writing signed by all of the holders of the Shares in that class, as appropriate, or is approved by a Special Resolution of all of the holders of the Shares in that class;
 - 18.1.2 the Directors deem it appropriate because of adverse political, economic, fiscal or regulatory factors affecting the ICAV or relevant class of Shares;
 - 18.1.3 where the Depositary has served notice of its intention to retire and an alternative depositary has not been appointed within 90 days from the date of such notice; or
 - 18.1.4 in such other circumstances as may be set out in the Prospectus from time to time.
- 18.2 Where a repurchase of Shares pursuant to Section 17 or 18 would result in the number of Shareholders falling below two or such other minimum number of Shareholders as the Act may stipulate as the legal minimum number of Shareholders in an ICAV or would result in

the issued share capital of the ICAV falling below such minimum amount as the ICAV may be obliged to maintain as the Act may stipulate, the ICAV may defer the repurchase of such Shares the repurchase of which would result in such number or amount not being satisfied until the ICAV is wound up or until the ICAV procures the issue of sufficient Shares to ensure that the aforesaid number and amount are satisfied. The ICAV shall be entitled to select the Shares for such deferred repurchase in such manner as it may deem to be fair and reasonable and as may be approved by the Depositary.

19 Determination of Net Asset Value and Temporary Suspension of Dealings

19.1 The Net Asset Value of the ICAV as at each Valuation Point shall be determined in accordance with the provisions of this Section 19. The Net Asset Value shall be expressed in the Base Currency as a per Share figure for the issue of Shares and for the repurchase of Shares, respectively as appropriate.

19.2 The Net Asset Value per Share of the ICAV shall be calculated by dividing the assets of the ICAV less its liabilities by the number of Shares in issue and shall be determined in accordance with Section 20 and Schedule 2 hereof.

19.3 The ICAV may, in each case in the discretion of the Directors or the Manager with the consent of the Master Fund Manager, on behalf of the ICAV, authorize the correction of any errors in the calculation of the Net Asset Value of the ICAV or the processing of subscriptions and redemptions. Such correction may involve an adjustment to the number of Shares held by a given Shareholder(s) or the Net Asset Value at which such Shares were issued or to the redemption monies paid to such Shareholder.

19.4 The Directors may, in consultation with the Depositary, temporarily suspend the determination of the Net Asset Value and the sale, issue, valuation, allotment and/or redemption of Shares during:

19.4.1 any breakdown in the means of communication normally employed in determining the value of any investments for the time being comprised in the ICAV or during any period when for any other reason the value of investments for the time being comprised in the ICAV cannot, in the opinion of the Directors, be promptly or accurately ascertained;

19.4.2 any period when proceeds of any sale or repurchase of the Shares cannot be transmitted to or from the account of the ICAV;

19.4.3 any period in which the repurchase of the Shares would, in the opinion of the Directors, result in a violation of applicable laws;

19.4.4 any period after a notice convening a meeting of Shareholders for the purpose of dissolving the ICAV or has been issued, up to and including the date of such meeting of Shareholders; or

19.4.5 any period when the Directors determine that it is in the best interests of the Shareholders to do so.

19.5 The ICAV may elect to treat the first Business Day on which the conditions giving rise to the suspension have ceased as a substitute Dealing Day in which case the Net Asset Value

calculations and all issues and repurchases of Shares shall be effected on the substitute Dealing Day.

- 19.6 Any such suspension shall be published by the ICAV in such manner as it may deem appropriate to the persons likely to be affected thereby if in the opinion of the ICAV, such suspension is likely to continue for a period exceeding fourteen days and any such suspension shall be notified immediately to the Central Bank and in any event within the same Business Day.

20 **Valuation of Assets**

- 20.1 The Net Asset Value of the ICAV and the ICAV's assets shall be determined in accordance with requirements of the Central Bank, and subject thereto, in accordance with Schedule 2 to this Instrument. The Net Asset Value per Share will be made available to Shareholders in the manner described in the Prospectus.

21 **General Meetings**

- 21.1 All general meetings of the ICAV shall be held in Ireland.
- 21.2 Subject to Section 21.3, the ICAV shall in each year hold a general meeting as its annual general meeting in addition to any other meeting in that year. Not more than fifteen months shall elapse between the date of one annual general meeting of the ICAV and that of the next **PROVIDED THAT** so long as the ICAV holds its first annual general meeting within eighteen months after the date on which the registration order made by the Central Bank in respect of the ICAV comes into operation it need not hold it in the year of its incorporation or in the following year.
- 21.3 The Directors may elect to dispense with the holding of an annual general meeting by giving 60 days' written notice to all Shareholders. Any such election has effect for the year in which it is made and subsequent years, but does not affect any liability already incurred by reason of default in holding an annual general meeting. Where an election under this Section 21.3 has effect for a year, one or more Shareholders of the ICAV holding, or together holding, not less than 10% of the voting rights in the ICAV or the auditors of the ICAV may require the ICAV to hold an annual general meeting in that year by giving notice in writing to the ICAV in the previous year or at least one month before the end of that year and the ICAV shall hold the required meeting.
- 21.4 All general meetings (other than annual general meetings) shall be called extraordinary general meetings.
- 21.5 The Directors may call an extraordinary general meeting whenever they think fit and extraordinary general meetings shall be convened on such requisition, or in default may be convened by such requisitionists, and in such manner as provided by the Act.

22 **Notice of General Meetings**

- 22.1 At least twenty-one clear days' notice (or such shorter notice approved by Shareholders of the ICAV holding, or together holding, more than 10% of the voting rights in the ICAV) specifying the place, the day and the hour of the meeting, and in the case of special business the general nature of such business (and in the case of an annual general meeting specifying the meeting as such) shall be given in the manner hereinafter mentioned to such persons as

are under the provisions hereof or the conditions of issue of the Shares held by them entitled to receive notices from the ICAV.

22.2 The Directors, the Manager, the Depositary, the Administrator and the Auditors shall each be entitled to receive notice of, and attend and speak at, any general meeting of the ICAV.

22.3 In each 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.

22.4 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.

23 **Proceedings at General Meetings**

23.1 All business shall be deemed special that is transacted at an extraordinary general meeting and also all business that is transacted at an annual general meeting, with the exception of the consideration of the accounts and the reports of the Directors and Auditors, the election of Directors in the place of those retiring, the reappointment of the retiring Auditors and the fixing of the remuneration of the Auditors.

23.2 No business shall be transacted at any general meeting unless a quorum is present. Two Shareholders holding voting Shares present either in person or by proxy shall be a quorum for a general meeting. A representative of a corporation authorised pursuant to Section 24.12 to be present at any meeting of the ICAV shall be deemed to be a Shareholder for the purpose of a quorum.

23.3 If within half an hour from the time appointed for a meeting a quorum is not present, the meeting, if convened on the requisition of or by 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.

23.4 The chairman or, if absent, the deputy chairman of the ICAV, or failing him, some other Director nominated by the Directors shall preside as chairman at every general meeting of the ICAV, but if at any meeting neither the chairman nor the deputy chairman nor such other Director 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 present shall choose some Director present to be chairman, or if no Directors be present, or if all the Directors present decline to take the chair, the Shareholders present shall choose some Shareholder present to be chairman.

23.5 The chairman may with the consent of any meeting at which a quorum is present (and shall if so directed by the meeting) adjourn the meeting from time to time and from place to place but no business shall be transacted at any adjourned meeting except business which might lawfully have been transacted at the meeting from which the adjournment took place. When a meeting is adjourned for fourteen days or more ten days' notice at the least specifying the place, the day and the hour of the adjourned meeting, shall be given as in the case of the original meeting but it shall not be necessary to specify in such notice the nature of the business to be transacted at the adjourned meeting. Save as aforesaid, it shall not be necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.

- 23.6 At any general meeting, a resolution put to the vote of the meeting shall be decided on a show of hands of those Shareholders holding voting Shares, unless a resolution is not passed unanimously on such show of hands, in which case such resolution shall be decided on a poll. Unless a poll is so taken, a declaration by the chairman that a resolution has been carried, or carried unanimously, or by a particular majority, or lost, or not carried by a particular majority, and an entry to that effect in the book containing the minutes of the proceedings of the ICAV shall be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against such resolution.
- 23.7 If a poll is duly demanded, it shall be taken in such manner and at such place as the chairman may direct (including the use of ballot or voting papers or tickets) and the result of a poll shall be deemed to be the resolution of the meeting at which the poll was demanded.
- 23.8 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.
- 23.9 In the case of an equality of votes, whether on a show of hands or on a poll, the chairman of the meeting at which the show of hands takes place or at which the poll is demanded shall be entitled to a second or casting vote.
- 23.10 A poll demanded on the election of a chairman and a poll demanded on a question of adjournment shall be taken forthwith. A poll demanded on any other question shall be taken at such time and place as the chairman directs not being more than thirty days from the date of the meeting or adjourned meeting at which the poll was demanded.
- 23.11 The demand for a poll shall not prevent the continuance of a meeting for the transaction of any business other than the question on which the poll has been demanded.
- 23.12 A demand for a poll may be withdrawn and no notice need be given of a poll not taken immediately.
- 23.13 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 with the consent in writing of the holders of three-fourths of the issued Shares of that class, or with the sanction of an Extraordinary 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 shall mutatis mutandis apply, save that the quorum at any such general meeting shall be two or more Shareholders present in person or by proxy together holding at least one-third of the Shares of the relevant class.

24 **Votes of Shareholders**

- 24.1 Subject to any special rights or restrictions for the time being attached to any class of Shares in accordance with the requirements of the Central Bank, each Shareholder shall be entitled to such number of votes as shall be produced by dividing the aggregate net asset value of that Shareholder's Shareholding (expressed or converted in Base Currency, calculated as of the relevant record date) by one. Where a separate written resolution or general meeting of a particular class of Shares is held, in such circumstances, the Shareholder's votes shall be calculated by reference only to the net asset value of each Shareholder's Shareholding in that particular class, as appropriate. The Subscriber Shareholders shall have one (1) vote

for each Subscriber Share held. The “relevant record date” for these purposes shall be a date being not more than thirty (30) days prior to the date of the relevant general meeting or written resolution as determined by the Directors. In relation to a resolution which in the opinion of the Directors affects more than one (1) class of Shares, such resolution shall be deemed to have been duly passed only if, in lieu of being passed through a single meeting of the Shareholders of such class of Shares, such resolution shall have been passed at a separate meeting of the Shareholders of each such classes. The Directors may in their discretion create classes which shall be designated as non-voting Shares and the holders of such Shares will not have the right to vote at any meeting of the ICAV.

- 24.2 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.
- 24.3 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.
- 24.4 On a poll votes may be given either personally or by proxy.
- 24.5 On a poll, a Shareholder entitled to more than one vote need not, if he votes, use all his votes or cast all the votes he uses in the same way.
- 24.6 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 any usual form or in such form as the Directors may approve PROVIDED ALWAYS that such form shall give the holder the choice of authorising his/her proxy to vote for or against each resolution.
- 24.7 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.
- 24.8 The instrument appointing a proxy and the power of attorney or other authority (if any) under which it is signed or a notarially certified copy of such power or authority, shall be deposited at the registered office of the ICAV or at such other place as is specified for that purpose in the notice of meeting or in the instrument of proxy issued by the ICAV not 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 if the aforesaid conditions are not complied with the instrument of proxy shall not be treated as valid.
- 24.9 No instrument appointing a proxy shall be valid after the expiration of twelve months from the date named in it as the date of its execution, except at an adjourned meeting or on a poll demanded at a meeting or an adjourned meeting in cases where the meeting was originally held within twelve months from such date.
- 24.10 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 or at any meeting of any class of Shareholders, 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.

- 24.11 A vote given in accordance with the terms of an instrument of proxy shall be valid notwithstanding the death or insanity of the principal or the revocation of the instrument of proxy, or of the authority under which the instrument of proxy was executed, or the transfer of the Shares in respect of which the instrument of proxy is given, provided that no notice in writing of such death, insanity, revocation or transfer shall have been received by the ICAV at the registered office of the ICAV, before the commencement of the meeting or adjourned meeting at which the instrument of proxy is used.
- 24.12 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 these presents be deemed to be present in person at any such meeting if a person so authorised is present thereat.
- 24.13 A resolution in writing signed by all of 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 authorised representative) 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 may consist of several documents in like form each signed by one or more persons, and if described as a Special Resolution shall be deemed to be a Special Resolution within the meaning of the Act. Any such resolution shall be served on the ICAV.
- 24.14 In the event that a Shareholder is a Feeder Partnership and the ICAV, as a limited partner of the Master Fund, is authorised under the terms of the Master Fund LPA, or is requested otherwise by the Manager or the Master General Partner to vote on any matter requiring the approval of the limited partners or the partners of the Master Fund under the Master Fund LPA (including, for the avoidance of doubt, a proposed amendment of the Master Fund LPA), the ICAV shall promptly solicit the votes of the Shareholders and shall exercise the voting rights of the ICAV on a split vote basis according to the proportions in which the such Shareholders have voted in favour of or against the relevant proposal.
- 24.15 The provisions of Sections 21, 22, 23 and 24 shall apply *mutatis mutandis* to meetings of each class of Shareholders.

25 **Directors**

- 25.1 Unless otherwise determined by the ICAV by Ordinary Resolution, the number of the Directors shall not be less than two nor more than twelve.
- 25.2 A Director need not be a Shareholder.
- 25.3 The Directors shall have power at any time and from time to time to appoint any person to be a Director, either to fill a casual vacancy or as an addition to the existing Directors.

- 25.4 The Directors shall be entitled to such remuneration in relation to the performance of their duties as the Directors may from time to time determine. The aggregate remuneration of the Directors shall not exceed €150,000 per annum (or such other sum as the Directors may from time to time determine and disclosed to the Shareholders). Such remuneration shall be deemed to accrue from day to day. The Directors and any alternate Directors may also be paid all travelling, hotel and other expenses properly incurred by them in attending and returning from meetings of the Directors or any committee of the Directors or general meetings or any meetings in connection with the business of the ICAV.
- 25.5 The Directors may in addition to such remuneration as is referred to in Section 25.4 hereof grant special remuneration to any Director who, being called upon, shall perform any special or extra services to or at the request of the ICAV.
- 25.6 The office of a Director shall be vacated by a Director in any of the following events, namely:
- 25.6.1 if he / she resigns his office by notice in writing signed by him and left at the registered office of the ICAV;
 - 25.6.2 if he / she becomes bankrupt or makes any arrangement or composition with his creditors generally;
 - 25.6.3 if he / she becomes of unsound mind;
 - 25.6.4 if he / she ceases to be a Director by virtue of, or becomes prohibited from being a Director by reason of an order made under the provisions of any law or enactment;
 - 25.6.5 if he / she is requested by a majority of the other Directors (not being less than two in number) to vacate office; or
 - 25.6.6 if he / she is removed from office by an Ordinary Resolution, in accordance with section 62 of the Act.
- 25.7 At a general meeting, a motion for the appointment of two or more persons as Directors of the ICAV by a single resolution shall not be made, unless a resolution that it shall be so made has been first agreed to by the meeting without any vote being given against it.
- 25.8 Subject to the requirements of the Central Bank, any Director may at any time by instrument in writing under his hand and deposited at the registered office, or delivered at a meeting of the Directors, appoint any Director or other person to be his alternate Director and may in like manner at any time terminate such appointment.
- 25.9 The appointment of an alternate Director shall determine if his appointer ceases to be a Director or on the happening of any such event which if he were a Director would cause him to vacate such office.
- 25.10 An alternate Director shall be entitled to receive notices of meetings of the Directors and shall be entitled to attend and vote as a Director at any such meeting at which the Director appointing him is not personally present and generally at such meeting to perform all functions of his appointer as a Director and for the purposes of the proceedings at such meeting the provisions hereof shall apply as if he (instead of his appointer) were a Director. If he himself shall be a director, or shall attend any such meeting as an alternate for more

than one Director, his voting rights shall be cumulative, provided, however, that he shall count as one for the purposes of determining a quorum. If his 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 Directors, the foregoing provisions of this paragraph shall also apply *mutatis mutandis* to any meeting of any such committee of which his appointer is a Shareholder. An alternate Director shall not (save as aforesaid or as otherwise herein provided) have power to act as a Director nor shall he be deemed to be a Director.

- 25.11 An alternate Director shall be entitled to contract and be interested in and benefit from contracts or arrangements or transactions and to be repaid expenses and to be indemnified to the same extent *mutatis mutandis* as if he were a Director but he shall not be entitled to receive from the ICAV in respect of his appointment as alternate Director any remuneration except only such part (if any) of the remuneration otherwise payable to his appointer as such appointer may by notice in writing to the ICAV from time to time direct.

26 **Directors, Offices and Interests**

- 26.1 The Directors may appoint one or more of their body to the office of managing Director or joint managing Director or to any other executive office under the ICAV (including, where considered appropriate, the office of chairman) on such terms and for such period as they may determine and, without prejudice to the terms of any contract entered into in any particular case, may revoke any such appointment at any time.

- 26.2 To the extent permitted by applicable law, a Director holding any such executive office shall receive such remuneration, whether in addition to, or in substitution for, his ordinary remuneration, as a Director and whether by way of salary, commission, participation in profits or otherwise or partly in one way and partly in another, as the Directors may determine.

- 26.3 The appointment of any Director to the office of chairman or managing or joint managing Director shall determine automatically if he ceases to be a Director but without prejudice to any claim for damages for breach of any contract of service between him and the ICAV.

- 26.4 The appointment of any Director to any other executive office shall not determine automatically if he ceases from any cause to be a Director unless the contract or resolution under which he holds office shall expressly state otherwise, in which event such determination shall be without prejudice to any claim for damages for breach of any contract of service between him and the ICAV.

- 26.5 A Director may hold any other office or place of profit under the ICAV (except that of Auditor) in conjunction with his office of Director, and may act in a professional capacity to the ICAV, on such terms as to remuneration and otherwise as the Directors may arrange.

- 26.6 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, a Director notwithstanding his office:

26.6.1 may be a party to, or otherwise interested in, any transaction or arrangement with the ICAV or in which the ICAV is interested; and

26.6.2 shall not be accountable, by reason of his office, to the ICAV for any benefit which he derives from any such office or employment or from any such transaction or

arrangement or from any interest in any such body corporate and no such transaction or arrangement shall be liable to be avoided on the ground of any such interest or benefit.

- 26.7 No Director or intending Director shall be disqualified by his office from contracting with the ICAV either as vendor, purchaser or otherwise, nor shall any such contract or any contract or arrangement entered into by or on behalf of the other company in which any Director shall be in any way interested be avoided nor shall any Director so contracting or being so interested be liable to account to the ICAV for any profit realised by any such contract or arrangement by reason of such Director holding that office or of the fiduciary relationship thereby established. The nature of a Director's interest must be declared by him at the meeting of the Directors at which the question of entering into the contract or arrangement is first taken into consideration, or if the Director was not at the date of that meeting interested in the proposed contract or arrangement at the next meeting of the Directors held after he became so interested, and in a case where the Director becomes interested in a contract or arrangement after it is made, at the first meeting of the Directors held after he becomes so interested.
- 26.8 A copy of every declaration made and notice given in relation to a Director's Shares shall be entered within three days after the date of making or giving thereof in a book kept for this purpose. Such book shall be open for inspection during normal business hours without charge by any Director, Secretary, Auditor or Shareholder at the registered office of the ICAV and shall be produced at every general meeting of the ICAV and at any meeting of the Directors if any Director so requests in sufficient time to enable the book to be available at the meeting by any Shareholder or holder of debentures of the ICAV.
- 26.9 For the purposes of this section:
- 26.9.1 a general notice 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;
 - 26.9.2 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
 - 26.9.3 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.
- 26.10 Save as otherwise provided by this Instrument, a Director shall not vote at a meeting of the Directors or a committee of Directors on any resolution concerning a matter in which he has, directly or indirectly, an interest which is material or a duty which conflicts or may conflict with the interests of the ICAV. Unless otherwise resolved by the Directors, a Director shall not be counted in the quorum present at a meeting in relation to any such resolution on which he is not entitled to vote.
- 26.11 A Director shall be entitled (in the absence of some other material interest than is indicated below) to vote (and be counted in the quorum) in respect of any resolution concerning any of the following matters, namely any proposal concerning any other company in which he is

interested, directly or indirectly, and whether as an officer or Shareholder or otherwise howsoever.

- 26.12 Where proposals are under consideration concerning the appointment (including fixing or varying the terms of appointment) of two or more Directors to offices or employments with the ICAV such proposals may be divided and considered in relation to each Director separately and in such case each of the Directors concerned (if not otherwise debarred from voting) shall be entitled to vote (and be counted in the quorum) in respect of each resolution, except that concerning his own appointment.
- 26.13 If a question arises at a meeting of Directors or of a committee of Directors as to the materiality of a Director's interest or as to the right of any Director to vote and such question is not resolved by his voluntarily agreeing to abstain from voting, such question may be referred, before the conclusion of the meeting, to the chairman of the meeting and his ruling in relation to any Director other than himself shall be final and conclusive.
- 26.14 The ICAV, by Ordinary Resolution, may suspend or relax the provisions of this section to any extent or ratify any transaction not duly authorised by reason of a contravention of this section.

27 Powers of Directors

- 27.1 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, by the AIFM Rules or hereby required to be exercised by the ICAV in general meeting, subject, nevertheless, to the provisions of the Act, to the AIFM Rules and to the regulations herein contained being not inconsistent with the aforesaid regulations as may be prescribed by the ICAV in general meeting, but no regulations made by the ICAV in general meeting shall invalidate any prior act of the Directors which would have been valid if such regulations had not been made. The general powers given by this Section shall not be limited or restricted by any special authority or power given to the Directors by this or any other Section.
- 27.2 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 from time to time shall by resolution determine.
- 27.3 Subject to the AIF Rulebook, the Directors may exercise all the powers of the ICAV to invest all or any funds of the ICAV as authorised by this Instrument. Subject to the provisions of the AIF Rulebook and with the authorisation of the Central Bank, the ICAV 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.

28 Borrowing of the Fund Vehicles

Each Shareholder understands, acknowledges and agrees that (a) the Master Fund may incur indebtedness as described in the Master Fund LPA, (b) such indebtedness may be

secured by the Portfolio Companies or other assets of the Master Fund, including the remaining capital commitments of the partners of the Master Fund and (c) in connection with any such indebtedness, the ICAV itself or the Manager shall, if requested by the Master General Partner, assign or otherwise transfer to the Master General Partner (i) the right (whether through power of attorney or otherwise) to issue and enforce payment directions with respect to any amounts unpaid on the Shares held by Shareholders and (ii) the right to enforce the rights of the ICAV and the Manager under this Instrument, including the rights under Section 34 relating to Defaulting Shareholders. All rights granted to the Master General Partner under this Section 28 shall apply to its agents, successors, grantees and assigns (including a lender). The Directors may exercise all powers of the ICAV permitted by this Section 28.

29 **Proceedings of Directors**

- 29.1 The Directors may meet together for the dispatch of business, adjourn and otherwise regulate their meetings as they think fit. Questions arising at any meeting shall be determined by a majority of votes. In case of an equality of votes, the chairman shall have a second or casting vote. A Director may, and the Secretary on the requisition of a Director shall, at any time summon a meeting of the Directors.
- 29.2 The quorum necessary for the transaction of business of the Directors may be fixed by the Directors, and unless so fixed at any other number shall be two.
- 29.3 The continuing Directors or a sole continuing Director may act notwithstanding any vacancies in their number but, if and so long as the number of Directors is reduced below the minimum number fixed by or in accordance with the provisions hereof or a majority or quorum of Directors cannot be attained, the continuing Directors or Director may act for the purpose of filling vacancies in their number or of summoning general meetings of the ICAV, but not for any other purpose. If there be no Directors or Director able or willing to act, then any two Shareholders may summon a general meeting for the purpose of appointing Directors.
- 29.4 The Directors may from time to time elect or remove a chairman and, if they think fit, a deputy chairman and determine the period for which they respectively are to hold office.
- 29.5 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 five minutes after the time appointed for holding the same, the Directors present may choose one of their number to be chairman of the meeting.
- 29.6 A resolution in writing signed by all the Directors for the time being entitled to receive notice of a meeting of the Directors and to vote thereat shall be as valid and effectual as a resolution passed at a meeting of the Directors duly convened and may consist of several documents in the like form each signed by one or more of the Directors. A resolution in writing shall be deemed to have been signed in the country or place where the last signatory to sign the resolution in writing executes such resolution.
- 29.7 A meeting of the Directors for the time being at which a quorum is present shall be competent to exercise all powers and discretions for the time being exercisable by the Directors.

- 29.8 The Directors may delegate any of their powers to committees consisting of such of their Shareholders 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 29.2 and shall be governed by the provisions hereof regulating the meetings and proceedings of the Directors so far as the same are applicable and are not superseded by any regulations imposed on them by the Directors.
- 29.9 The Directors may, whether by standing resolution or otherwise, delegate their powers relating to the issue and repurchase of Shares and the calculation of the Net Asset Value of the Shares, the declaration of dividends and all management and administrative duties in relation to the ICAV, to the Administrator or to any duly authorised Officer or other person, subject to such terms and conditions as the Directors in their absolute discretion may resolve.
- 29.10 The Directors may delegate their powers relating to the management of the ICAV's assets to the Manager or to any duly authorised Officer or other person, subject to such terms and conditions as the Directors in their absolute discretion may resolve.
- 29.11 All acts done by any meeting of Directors, or of a committee of Directors or by any person authorised by the Directors shall, notwithstanding it be afterwards discovered that there was some defect in the appointment or authorisation of any such Directors or person acting as aforesaid, or that they or any of them were disqualified, or had vacated office, or were not entitled to vote, be as valid as if every such person had been duly appointed, and was qualified and had continued to be a Director and had been entitled to vote.
- 29.12 The Directors shall as soon as may be cause minutes to be made of:
- 29.12.1 all appointments of officers made by the Directors;
 - 29.12.2 the names of the Directors present at each meeting of the Directors and of any committee of Directors; and
 - 29.12.3 all resolutions and proceedings of all general meetings of the ICAV and of the Directors and of committees of Directors;
- and such minutes shall be entered in books kept for that purpose.
- 29.13 Any such minutes as are referred to in Section 29.12 hereof, if purporting to be signed by the chairman of the meeting at which the proceedings took place, or by the chairman of the next succeeding meeting, shall, until the contrary be proved, be conclusive evidence of their proceedings.
- 29.14 Any Director may participate in a meeting of the Directors or any committee of the Directors by means of a conference telephone or other telecommunication equipment by means of which all persons participating in the meeting can hear each other speak and such participation in a meeting shall constitute presence in person at the meeting.

30 **Secretary**

The Secretary shall be appointed by the Directors. 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. Anything required or authorised to be done by the Secretary may, if the office is vacant or there is for any other reason no

Secretary capable of acting, be done by any assistant or deputy Secretary or if there is no assistant or deputy Secretary capable of acting, by any officer of the ICAV authorised generally or specially in that behalf by the Directors **PROVIDED THAT** any provisions hereof requiring or authorising anything to be done by a Director and the Secretary shall not be satisfied by its being done by the same person acting both as Director and as, or in the place of, the Secretary. Any reference to a Secretary in this Section 30 may be deemed to include a reference to joint secretaries where joint secretaries are so appointed.

31 **Execution of Documents**

31.1 The ICAV shall not have a common seal.

31.2 Any document expressed to be executed by the ICAV and signed on behalf of the ICAV:

31.2.1 by two authorised signatories of the ICAV; or

31.2.2 by a Director in the presence of a witness who attests the signature;

shall have the same effect as if executed under the common seal of the ICAV.

31.3 The term “*authorised signatories*” as used in this Section shall mean:

31.3.1 a Director;

31.3.2 the Secretary or any joint secretary of the ICAV.

32 **Distributions / Dividends**

32.1 The Directors shall pay such dividends on any class of Shares of the ICAV in accordance with this Section 32 and subject to any policy statement in relation to dividends in the Prospectus.

32.2 Unless otherwise provided for in the Prospectus, the aggregate amount available for distribution by way of dividend in any Accounting Period in respect of a class of Shares shall be a sum equal to the aggregate of the ICAV’s share capital, accumulated reserves, net realised and net unrealised capital gains and losses and the net income received by the ICAV (whether in the form of dividends, interest or otherwise) during the Accounting Period.

32.3 The Directors may, in accordance with the requirements of the Central Bank, distribute in kind among Shareholders by way of dividend or otherwise any of the assets of the ICAV (other than any assets which have a contingent liability).

32.4 Shares shall qualify for dividend in such manner as set out in the Prospectus relating to such Shares.

32.5 Any declaration of a dividend by the Directors may specify that the same shall be payable to the persons registered as the Shareholders at the close of business on a particular date, and thereupon the dividend shall be payable to them in accordance with their respective holdings so registered, but without prejudice to the rights *inter se* in respect of such dividend, of transferors and transferees of Shares.

- 32.6 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 Shareholder, or, in the case of joint holders, to the person whose name and address appears first on the Register and shall not be responsible for any loss arising in respect of such transmission.
- 32.7 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.
- 32.8 At the option of any Shareholder, the Directors may apply all dividends declared on a class of Shares held by such Shareholder in the issue of additional Shares in that class in the ICAV to that Shareholder at the Net Asset Value obtaining when such dividends are declared and on such terms as the Directors from time to time may resolve, provided, however, that any Shareholder shall be entitled to elect to receive a cash dividend in respect of the Shares held by that Shareholder.
- 32.9 The Directors may provide that Shareholders will be entitled to elect to receive in lieu of any dividend (or part thereof) in respect of any Shares an issue of additional Shares in that class credited as fully paid. In any such case the following provisions shall apply:
- 32.9.1 the number of additional Shares (including any fractional entitlement) to be issued in lieu of any amount of dividend shall be equal in value to the amount of such dividend at the date the dividend was declared;
- 32.9.2 the dividend (or that part of the dividend in respect of which a right of election has been accorded) shall not be payable on Shares in respect of which the Share election has been duly exercised (the “**Elected Shares**”), and in lieu thereof additional Shares shall be issued to the holders of the Elected Shares on the basis determined as aforesaid and for such purpose the Directors shall capitalise a sum equal to the aggregate value of the dividends in respect of which elections have been made and apply the same in paying up in full the appropriate amount of unissued Shares;
- 32.9.3 the additional Shares so issued shall rank pari passu in all respects with the fully-paid Shares then in issue save only as regards participation in the relevant dividend (or Share election in lieu);
- 32.9.4 the Directors may do all acts and things considered necessary or expedient to give effect to any such capitalization, 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
- 32.9.5 the Directors may on any occasion determine that rights of 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 such event the provisions aforesaid shall be read and construed subject to such determination.

32.10 Where the ICAV proposes to pay a distribution to a Shareholder, it shall be entitled to deduct from the distribution such amount that may be necessary to discharge the ICAV's liability to taxation in respect of such distribution and the ICAV shall arrange to discharge the amount of taxation due.

32.11 Recall of Distributions and Redemptions

32.11.1 Subject to Section 32.11.2, the Manager is permitted to notify the Shareholders at the time of a distribution or a redemption that all or part of such distribution or redemption may be subject to recall for the purpose of satisfying any contingent liabilities of the ICAV pursuant to the Master Fund LPA arising in connection with the Investment to which such distributions or redemptions relate. In the event that such liabilities subsequently become due and payable, or in the Manager's reasonable opinion are likely to become due and payable, each Shareholder shall, if requested by the Manager upon at least ten (10) Business Days' notice, be required to repay its *pro rata* share of the total amount being recalled. Any amount recalled pursuant to this Section 32.11 shall be treated as a payment of a Capital Call for the purposes of this Instrument.

32.11.2 In the event that a Shareholder fails to meet its repayment obligations pursuant to this Section 32.11, the default provisions of Section 34 shall apply accordingly.

33 **Capital Calls**

33.1 Any uncalled Capital Commitment or any other amounts payable to the ICAV pursuant to this Instrument may be called by the ICAV by determination of the Directors pursuant to a Capital Call in the circumstances more particularly outlined in the Prospectus.

34 **Default Provisions**

34.1 In the event that a Shareholder fails to make any payment to the ICAV when due, the Manager shall send a notice to such Shareholder requiring immediate payment of the due amount. If such Shareholder fails or refuses to pay the full amount of the relevant payment, together with any interest accrued thereon and any related expenses under section 34.2, within nine (9) Business Days after receipt of the Default Notice, then such Shareholder shall be deemed a Defaulting Shareholder.

34.2 With respect to a Defaulting Shareholder, one or more of the remedies provided for in this Section 34.2 may be applied by the ICAV in its sole discretion following consultation with the Manager, it being understood that if the Defaulting Shareholder is a Feeder Vehicle and is in default due to the default of a Feeder Partner that is a Waterland Related Party in respect of such Feeder Vehicle, the ICAV shall consult with the Advisory Board and must apply at least one remedy. In any case, in respect of any defaulted payment amount, the ICAV, following consultation with the Manager, may issue (or may direct the Manager to issue) a Capital Call to the non-defaulting Shareholders for the defaulted payment amount in proportion to their respective Capital Commitments to the ICAV.

- 34.3 In all circumstances, and with respect to any defaulted payment amount, unless waived by the ICAV in its sole discretion following consultation with the Manager, the Shareholder concerned shall, in addition to the defaulted payment amount, be liable to pay to the ICAV an amount equal to (i) interest at a rate of three per cent. (3%) over EURIBOR per annum, from the date on which the defaulted payment amount became due until the date of payment thereof and (ii) expenses incurred by the ICAV and the Master Fund in relation to the default.
- 34.4 In the event that a Shareholder is in default with respect to the initial drawdown of its Capital Commitment and is deemed a Defaulting Shareholder pursuant to Section 34.1, the ICAV following consultation with the Manager, shall have the right to cancel the Shares of such Defaulting Shareholder with immediate effect by giving notice of cancellation, in which case the Defaulting Shareholder shall be required to pay to the ICAV an amount equal to the liability of the Shareholder for its resulting default as a limited partner of the Master Fund, which amount shall immediately become due and payable to the ICAV.
- 34.5 With respect to a Defaulting Shareholder, the ICAV following consultation with the Manager shall have the right to cause twenty-five per cent. (25%) of such Defaulting Shareholder's Shares to be forfeited by giving notice thereof to such Defaulting Shareholder. In such event:
- 34.5.1 to the extent permitted by applicable law, the Defaulting Shareholder shall transfer twenty-five per cent. (25%) of its Shares to one or more third-party transferees designated by the ICAV, which may include other Shareholders or Waterland Related Parties, in accordance with written instructions given to it by the ICAV (for the avoidance of doubt, in no event shall the ICAV be required to achieve a minimum price for the Defaulting Shareholder's Shares); or
- 34.5.2 in the absence of any designated transferee being identified by the ICAV, twenty-five per cent. (25%) of the Shares of the Defaulting Shareholder shall be cancelled and the ICAV Assets relating to such cancelled Shares shall be reallocated among the other Shareholders and the Shareholders in the other Feeder Vehicles (pursuant to a transfer of the ICAV's corresponding interest in the Master Fund, which transfer shall be subject to Section 9.3 of the Master Fund LPA) in proportion to their respective Commitments.
- 34.6 In the event that, following forfeiture of twenty-five per cent. (25%) of its Shares pursuant to Section 34.5, a Defaulting Shareholder continues to fail or refuses to make the defaulted payment together with the Default Amount within thirty (30) Business Days after receipt of a Default Notice, the ICAV following consultation with the Manager, shall have the right to cause the remainder of such Defaulting Shareholder's Shares to be forfeited by giving notice thereof to such Defaulting Shareholder. In such event:
- 34.6.1 to the extent permitted by applicable law, the Defaulting Shareholder shall transfer the remainder of its Shares to one or more third-party transferees designated by the ICAV, which may include other Shareholders or Waterland Related Parties, in accordance with written instructions given to it by the ICAV (for the avoidance of doubt, in no event shall the ICAV be required to achieve a minimum price for the Defaulting Shareholder's Shares); or
- 34.6.2 in the absence of any designated transferee being identified by the ICAV, the remainder of the Shares of the Defaulting Shareholder shall be cancelled and the ICAV Assets relating to such cancelled Shares shall be reallocated among the other Shareholders and the Shareholders in the other Feeder Vehicles (pursuant to a transfer of the ICAV's corresponding interest in the Master Fund) in proportion to their respective Commitments.

- 34.7 Each Shareholder hereby grants to the ICAV, to the extent permitted by applicable law, an unconditional irrevocable power of attorney for the purposes of effectuating any transfer, cancellation or reduction of its Shares pursuant to Sections 34.5.1, 34.6.1 in its name and on its behalf, in the event that such Shareholder has become a Defaulting Shareholder.
- 34.8 Any party acquiring a Defaulting Shareholder's shares pursuant to Sections 34.5.1 and 34.6.1, shall assume the Defaulting Shareholder's Capital Commitment and other rights and obligations under this Instrument relating to such shares by executing a subscription agreement at the time of acquiring such Shares.
- 34.9 In the event a Defaulting Shareholder's Shares or any part thereof is cancelled or transferred pursuant to this Section 34, any obligation of such Defaulting Shareholder to return distributions pursuant to Section 32.11 received by such Defaulting Shareholder prior to the date of cancellation or transfer shall remain in full force and effect in accordance with the terms of this Instrument, unless otherwise agreed upon.
- 34.10 Until such time as a default is remedied in full, (a) a Defaulting Shareholder shall lose its entitlement to participate in any votes or meetings of Shareholders, and its Capital Commitment shall be disregarded for such purposes, and (b) the ICAV after consultation with the Manager may withhold any sums that would otherwise be payable to such Defaulting Shareholder under this Instrument.
- 34.11 The remedies available to the ICAV under this Section 34 are without prejudice to any other legal or equitable remedies available in respect of any default hereunder. Each of the Shareholders acknowledges and consents to the remedies contained in this Instrument and to any such other legal and equitable remedies in recognition of the fact that timely compliance with Capital Calls is essential to the ability of the ICAV to conduct its business successfully, and in recognition of the risk and speculative damage which any such default would cause to the Shareholders.
- 34.12 Notwithstanding any other provision of this Instrument, default by a Shareholder which is a Feeder Vehicle on the part of any of its payment obligations under this Instrument should not have a negative effect on any of the Feeder Investors of such defaulting Shareholder other than on the Feeder Investor that is in default on the part of any of its obligations to the relevant Shareholder under its Feeder Vehicle Agreement which default caused, directly or indirectly, the default of the Feeder Vehicle, and that for this reason:
- 34.12.1 each Feeder Vehicle shall in its Feeder Vehicle Agreement provide for the obligation of a defaulting Feeder Investor to pay to the Feeder Vehicle such amounts as the Feeder Vehicle is as a consequence of the default of the defaulting Feeder Investor required to pay to the ICAV or, as the case may be, to the Manager, pursuant to Section 34.3 and/or Section 34.4, and (ii) recourse of the ICAV and the Manager in respect of any claim it or they may have pursuant to Section 34.3 and/or, as the case may be, Section 34.4, originating from the default of a specific Shareholder shall be limited to the amount received, directly or indirectly, by the Shareholder from the defaulting Feeder Investor concerned pursuant to the provisions in its Feeder Vehicle Agreement referred to in (i) above;
- 34.12.2 if the Manager has the right to cancel or transfer the Shares (or a certain part thereof) of a Defaulting Shareholder pursuant to Section 34.4, Section 34.5 or Section 34.6, this right to cancel or transfer shall be limited to such percentage of the Shares of the Shareholder as is equal to the commitment to such Shareholder of the defaulting Feeder Investor which is

attributable to the ICAV, expressed as a percentage of the total amounts of the commitments to the Defaulting Shareholder concerned which is attributable to the ICAV, and (ii) the exercise of this right by the Manager shall be subject to the exercise by the Defaulting Shareholder of its right under its own Feeder Vehicle Agreement to cancel or transfer (the same part of) the interest in the Shareholder which is attributable, directly or indirectly, to the defaulting Feeder Investor;

34.12.3 the sanctions that will be imposed on a Defaulting Shareholder pursuant to Section 34.10(a) shall only apply to a Defaulting Shareholder which is a Feeder Vehicle in respect of such number of votes attributable to, and such percentage of amounts otherwise payable to, such Shareholder as is equal to the amount of the commitment to such Shareholder of the defaulting Feeder Investor which is attributable to the ICAV, expressed as a percentage of the amount of the total commitments to the Shareholder which is attributable to the ICAV, and

34.12.4 a Shareholder which is a Feeder Vehicle being in default in respect of any of its payment obligations under this Instrument caused by any reason other than default by any Feeder Investor of such Shareholder shall not be a Defaulting Partner.

35 Untraced Shareholders

35.1 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.

35.2 The ICAV shall account to the Shareholder or to the person entitled to such Share for the net proceeds of such repurchase by carrying all moneys in respect thereof to a separate interest bearing account which shall be a permanent debt of the ICAV and the ICAV shall be deemed to be a debtor and not a trustee in respect thereof for such Shareholder or other person.

36 Accounts

36.1 The Directors shall cause to be kept books of account as are necessary in relation to the conduct of its business or as are required by the Act and the AIFM Rules so as to enable the accounts of the ICAV to be prepared.

36.2 The books of account shall be kept at the registered office, or at such other place or places as the Directors shall think fit in accordance with the Act, and shall at all reasonable times be open to for inspection without charge by the Officers of the ICAV and by other persons entitled pursuant to the Act to inspect the accounting records of the ICAV. However, other than the aforesaid, no other person shall be entitled to inspect the books, accounts, documents or writings of the ICAV, except as authorised by the Directors or by the ICAV in general meeting.

36.3 A balance sheet, including every document required by law to be annexed to it, and a profit and loss account of the ICAV shall be made out as at the end of each Accounting Period of the ICAV and shall be audited by the Auditors and laid before the ICAV at its annual general meeting in each year (if any), and such balance sheet shall contain a general summary of the assets and liabilities of the ICAV and all information required to be included by the Act. The balance sheet shall be accompanied by a report of the Directors as to the state and condition of the ICAV, the amount (if any) which they recommend should be paid by way of

dividend, the amount (if any) which they have carried or propose to carry to reserve, and shall include such information as is required pursuant to the Act, together with a profit and loss account. The balance sheet of the ICAV and the report of the Directors and the profit and loss account shall be signed on behalf of the Directors by at least two of the Directors. An Auditors' report shall be attached to the balance sheet of the ICAV. The Auditors' report shall be read at the annual general meeting.

- 36.4 Once at least in every year the Directors shall cause to be prepared an Annual Report relating to the management of the ICAV during the relevant Accounting Period. The Annual Report shall include the balance sheet and profit and loss account duly audited by the Auditors and the Directors' Report and the Auditors' Report as provided for in Section 36.3 and shall be in a form approved by the Central Bank and shall contain such information as required by the Act and the AIFM Regulations and as specified by the Central Bank. There shall be attached to such Annual Report such additional information and reports as the Central Bank may specify.
- 36.5 A copy of the Annual Report including the balance sheet (including every document required by law to be annexed thereto) together with a copy of the Directors' report and the Auditors' report shall be made available by the ICAV to every person entitled under the Act and the AIFM Rules to receive them.
- 36.6 In accordance with Irish law and regulations, the Directors may elect to prepare the Annual Report and accounts in accordance with International Financial Reporting Standards or in accordance with such international accounting standards or such alternative body of accounting standards as may be permitted under the Act and the AIFM Regulations from time to time.
- 36.7 The Auditors' certificate appended to the Annual Report and statement referred to herein shall declare that the accounts or statement attached respectively thereto (as the case may be) have been examined together with the books and records of the ICAV and of the Administrator in relation thereto, that the information given in the Annual Report relating to the Accounting Period concerned is consistent with the accounts 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, and whether the accounts are in their opinion properly drawn up in accordance with the provisions hereof.
- 36.8 If it appears to the Directors that any Annual Report of the ICAV did not comply with the requirements of the Act or the AIFM Rules, the Directors may prepare a revised Annual Report.

37 **Audit**

- 37.1 The appointment, resignation and removal of Auditors and the determination of eligibility for appointment as Auditors to the ICAV shall be governed by the provisions of the Act.
- 37.2 Subject to Section 37.5, the ICAV shall at an annual general meeting appoint an Auditor or Auditors to hold office from the conclusion of that meeting until the conclusion of the next annual general meeting, in accordance with the provisions of the Act.

- 37.3 A person, other than a retiring Auditor, shall not be capable of being appointed Auditor at an annual general meeting unless notice of an intention to nominate that person to the office of Auditor has been given by a Shareholder to the ICAV not less than twenty eight clear days before the annual general meeting and the Directors shall send a copy of any such notice to the retiring Auditor and shall give notice thereof to the Shareholders in accordance with the Act.
- 37.4 The first Auditors shall be appointed by the Directors at any time before the first annual general meeting, and they shall hold office until the conclusion of the first annual general meeting unless previously removed by a resolution of the ICAV in general meeting, in which case the Shareholders at such meeting may appoint Auditors. Where no appointment is made under this Section 37.4, the first Auditors may be appointed by the Shareholders in general meeting.
- 37.5 Where the Directors have dispensed with the requirement to hold an annual general meeting in accordance with Section 21.3, the Directors shall appoint the Auditors. Where, in any case, no Auditors are appointed as required under this Section 37, the Central Bank may appoint a person to fill the vacancy.
- 37.6 The remuneration of the Auditors who are appointed by the ICAV in general meeting shall be fixed by the ICAV in general meeting or in such manner as the ICAV in general meeting may determine. The remuneration of the Auditors who are appointed by the Directors or the Central Bank shall be fixed by the Directors or the Central Bank (and will be payable by the ICAV where fixed by the Central Bank).
- 37.7 The Auditors shall examine such books, accounts and vouchers as may be necessary for the performance of their duties.
- 37.8 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 in their opinion give a true and fair view of the state of the ICAV's affairs and of its profit and loss for the period in question.
- 37.9 The Auditors shall have a right of access at all times to the accounting records of the ICAV. The Auditors shall be entitled to require from the Officers such information and explanations as they think necessary for the performance of their duties as Auditors.
- 37.10 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 be heard at any general meeting on any part of the business of the meeting which is of concern to them as Auditors and in this regard, make any statement or explanations they may desire with respect to the accounts and notice of every such meeting, and other communications relating thereto, shall be given to the Auditors in the manner prescribed for the Shareholders.
- 37.11 The Auditors shall be eligible for re-election.

38 Notices

- 38.1 Any notice or other document required to be served upon or sent to a Shareholder shall be deemed to have been duly given if sent by post or left at his address as appearing on the Register, or sent by electronic mail to an e-mail address or (save in the case of a notice of a

general meeting of the ICAV) if either the full text of the notice or documents is published in a national daily newspaper in Ireland or such other publication as the ICAV may from time to time decide circulating in any country where the Shares are marketed, or an advertisement is so published stating where copies of such notices or documents may be obtained. 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 24 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.

38.2 Any notice or document sent by post to or left at the registered address of a Shareholder or sent by electronic mail to an e-mail address, 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.

38.3 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 sent by electronic mail to an e-mail address or dispatched by the ICAV, the Depositary, the Administrator or the Manager, in accordance with his instructions shall be so sent left or dispatched at the risk of such Shareholder.

39 **Winding Up**

39.1 The ICAV shall not be wound up prior to the termination and dissolution of the Master Fund.

39.2 If the ICAV shall be wound up or dissolved, the liquidator shall apply the assets of the ICAV in satisfaction of the relevant creditors' claims in such manner and order as the liquidator thinks fit subject to section 154 of the Act.

39.3 The assets of the ICAV available for distribution (after satisfaction of the relevant creditors' claims) amongst the relevant Shareholders shall be distributed pro rata to the holders of the Shares of each class in the ICAV and shall be allocated pro rata to the number of Shares in that class held by them.

39.4 If the ICAV shall be wound up or dissolved (whether the liquidation is voluntary, under supervision or by the Court) the liquidator may with the authority of an Ordinary Resolution of the ICAV, divide among the relevant Shareholders pro-rata to the value of their Shareholdings in the ICAV (as determined in accordance with Section 19 herein) in specie the whole or any part of the assets of the ICAV, and whether or not the assets shall consist of property of a single kind and may for such purposes value any class or classes of property in accordance with the valuation provisions in Section 20. The liquidator may, with the like authority, vest any part of the assets in trustees upon such trusts for the benefit of the relevant Shareholders as the liquidator shall think fit, and the liquidation of the ICAV may be closed and the ICAV dissolved, but not so that any Shareholder shall be compelled to accept any asset in respect of which there is a liability. If a Shareholder so requests, the Manager shall sell the assets to be distributed to that Shareholder and distribute the cash proceeds to the

Shareholder. The relevant Shareholders will bear any risks of the distributed securities and may be required to pay a brokerage commission or other costs in order to dispose of such securities.

40 **Indemnity**

- 40.1 The Indemnified Persons shall have no liability for any loss incurred by the ICAV or any Shareholder howsoever arising in connection with the services provided by any of them in connection with the ICAV, **provided that** such exculpation shall not apply with respect to any matter resulting from such Indemnified Person's material breach of this Instrument that has resulted in the ICAV and/or the Shareholders suffering material financial disadvantage, fraud, gross negligence, wilful misconduct or wilful illegal act.
- 40.2 Each of the Indemnified Persons shall be entitled to be indemnified out of the ICAV Assets against any and all claims, liabilities (including liabilities in contract or tort), costs, damages or expenses incurred or threatened by reason of their activities and responsibilities in relation to the ICAV **provided that** such Indemnified Person shall not be so indemnified with respect to any matter resulting from its material breach of this Instrument that has resulted in the ICAV and/or the Shareholders suffering material financial disadvantage, fraud, gross negligence, wilful misconduct or wilful illegal act.
- 40.3 In particular, but without prejudice to the generality of Sections 40.1 and 40.2, the Indemnified Persons shall be indemnified against any liability in respect of tax on income or capital gains allocated to, or otherwise levied in relation to any Shareholder (other than a Waterland Related Party), such indemnity to be satisfied in the first instance by the Shareholder concerned but, if not so satisfied, out of the ICAV Assets in which event the ICAV shall be subrogated to the rights of the Indemnified Persons against such Shareholder hereunder.
- 40.4 The Indemnified Persons shall not be liable to the ICAV or any Shareholder for:
- 40.4.1 the material breach of this Instrument that has resulted in the ICAV and/or the Shareholders suffering material financial disadvantage, fraud, gross negligence, wilful misconduct, wilful illegal act of or by any agent acting on behalf of the Feeder General Partner or the ICAV, provided that such agent was selected, appointed and monitored by the ICAV in good faith applying reasonable care.
- 40.5 The ICAV shall use their reasonable endeavours to ensure that:
- 40.5.1 any Indemnified Person shall use its reasonable endeavours to exercise any rights of recovery which it may have against its insurer or the relevant third party and its insurers before receiving any payment pursuant to Section 40.2, provided that it shall be indemnified out of the ICAV Assets for its reasonable costs and expenses in seeking to exercise such rights of recovery;
- 40.5.2 to the extent that any Indemnified Person is indemnified out of ICAV Assets pursuant to Section 40.2 and subsequently recovers monies in relation to the same matter from an insurer or third party, then such Indemnified Person shall account to the ICAV for the amount so recovered (after deduction of all costs and expenses incurred in procuring recovery) or, if less, the amount paid by the ICAV by way of indemnity (net of any tax borne thereon);
- 40.5.3 to the extent that any Indemnified Person is indemnified out of the ICAV Assets pursuant to Section 40.2 and subsequently it is determined that such Indemnified Person does not have

- the entitlement to such indemnification, then such Indemnified Person shall account to the ICAV for the amount of the indemnification provided out of the ICAV Assets; and
- 40.5.4 professional indemnity insurance policies, as the Manager reasonably deems appropriate, are taken out on behalf of the ICAV.
- 40.6 Section 40.2 shall give no right of indemnity to an Indemnified Person to the extent that (i) the relevant claim, liability, cost or expense is the result of a dispute with another Indemnified Person which is an Affiliate of the first Indemnified Person (provided that for purposes of this Section 40.6, each employee of an Indemnified Person shall be deemed to be an Affiliate of such Indemnified Person), or (ii) the claim is brought against any Indemnified Person by Shareholders who, at the time of making such claim, together represent more than fifty per cent. (50%) of the Capital Commitments, but only if and to the extent that the dispute is resolved by a court of competent jurisdiction in favour of the Shareholders.
- 40.7 The ICAV may make an advance payment on behalf of the ICAV to an Indemnified Person (except where such costs or expenses relate to an action being brought against the ICAV, the Manager or any of its Affiliates by any entity comprising WPEF VI or by Shareholders who together represent more than fifty per cent (50%) of the Total Commitments, excluding Commitments of Waterland Related Parties), **provided that** such person agrees in writing to repay immediately to the ICAV any sums advanced if it is subsequently determined that no right of indemnity exists under Section 40.2 in respect of such person.
- 40.8 To the extent that the ICAV Assets constitute "plan assets" of an employee benefit plan that is subject to ERISA, the limitation of liability provided under this clause 40 shall not apply with respect to such a plan to the extent prohibited by ERISA.
- 40.9 Notwithstanding anything to the contrary in this Section 40, and for the avoidance of doubt, the ICAV's obligations under this Section 40 are not intended to render the ICAV as a primary indemnitor for purposes of the indemnification, advancement of expenses and related provisions under the applicable law governing a Portfolio Company whom an Indemnified Person would reasonably expect to be legally obliged to bear such indemnification and other liabilities (for which purpose an Indemnified Person may rely upon advice provided by the ICAV's legal counsel in making such determination). Such Indemnified Person shall first seek to be so indemnified and have such expenses advanced by such Portfolio Company (or applicable insurance policies maintained by such Portfolio Company). Any advancement or payment by the ICAV to such Indemnified Person will result in the ICAV (through the Master Fund) having a subrogation claim against such Portfolio Company in respect of such advancement or payments. The ICAV may structure any such advancement or payment as a loan or other arrangement as the ICAV following consultation with the Manager may determine necessary or advisable to give effect to or otherwise implement the foregoing.
- 40.10 To the extent that any Shareholder is prohibited by law or regulation from entering into any indemnification obligations, then such Shareholder shall not be liable for any indemnification payment that it would otherwise be required to make pursuant to the Fund Agreements or its subscription form in respect of its Commitment, without prejudice to its drawdown and payment obligations under section 33 (including without limitation where such drawdown may be used for payments to an Indemnified Person pursuant to this clause 40) and its liabilities on any legal basis other than indemnification in respect of the matter that would otherwise have given rise to an indemnification obligation, provided, however, that (i) in no event will the ICAV draw Capital Contributions from any other Shareholder to make up a

shortfall caused by any Shareholder which is not required to make an indemnification payment under this Section 40.10 and (ii) the right to distributions of a Shareholder, being excused from making an indemnification payment under this Section 40.10, will be reduced by an amount equal to the indemnification payment for which it is excused.

40.11 For the avoidance of doubt, the Directors will not be indemnified for any liability which stems from or through their own negligence, default, breach of duty or breach of trust.

41 **Destruction of Documents**

41.1 The ICAV may destroy:

41.1.1 any dividend mandate or Share allotment request form or any variation or cancellation thereof or any notification of change of name or address at any time after the expiry of two years from the date such mandate, request, variation, cancellation or notification was recorded by the ICAV;

41.1.2 any instrument of transfer of Shares which has been registered at any time after the expiry of six years from the date of registration there of; and

41.1.3 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:

41.1.4 the foregoing provisions of this Section shall apply only to the destruction of a document in good faith and without express notice to the ICAV that the preservation of such document was relevant to a claim;

41.1.5 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 (i) above are not fulfilled; and

41.1.6 references in this Section to the destruction of any document includes references to its disposal in any manner.

42 **Severability**

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

43 **Rights of Third Parties**

Any right or benefit conferred by this Instrument (including this Section 43) to any person other than the respective persons outlined herein (a “**Third Party**”) shall not be enforceable directly by such person and may only be enforced on such person’s behalf by the ICAV, who shall hold such rights and benefits on bare trust for each Third Party. Except to the extent expressly provided otherwise, the Shareholders may take all actions contemplated by this Instrument or any subscription agreement to which they are a party (including amending this Instrument and terminating the ICAV, each in the manner set out in this Instrument) without regard to any such trust and without the consent of or notice to any Third Party, but no such action shall affect any Third Party rights or benefits which had accrued prior to such action. The ICAV and/or Manager may enter into such agreements or instruments as they may reasonably and in good faith determine as being for the purpose of ensuring that a Third Party obtains the full benefit of any right or benefit conferred on it by this Instrument. The ICAV and/or Manager shall take such action as may be reasonably requested by a Third Party to enforce any rights or benefits conferred by this Instrument on such Third Party provided that the ICAV and/or Manager are fully indemnified to their reasonable satisfaction.

44 **Modification of this Instrument**

- 44.1 No modification shall be made to this Instrument without the prior approval of the Central Bank. Any such modification may only be made in accordance with the requirements of the Act.
- 44.2 No amendment shall be made to this Instrument that would: (i) increase the Capital Commitment or liability of a Shareholder; or (ii) materially and adversely affect the rights of a Shareholder or the Shareholders as a whole in a disproportionate manner vis-à-vis other Shareholders, without the prior written consent of such Shareholders.
- 44.3 The ICAV, subject to the prior approval of the Central Bank, shall be entitled to modify, alter or add to the provisions of this Instrument, without the prior approval of the Shareholders where the Depositary certifies that the modification, alteration or addition does not materially prejudice the interests of the Shareholders and is not one which the Central Bank has specified as one requiring approval of the Shareholders.
- 44.4 Each Shareholder hereby agrees and certifies to the Depositary that an amendment shall not be considered to prejudice the interests of the Shareholders to the extent that the purposes of such amendment is to: (i) reflect changes validly made in the membership of the ICAV and the Capital Commitments of the Shareholders; (ii) reflect a change in the name of the ICAV; (iii) make a change that is necessary or advisable to qualify the ICAV as a partnership, or ensure that the ICAV is treated as a partnership for U.S. federal income tax purposes or otherwise to comply with changes in tax law or regulation; (iv) cure any ambiguity, correct or supplement any provision in this Instrument that may be incomplete or inconsistent with any other provision hereof, or make any changes negotiated with Shareholders in connection with their admission to the ICAV as Shareholders, in each case so long as such change does not adversely affect the Shareholders in any material respect; (v) make a change that is necessary, advisable or appropriate to satisfy any requirements, conditions or guidelines contained in any opinion, directive, order, ruling or regulation of any law, so long as such change is made in a manner which minimizes any adverse effect on the Shareholders or that is required or contemplated by this Agreement; (vi) make a change in any provision of this Agreement that requires any action to be taken by or on behalf of the

Directors or the ICAV pursuant to the requirements of applicable Irish law if the provisions of applicable Irish law are amended, modified or revoked so that the taking of such action is no longer required; (vii) comply with applicable laws and regulations; (viii) make amendments necessary in order to ensure parity between the ICAV and any other Feeder Vehicles and parity between all Shareholders; (ix) make any other amendments similar to the foregoing or (xi) is necessary or desirable to address the consequence of events provided for in this Instrument, including amendments, as the case may be.

- 44.5 Without prejudice to the foregoing, the ICAV shall be entitled (and without the sanction of an ordinary resolution as aforesaid) 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 having regard to the provisions of any fiscal enactments for the time being in force affecting the ICAV and any arrangements approved by the Revenue Commissioners of Ireland in relation to the carrying into effect hereof or to conform to any legislation, provided that no such modification, alteration or addition shall impose upon any Shareholder any obligation to make any further payment in respect of his Shares or to accept any liability in respect thereof.

SUBSCRIBER SHAREHOLDERS

We, the several persons whose names, addresses and descriptions are subscribed, wish to be formed into a variable capital investment corporate body in pursuance of this Instrument and we agree to take the number of Shares in the capital of the ICAV set opposite our respective names.

Names, Addresses and Description of subscribers Subscriber (written in full)	Number of Shares taken by each
For and on behalf of Matsack Trust Limited 70 Sir John Rogerson's Quay Dublin 2	One Share
For and on behalf of Matsack Nominees Limited 70 Sir John Rogerson's Quay Dublin 2	One Share
Total No. of Shares taken:	Two Shares

Dated this 29 September 2023

Witness to the above Signatures:

Name: Matsack Trust Limited, Company Secretary

Address: 70 Sir John Rogerson's Quay, Dublin 2

Signature of witness: _____

Schedule 1

Qualified Holder Restrictions

- 1.1 Unless authorised by the Directors, no Shares shall be issued to or transferred to or be beneficially owned by any US Person. Each subscriber for Shares of the ICAV shall be required to certify that he is not, nor is he acquiring such Shares, except with the authorisation of the Directors, on behalf of or for the benefit of a US Person, and that such subscriber will not sell or offer to sell or transfer, hypothecate or otherwise assign such Shares in the United States to, or for the benefit of, a US Person.
- 1.2 The Directors may determine to permit the private sale of Shares in the United States or to US Persons to a limited number of “accredited investors” (as defined in Rule 501(a) of Regulation D under the United States Securities Act of 1933 (the “1933 Act”) who are also “qualified purchasers” (as defined in Section 2(a)(51) of the United States Investment Company Act of 1940 (the “1940 Act”) under restrictions and other circumstances designed to preclude any requirement to register the Shares under the 1933 Act or any securities law of any state of the United States, or cause the ICAV to become subject to the registration requirements of the 1940 Act, including presentation by such investors, prior to the delivery to them of Shares, of a letter containing specified representations and agreements. Each applicant for Shares who is in the United States or a US Person will be required to provide such representations, warranties or documentation as may be required by the Directors to ensure that such requirements are met prior to approval of such sale or transfer by the Directors.
- 1.3 The Directors may not authorise the purchase by or transfer of Shares to or on behalf of a US Person unless:
 - (a) such purchase or transfer does not result in a violation of the 1933 Act or the securities laws of any state of the United States;
 - (b) such purchase or transfer would not require the ICAV to register under the 1940 Act; and
 - (c) there will be no adverse regulatory, tax or fiscal consequences to the ICAV or any of their respective Shareholders as a result of such a purchase or transfer.
- 1.4 The Directors shall have power (but shall not be under any duty) to impose such restrictions (other than a restriction on transfer which is not expressly referred to in this Instrument) 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 including without limitation of the foregoing any exchange control regulations applicable thereto or by a US Person or by any person in the circumstances described in paragraph 1.3 (c) above.
- 1.5 Shareholders are required to notify the ICAV immediately in the event that they become Irish Residents, US Persons, Benefit Plan Investors or cease to be Exempt Investors, or the Declaration made by or on their behalf is no longer valid. Shareholders are also required to notify the ICAV immediately in the event that they hold Shares for the account or benefit of Irish Residents, US Persons, Benefit Plan Investors, or otherwise hold Shares in breach of any law or regulation or otherwise in circumstances having or which may have, adverse regulatory, tax or fiscal consequences or be a material administrative disadvantage for the

ICAV or the Shareholders as a whole. In addition, Shareholders are required to notify the ICAV if any information provided or representations made by them on any subscription agreement is no longer correct.

- 1.6 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 paragraph 1.1 above 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 (30) 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 paragraph 1.8 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 19.4.
- 1.7 If a person becomes aware that he is holding or owning Shares in contravention of this Schedule 1 or the Instrument he shall forthwith in writing request the ICAV to redeem such Shares in accordance with Section 17 or shall transfer such Shares to a person duly qualified to hold the same unless he has already received a notice under paragraph 1.8 below.
- 1.8 Where the ICAV becomes aware that a Shareholder is (a) a US Person or is holding Shares for the account or benefit of a US Person and such person is not an “accredited investor” (as defined in Rule 501(a) of Regulation D under the 1933 Act) and a “qualified purchaser” (as defined in Section 2(a)(51) of the 1940 Act; (b) a Benefit Plan Investor or is holding Shares for the account or benefit of a Benefit Plan Investor; or (c) holding Shares in breach of any law or regulation or otherwise in circumstances having or which may have adverse regulatory, legal, pecuniary or tax consequences or material administrative disadvantage for the ICAV or the Shareholders as a whole; may: (i) direct the Shareholder to dispose of those Shares to a person who is entitled to own the Shares within such time period as the ICAV stipulates; or (ii) redeem the Shares at the Net Asset Value per Share, less any applicable Duties and Charges and any redemption fee as at the next Redemption Day or Dealing Day after the date of notification to the Shareholder or following the end of the period specified for disposal pursuant to (i) above.
- 1.9 If any such person upon whom such a notice is served as aforesaid does not within thirty (30) 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 (30) days to have so requested the redemption of all his Shares the subject of such notice 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 repurchase the provisions of Section 17 shall apply, subject to paragraph 1.8 above 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 19.4.
- 1.10 Subject to Section 17.5, 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.

- 1.11 Any person or persons to whom paragraph 1.1, 1.2, 1.4 and 1.5 shall apply shall indemnify the Directors, the ICAV, the Administrator, the Depositary, the Manager 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 Schedule 1.
- 1.12 Every Shareholder and every applicant for Shares (being a partnership, company or other investment vehicle or entity other than an individual) which is proposing to subscribe for, acquire or hold or which is made aware that it is holding 10% or more of the Shares of the ICAV must immediately disclose in writing to the ICAV the number of US Persons with a shareholding or interest in such applicant or Shareholder. In addition, every Shareholder holding 10% or more of the Shares of the ICAV shall be obliged, for so long as such Shareholder continues to hold 10% or more of the Shares of the ICAV, to immediately disclose in writing to the ICAV any increase or decrease in the number of US Persons with a shareholding or interest in such Shareholder. The ICAV shall be entitled to refuse to allot any Shares to, or to register a transfer in favour of, any applicant or Shareholder if such allotment or transfer would result in such applicant or Shareholder holding 10% or more of the Shares of the ICAV or, in the event that any Shareholder has been permitted to hold 10% or more of the Shares of the ICAV, to redeem such number of the Shares of the ICAV held by such Shareholder as would result in the number of Shares of the ICAV held by such Shareholder being less than 10% of the Shares of the ICAV.

Schedule 2

Valuation of Assets

- (a) The Net Asset Value of the ICAV shall be calculated in accordance with the provisions of this Schedule.
- (b) The Net Asset Value of the ICAV shall be calculated by ascertaining the value of the assets of the ICAV and deducting from such amount the liabilities of the ICAV, which shall include all fees and expenses payable and/or accrued and/or estimated to be payable out of the assets of the ICAV.
- (c) The Administrator shall determine the Net Asset Value per Share as at each Valuation Point. Shares will not be issued or redeemed until the Net Asset Value per Share has been calculated.
- (d) Where the Directors have created different classes and have determined that each class or classes will incur different levels of fees, the Administrator shall adjust the relevant Net Asset Value per class in order to reflect such different levels of fees payable in respect of each such class.
- (e) The Net Asset Value of the ICAV and the Net Asset Value per Share in respect of any Dealing Day will be calculated using the value of each the relevant assets or liabilities as at their respective Valuation Points and will be determined at the time set out in the Prospectus.
- (f) In the annual accounts of the Master Fund, the Portfolio Companies will be valued based on the EVCA guidelines as in force on the date of this Instrument, subject to such changes as the Manager may adopt from time to time after consultation with the Advisory Board. The ICAV shall for the purpose of its annual accounts (and the valuation of its assets and obligations) rely on the information received from the Master Fund.
- (g) Subscription and redemption prices of Shares shall be made available to Shareholders on request to the Administrator.

**Irish Collective Asset-management Vehicles Acts
2015 - 2020**

INSTRUMENT OF INCORPORATION

OF

WPEF VI Feeder 2 ICAV

(a closed-ended ICAV)

**A VARIABLE CAPITAL COLLECTIVE
INVESTMENT CORPORATE BODY**