

IRISH COLLECTIVE ASSET-MANAGEMENT VEHICLES ACT 2015

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

**INSTRUMENT OF INCORPORATION**

**- OF -**

**LDI SOLUTIONS PLUS ICAV**

(registered on 10 April 2018)

Registration Number: C180449

As altered and adopted in accordance with Section 31(b) of the Act on 23 November 2018

Maples and Calder  
75 St. Stephen's Green  
Dublin 2

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# INSTRUMENT OF INCORPORATION

- OF -

## LDI SOLUTIONS PLUS ICAV

### PART I PRELIMINARY

#### 1 Definitions and Interpretation

1.1 In this Instrument of Incorporation the following expressions shall have the following meanings:

**Accredited Investor** means an individual or entity to whom an exemption is granted from the Minimum Initial Investment Amount requirement and Qualifying Investor criteria, subject to the conditions and requirements of the Competent Authority, that is:

- (a) an external AIFM or a management company appointed by the ICAV; or
- (b) an entity appointed to provide investment management or advisory services to the ICAV or any Fund; or
- (c) a Director; or
- (d) a director of an external AIFM or management company or of an entity appointed to provide investment management or advisory services to the ICAV; or
- (e) an employee of the external AIFM or management company or entity appointed to provide investment management or advisory services to the ICAV and is directly involved in the investment activities of the ICAV or is a senior employee of the relevant entity and has experience in the provision of investment management services and the ICAV (or management company if appointed) is satisfied that the investor falls within the criteria outlined and the employee certifies in writing to the ICAV to its satisfaction that (i) they are availing of the exemption from the minimum subscription requirement of €100,000 on the basis that they are an Accredited Investor as defined above; (ii) they are aware that each Fund is marketed solely to Qualifying Investors who are normally subject to a minimum subscription requirement of €100,000;
- (f) or meets the applicable requirements as may be prescribed by the Competent Authority from time to time and set out in the Prospectus;

**Act** means the Irish Collective Asset-management Vehicles Act 2015, as may be modified, amended, supplemented, consolidated or re-enacted from time to time together with any regulations issued pursuant thereto from time to time;

**AIFM** means an alternative investment fund manager as defined in the AIFM Regulations;

**AIFM Directive** means Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC)

No 1060/2009 and (EC) No 1095/2010 as may be amended from time to time;

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| <b>AIFM Legislation</b>              | means the AIFM Regulations and the Delegated Regulation (or either of them as the case may be), as may be amended, supplemented or replaced from time to time;  |
| <b>AIFM Regulations</b>              | means the European Union (Alternative Investment Fund Managers) Regulations 2013, as may be amended, supplemented or replaced from time to time;  |
| <b>AIF Rulebook</b>                  | means the alternative investment fund rulebook issued by the Competent Authority, as may be amended, supplemented or replaced from time to time;  |
| <b>Appendix or Appendices</b>        | means the Appendix or Appendices which is/are attached to and form(s) part of this Instrument of Incorporation;   |
| <b>Assets</b>                        | means all of the assets including the Investments for the time being of the ICAV and any Fund acquired in accordance with the provisions of Clause 21 of Appendix I;  |
| <b>Asset-Specific Share Class</b>    | means a class (which includes Derivative Specific Share Classes, Hedged Currency Share Classes and New Issues Share Classes) in respect of which the ICAV may allocate specific Investments in accordance with the requirements of the Competent Authority, the gains/income, losses and costs of which will accrue solely to Holders of shares of that class;  |
| <b>Auditors</b>                      | means the auditors for the time being of the ICAV;  |
| <b>Authorised Money Market Funds</b> | means a Fund authorised as a money market fund pursuant to the Money Market Fund Regulation;  |
| <b>Business Day</b>                  | means any day on which banks are generally open for business in such jurisdictions or such other days as the Directors may determine in relation to each Fund;  |
| <b>Clear Days</b>                    | means in relation to the period of a notice, that period excluding the day when the notice is given or deemed to be given and the day for which it is given or on which it is to take effect;   |
| <b>Client Agreement</b>              | means an agreement between an investor and any investment manager appointed by the ICAV or any sub-investment manager, or any company which has the same ultimate parent company as the investment manager or the sub-investment manager, for the provision of investment management or investment advisory services;   |
| <b>Competent Authority</b>           | means the Central Bank of Ireland or such other authority designated as such pursuant to the Act with responsibility for authorising and supervising the ICAV;  |
| <b>CRS</b>                           | means the Standard for Automatic Exchange of Financial Account Information approved on 15 July 2014 by the Council of the Organisation for Economic Cooperation and Development, also known as the Common Reporting Standard, and any bilateral or multilateral competent authority agreements, intergovernmental agreements and treaties, laws, regulations, official guidance or other instrument facilitating the implementation thereof and any law implementing the Common Reporting Standard; |

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| <b>Depository</b>                      | means the person appointed and for the time being acting as Depository of all the Assets pursuant to Clauses 25 to 28 of Appendix I;   |
| <b>Depository Agreement</b>            | means any agreement for the time being subsisting between the ICAV, the external AIFM (if any) and the Depository, relating to the appointment and duties of the Depository;   |
| <b>Dealing Day</b>                     | means such Business Day or Business Days as the Directors may, from time to time determine in relation to any Fund and as may be defined in the Prospectus or relevant Supplement for the subscription, repurchase or exchange of shares provided that there shall, in the case of open ended Funds only, be at least one Dealing Day for repurchase of shares per calendar quarter for each Fund;   |
| <b>Dealing Deadline</b>                | means such day and time as may be specified from time to time by the Directors in relation to any class of shares;   |
| <b>Delegated Regulation</b>            | means Commission Delegated Regulation (EU) No 231/2013 supplementing the AIFM Directive with regard to exemptions, general operating conditions, depositaries, leverage, transparency and supervision as may be amended from time to time;   |
| <b>Derivative Specific Share Class</b> | means a class in respect of which the ICAV will enter into derivative transactions the benefits and costs of which will accrue solely to Holders of shares of that class;  |
| <b>Designated Investment</b>           | means a security or other instrument held or to be purchased/acquired by a Fund that the Directors in their discretion determine has become or is illiquid, difficult to value or lacks a reliable or readily assessable market value or should be held until the resolution of a special event or circumstance;   |
| <b>Dilution Adjustment</b>             | means an adjustment made to the Net Asset Value per share of a Fund which adjustment is made for the purpose of reducing the effects of transaction charges and dealing spreads on Holders' interests in a Fund;   |
| <b>Directors</b>                       | means the Directors for the time being of the ICAV and Director means any one of those;  |
| <b>Duties and Charges</b>              | means all stamp and other duties, taxes, governmental charges, agent's fees, brokerage, bank charges, transfer fees, registration fees and other, charges, whether in connection with the original acquisition or increase or the disposal of the Assets of the ICAV as the case may be or the creation, issue or sale of shares or the sale or purchase of Investments by the ICAV or in respect of certificates or otherwise which may have become or may be payable in respect of or prior to or upon the occasion of the transaction or dealing in respect of which such duties and charges are payable but shall not include any market spreads, commission, taxes, charges or costs which may have been taken into account in ascertaining the Net Asset Value of the relevant Fund; |
| <b>Electronic Communication</b>        | has the same meaning as under the Electronic Commerce Act, 2000 (as amended or supplemented from time to time) and " <b>electronic</b> " and " <b>electronically</b> " shall be construed accordingly;   |
| <b>Equalisation Account</b>            | means an equalisation account which may in the discretion of the Directors be maintained in respect of any Fund in accordance with Clause 33 of Appendix I;  |

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| <b>Equalisation Payment</b>        | means an amount paid in accordance with paragraph 33.1 of Appendix I (subject to any determination of the Directors to the contrary) calculated at such rate per share of a class of shares as shall be determined by the Directors by reference to their estimate from time to time of the next dividend to be declared in respect of the relevant class;   |
| <b>FATCA</b>                       | means: <ul style="list-style-type: none"> <li>(a) sections 1471 to 1474 of the U.S. Internal Revenue Code or any associated regulations or other official guidance;</li> <li>(b) any intergovernmental agreement, treaty, regulation, guidance or other agreement between the Government of Ireland (or any Irish government body) and the US, UK or any other jurisdiction (including any government bodies in such jurisdiction), entered into in order to comply with, facilitate, supplement, implement or give effect to the legislation, regulations or guidance described in paragraph (a) above; and</li> <li>(c) any legislation, regulations or guidance in Ireland that give effect to the matters outlined in the preceding paragraphs;</li> </ul> |
| <b>FINRA</b>                       | means the US Financial Industry Regulatory Authority, Inc.;  |
| <b>FINRA Rules</b>                 | means the rules of FINRA, as the same may from time to time be amended;  |
| <b>Fund(s)</b>                     | means the portfolio(s) maintained in accordance with Clause 9 of Appendix I which shall be kept separate in respect of each class of share or the relevant classes of share (where more than one class of share has been created to participate in a Fund) to which all assets and liabilities, income and expenditure attributable or allocated to each such Fund shall be applied and charged;   |
| <b>Hedged Currency Share Class</b> | means a Currency Share Class in respect of which the ICAV will conduct currency hedging transactions the benefits and costs of which will accrue solely to Holders of shares of that class;  |
| <b>Holder</b>                      | means in relation to any share or any Subscriber Share the member whose name is entered in the Register as the holder of such share;   |
| <b>ICAV</b>                        | means the Irish collective asset management vehicle named in the heading to this Instrument of Incorporation;  |
| <b>Initial Offer Period</b>        | means any period determined by the Directors during which any class of shares in the relevant Fund may be initially offered for subscription at an initial subscription price;   |
| <b>Investment</b>                  | means an Investment acquired by the ICAV pursuant to Clause 21 of Appendix I;  |
| <b>Irish Stock Exchange</b>        | means The Irish Stock Exchange Limited and any successor thereto;  |
| <b>IRS</b>                         | means the U.S. Internal Revenue Service;   |
| <b>Market</b>                      | means in relation to any Investment, any stock exchange, over the counter market or other regulated securities market or trading venue on which an Investment is listed and/or traded;   |

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| <b>Member State</b>                         | means any member state of the European Union;  |
| <b>Minimum Additional Investment Amount</b> | means such minimum cash amount or minimum number of shares as the case may be (if any) as the Directors may from time to time require to be invested in any Fund by each Holder (after investing the Minimum Initial Investment Amount);   |
| <b>Minimum Fund Size</b>                    | means such amount (if any) as the Directors may from time to time prescribe as the minimum fund size for a Fund;   |
| <b>Minimum Initial Investment Amount</b>    | means such amount as the Directors may from time to time prescribe as the minimum initial subscription for shares of any class provided that such amount shall (except in respect of shares acquired by Accredited Investors) at all times be equal to or greater than the minimum amount required by the Competent Authority for the ICAV to obtain qualifying investor alternative investment fund status; |
| <b>Minimum Repurchase Amount</b>            | means such minimum number or minimum value of shares of any class as the case may be (if any) as the Directors may from time to time prescribe as the minimum which may be redeemed at any time by a Holder and as may be disclosed in the Prospectus or relevant Supplement;  |
| <b>Minimum Shareholding</b>                 | means such minimum number or minimum value of shares of any class as the case may be (if any) as the Directors may, from time to time, prescribe, as the minimum permitted holding of shares of that class or for that Fund;   |
| <b>Money Market Fund Regulation</b>         | means the Regulation of the European Parliament and of the Council on money market funds (2013/0306) as amended or supplemented from time to time, including any delegated acts adopted thereunder and any implementing rules or conditions that may from time to time be imposed thereunder by the Competent Authority or the European Securities and Markets Authority;                                    |
| <b>Month</b>                                | means a calendar month;  |
| <b>Net Asset Value</b>                      | means the net asset value of the ICAV or of any Fund or of any class or of any share, which shall be calculated as at a Valuation Point by valuing the Assets of the ICAV or any Fund in accordance with the provisions of Appendix II;  |
| <b>New Issues</b>                           | shall have the meaning ascribed to that term in the FINRA Rules, as amended, extended, consolidated, substituted or re-enacted from time to time to include any initial public offering of an equity security as defined in Section 3(a)(11) of the US Securities Exchange Act of 1934, as amended;  |
| <b>New Issues Share Classes</b>             | means a class in respect of which the relevant Fund may invest in or otherwise be exposed to New Issues, where the gains and losses on such investment, and the benefit and costs of which, will accrue solely to Holders of shares of that class, and such Holders are not deemed to be 'restricted persons' in accordance with the FINRA Rules;  |
| <b>OECD Member State</b>                    | means a member state of the Organisation for Economic Co-operation and Development;  |
| <b>Office</b>                               | means the registered office for the time being of the ICAV;  |
| <b>Permitted Investor</b>                   | means any person not disqualified from holding shares by virtue of Clause 20 of Appendix I;  |

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| <b>Prospectus</b>            | means the prospectus issued from time to time by the ICAV as same may be amended, supplemented, consolidated, substituted or otherwise modified from time to time including by way of a Supplement;   |
| <b>Qualifying Investor</b>   | means: <ul style="list-style-type: none"> <li>(a) an investor who is a professional client within the meaning of Annex II of Directive 2004/39/EC (Markets in Financial Instruments Directive ("MiFID")); or</li> <li>(b) an investor who receives an appraisal from an EU credit institution, a MiFID firm or an Undertaking for Collective Investment in Transferable Securities management company that the investor has the appropriate expertise, experience and knowledge to adequately understand the investment in the ICAV; or</li> <li>(c) an investor who certifies that they are an informed investor by providing the following: <ul style="list-style-type: none"> <li>(i) Confirmation (in writing) that the investor has such knowledge of and experience in financial and business matters as would enable the investor to properly evaluate the merits and risks of the prospective investment; or</li> <li>(ii) Confirmation (in writing) that the investor's business involves, whether for its own account or the account of others, the management, acquisition or disposal of property of the same kind as the property of the scheme.</li> </ul> </li> </ul> <p>and in each case certifies in writing to the ICAV that they (i) meet the minimum criteria required of a Qualifying Investor, (ii) they are aware of the risk involved in the proposed investment and (iii) they are aware of the fact that inherent in such investments is the potential to lose all of the sum invested;</p> <p>Within the European Union, a qualifying investor alternative investment fund may only be marketed to professional investors as defined in the AIFM Regulations, unless the Member State in question permits, under the laws of that Member State, the ICAV to be sold to other categories of investors and this permission encompasses investors under (b) and (c) above, as may be amended, supplemented or replaced from time to time;</p> |
| <b>Register</b>              | means the register of Holders to be kept as required by the Act;  |
| <b>Repurchase Charge</b>     | means a repurchase charge payable to the ICAV or any delegate;  |
| <b>Repurchase Price</b>      | means the repurchase price of shares calculated and determined in accordance with Clauses 12 to 16 of Appendix I;   |
| <b>Revenue Commissioners</b> | means the Irish Revenue Commissioners;  |
| <b>Seal</b>                  | means the common seal of the ICAV or (where relevant) the official securities seal kept by the ICAV pursuant to the Act;  |
| <b>Secretary</b>             | means any person appointed to perform the duties of the secretary of the ICAV;  |
| <b>Settlement Date</b>       | means the latest date(s) as may be determined by the Directors from time to time by which payment of the Subscription Price or the Repurchase Price of shares of any class must be received or made as may be disclosed in the Prospectus and/or Supplement which shall be in   |



accordance with any requirements of the Competent Authority, unless the calculation of Net Asset Value is suspended in accordance with Clause 18 of Appendix I;

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| <b>share or shares</b>                     | means participating shares of no par value in the capital of the ICAV originally designated as unclassified participating shares;   |
| <b>Special Situation Shares</b>            | means shares which have been so designated by the Directors in accordance with paragraph 1.13 of Appendix I;  |
| <b>State</b>                               | means the Republic of Ireland;  |
| <b>Stock Exchange Nominee</b>              | means a person designated, by regulation as a nominee of a recognised stock exchange;   |
| <b>Subscriber Share or Shares</b>          | means a non-participating share in the capital of the ICAV issued in accordance with this Instrument of Incorporation and with the rights provided for under this Instrument of Incorporation;  |
| <b>Subscription Price</b>                  | means the issue price of shares calculated and determined by the Directors in accordance with Clause 2 of Appendix I;   |
| <b>Supplement</b>                          | means any supplement to the Prospectus issued on behalf of the ICAV in relation to a Fund or class thereof from time to time;   |
| <b>Taxable Irish Person</b>                | has the meaning given to that term in the Prospectus;   |
| <b>TCA</b>                                 | means the Taxes Consolidation Act 1997, as amended;   |
| <b>Unhedged Currency Share Class</b>       | means a class of shares where typically, shares may be subscribed for and dividends calculated and paid and repurchase proceeds paid in a currency other than the base currency of the relevant Fund on the basis of a currency conversion at the prevailing spot currency exchange rate of the relevant base currency for the currency of the relevant share class;  |
| <b>United States</b>                       | means the United States of America (including each of the states, the District of Columbia and the Commonwealth of Puerto Rico) its territories, possessions and all other areas subject to its jurisdiction;   |
| <b>United States Person or U.S. Person</b> | has the meaning ascribed to it in the Prospectus, as amended from time to time;   |
| <b>Valuation Point</b>                     | means such point in time, in such place or places as the Directors may, from time to time determine, by reference to which the Net Asset Value is calculated as is specified in the Supplement for the relevant Fund or such other time after the Dealing Deadline as the ICAV may from time to time determine, provided that in the case of (i) open ended Funds there shall be at least one Valuation Point per quarter and (ii) open ended with limited liquidity, limited liquidity and closed ended Funds there shall be at least one Valuation Point per annum. |

- 1.2 Expressions in this Instrument of Incorporation referring to writing shall be construed, unless the contrary intention appears, as including references to printing, lithography, photography and any other modes of representing or reproducing words in a visible form. Expressions in this Instrument of Incorporation referring to execution of any document shall include any mode of execution whether under seal or under hand.

- 1.3 Unless specifically defined or unless the context otherwise requires, words or expressions contained in this Instrument of Incorporation shall bear the same meaning as in the Act.
- 1.4 The table of contents, headings and captions included in this Instrument of Incorporation are inserted for convenience of reference only and shall not be considered a part of or affect the construction or interpretation of this Instrument of Incorporation.
- 1.5 References in this Instrument of Incorporation to any enactment or any section or provision thereof shall mean such enactment, section or provision as the same may be amended and may be from time to time and for the time being in force.
- 1.6 In this Instrument of Incorporation the masculine gender shall include the feminine and neuter, and vice versa, and the singular number shall include the plural, and vice versa, and words importing persons shall include firms or companies.
- 1.7 References in this Instrument of Incorporation to "Euro" or € are to the currency, for the time being, of Ireland and shall include any successor currency.

## **PART II – NAME, OBJECT, POWERS**

### **2 Name**

- 2.1 The name of the ICAV is "LDI Solutions Plus ICAV".
- 2.2 Any change in name of the ICAV shall be made in accordance with section 30 of the Act.
- 2.3 For the purposes of Clause 106, a change in name of the ICAV shall not constitute an alteration to this Instrument of Incorporation.

### **3 Object**

The ICAV is a body corporate of a type known as an Irish collective asset-management vehicle having as its sole object the collective investment of its funds in property and giving members of the ICAV the benefit of the results of the management of its funds.

### **4 Capacity**

In order to attain the said object stated in Clause 3 above, the ICAV shall in addition to all powers implied at law, also have the following powers:

- 4.1 To seek authorisation pursuant to the Act as an Irish collective asset-management vehicle;
- 4.2 To carry on business as a collective investment scheme and to acquire, dispose of, invest in and hold by way of investment, shares, stocks, securities, bonds, obligations, certificates of deposit, money market instruments, treasury bills, trade bills, bank acceptances, bills of exchange, fixed rate securities, variable or floating rate securities, securities in respect of which the return and/or repurchase amount is calculated by reference to any index, price or rate, monetary and financial instruments of all kinds, futures contracts, swaps, options contracts, contracts for differences, commodities, forward rate agreements and other financial derivative instruments, debentures, debenture stock, warrants, commercial paper, promissory notes, mortgage backed securities, asset backed securities and securities of all kinds created, issued or guaranteed by any government, sovereign, ruler, commissioners, body or authority, supreme, state, municipal, local, supranational or otherwise, in any part of the world, or by any company, bank, association or partnership, whether with limited or unlimited liability constituted or carrying on business or activities in any part of the world, units of or

participation in any unit trust scheme, mutual fund or collective investment scheme in any part of the world, policies of insurance and assurance, domestic and foreign currency and any present or future rights and interests to or in any of the foregoing, to subscribe for the same either conditionally or otherwise, to enter into underwriting, stocklending and repurchase and similar contracts with respect thereto, to exercise and enforce all rights and powers conferred by or incidental to the ownership thereof and from time to time to sell, exchange, lend, vary or dispose of and grant and dispose of options over any of the foregoing and to deposit money (or place money on current account) with such persons in such currencies and otherwise on such terms as may seem expedient and all other assets permitted by the Act.

- 4.3 To deposit money, securities and/or property to or with such persons, 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.
- 4.4 Where required for the direct pursuit of the business of the ICAV, to acquire by purchase, lease, exchange, hire or otherwise lands and real or personal property wheresoever situate of any kind or of any tenure or any interest in the same; to erect and construct houses, buildings or works of every description on any land of the ICAV, or upon any other lands or property, and to pull down, rebuild, enlarge, alter or improve existing houses, buildings or works thereon and generally to manage deal with and improve the property of the ICAV; and to sell, lease, let, mortgage or otherwise dispose of the lands, houses, buildings, and other property of the ICAV.
- 4.5 To carry on business as capitalists and financiers, and to undertake and carry on all kinds of financial, trust, agency, broking, and other operations including underwriting, issuing on commission or otherwise of stocks and securities of all kinds.
- 4.6 To receive monies on loan and to borrow or raise money in any currency and secure or discharge any debt or obligation of or binding on the ICAV in any manner and to secure the repayment of any money borrowed, raised or owing by mortgage, charge or lien (or any other security arrangement of any other kind) against the whole or any part of the ICAV's property or assets (whether present or future) including uncalled capital and also by a similar mortgage charge or lien (or any other security arrangement of any other kind) to secure or guarantee the performance of any obligation or liability undertaken by the ICAV.
- 4.7 To guarantee the payment of money by or the performance of any contracts, liabilities, obligations, or engagements of any company, firm or person and to grant guarantees and indemnities of every description, and to undertake obligations of every description.
- 4.8 To enter into any arrangements with any government, or authority, supreme, municipal, local or otherwise, 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.
- 4.9 To employ any person, firm, company or other body to investigate and examine the conditions, prospects, values, character and circumstances of any business concern or undertaking and generally of any assets, concessions, properties or rights.
- 4.10 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.
- 4.11 To promote and aid in promoting, constitute, form or organise companies, syndicates or partnerships of all kinds for the purpose of acquiring and undertaking any property and liabilities of the ICAV, or of advancing directly or indirectly the objects thereof, or for any purpose which the ICAV may think expedient.

- 4.12 To promote and aid in promoting, constitute, form or organise any company or companies, syndicates or partnerships of all kinds in any part of the world and to subscribe for shares therein or other securities thereof for the purpose of carrying on any business which the ICAV is authorised to carry on or of advancing directly or indirectly the objects thereof, or for any other purpose which may seem directly or indirectly calculated to benefit the ICAV.
- 4.13 To amalgamate or enter into partnership or into any arrangement for sharing profits, union of interest, joint venture, reciprocal concessions or co-operation with any person or company carrying on, engaged in, or about to carry on or engage in any business or transaction which the company is authorised to carry on or engage in, or any business or transaction capable of being conducted so as directly or indirectly to benefit the ICAV, and to take or otherwise acquire and hold, sell, re-issue, or otherwise deal with shares or stock in or securities or obligations of, and to subsidise or otherwise assist any such securities or obligations or any dividends upon any such shares or stock.
- 4.14 To apply for, purchase or otherwise acquire any patents, trademarks, copyrights, designs, licences, and like rights, conferring an exclusive or limited right to use, or any secret or other information as to any invention which may seem capable of being used for any of the purposes of the ICAV or the acquisition of which may seem calculated directly or indirectly to benefit the ICAV and to use, exercise, develop, sell, mortgage, grant licences in respect of, or otherwise turn to account the rights and information so acquired.
- 4.15 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.
- 4.16 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 or company 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 or company.
- 4.17 To create, issue, make, draw, accept and negotiate redeemable debentures or bonds or other obligations, bills of exchange, promissory notes or other negotiable instruments.
- 4.18 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.
- 4.19 To sell, let, develop, dispose of or otherwise deal with the undertaking or all or any part of the property real or personal, rights or privileges of the ICAV upon such terms as the ICAV may think fit, with power to accept as the consideration, any shares, stocks, debentures, securities or obligations of or interest in any other company.
- 4.20 To establish and support or aid in the establishment and support of associations, institutions and conveniences calculated to benefit any of the employees or ex-employees of the ICAV or any associated company, or the dependants or connections of such persons, and to grant pensions and allowances and to make payment towards insurance and to subscribe or guarantee money for charitable or benevolent objects or for any exhibition, or for any public general or useful object.
- 4.21 To remunerate any companies, firm or person for services rendered or to be rendered in placing or assisting to place or guaranteeing the placing of any of the shares in the ICAV's capital or any debentures or other securities of the ICAV or in or about the promotion of the ICAV or the conduct of its business and whether by cash payment or by

the allotment to him or them of stocks, shares, debentures, bonds or other securities of the ICAV, credited as paid up in full in part or otherwise.

- 4.22 To promote any company or companies for the purpose of its or their acquiring all or any of the property, rights and liabilities of the ICAV, or for any other purpose which may seem directly or indirectly calculated to benefit the ICAV and to pay all the expenses of or incidental to such promotion.
- 4.23 To pay out of the funds of the ICAV all expenses which the ICAV may lawfully pay incidental to the formation, registration and advertising of or raising money for the ICAV and the issue of its capital or any class thereof, including brokerage and commissions for obtaining applications for or taking, placing or procuring the underwriting of shares, stocks, debentures, bonds or other securities of the ICAV and any other expenses which the Directors shall consider to be in the nature of preliminary expenses and to amortise such expenses over such period or periods as the Directors may determine.
- 4.24 To pay for any property or rights acquired by the ICAV either in cash or by the issue of fully paid shares of the ICAV.
- 4.25 To withhold or deduct from any payment to be made to a shareholder of the ICAV any amount for or on account of any taxes imposed or required to be withheld by any jurisdiction or, where no payment is due to be made, to appropriate or cancel the number of shares required to meet any such liability.
- 4.26 To exercise all or any of the powers aforesaid in any part of the world, and as principals, agents, contractors, trustees or otherwise, and by or through trustees, agents, attorneys or otherwise, and either alone or in conjunction with others.
- 4.27 To do all such other things as the ICAV may deem incidental or conducive to the attainment of any of the objects of the ICAV.
- 4.28 To procure the ICAV to be registered or recognised in any part of the world outside Ireland.
- 4.29 Each of the ancillary powers of the ICAV (whether enumerated or not) is to be interpreted and exercised as ancillary to the objects of the ICAV but separate from and ranking equally to any other ancillary power.

And it is hereby declared that the word **company** in this Instrument of Incorporation shall be deemed to include any partnership or other body of persons, whether incorporated or not incorporated.

### **PART III - SHARE CAPITAL, UMBRELLA FUND AND RIGHTS**

#### **5 Share Capital**

- 5.1 The share capital of the ICAV shall be equal to the value for the time being of the share capital issued by the ICAV. The value of the paid up share capital of the ICAV shall at all times be equal to the Net Asset Value of the ICAV.
- 5.2 The authorised share capital of the ICAV is 2 Subscriber Shares of €1 each and 999,999,999,998 shares of no par value initially designated as unclassified shares. The minimum issued share capital of the ICAV is €2 or its equivalent in any other currency. The maximum issued share capital of the ICAV is €1,000,000,000,000 or its equivalent in any other currency. Subscriber Shares shall only be issued at par value.
- 5.3 The liability of the members is limited to the amount, if any, unpaid on the shares respectively held by the Holders. This is without prejudice to any other liability to which a Holder may be subject as provided by under the Act.

## 6 **Umbrella Fund**

The ICAV is an "umbrella fund" comprising separate portfolios of assets and liabilities attributable thereto referred to herein as Fund(s) as further described in Clause 9 of Appendix I by reference to which shares are issued. The relevant provisions of the Act shall apply to the ICAV as an umbrella fund accordingly.

## 7 **Issue of shares**

- 7.1 Shares may only be issued as fully paid or partly paid and shall have no par value.
- 7.2 The Directors may from time to time issue fractions of shares. Notwithstanding anything contained in this Instrument of Incorporation the holder of a fraction of a share may not exercise any voting rights in respect of such share.
- 7.3 The Directors may issue any of the unclassified shares as participating shares in a Fund with such rights or restrictions as the Directors may determine. The Directors may establish open ended, open ended with limited liquidity, limited liquidity and closed ended Funds with the prior approval of the Competent Authority. The Directors may issue more than one class of shares which participate in a Fund. The provisions contained in Clauses 1 to 8 of Appendix I shall govern the terms and conditions relating to the issue of shares.
- 7.4 The Directors, on the allotment and issue of any shares, may impose restrictions on the transferability or disposal of the shares as may be considered by the Directors to be in the best interests of the Holders as a whole.
- 7.5 The Directors may in their absolute discretion refuse to accept any application for shares in the ICAV or accept any application in whole or in part.
- 7.6 The Directors are generally and unconditionally authorised to exercise all powers of the ICAV to allot shares, including fractions thereof, up to an amount equal to the authorised but as yet unissued share capital of the ICAV.

## 8 **Variation of rights**

- 8.1 Whenever the share capital is divided into different classes of shares, the rights attached to any class may be varied or abrogated with the consent in writing of the Holders of three-fourths in number of the issued shares of that class, or with the sanction of a special resolution passed at a separate general meeting of the Holders of the shares of the class, and may be so varied or abrogated either whilst the ICAV is a going concern or during or in contemplation of a winding-up. The quorum at any such separate general meeting, other than an adjourned meeting, shall be two persons present in person or by proxy and the quorum at an adjourned meeting shall be one person holding shares of the class in question or his proxy.
- 8.2 The rights conferred upon the Holders of the shares of any class issued with preferred or other rights shall not, unless otherwise expressly provided by this Instrument of Incorporation or the terms of the issue of the shares of that class, be deemed to be varied by the creation or issue of further shares ranking *pari passu* therewith or subordinate thereto.

## 9 **Trusts not recognised**

- 9.1 Except as required by law, no person shall be recognised by the ICAV as holding any share upon any trust, and the ICAV shall not be bound by or be compelled in any way to recognise (even when having notice thereof) any equitable, contingent, future or partial interest in any share or any interest in any fractional part of a share or (except only as by this Instrument of Incorporation or by law otherwise provided) any other rights in respect of any share except an absolute right to the entirety thereof in the Holder. This shall not

preclude the ICAV from requiring the Holders or a transferee of shares to furnish the ICAV with information as to the beneficial ownership of any share when such information is reasonably required by the ICAV.

## 10 Disclosure of interests

- 10.1 Notwithstanding the provisions of the immediately preceding Clause, the Directors, at any time and from time to time if, in their absolute discretion, they consider it to be in the interests of the ICAV to do so, may give a notice to the Holder or Holders of any share (or any of them) requiring such Holder or Holders to notify the ICAV in writing within such period as may be specified in such notice (which shall not be less than twenty-eight days from the date of service of such notice) of full and accurate particulars of all or any of the following matters, namely:-
- (i) his interest in such share;
  - (ii) if his interest in the share does not consist of the entire beneficial interest in it, the interests of all persons having any beneficial interest in the share (provided that one joint Holder of a share shall not be obliged to give particulars of interests of persons in the share which arise only through another joint Holder); and
  - (iii) any arrangement (whether legally binding or not) entered into by him or any person having any beneficial interest in the share whereby it has been agreed or undertaken or the Holder of such share can be required to transfer the share or any interest therein to any person (other than a joint Holder of the share) or to act in relation to any meeting of the ICAV or of any class of shares of the ICAV in a particular way or in accordance with the wishes or directions of any other person (other than a person who is a joint Holder of such share).
- 10.2 If, pursuant to any notice given under paragraph 10.1, the person stated to own any beneficial interest in a share or the person in favour of whom any Holder (or other person having any beneficial interest in the share) has entered into any arrangements referred to in sub-paragraph 10.1(iii), is a body corporate, trust, society or any other legal entity or association of individuals and/or entities, the Directors, at any time and from time to time if, in their absolute discretion, they consider it to be in the best interests of the ICAV to do so, may give a notice to the Holder or Holders of such share (or any of them) requiring such Holder or Holders to notify the ICAV in writing within such period as may be specified in such notice (which shall not be less than twenty-eight days from the date of service of such notice) of full and accurate particulars of the name and addresses of the individuals who control (whether directly or indirectly and through any number of vehicles, entities or arrangements) the beneficial ownership of all the shares, interests, units or other measure of ownership of such body corporate, trust, society or other entity or association wherever the same shall be incorporated, registered or domiciled or wherever such individuals shall reside provided that if at any stage of such chain of ownership the beneficial interest in any share shall be established to the satisfaction of the Directors to be in the ownership of any body corporate any of whose share capital is listed or dealt in on any bona fide stock exchange, unlisted securities market or over-the-counter securities market, it shall not be necessary to disclose details of the individuals ultimately controlling the beneficial interests in the shares of such body corporate.
- 10.3 The Directors, if they think fit, may give notices under paragraphs 10.1 and 10.2 at the same time on the basis that the notice given pursuant to paragraph 10.2 shall be contingent upon disclosure of certain facts pursuant to a notice given pursuant to paragraph 10.1.
- 10.4 The Directors may require (before or after the receipt of any written particulars under this Clause) any such particulars to be verified by statutory declaration.
- 10.5 The Directors may serve any notice pursuant to the terms of this Clause irrespective of whether or not the Holder on whom it shall be served may be dead, bankrupt, insolvent or

otherwise incapacitated and no such incapacity or any unavailability of information or inconvenience or hardship in obtaining the same shall be a satisfactory reason for failure to comply with any such notice provided that if the Directors in their absolute discretion think fit, they may waive compliance in whole or in part with any notice given under this Clause in respect of a share in any case of bona fide unavailability of information or genuine hardship or where they otherwise think fit but no such waiver shall prejudice or affect in any way any non-compliance not so waived whether by the Holder concerned or any other joint Holder of the share or by any person to whom a notice may be given at any time.

- 10.6 For the purpose of establishing whether or not the terms of any notice served under this Clause shall have been complied with the decision of the Directors in this regard shall be final and conclusive and shall bind all persons interested.

#### **PART IV - REPURCHASE AND EXCHANGE OF SHARES**

**11 Right of repurchase**

Holders in open ended, open ended with limited liquidity and limited liquidity Funds shall have the right to request the ICAV to repurchase their shares in accordance with the terms and conditions set out in Clauses 12 to 16 of Appendix I.

**12 Right of Exchange**

Holders shall have the right to exchange all or any of their shares in accordance with the terms and conditions set out in Clause 10 of Appendix I.

#### **PART V – CONFIRMATION OF OWNERSHIP**

**13 The Register**

- 13.1 The ICAV shall maintain a Register in accordance with the Act. The Register shall be kept available for inspection by a person entitled to inspect it in accordance with the Act. The Register shall be kept at the Office or at such other place within Ireland, as the Directors may determine, subject to the requirements of the Act.
- 13.2 Every Holder shall receive written confirmation of ownership in respect of his holding of shares. Share certificates will not be issued by, or on behalf of, the ICAV. To be entered on the Register, an applicant or transferee must apply for or acquire shares in the ICAV to the value of not less than the Minimum Investment Amount, certify that they are a Qualifying Investor and certify that they are aware of the risks involved in the proposed investment and of the fact that inherent in such investment is the potential to lose all of the sum invested or meet the criteria of an Accredited Investor.
- 13.3 Every Holder shall receive written confirmation of entry on the Register (which may be sent to Holders by ordinary post, facsimile, electronic or such other means, as may be determined by the Directors, in accordance with the requirements of the Competent Authority) in respect of his holding of shares within such period as the Directors may determine from time to time (as disclosed in the Prospectus) after receipt of payment for the shares and the necessary accompanying documentation. The ICAV shall not be bound to register more than four persons as joint Holders of any share (except in the case of executors or trustees of a deceased member).



14 **Other methods of recording title**

Nothing in this Instrument of Incorporation shall preclude title to any shares of the ICAV being recorded other than in writing in accordance with such arrangements as may from time to time be permitted by the Act and approved by the Directors.

**PART VI - TRANSFER OF SHARES**

15 **Form of instrument of transfer**

Subject to such of the restrictions of this Instrument of Incorporation and to such of the conditions of issue as may be applicable, the shares of any Holder may be transferred by instrument in writing in any usual or common form or any other form which the Directors may approve.

16 **Execution of instrument of transfer**

The instrument of transfer of any share shall be executed by or on behalf of the transferor. The transferor shall be deemed to remain the Holder of the share until the name of the transferee is entered in the Register in respect thereof.

17 **Payment of taxation upon transfer**

The Directors may repurchase and cancel a sufficient portion of the transferor's shares to discharge any taxation imposed or required to be withheld by any jurisdiction or its tax authority, including the Revenue Commissioners in respect of a transfer of shares by a Holder who is or is deemed to be a Taxable Irish Person or acting on behalf of such a person.

18 **Refusal to register transfers**

18.1 The Directors in their absolute discretion and without assigning any reason therefor may decline to register the transfer of a share including but not limited to:-

- (a) any transfer of a share to a person who is not a Permitted Investor;
- (b) any transfer to a person who has not entered into a Client Agreement;
- (c) any transfer to or by an individual under the age of 18 (or other such age as the Directors may determine) or by a minor or person of unsound mind;
- (d) any transfer unless the transferee of such shares would following such transfer be the holder of shares equal to or greater than the Minimum Initial Investment Amount;
- (e) any transfer in circumstances where as a result of such transfer the transferor or transferee would hold less than the Minimum Shareholding;
- (f) any transfer in regard to which any payment of taxation and/or stamp duty remains outstanding;
- (g) any transfer to a person who does not provide all necessary anti-money laundering documentation or clear such anti-money laundering checks as the Directors or their delegate may determine;
- (h) any transfer where the transferee has failed to provide the ICAV or its agent with any documentation reasonably required by the ICAV or its agent;
- (i) any transfer to a person or entity who breached or falsified representations on subscription documents; or
- (j) any transfer unless the transferee has provided the ICAV with a certificate to the effect that he is a Qualifying Investor (or Accredited Investor as the case may

be), that he is aware of the risks involved in the proposed investment and of the fact that inherent in such investment is the potential to lose all of the sum involved.

18.2 The Directors may decline to recognise any instrument of transfer unless:-

- (a) the instrument of transfer is accompanied by such evidence as the Directors may reasonably require to show the right of the transferor to make the transfer (save where the transferor is a Stock Exchange Nominee);
- (b) the instrument of transfer is in respect of one class of share only;
- (c) the instrument of transfer is in favour of not more than four transferees; and
- (d) the instrument of transfer is lodged at the Office or at such other place as the Directors may appoint.

**19 Procedure on refusal**

If the Directors refuse to register a transfer then, within two months commencing on the date on which the transfer was received by the ICAV, they shall send to the transferee written notice of the refusal to register a transfer of shares to the transferee in accordance with section 43 of the Act. The Directors shall not be obliged to give notice to any person of a refusal to register a transfer where the giving of notice would be in 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 Ireland).

**20 Closing of transfer books**

The registration of transfers of shares or of transfers of any class of shares may be deferred at such times and for such periods (not exceeding thirty days in each year) as the Directors may determine.

**21 Registration fees**

A fee may be charged for the registration of any instrument of transfer or other document relating to or affecting the title to any share.

**22 Retention of transfer instruments**

The ICAV shall be entitled to retain any instrument of transfer which is registered, but any instrument of transfer which the Directors refuse to register shall be returned to the person lodging it when notice of the refusal is given.

**23 Renunciation of allotment**

Nothing in this Instrument of Incorporation shall preclude the Directors from recognising a renunciation of the allotment of any shares by the allottee in favour of some other person provided such other person is a Permitted Investor.

**24 Compulsory transfer of shares**

The Directors shall have the power to arrange for the compulsory transfer of shares acquired by or on behalf of a person who is not a Permitted Investor or who has failed to furnish to the ICAV or its agent such evidence and/or undertaking as may be required for the purpose of any restriction imposed for compliance with anti-money laundering provisions applicable to the ICAV in accordance with the provisions set out in Clause 20 of Appendix I.

## **PART VII - TRANSMISSION OF SHARES**

**25 Death of Holder**

If a Holder dies the survivor or survivors where he was a joint Holder, and his personal representatives where he was a sole Holder or the only survivor of joint Holders, shall be the only

persons recognised by the ICAV as having any title to his interest in the shares; but nothing herein contained shall release the estate of a deceased Holder from any liability in respect of any share which had been jointly held by him.

**26 Transmission on death or bankruptcy/minors**

Any guardian of an infant Holder and any curator or other legal representative of a Holder under legal disability and any person entitled to a share in consequence of the death or bankruptcy of a Holder may elect, upon such evidence being produced as the Directors may properly require, either to become the Holder of the share or to make such transfer thereof as the deceased or bankrupt Holder or Holder under a disability could have made. If he elects to become the Holder he shall give notice to the ICAV to that effect and supply the ICAV or its agent with whatever documentation and/or information as the ICAV or its agent reasonably requests. If he elects to have another person registered he shall execute an instrument of transfer of the share to that person. All of these Clauses relating to the transfer of shares shall apply to the notice or instrument of transfer as if it were an instrument of transfer executed by the Holder and the death or bankruptcy or disability of the Holder had not occurred.

**27 Rights before registration**

A person becoming entitled to a share by reason of the death or bankruptcy of a Holder (upon supplying to the ICAV such evidence as the Directors may reasonably require to show his title to the share) shall have the rights to which he would be entitled if he were the holder of the share, except that, before being registered as the Holder of the share, he shall not be entitled in respect of it to attend or vote at any meeting of the ICAV or at any separate meeting of the Holders of any class of shares in the ICAV, so, however, that the Directors, at any time, may give notice requiring any such person to elect either to be registered himself or to transfer the share and, if the notice is not complied with within ninety days, the Directors thereupon may withhold payment of all dividends, bonuses or other moneys payable in respect of the share until the requirements of the notice have been complied with.

**PART VIII - ALTERATION OF SHARE CAPITAL**

**28 Increase of capital**

- 28.1 The ICAV from time to time by ordinary resolution may increase the share capital by such amount and/or number as the resolution shall prescribe.
- 28.2 Subject to the provisions of this Instrument of Incorporation, the new shares shall be issued to such persons, upon such terms and conditions and with such rights and privileges annexed thereto as the Directors shall determine.

**29 Consolidation, sub-division and cancellation of capital**

The ICAV, by ordinary resolution, may:-

- 29.1 consolidate and divide all or any of its share capital into shares of larger amount;
- 29.2 subdivide its shares, or any of them, into shares of smaller amount or value, (and so that the resolution whereby any share is sub-divided may determine that, as between the Holders of the shares resulting from such sub-division, one or more of the shares may have, as compared with the others, any such preferred, deferred or other rights or be subject to any such restrictions as the ICAV has power to attach to unissued or new shares);
- 29.3 cancel any shares which, at the date of the passing of the resolution, have not been taken or agreed to be taken by any person and reduce the amount of its authorised share capital by the amount of the shares so cancelled; or
- 29.4 redenominate the currency of any class of shares.

## **PART IX - GENERAL MEETINGS**

### **30 Annual general meetings**

- 30.1 Subject to paragraph 30.2 below, the ICAV shall hold in each year a general meeting as its annual general meeting in addition to any other meeting in that year and shall specify the meeting as such in the notice calling it. Not more than fifteen months shall elapse between the date of one annual general meeting and that of the next.
- 30.2 The Directors may elect to dispense with the holding of an annual general meeting by giving 60 days' written notice to all of the Holders, which notice has effect for the year in which it is made and subsequent years. Where an election to dispense with the holding of an annual general meeting has effect for a year, one or more Holder(s) holding not less than 10 per cent of the voting rights in the ICAV may require the ICAV to hold an annual general meeting in that year by giving notice in writing to the ICAV in the previous year or at least one month before the end of that year and the ICAV shall hold the required meeting.

### **31 Extraordinary general meetings**

All general meetings other than annual general meetings shall be called extraordinary general meetings.

### **32 Convening general meetings**

The Directors may convene general meetings. Extraordinary general meetings may also be convened on such requisition, or in default may be convened by such requisitionists, and in such manner as may be provided by the Act. If at any time there are not within the State sufficient Directors capable of acting to form a quorum, any Director or any two Holders may convene an extraordinary general meeting in the same manner as nearly as possible as that in which general meetings may be convened by the Directors.

### **33 Notice of general meetings**

- 33.1 Subject to the provisions of the Act allowing a general meeting to be called by shorter notice, an annual general meeting and an extraordinary general meeting called for the passing of a special resolution shall be called by at least twenty-one Clear Days' notice and all other extraordinary general meetings shall be called by at least fourteen Clear Days' notice.
- 33.2 Any notice convening a general meeting shall specify the time and place of the meeting and, in the case of special business, the general nature of that business and, in reasonable prominence, that a Holder entitled to attend and vote is entitled to appoint a proxy to attend, speak and vote in his place and that a proxy need not be a Holder. Subject to any restrictions imposed on any shares, the notice shall be given to all the Holders and to the Directors and the Auditors.
- 33.3 The accidental omission to give notice of a meeting to, or the non-receipt of notice of a meeting by, any person entitled to receive notice shall not invalidate the proceedings at the meeting.
- 33.4 Where, by any provision contained in the Act, extended notice is required of a resolution, the resolution shall not be effective (except where the Directors of the ICAV have resolved to submit it) unless notice of the intention to move it has been given to the ICAV not less than twenty-eight days (or such shorter period as the Act permits) before the meeting at which it is moved, and the ICAV shall give to the Holders notice of any such resolution as required by and in accordance with the provisions of the Act.

## PART X - PROCEEDINGS AT GENERAL MEETINGS

### 34 Quorum for general meetings

- 34.1 No business other than the appointment of a chairman shall be transacted at any general meeting unless a quorum of Holders is present at the time when the meeting proceeds to business. Except as provided in relation to an adjourned meeting, two persons entitled to vote upon the business to be transacted, each being a Holder or a proxy for a Holder or a duly authorised representative of a corporate Holder, shall be a quorum.
- 34.2 If such a quorum is not present within half an hour from the time appointed for the meeting, or if during a meeting a quorum ceases to be present, the meeting shall stand adjourned to the same day in the next week at the same time and place, or to such other day, time and place as the Directors may determine. If at the adjourned meeting such a quorum is not present within half an hour from the time appointed for the meeting, the meeting, if convened otherwise than by resolution of the Directors, shall be dissolved, but if the meeting shall have been convened by resolution of the Directors, one person entitled to be counted in a quorum present at the meeting shall be a quorum.

### 35 Special business

All business shall be deemed special that is transacted at an extraordinary general meeting. All business that is transacted at an annual general meeting shall also be deemed special, with the exception of declaring a dividend, the consideration of the accounts, balance sheets and reports of the Directors and Auditors, the re-appointment of the retiring Auditors and the fixing of the remuneration of the Auditors.

### 36 Chairman of general meetings

- 36.1 The chairman of the board of Directors or, in his absence, the deputy chairman (if any) or, in his absence, some other Director nominated by the Directors shall preside as chairman at every general meeting of the ICAV. If at any general meeting none of such persons shall be present within fifteen minutes after the time appointed for the holding of the meeting and willing to act, the Directors present shall elect one of their number to be chairman of the meeting and, if there is only one Director present and willing to act, he shall be chairman.
- 36.2 If at any meeting no Director is willing to act as chairman or if no Director is present within fifteen minutes after the time appointed for holding the meeting, the Holders present (in person or by proxy or by representative) and entitled to vote shall choose one of the Holders (including his proxy or its duly authorised representative) personally present to be chairman of the meeting.

### 37 Directors' and Auditors' right to attend general meetings

A Director shall be entitled, notwithstanding that he is not a Holder, to attend and speak at any general meeting and at any separate meeting of the Holders of any class of shares in the ICAV. The Auditors shall be entitled to attend any general meeting and to be heard on any part of the business of the meeting which concerns them as the Auditors.

### 38 Adjournment of general meetings

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

**39 Determination of resolutions**

At any general meeting a resolution put to the vote of the meeting shall be decided on a show of hands unless before, or on the declaration of the result of, the show of hands a poll is duly demanded. Unless a poll is so demanded a declaration by the chairman that a resolution has been carried or carried unanimously, or by a particular majority, or lost, or not carried by a particular majority and an entry to that effect in the minutes of the meeting shall be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution. The demand for a poll may be withdrawn before the poll is taken but only with the consent of the chairman, and a demand so withdrawn shall not be taken to have invalidated the result of a show of hands declared before the demand was made.

**40 Entitlement to demand poll**

Subject to the provisions of the Act, a poll may be demanded:-

- 40.1 by the chairman of the meeting;
- 40.2 by at least two Holders present (in person or by proxy) having the right to vote at the meeting; or
- 40.3 by any Holder or Holders present (in person or by proxy) representing not less than one-tenth of the total voting rights of all the Holders having the right to vote at the meeting.

**41 Taking of a poll**

- 41.1 Save as provided in paragraph 41.2 of this Clause, a poll shall be taken in such manner as the chairman directs and he may appoint scrutineers (who need not be Holders) and fix a time and place for declaring the result of the poll. The result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded.
- 41.2 A poll demanded on the election of a chairman or on a question of adjournment shall be taken forthwith. A poll demanded on any other question shall be taken either forthwith or at such time (not being more than thirty days after the poll is demanded) and place as the chairman of the meeting may direct. The demand for a poll shall not prevent the continuance of a meeting for the transaction of any business other than the question on which the poll was demanded. If a poll is demanded before the declaration of the result of a show of hands and the demand is duly withdrawn, the meeting shall continue as if the demand had not been made.
- 41.3 No notice need be given of a poll not taken forthwith if the time and place at which it is to be taken are announced at the meeting at which it is demanded. In any other case at least seven Clear Days' notice shall be given specifying the time and place at which the poll is to be taken.

**42 Votes of Holders**

- 42.1 Votes may be given either personally or by proxy. Subject to any rights or restrictions for the time being attached to any class or classes of shares:-
  - (a) on a show of hands every Holder, who is present in person or by proxy, shall have one vote and the holder(s) of Subscriber Shares present in person or by proxy shall have one vote in respect of all of the Subscriber Shares in issue;
  - (b) on a poll every Holder present in person or by proxy shall have one vote for every share of which he is the Holder and every holder of a Subscriber Shares present in person or by proxy shall have one vote in respect of his holding of Subscriber Shares;
  - (c) on a poll of all the Holders of shares in a Fund, where there is more than one class of shares in existence in that Fund, the voting rights of such Holders may at the

discretion of the Directors be adjusted in such manner, determined by the Directors, so as to reflect the most recently calculated price at which the shares of each of the classes in question may be repurchased by the ICAV;

- (d) a Holder or Holders who hold a fraction of a share may not exercise any voting rights, whether on a show of hands or on a poll, in respect of such fraction of a share.

#### 43 **Written Resolutions**

A resolution in writing executed by or on behalf of each Holder who would have been entitled to vote upon it if it had been proposed at a meeting at which he was present shall be as effectual as if it had been passed at a general meeting duly convened and held and may consist of several instruments in the like form each executed by or on behalf of one or more Holders. In the case of a corporation a resolution in writing may be signed on its behalf by a director or the secretary thereof or by its duly appointed attorney or duly authorised representative.

#### 44 **Chairman's casting vote**

Where there is an equality of votes, whether on a show of hands or on a poll, the chairman of the meeting at which the show of hands takes place or at which the poll is demanded shall be entitled to a casting vote in addition to any other vote he may have.

#### 45 **Voting by joint Holders**

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

#### 46 **Voting by incapacitated Holders**

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

#### 47 **Restriction of voting rights**

47.1 If at any time the Directors shall determine that a Specified Event (as defined in paragraph 47.5 of this Clause) shall have occurred in relation to any share or shares the Directors may serve a notice to such effect on the Holder or Holders thereof. Upon the service of any such notice (in this Instrument of Incorporation referred to as a **restriction notice**) no Holder or Holders of the share or shares specified in such restriction notice shall be entitled, for so long as such restriction notice shall remain in force, to attend or vote at any general meeting, either personally or by proxy.

47.2 A restriction notice shall be cancelled by the Directors as soon as reasonably practicable, but in any event not later than forty-eight hours, after the Holder or Holders concerned shall have remedied the default by virtue of which the Specified Event shall have occurred. A restriction notice shall automatically cease to have effect in respect of any share transferred upon registration of the relevant transfer provided that a restriction notice shall not cease to have effect in respect of any transfer where no change in the beneficial ownership of the share shall occur and for this purpose it shall be assumed that no such change has occurred where a transfer form in respect of the share is presented for registration having been stamped at a reduced rate of stamp duty by virtue of the

transferor or transferee claiming to be entitled to such reduced rate as a result of the transfer being one where no beneficial interest passes.

47.3 The Directors shall cause a notation to be made in the Register against the name of any Holder or Holders in respect of whom a restriction notice shall have been served indicating the number of shares specified in such restriction notice and shall cause such notation to be deleted upon cancellation or cesser of such restriction notice.

47.4 Any determination of the Directors and any notice served by them pursuant to the provisions of this Clause shall be conclusive as against the Holder or Holders of any share and the validity of any notice served by the Directors in pursuance of this Clause shall not be questioned by any person.

47.5 For the purpose of this Instrument of Incorporation the expression **Specified Event** in relation to any share shall mean the failure by the Holder thereof or any of the Holders thereof to comply, to the satisfaction of the Directors, with all or any of the terms of Clause 10 in respect of any notice or notices given to him or any of them thereunder.

#### 48 **Time for objection to voting**

No objection shall be raised to the qualification of any voter except at the meeting or adjourned meeting at which the vote objected to is tendered and every vote not disallowed at such meeting shall be valid. Any such objection made in due time shall be referred to the chairman of the meeting whose decision shall be final and conclusive.

#### 49 **Appointment of proxy**

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

#### 50 **Bodies corporate acting by representatives at meetings**

Any body corporate which is a Holder may by resolution of its directors or other governing body authorise such person as it thinks fit to act as its representative at any meeting of the ICAV or of any class of Holders 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 Holder.

#### 51 **Deposit of proxy instruments**

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

#### 52 **Electronic proxy**

Notwithstanding anything contained in this Instrument of Incorporation, in relation to any shares, the Directors may from time to time permit appointments of proxies to be made by electronic means (including without limitation by means of Electronic Communication generated and sent by Holders to the ICAV or its agent via a website for this purpose using identification numbers



communicated by or on behalf of the ICAV to each Holder) in such manner or form and subject to such terms, conditions or restrictions as the Directors may, determine or approve from time to time in their absolute discretion. Subject as aforesaid, the ICAV and its Directors, secretary or officers shall not be compelled to accept or receive any instrument appointing a proxy in accordance with this Clause until such time as the Directors shall have advised (pursuant to any terms and conditions of Electronic Communication or otherwise) the Holder in writing of the manner, form and restrictions (if any) by which such appointment may be made. The Directors may prescribe the method of determining the time at which any such appointment of a proxy is to be treated as received by the ICAV. The Directors may treat any such appointment which purports to be or is expressed to be sent on behalf of a Holder as sufficient evidence of the authority of the person sending that instruction to send it on behalf of that Holder.

For the purposes of this Clause, the place to which the appointment of proxy should be delivered by the Holder shall be such number or address (including any number or address used for the purpose of communication by way of electronic mail or other Electronic Communication) of a Holder as is notified by the Directors to the Holders whether by way of note to the notice convening the meeting or otherwise.

**53 Effect of proxy instruments**

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

**54 Effect of revocation of proxy or of authorisation**

54.1 A vote given or poll demanded in accordance with the terms of an instrument of proxy or a resolution authorising a representative to act on behalf of a body corporate shall be valid notwithstanding the death or insanity of the principal, or the revocation of the instrument of proxy or of the authority under which the instrument of proxy was executed or of the resolution authorising the representative to act or transfer of the share in respect of which the instrument of proxy or the authorisation of the representative to act was given, provided that no intimation in writing of such death, insanity, revocation or transfer shall have been received by the ICAV at the Office at least one hour before the commencement of the meeting or adjourned meeting at which the instrument of proxy is used or at which the representative acts.

54.2 The Directors may send, at the expense of the ICAV, by post or otherwise, to the Holders instruments of proxy (with or without stamped envelopes for their return) for use at any general meeting or at any class meeting, either in blank or nominating any one or more of the Directors or any other persons in the alternative. If for the purpose of any meeting invitations to appoint as proxy a person or one of a number of persons specified in the invitations are issued at the expense of the ICAV, such invitations shall be issued to all (and not to some only) of the Holders entitled to be sent a notice of the meeting and to vote thereat by proxy.

**55 Class Meetings**

Save as otherwise provided in this Instrument of Incorporation, the provisions of Clauses 32 to 54 shall apply mutatis mutandis to class meetings and meetings of Holders of shares in a Fund as they apply to general meetings.

**PART XI - DIRECTORS**

**56 Number of Directors**

Unless otherwise determined by the ICAV in general meeting the number of Directors shall not be less than two.

**57 Share qualification**

A Director shall not be required to hold any shares in the ICAV.

**58 Ordinary remuneration of Directors**

Unless and until otherwise determined from time to time by the ICAV in general meeting, the ordinary remuneration of each Director shall be determined from time to time by resolution of the Directors.

**59 Special remuneration of Directors**

Any Director who holds any executive office (including for this purpose the office of chairman or deputy chairman) or who serves on any committee, or who otherwise performs services which in the opinion of the Directors are outside the scope of the ordinary duties of a Director, may be paid such extra remuneration by way of salary, commission or otherwise as the Directors may determine.

**60 Expenses of Directors**

The Directors may be paid all travelling, hotel and other out-of-pocket expenses properly incurred by them in connection with their attendance at meetings of the Directors or committees established by the Directors or general meetings or separate meetings of the Holders of any class of shares of the ICAV or otherwise in connection with the discharge of their duties.

**61 Alternate Directors**

61.1 Any Director may appoint by writing under his hand any person (including another Director) to be his alternate. Any such authority may be sent by delivery, post, cable, telegram, telex, telefax, electronic mail or any other means of communication approved by the Directors and may bear a printed or facsimile signature of the Director giving such authority.

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

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

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

61.5 Any appointment or revocation by a Director under this Instrument of Incorporation shall be effected by notice in writing given under his hand to the Secretary or deposited at the Office or in any other manner approved by the Directors.

**PART XII - POWERS OF DIRECTORS**

**62 Directors' powers**

62.1 The business of the ICAV shall be managed by the Directors and the Directors have authority to exercise all the powers, authorities and discretions expressed in the Act or by

this Instrument of Incorporation to be vested in an Irish collective asset-management vehicle, whether relating to the management of the business or not, as are not, by the Act, the AIFM Regulations, or by this Instrument of Incorporation, required to be exercised by the ICAV in general meetings but subject to any directions (not being inconsistent with the Act, the AIFM Regulations or this Instrument of Incorporation) as the Holders of the ICAV in a general meeting may by special resolution give. The general powers given by this Clause shall not be limited or restricted by any special authority or power given to the Directors by this or any other Clause. Without prejudice to the generality of the foregoing, the Directors may exercise all powers of the ICAV in relation to the investment of the Assets in accordance with Clause 21 of Appendix I.

62.2 No alteration of the Instrument of Incorporation and no such direction shall invalidate any prior act of the Directors which would have been valid if that alteration had not been made or that direction had not been given. The powers given by this Clause shall not be limited by any special power given to the Directors by this Instrument of Incorporation and a meeting of Directors at which a quorum is present may exercise all powers exercisable by the Directors.

### **63 Power to delegate**

Without prejudice to the generality of the last preceding Clause, the Directors may delegate any of their powers to any committee whether or not consisting of Directors. Any such delegation may be made subject to any conditions the Directors may impose, and either collaterally with or to the exclusion of their own powers and may be revoked. Subject to any such conditions, the proceedings of a committee with two or more members shall be governed by the provisions of this Instrument of Incorporation regulating the proceedings of Directors so far as they are capable of applying.

### **64 Appointment of attorneys/agents/delegates/service providers**

64.1 The Directors, from time to time and at any time by power of attorney under seal or otherwise, may appoint any company, firm or person or fluctuating body of persons, whether nominated directly or indirectly by the Directors, to be the attorney or agent or delegate of the ICAV for such purposes and with such powers, authorities and discretions (not exceeding those vested in or exercisable by the Directors under this Instrument of Incorporation) and for such period and subject to such conditions as they may think fit. Any such power of attorney may contain such provisions for the protection of persons dealing with any such attorney as the Directors may think fit, may contain indemnities in favour of any attorney, agent or delegate and may authorise any such attorney to sub-delegate all or any of the powers, authorities and discretions vested in him.

64.2 Without prejudice to the generality of the foregoing, the Directors may, with the prior approval of the Competent Authority, appoint a manager and/or appoint an alternative investment fund manager and in accordance with the requirements of the Competent Authority appoint an investment manager and/or investment adviser, distributor, administrator and/or other similar entity to manage and/or advise on the investment of the Assets, the distribution of Shares and the administration of the ICAV, on such terms and conditions as the Directors may deem fit. The remuneration and expenses of such appointees may be charged to the ICAV.

64.3 Notwithstanding the generality of paragraph 64.1 above the Directors may appoint an agent for the purposes of exercising their power to allot relevant securities in accordance with the provisions of Clause 7.

64.4 Without prejudice to the generality of the foregoing, the Directors shall appoint a Depository to all of the Assets (including cash) of the ICAV in accordance with the provisions of Clauses 23 to 26 of Appendix I.

- 64.5 Without prejudice to the generality of the foregoing, the Directors may appoint and replace a management company in accordance with the provisions of Clauses 27 to 29 of Appendix I.
- 64.6 Without prejudice to the generality of the foregoing, the Directors may appoint and replace an external AIFM in accordance with the provisions of Clauses 30 to 32 of Appendix I.
- 64.7 Any dealings (including, but not limited to, dealing in shares of the ICAV) by any person referred to in this Clause will be subject to such rules and conditions as may be laid down by the Competent Authority from time to time.

**65 Borrowing powers, transfer and re-use of Assets**

Subject to the Act, the Directors (or the duly authorised delegate of the ICAV) may exercise all the powers of the ICAV to borrow or raise money (including employing leverage) and to mortgage, charge or transfer its undertaking, property and Assets (both present and future), and uncalled capital or any part thereof provided that all such borrowings and any such transfer of Assets shall be within the limits and conditions laid down by the Competent Authority.

**66 Execution of negotiable instruments**

All cheques, promissory notes, drafts, bills of exchange and other negotiable instruments and all receipts for moneys paid to the ICAV shall be signed, drawn, accepted, endorsed or otherwise executed, as the case may be, by such person or persons and in such manner as the Directors shall determine from time to time.

**PART XIII - APPOINTMENT AND RETIREMENT OF DIRECTORS**

**67 No retirement by rotation**

No Director will be required to retire by rotation.

**68 Eligibility for appointment**

To be eligible for appointment as a Director at a general meeting of the ICAV, a person must be recommended by the Directors or, not less than six nor more than thirty Clear Days before the date appointed for the meeting, notice executed by a Holder qualified to vote at the meeting must have been given to the ICAV of the intention to propose that person for appointment stating the particulars which would be required, if he were so appointed, to be included in the ICAV's register of Directors together with notice executed by that person of his willingness to be appointed.

**69 No retirement on account of age**

No Director shall be required to retire on account of age.

**70 Appointment of additional Directors**

- 70.1 Subject as aforesaid, the ICAV by ordinary resolution may appoint a person to be a Director either to fill a vacancy or as an additional Director.
- 70.2 The Directors may appoint a person who is willing to act to be a Director, either to fill a vacancy or as an additional Director, provided that the appointment does not cause the number of Directors to exceed any number as fixed by or in accordance with this Instrument of Incorporation as the maximum number of Directors. Any Director so appointed shall not be required to retire at any subsequent annual general meeting of the ICAV.
- 70.3 The continuing Directors may act notwithstanding any vacancy in their body, provided that if the number of the Directors is reduced below two, the remaining Director shall appoint forthwith an additional Director or additional Directors to make up a quorum or shall convene a general meeting of the ICAV for the purpose of making such appointment

or appointments. If, in such circumstances, there be no Director or Directors able or willing to act then any two Holders may summon a general meeting for the purpose of appointing Directors. Any additional Director so appointed shall not be required to retire at any subsequent annual general meeting of the ICAV.

#### **PART XIV - DISQUALIFICATION AND REMOVAL OF DIRECTORS**

##### **71 Disqualification of Directors**

The office of a Director shall be vacated ipso facto if:-

- 71.1 he ceases to be a Director by virtue of any provision of the Act or he becomes prohibited by law from being a Director;
- 71.2 he becomes bankrupt or makes any arrangement or composition with his creditors generally;
- 71.3 in the opinion of a majority of his co-Directors, he becomes incapable by reason of mental disorder of discharging his duties as a Director;
- 71.4 he resigns his office by notice in writing to the ICAV signed by him and delivered to the Office;
- 71.5 he is convicted of an indictable offence, unless the Directors otherwise determine;
- 71.6 he shall have been absent for more than six consecutive months without permission of the Directors from meetings of the Directors held during that period and his alternate Director (if any) shall not have attended any such meeting in his place during such period, and the Directors pass a resolution that by reason of such absence he has vacated office;
- 71.7 he is required in writing by all his co-Directors to resign; or
- 71.8 the Competent Authority requires him to resign.

##### **72 Removal of Directors**

The ICAV may remove any Director in accordance with the provisions of the Act.

#### **PART XV - DIRECTORS' INTERESTS**

##### **73 Directors' interests**

A Director who is in any way, whether directly or indirectly, interested in a contract or proposed contract with the ICAV shall be required to declare the nature of his interest at a Directors' meeting. This requirement does not apply to an interest that cannot reasonably be regarded as likely to give rise to a conflict of interest.

- 73.1 A Director notwithstanding his office:-
  - (a) may be a party to, or otherwise interested in, any transaction or arrangement with the ICAV or any subsidiary or associated company thereof or in which the ICAV or any subsidiary or associated company thereof is otherwise interested;
  - (b) may be a director or other officer of, or employed by, or a party to any transaction or arrangement with, or otherwise interested in, any body corporate promoted by the ICAV or in which the ICAV or any subsidiary or associated company thereof is otherwise interested; and

- (c) 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.

73.2 No Director or intending Director shall be disqualified by his office from contracting with the ICAV either as vendor, purchaser or otherwise, nor shall any such contract or any contract or arrangement entered into by or on behalf of the 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.

73.3 A copy of every declaration made and notice given under this Clause shall be entered within three days after the making or giving thereof in a book kept for this purpose. Such book shall be open for inspection without charge by any Director, Secretary, Auditor or Holder at the Office 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.

73.4 For the purposes of this Clause:-

- (a) 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; and
- (b) an interest of which a Director has no knowledge and of which it is unreasonable to expect him to have knowledge shall not be treated as an interest of his.

#### **74 Restriction on Directors' voting**

74.1 Save as otherwise provided by this Instrument of Incorporation, a Director shall not vote at a meeting of the Directors or any committee established by the Directors on any resolution concerning a matter in which he has, directly or indirectly, an interest which is material (other than an interest arising by virtue of his interest in shares or debentures or other securities or otherwise in or through the ICAV) or a duty which conflicts or may conflict with the interests of the ICAV. 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.

74.2 A Director shall be entitled to vote (and be counted in the quorum) in respect of any resolutions concerning any of the following matters, namely:-

- (a) the giving of any security, guarantee or indemnity to him in respect of money lent by him to the ICAV or any of its subsidiary or associated companies or obligations incurred by him at the request of or for the benefit of the ICAV or any of its subsidiary or associated companies;
- (b) the giving of any security, guarantee or indemnity to a third party in respect of a debt or obligation of the ICAV or any of its subsidiary or associated companies for which he himself has assumed responsibility in whole or in part and whether alone or jointly with others under a guarantee or indemnity or by the giving of security;

- (c) any proposal concerning any offer of shares or debentures or other securities of or by the ICAV or any of its subsidiary or associated companies for subscription, purchase or exchange in which offer he is or is to be interested as a participant in the underwriting or sub-underwriting thereof; or
- (d) any proposal concerning any other company in which he is interested, directly or indirectly and whether as an officer or shareholder or otherwise howsoever.

74.3 Where proposals are under consideration concerning the appointment (including fixing or varying the terms of appointment) of two or more Directors to offices or employments with the ICAV or any company in which the ICAV is interested, such proposals may be divided and considered in relation to each Director separately and in such case each of the Directors concerned (if not debarred from voting under this Clause) shall be entitled to vote (and be counted in the quorum) in respect of each resolution except that concerning his own appointment.

74.4 If a question arises at a meeting of Directors or of any committee established by the 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.

74.5 The ICAV by ordinary resolution may suspend or relax the provisions of this Clause to any extent or ratify any transaction not duly authorised by reason of a contravention of this Clause.

## **PART XVI - PROCEEDINGS OF DIRECTORS**

### **75 Convening and regulation of Directors' meetings**

75.1 Subject to the provisions of this Instrument of Incorporation, the Directors may regulate their proceedings as they think fit. A Director may, and the Secretary at the request of a Director shall, call a meeting of the Directors. Any Director may waive notice of any meeting and any such waiver may be retrospective. If the Directors so resolve, it shall not be necessary to give notice of a meeting of Directors to any Director or alternate Director who, being a resident of the State, is for the time being absent from the State.

75.2 Notice of a meeting of the Directors shall be deemed to be duly given to a Director if it is given to him personally or by word of mouth or sent in writing by delivery, post, cable, telegram, telex, telefax, electronic mail or any other means of communication approved by the Directors to him at his last known address or any other address given by him to the ICAV for this purpose.

### **76 Quorum for Directors' meetings**

76.1 The quorum for the transaction of the business of the Directors may be fixed by the Directors and unless so fixed at any other number shall be two. A person who holds office only as an alternate Director shall, if his appointer is not present, be counted in the quorum but notwithstanding that such person may act as alternate Director for more than one Director he shall not count as more than one for the purposes of determining whether a quorum is present.

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

### **77 Voting at Directors' meetings**

77.1 Questions arising at any meeting of Directors shall be decided by a majority of votes. Where there is an equality of votes, the chairman of the meeting shall have a casting vote.

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

## 78 **Telecommunication meetings**

78.1 All or any of the Directors (or any alternate Directors), or any of the members of a committee of the Board (a **Committee**) can take part in a meeting of the Directors, or of a Committee as the case may be, by the use of conference telephone, video conferencing or other telecommunications equipment designed to allow all persons participating to hear each other speak (an **Electronic Meeting**). Such participation in a meeting shall constitute presence in person at the meeting and shall be counted for the purposes of determining whether a quorum is present at the meeting. Such meeting shall be deemed to have been convened in the place from which the conference telephone call or other telecommunication is initiated.

## 79 **Chairman of the board of Directors**

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

## 80 **Validity of acts of Directors**

All acts done by any meeting of the Directors or of a committee established by the Directors or by any person acting as a Director, notwithstanding that it be afterwards discovered that there was some defect in the appointment of any such Director or person acting as aforesaid, or that they or any of them were disqualified from holding office or had vacated office, shall be as valid as if every such person had been duly appointed and was qualified and had continued to be a Director and had been entitled to vote.

## 81 **Directors' resolutions or other documents in writing**

A resolution or other document in writing signed by all the Directors entitled to receive notice of a meeting of Directors or of a committee established by the Directors shall be as valid as if it had been passed at a meeting of Directors or (as the case may be) a committee established by the Directors duly convened and held. Such resolution or other document may consist of several documents in the like form each signed by one or more Directors or by one or more persons (which may include Directors) being the members of the committee established by the Directors, and such resolution or other document or documents when duly signed may be delivered or transmitted (unless the Directors or the members of the committee as the case may be shall otherwise determine either generally or in any specific case) by facsimile transmission or some other similar means of transmitting the contents of documents. A resolution or other documents signed by an alternate Director need not also be signed by his appointor and, if it is signed by a



Director who has appointed an alternate Director, it need not be signed by the alternate Director in that capacity.

## **PART XVII - THE SECRETARY**

### **82 Appointment of Secretary**

The Secretary shall be appointed by the Directors for such term, at such remuneration and upon such conditions as they may think fit and any Secretary so appointed may be removed by them. Anything required or authorised by the Act or this Instrument of Incorporation to be done by, or given to, the Secretary may be done by or given to any assistant or acting secretary readily available and capable of acting by or to any officer of the ICAV authorised generally or specially in that behalf by the Directors, if the office is vacant or there is for any other reason no Secretary readily available and capable of acting Provided that any provision of the Act or this Instrument of Incorporation requiring or authorising a thing to be done by or to a Director and the Secretary shall not be satisfied by its being done by or to the same person acting both as a Director and as, or in the place of, the Secretary.

## **PART XVIII - THE SEAL**

### **83 Use of Seal**

The Directors shall ensure that the Seal shall be used only by the authority of the Directors or of a committee authorised by the Directors.

### **84 Signature of sealed instruments**

Every instrument to which the Seal shall be affixed shall be signed by a Director and shall also be signed by the Secretary or by a second Director or by some other person appointed by the Directors for the purpose (which may include the Depositary) save that as regards any debentures or other securities of the ICAV the Directors may determine by resolution that such signatures or either of them shall be dispensed with, or be printed thereon or affixed thereto by some method or system of mechanical signature provided that in any such case the document to be sealed shall have been approved for sealing by the Secretary or by the registrar of the ICAV or by the Auditors or by some other person appointed by the Directors for this purpose in writing (and, for the avoidance of doubt, it is hereby declared that it shall be sufficient for approval to be given and/or evidenced either in such manner (if any) as may be approved by or on behalf of the Directors or by having such documents initialled before sealing or presented for sealing accompanied by a list thereof which has been initialled).

## **PART XIX - DIVIDENDS AND RESERVES**

### **85 Declaration of dividends**

- 85.1 The Directors at such times as they think fit may declare such dividends on any class of shares as appear to the Directors to be justified by the profits of the relevant Fund being;
- (a) the accumulated revenue (consisting of all revenue accrued including interest and dividends) less expenses; and/or
  - (b) realised and unrealised capital gains on the disposal/valuation of Investments and other funds less realised and unrealised accumulated capital losses and expenses of the relevant Fund.

The Directors at such times as they think fit may also declare such dividends on any class of share out of the capital of the relevant Fund.

- 85.2 The Directors may, satisfy any dividend due to Holders of the shares in whole or in part by distributing to them in specie any of the Assets of the relevant Fund, and in particular any Investments to which the relevant Fund is entitled. A Holder may require the Directors instead of transferring any assets in specie to him, to arrange for a sale of the Assets and for payment to the Holder of the net proceeds of same.

- 85.3 Shares of any class may at the discretion of the Directors be issued on the basis that any dividends declared in respect of those shares shall be paid by the ICAV into an account in the name of the Depositary for the account of the Holders of that class of Shares. The amount standing to the credit of this account shall not be an asset of the Fund or the ICAV and will be immediately transferred from the aforementioned account to the account of the ICAV.
- 85.4 Shares of any class may at the discretion of the Directors be issued on the basis that any dividends declared in respect of those shares will be reinvested and form part of the assets of the relevant Fund and will be applied when calculating the Subscription Price and the Repurchase Price as part of the proportion of the relevant Fund which is attributable to the Holders of that class of shares.
- 85.5 Shares of any class may at the discretion of the Directors be issued on the basis that no dividends will be declared in respect of those shares and that any profits available for distribution will form part of the assets of the relevant Fund and will be applied when calculating the Subscription Price and the Repurchase Price as part of the proportion of the relevant Fund which is attributable to the Holders of that class of shares.
- 85.6 No dividend shall be payable to the holder(s) of the Subscriber Shares.

## 86 **Eligibility for dividends**

If any share is issued on terms providing that it shall rank for dividend as from or after a particular date or to a particular extent, such share shall rank for dividend accordingly.

## 87 **Deduction from Dividend**

87.1 The Directors may deduct from any dividend or other monies payable to any Holder on or in respect of a share all sums of money (if any) presently payable by him to the ICAV in relation to the shares of the ICAV.

87.2 Where the ICAV is required to deduct, withhold, pay or account for any taxation imposed or required to be withheld as a consequence of making any dividend payment to a Holder the Directors may deduct from the payment to be made to the relevant Holder(s) who is or is deemed to be a Taxable Irish Person, an amount equal to the taxation attributable to the relevant payment(s) and pay such amount to the appropriate tax authority.

## 88 **Unclaimed dividends**

All unclaimed dividends on shares may be invested or otherwise made use of by the Directors for the benefit of the relevant Fund until claimed. No dividend shall bear interest against the ICAV. The payment by the Directors of any unclaimed dividend or other monies payable on or in respect of a share into a separate account shall not constitute the ICAV a trustee in respect thereof and any dividend unclaimed after a period of six years from the date of declaration of such dividend or on the winding up of the ICAV or the relevant Fund will lapse and revert to the relevant Fund, without the necessity for any declaration or other action by the ICAV.

## 89 **Currency of Dividend**

Any dividend or other monies payable on or in respect of a share shall be expressed and payment shall be made in the currency in which the relevant class of shares is designated or in such other currency as the Directors may determine either generally or in relation to a particular class of shares or in any specific case.

## 90 **Payment of Dividend**

Any dividend or other monies payable on or in respect of a share may be paid by electronic transfer to the account nominated by the Holder or person entitled thereto, and in the case of joint Holders to that one whose name stands first on the Register in respect of their joint holding or may if required be paid by cheque or warrant sent through the post to the registered address of the

Holder or the person entitled thereto. Every such payment by cheque or warrant shall be made payable to the order of the person to whom it is sent, and payment of the cheque or warrant shall be a good discharge to the ICAV and, in the case of payment by telegraphic transfer, every such payment shall be a good discharge to the ICAV. Every such cheque or warrant or, where applicable, transfer shall be sent or, as the case may be, made at the risk and cost of the person entitled to the money represented thereby or, as the case may be, payment remitted.

91 **Joint Holders**

If several persons are registered as joint holders of any share, any one of them may give effectual receipts for any dividend or other monies payable on or in respect of the share.

## **PART XX - ACCOUNTS**

92 **Accounts**

92.1 The Directors shall keep or cause adequate accounting records, within the meaning of section 110 of the Act, to be kept that are sufficient to:

- (a) correctly record and explain the transactions of the ICAV;
- (b) enable at any time the assets, liabilities, financial position and profit or loss of the ICAV to be determined with reasonable accuracy;
- (c) enable the Directors to ensure that any balance sheet, profit and loss account or income and expenditure account of the ICAV complies with the requirements of the Act; and
- (d) enable the accounts of the ICAV to be readily and properly audited.

92.2 The accounting records shall be kept at the Office or, subject to the provisions of the Act, at such other place as the Directors think fit. The accounting records shall be available at all reasonable times to the inspection by persons entitled pursuant to the Act.

92.3 The Directors shall prepare accounts for each financial year in respect of the ICAV in accordance with the requirements of the Act. The Directors shall also prepare, in respect of each financial year, a Directors' report in accordance with the requirements of the Act. A copy of the Directors' report as well as a copy of the Auditor's report shall be attached to the annual accounts for the financial year of the ICAV to which the accounts relate.

92.4 Separate accounts may be prepared in respect of a Fund and all references to ICAV in this Instrument of Incorporation may be read as, where appropriate, referring to the relevant Fund in respect of which the separate books of account are to be prepared.

92.5 Copies of the annual accounts and reports shall be made available and/or sent to all Holders by the ICAV in accordance with the requirements of the Competent Authority.

92.6 The ICAV shall provide the Competent Authority with all reports and information to which it is entitled under the Act and the AIF Rulebook.

## **PART XXI - NOTICES**

93 **Notices in writing**

Any notice to be given, served or delivered pursuant to this Instrument of Incorporation shall be in writing.

94 **Service of notices**

- 94.1 A notice or document (including a share certificate) to be given, served or delivered in pursuance of this Instrument of Incorporation may be given to, served on or delivered to any Holder by the ICAV:
- (a) by handing same to him or his authorised agent;
  - (b) by leaving the same at his registered address;
  - (c) by sending the same by post in a pre-paid cover addressed to him at his registered address; or
  - (d) where permitted by law, by transmitting the same by facsimile or otherwise electronically.
  - (e) by sending it electronically to the address previously identified to the ICAV or by posting such notice or document on a web-site which is duly notified to the Holders by post or by sending such notice electronically to an address previously identified to the ICAV; or
  - (f) by such other method as may be agreed between the ICAV and the Holder from time to time.
- 94.2 Where a notice or document is given, served or delivered pursuant to sub-paragraph 94.1(a) or 94.1(b) of this Clause, the giving, service or delivery thereof shall be deemed to have been effected at the time the same was handed to the Holder or his authorised agent, or left at his registered address (as the case may be).
- 94.3 Where a notice or document is given, served or delivered pursuant to sub-paragraph 94.1(c) of this Clause, the giving, service or delivery thereof shall be deemed to have been effected at the expiration of forty-eight hours after the cover containing it was posted. In proving service or delivery it shall be sufficient to prove that such cover was properly addressed, stamped and posted.
- 94.4 Where a notice or document is given, served or delivered pursuant to sub-paragraph 94.1(a) or 94.1(e) of this Clause, the giving, service or delivery thereof shall be deemed to have been effected, in the case of notice or document sent by facsimile at the time of transmission provided the correct number is received on the transmission report and in the case of notice or document sent by electronic mail, when it enters the information system applicable to the electronic mail address. In proving service of delivery it shall be sufficient to prove, if sent by facsimile that it was properly addressed and sent to the correct number on record and if sent by electronic mail that such email entered an information system outside the control of the ICAV.
- 94.5 Every legal personal representative, committee, receiver, curator bonis or other legal curator, assignee in bankruptcy or liquidator of a Holder shall be bound by a notice given as aforesaid if sent to the last registered address of such Holder, notwithstanding that the ICAV may have notice of the death, lunacy, bankruptcy, liquidation or disability of such Holder.
- 94.6 Without prejudice to the provisions of sub-paragraphs 94.1(a) and 94.1(b) of this Clause, if at any time by reason of the suspension or curtailment of postal services within the State, the ICAV is unable effectively to convene a general meeting by notice sent through the post, a general meeting may be convened by a notice advertised on the same day in at least one leading national daily newspaper published in the State and such notice shall be deemed to have been duly served on all Holders entitled thereto at noon on the day on which the said advertisement or advertisements shall appear. In any such case the ICAV shall send confirmatory copies of the notice through the post to those Holders whose registered addresses are outside the State (if or to the extent that in the opinion of

the Directors it is practical so to do) or are in areas of the State unaffected by such suspension or curtailment of postal services. If at least ninety-six hours prior to the time appointed for the holding of the meeting the posting of notices to Holders has become practical in the opinion of the Directors, the Directors shall send forthwith confirmatory copies of the notice by post to such Holders. The accidental omission to give any such confirmatory copy of a notice of a meeting to, or the non-receipt of any such confirmatory copy by, any person entitled to receive the same shall not invalidate the proceedings at the meeting.

94.7 Notwithstanding anything contained in this Clause the ICAV shall not be obliged to take account of or make any investigations as to the existence of any suspension or curtailment of postal services within or in relation to all or any part of any jurisdiction or other area other than the State.

**95 Service of notice on joint Holders**

A notice may be given by the ICAV to the joint Holders of a share by giving the notice to the joint Holder whose name stands first in the Register in respect of the share and notice so given shall be sufficient notice to all the joint Holders.

**96 Service of notice on transfer or transmission of shares**

96.1 Every person who becomes entitled to a share shall, before his name is entered in the Register in respect of the share, be bound by any notice in respect of that share which has been duly given to a person from whom he derives his title provided that the provisions of this paragraph shall not apply to any notice served under Clause 10 unless, under the provisions of Clause 10, it is a notice which continues to have effect notwithstanding the registration of a transfer of the shares to which it relates.

96.2 Without prejudice to the provisions of this Instrument of Incorporation allowing a meeting to be convened by newspaper advertisement, a notice may be given by the ICAV to the persons entitled to a share in consequence of the death or bankruptcy of a Holder by sending or delivering it, in any manner authorised by this Instrument of Incorporation for the giving of notice to a Holder, addressed to them at the address, if any, supplied by them for that purpose. Until such an address has been supplied, a notice may be given in any manner in which it might have been given if the death or bankruptcy had not occurred.

**97 Signature to notices**

97.1 The signature to any notice to be given by the ICAV may be written or printed.

**Deemed receipt of notices**

97.2 A Holder present, either in person or by proxy, at any meeting of the ICAV or the Holders of any class of shares in the ICAV shall be deemed to have received notice of the meeting and, where requisite, of the purposes for which it was called.

**PART XXII - WINDING UP**

**98 Distribution on winding up**

98.1 The ICAV may be dissolved and proceed to be wound up as a members' voluntary winding up if and when determined by the Directors, in their sole and absolute discretion in any of the following events:

- (a) the ICAV shall cease to be authorised by the Competent Authority; or

- (b) the Directors have resolved that dissolving the ICAV is in the best interests of the Holders.

98.2 In such circumstances as aforesaid, the ICAV shall be wound up in accordance with the provisions of Part 11 of the Companies Act relating to the winding up of companies subject to any necessary modifications and the specific modifications contained in the Act which apply as if the ICAV were an investment company.

## 99 **Distribution in specie**

If the ICAV shall be wound up (whether the liquidation is voluntary, under supervision or by the court) the liquidator may, with the authority of a special resolution of the relevant Holders and any other sanction required by the Act, divide among the Holders of shares of any class or classes of a Fund in specie the whole or any part of the Assets of the ICAV relating to that Fund, and whether or not the Assets shall consist of property of a single kind, and may for such purposes set such value as he deems fair upon any one or more class or classes of property, and may determine how such division shall be carried out as between the Holders or the Holders of different classes of shares in the Fund. The liquidator may, with the like authority, vest any part of the Assets in trustees upon such trusts for the benefit of Holders as the liquidator, with the like authority, shall think fit, and the liquidation of the ICAV may be closed and the ICAV dissolved, but so that no Holder shall be compelled to accept any Assets in respect of which there is a liability. A Holder may require the liquidator instead of transferring any Asset in specie to him/her/it, to arrange for a sale of the Assets and for payment to the Holder of the net proceeds of same.

## **PART XXIII - MISCELLANEOUS**

## 100 **Minutes of meetings**

100.1 The Directors shall cause minutes to be made of the following matters, namely:-

- (a) of all appointments of officers and committees made by the Directors and of their salary or remuneration;
- (b) of the names of Directors present at every meeting of the Directors and of the names of any Directors and of all other members thereof present at every meeting of any committee established by the Directors; and
- (c) of all resolutions and proceedings of all meetings of the ICAV and of the Holders of any class or classes of shares in the ICAV and of the Directors and of committees established by the Directors. Any such minute as aforesaid, if purporting to be signed by the chairman of the meeting at which the proceedings were had, or by the chairman of the next succeeding meeting, shall be receivable as prima facie evidence of the matters stated in such minute without any further proof.

## 101 **Inspection and secrecy**

The Directors shall determine from time to time whether and to what extent and at what times and places and under what conditions or regulations the accounts and books and records of the ICAV or any of them shall be open to the inspection of Holders, not being Directors, and no Holder (not being a Director) shall have any right of inspecting any account or book or record of the ICAV except as conferred by the Act or authorised by the Directors or by the ICAV in general meeting. No Holder shall be entitled to require discovery of or any information respecting any detail of the ICAV's trading, or any matter which is or may be in the nature of a trade secret, mystery of trade, or secret process which may relate to the conduct of the business of the ICAV and which in the opinion of the Directors it would be inexpedient in the interests of the Holders to communicate to the public.

## 102 **Destruction of records**

102.1 The ICAV shall be entitled to destroy all instruments of transfer which have been registered at any time after the expiration of six years from the date of registration

thereof, all notifications of change of address at any time after the expiration of two years from the date of recording thereof and dividend mandates which have been cancelled or ceased to have effect at any time after the expiration of one year from the date of such cancellation or cessation. It shall be presumed conclusively in favour of the ICAV that every entry in the Register purporting to have been made on the basis of an instrument of transfer or other document so destroyed was duly and properly made and every instrument duly and properly registered so destroyed was a valid and effective document duly and properly cancelled and 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:-

- (a) the provision aforesaid shall apply only to the destruction of a document in good faith and without notice of any claim (regardless of the parties thereto) to which the document might be relevant;
- (b) nothing herein contained shall be construed as imposing upon the ICAV any liability in respect of the destruction of any document earlier than as aforesaid or in any other circumstances which would not attach to the ICAV in the absence of this Clause; and
- (c) references herein to the destruction of any document include references to the disposal thereof in any manner.

### 103 **Untraced Holders**

103.1 The ICAV shall be entitled to sell at the best price reasonably obtainable any share of a Holder or any share to which a person is entitled by transmission if and provided that:-

- (a) for a period of twelve years no cheque or warrant sent by the ICAV through the post in a pre-paid letter addressed to the Holder or to the person entitled by transmission to the share at his address on the Register or the last known address given by the Holder or the person entitled by transmission to which cheques and warrants are to be sent has been cashed and no communication has been received by the ICAV from the Holder or the person entitled by transmission (provided that during such twelve year period at least three dividends shall have become payable in respect of such share);
- (b) at the expiration of the said period of twelve years by advertisement in a national daily newspaper published in the State and in a newspaper circulating in the area in which the address referred to in sub-paragraph 103.1(a) of this Clause is located, the ICAV has given notice of its intention to sell such share; and
- (c) during the further period of three months after the date of the advertisement and prior to the exercise of the power of sale the ICAV has not received any communication from the Holder or person entitled by transmission.

103.2 To give effect to any such sale the ICAV may appoint any person to execute as transferor an instrument of transfer of such share and such instrument of transfer shall be as effective as if it had been executed by the Holder or the person entitled by the transmission to such share. The transferee shall be entered in the Register as the Holder of the shares comprised in any such transfer and he shall not be bound to see to the application of the purchase moneys nor shall his title to the shares be affected by any irregularity in or invalidity of the proceedings in reference to the sale.

103.3 The ICAV shall account to the relevant Fund or, if the Fund is no longer in existence, to such persons as the Directors may determine for the net proceeds of such sale.

### 104 **Indemnity**

- 104.1 Subject to the provisions of and insofar as may be permitted by the Act every Director, Secretary and other officer or servant of the ICAV shall be indemnified by the ICAV against, and it shall be the duty of the Directors out of the Assets to pay, all costs, losses and expenses which any such officer or servant may incur or become liable to by reason of any contract entered into, or act or thing done by him as such officer or servant or in any way in discharge of his duties, including travelling expenses, and the amount for which such indemnity is provided shall immediately attach as a lien on the property of the ICAV and have priority as between the Holders over all other claims.
- 104.2 Subject to the Act no Director or other officer of the ICAV shall be liable for the acts, receipts, neglects or defaults of any other Director or officer or for joining in any receipt or other act for conformity or for any loss or expense happening to the ICAV through the insufficiency or deficiency of title to any property acquired for or on behalf of the ICAV or for the insufficiency or deficiency of any security in or upon which any of the monies of the ICAV shall be invested or for any loss or damage arising from the bankruptcy, insolvency or tortious act of any person with whom any monies, securities or effects shall be deposited or any other loss, damage or misfortune whatever which shall happen in the execution of the duties of his office or in relation thereto.
- 104.3 The Directors may grant indemnities to the AIFM, the Depositary, the administrator, any investment manager, investment adviser or other service provider which has entered into a contract with the ICAV upon such terms and subject to such conditions and exceptions and with such entitlement to have recourse to the assets of the relevant Fund or Funds as the Directors in their discretion may determine, in accordance with the Act and the requirements of the Competent Authority, as appropriate provided that no such indemnity shall extend to any matters arising from the failure of the person so indemnified to meet the standard of care agreed by the ICAV (in the Directors' absolute discretion) with such party as set out in the relevant contract of engagement or other agreement with such person so indemnified.

#### 105 **Overriding provisions**

In the event of there being any conflict between the provisions of this Instrument of Incorporation and the Act the Act shall prevail.

#### 106 **Restriction on modifications to the Instrument of Incorporation**

No alterations shall be made to this Instrument of Incorporation without the prior approval of the Competent Authority and save in accordance with the requirements of section 31 of the Act.

#### 107 **Segregation of Assets and Liabilities**

- 107.1 Pursuant to the terms of the Act, the assets of each Fund shall belong exclusively to that Fund, and any liability incurred on behalf of or attributable to any Fund shall be discharged solely out of the assets of that Fund or, where there is more than one class of shares in respect of such Fund and a liability of such class, out of the assets of such Fund attributable to such class, and neither the ICAV nor any Director, receiver, examiner, liquidator, provisional liquidator or other person shall apply nor be obliged to apply the assets of any such Fund or such class to discharge directly or indirectly any liability incurred on behalf of or attributable to any other Fund or class, and nor shall the assets of any such Fund or such class be available for any such purposes.
- 107.2 The assets allocated to a Fund or attributable to a class shall be applied solely in respect of the Shares of such Fund or class to which they are attributable and no Holder of such Fund or class shall have any claim or right to any asset allocated to any other Fund or class. The Investments of the ICAV belong exclusively to the ICAV and no Holder has any direct interest in the Investments.
- 107.3 Any asset or sum recovered by the ICAV by any means whatsoever or wheresoever shall, after the deduction or payment of any costs of recovery, be applied to the Fund or



class affected. In the event that assets attributable to a Fund or class are taken in execution of a liability not attributable to that Fund or class, and in so far as such assets or compensation in respect thereof cannot otherwise be restored to that Fund or class, the Directors, with the consent of the Depositary, shall certify or cause to be certified the value of the assets lost to the Fund or class affected and transfer or pay from the assets of the Fund or Funds or class or classes to which the liability was attributable, in priority to all other claims against such Fund or Funds or class or classes, assets or sums sufficient to restore to the Fund or class affected the value of the assets or sums lost to it.

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

107.5 In any proceedings brought by any Holder of a particular Fund or class, any liability of the ICAV to such Holder in respect of such proceeding shall only be settled out of the assets of the Fund or class corresponding to such Shares without recourse in respect of such liability or any allocation of such liability to any other Fund or class.

107.6 Nothing in this Clause shall prevent the application of any enactment or rule of law which would require the application of the assets of any Fund or class in discharge of some or all of the liabilities of any other Fund or class on the grounds of fraud or misrepresentation and, in particular, by reason of the application of the Companies Act.

#### 107.7 Asset-Specific Share Classes

Without prejudice to this Clause 107 and to the greatest extent permissible by law:

- (a) a Holder of shares in an Asset-Specific Share Class shall have its participation, rights, interests (beneficial or otherwise) and its recourse limited to those assets specifically allocated to the class which correspond with the proportionate participation of its shares in that particular Asset Specific Class in the assets of the relevant Fund, represented by the Net Asset Value of such Asset-Specific Class. The provisions of paragraph 107.1 to 107.6 (inclusive) of this Clause shall apply mutatis mutandis with respect to a Holder of shares in an Asset-Specific Share Class, whereby "Fund" would be construed as referring to "Asset-Specific Share Class";
- (b) subject to any contract that may be agreed by or on behalf of the ICAV, a counterparty to any transaction with respect to an Asset-Specific Class shall have its recourse limited to those assets which correspond with the proportionate participation of that particular Asset-Specific Class in the assets of the relevant Fund represented by the Net Asset Value of such Asset-Specific Class. To the greatest extent permissible, the provisions of paragraph 107.1 to 107.6 (inclusive) of this Clause shall apply mutatis mutandis with respect to a counterparty to any transaction with respect to an Asset-Specific Class, whereby "Fund" would be construed as referring to "Asset-Specific Share Class".

#### 107.8 Unclaimed Assets

In some circumstances (for example on a Fund termination, a winding up or a compulsory repurchase) the ICAV may be unable in practice to make a disbursement of assets due to one or more Holders. Notwithstanding anything herein to the contrary, once all reasonable measures to make the disbursement have been taken, the Directors may in their discretion consider that any claims of the Shareholders in respect of any such assets whether in the form of unclaimed dividends, unpaid repurchase proceeds or otherwise and any obligations of the ICAV in connection therewith shall be extinguished and any such amounts may be retained by the relevant Fund for the benefit of the other Holders or paid to a charitable foundation to be determined by the Directors. The foregoing may apply subject to a de minimus level to be reasonably determined by the Directors in their

discretion or without qualification on the basis of the ICAV seeking to meet its anti-money laundering obligations under Irish law.

**APPENDIX I**  
**ISSUE OF SHARES**

1 Terms and conditions of issue of shares

- 1.1 Prior to the issue of any class of shares the Directors shall determine the rights and restrictions attaching thereto including the Fund to which they relate, the designated currency of the shares and the fees and expenses to be borne by the class of shares. In accordance with the requirements of the Competent Authority the decision to subscribe for any class of shares in respect of which the voting rights are restricted shall be made solely by the investor. The Directors may in relation to a Fund create more than one class of shares to participate in the Fund in accordance with the requirements and upon the prior notification to the Competent Authority. Subject to the requirements of the Competent Authority, share classes may be established which may be differentiated on the basis of subscription and/or repurchase procedures, distribution policies or charging structures, hedging policies or other criteria disclosed in the Prospectus. The Directors shall at the time of creation of such class determine if such class of shares shall be constituted as a Hedged Currency Share Class, an Unhedged Currency Share Class, a Derivative Specific Share Class, an Asset-Specific Share Class and/or a New Issue Share Class.
- 1.2 Asset-Specific Share Classes (including Derivative Specific Share Classes, Hedged Currency Share Classes and New Issues Share Classes)

Notwithstanding anything contained in this Instrument of Incorporation:

- (a) the costs, gains/income and losses attributable to any Investments or transactions relating to an Asset-Specific Share Class shall accrue solely to the Holders of the relevant Asset-Specific Share Class and shall not form part of the assets of the relevant Fund, or other classes of that Fund or constitute a liability of the relevant Fund or class of that Fund to which the class relates;
- (b) any such Investments or transactions must be clearly attributable to a particular class only;
- (c) a Derivative Specific Share Class must not be leveraged solely as a result of currency hedging transactions unless provided for in the Prospectus, subject to parameters set out therein; and
- (d) any Investment (including without limitation any derivative transaction) relating to an Asset-Specific Share Class shall be valued in accordance with the provisions of Appendix II.

Subject as otherwise provided herein, the Investments held in each Fund shall be applied solely in respect of the shares of the class (or classes as the case may be) to which such Fund appertains.

- 1.3 The Funds in relation to which shares shall be issued and designated are determined by the Directors and set out in the Prospectus. Subject to the applicable requirements of the Competent Authority which may be amended from time to time, a Fund will be classified as open ended with limited liquidity or limited liquidity if the Dealing Day of the Fund is less than quarterly or the Settlement Date for the payment of repurchase proceeds exceeds 90 calendar days from the Dealing Deadline for the relevant Dealing Day or such other criteria as may be prescribed by the Competent Authority from time to time which, if applicable, require that the relevant Fund be classified as open ended with limited liquidity or limited liquidity. The name of each Fund may be amended by the Directors and any such change of name shall not require the approval of the Holders in the relevant Fund and will be in accordance with the requirements of the Competent Authority.
- 1.4 Shares in relation to new Funds may be issued and designated from time to time with the prior approval of the Competent Authority;

- 1.5 Subject as hereinafter provided and subject to any regulations made or conditions imposed by the Competent Authority pursuant to the Act, the initial issue of shares by the ICAV shall be subject to the receipt by the ICAV or its authorised agents of:-
- (a) the application in such form as the Directors may from time to time determine;
  - (b) such information and declarations as the Directors may from time to time require; and
  - (c) subject to the requirements of the Competent Authority subsequent subscriptions may be made by telephone or such other manner in accordance with the procedure to be set out in the Prospectus.
- 1.6 Payment for shares shall be made by the Settlement Date in such currency and at such time, place and manner and to such person, on behalf of the ICAV, as the Directors may from time to time determine.
- 1.7 The ICAV may (at the option of the Directors) satisfy any application for the allotment of shares by procuring the transfer to the applicant of fully-paid shares, the effective date of such transfer to be the relevant Dealing Day. In any such case, references in this Instrument of Incorporation to allotting shares shall, where appropriate, be taken as references to procuring the transfer of shares.
- 1.8 The allotment of shares may take place notwithstanding that the information or declarations referred to in paragraph 1.5 above have not been received by the ICAV or its authorised agent provided that the application referred to in sub-paragraph 1.5(a) above has been received and provided further that if the said information or declarations have not been received within one Month (or such other period as the Directors may determine) after the Dealing Day on which such shares are allotted, the Directors shall be entitled to cancel the allotment and if so cancelled the relevant application monies (if any) shall be returnable to the applicant at his risk (together with such additional amount, if any, or after deducting such amount, if any, as the Directors may in their absolute discretion think fit, any such amount so deducted being retained by the ICAV for its own benefit) and until returned may be made use of by the ICAV for its own benefit.
- 1.9 If payment in full for any shares is not received by the relevant Settlement Date, or in the event of non-clearance of funds, the Directors or their delegates shall be entitled to cancel the allotment and either return the relevant monies to the applicant at his risk or to treat the relevant monies as payment in respect of an application for shares made by the Dealing Deadline for the Dealing Day next following receipt of such monies or of cleared funds. Where an allotment of shares is cancelled, the ICAV may charge the applicant for any resulting bank charges or market losses incurred by the ICAV. Where subscriptions are settled late, the ICAV reserves the right to charge an applicant interest at a reasonable commercial rate on such subscriptions.
- 1.10 Applications within the meaning of paragraph 1.5 above that are received by or on behalf of the ICAV on or prior to the Dealing Deadline for a Dealing Day shall subject as may be provided in the relevant Supplement for an open ended with limited liquidity, limited liquidity or closed ended Fund and unless the Directors determine otherwise, be dealt with on that Dealing Day. Such applications as are received after the Dealing Deadline for a Dealing Day shall, (unless the Directors otherwise agree and provided they are received before the Valuation Point for the relevant Dealing Day), be deemed to have been received by the next Dealing Deadline. If requested the Directors may, in their absolute discretion and subject to the prior approval of the Depositary, agree to designate additional Dealing Days and Valuation Points for the purchase of shares relating to any Fund which will be open to all Holders and which will be notified in advance to all Holders.
- 1.11 The Directors may, in their sole and absolute discretion, determine that in certain circumstances, it is detrimental for existing Holders to accept an application for shares in

cash or in specie, representing more than 5 per cent of the Net Asset Value of a Fund. In such case, the Directors may postpone the application and, in consultation with the relevant investor, require such investor to stagger the proposed application over an agreed period of time.

- 1.12 Applications for the issue of shares will be irrevocable unless the Directors, (or their delegate) otherwise agree.
- 1.13 The Directors (or their delegate) may, in their absolute discretion, determine that one or more securities or other instruments held or to be purchased/acquired by a Fund have become or are illiquid, difficult to value or lack a reliable or readily assessable market value or should be held until the resolution of a special event or circumstance. Following such determination or determinations, each such security or instrument shall be designated by the Directors (or their delegate) as a Designated Investment. Similarly, the Directors (or their delegate) may, in their absolute discretion but subject to the AIF Rulebook, determine in light of requests for redemptions of shares, that Investments that have a reliable or readily assessable valuation, and which could be used to meet such redemption requests, but are illiquid, be Designated Investments.
- 1.14 Upon the designation of an investment as a Designated Investment, a pro rata portion of a Holder's shares (except other Special Situation Shares) will be converted or exchanged by way of a compulsory redemption and reissued to one or more new classes of shares representing the Fund's or one or more Holders indirect interest in such Designated Investment (each, a "Special Situation Share"). Likewise, upon the Disposition of such Designated Investment, the associated Special Situation Shares held by such Holders will be converted to Shares of the original class from which they were initially converted by way of a compulsory redemption and reissue or otherwise directly redeemed, in each case, as further described below. Unless the context otherwise requires, the term "shares" includes Special Situation Shares. This exchange of shares for Special Situation Shares will be at the Net Asset Value per share of the relevant class (or such other value as determined in accordance with this Clause) as at the Valuation Point immediately preceding the designation of the investment as a Designated Investment, or at such other value and/or date as the Directors (or their delegate) reasonably determine.
- 1.15 Special Situation Shares are not redeemable at the option of the Holder thereof. The Directors (or their delegate) may, in their absolute discretion, redeem Special Situation Shares in cash, in-kind or partially in-kind prior to the Disposition of the relevant Designated Investment (including through an in-kind distribution of an equity interest in one or more special purpose vehicles ("**SPVs**") which may have been created to hold such Designated Investment). In the event that Special Situation Shares are redeemed for cash prior to the Disposition of the relevant Designated Investment, a pro rata portion of non-Special Situation Shares held by Holders that hold the same class of Special Situation Shares will be converted into Special Situation Shares by way of redemption and reissue, without the requirement for any notice to be served on such Holders. This will increase the illiquidity of the remaining Holders' investments by increasing their proportional participation in the associated Designated Investment.
- 1.16 The value of Designated Investments will be determined by or on behalf of Directors (or their delegate) using a methodology in accordance with the requirements of the Competent Authority, including (but not limited to) where the Designated Investment is no longer illiquid or has a readily ascertainable market value and/or determining the value thereof pursuant to the valuation principles described in the Prospectus.
- 1.17 The value of Designated Investments will not be included in the Net Asset Value of the relevant Fund (but will be solely attributable to Holders holding Special Situation Shares) but may be included in the calculation and payment of any management fees and incentive fee, if any, with respect to the applicable Special Situation Shares; provided that any incentive fees accrued on the Designated Investments shall not be paid until the Disposition of the applicable Designated Investments or upon a redemption of a Holder's Special Situation Shares. The Directors (or their delegate) may, in their absolute

discretion, charge the portion of any management fee attributable to a particular Designated Investment to the non-Special Situation Shares held by Holders participating indirectly in such Designated Investment.

- 1.18 For so long as the relevant Fund continues to own or hold a Designated Investment, a Holder owning Special Situation Shares participating in such Designated Investment: (i) will continue to receive its allocable share of the gains, losses and expenses related thereto; (ii) will remain a Holder in the relevant Fund to the extent of its Special Situation Shares held in respect of such Designated Investment, even if such Holder has otherwise fully redeemed from the relevant Fund, and (iii) upon the Disposition of the relevant Designated Investment, each Holder participating in such Designated Investment will be entitled to receive its allocable portion of the proceeds (if any) from the Disposition, less any expenses, management fees and incentive fee, if any, relating to such Designated Investment. Except where a Holder has redeemed all of its non-Special Situation Shares prior to the Disposition of the relevant Designated Investment and unless otherwise determined by the Directors (or their delegate), each Holder will receive its proceeds by way of the issue of additional non-Special Situation Shares out of the original Class from which they were initially converted (or such other class or classes, including new class(es), as the Directors consider appropriate), without the requirement for any notice to be served on such Holders. If a Holder has redeemed all of its non-Special Situation Shares, then, unless otherwise determined by the Directors (or their delegate), upon Disposition of the relevant Designated Investment such Holder's Special Situation Shares will be redeemed automatically, without notice, and the redemption proceeds (being a pro rata portion of the proceeds from the Disposition, if any, less expenses and accrued management fees, incentive fees and other fees) will be paid in accordance with the redemption terms of the Shares of the applicable class from which such Special Situation Shares were initially converted. To the extent that any reserve maintained out of the proceeds of redemption of a Holder's non-Special Situation Shares is not applied in full in settlement of the relevant portion of management fees and expenses attributable to the Holder's corresponding Special Situation Shares, such excess shall be paid to the Holder as soon as practicable following the Disposition of the relevant Designated Investment.
- 1.19 A "Disposition" includes a complete or partial disposition of a Designated Investment or receipt of income or other distribution in respect of the same or an earlier determination by the Directors (or their delegate) or their delegate in their sole discretion that the Designated Investment will no longer be deemed a Designated Investment.
- 1.20 A Fund may establish a class of Special Situation Shares, to which assets are to be attributed which are Designated Investments at the time of purchase or acquisition by such Fund, in accordance with the requirements of the Competent Authority. The foregoing paragraphs 1.13 to 1.18 shall apply mutatis mutandis to any such Class.

## 2 **Subscription Price**

- 2.1 During the Initial Offer Period in relation to a Fund the Subscription Price per share of the relevant class shall be the price as determined by the Directors. Subject to the applicable requirements of the Competent Authority, the ICAV may launch additional share classes in a Fund at a fixed price, provided that, where required by the Competent Authority, the ICAV shall confirm to the Competent Authority that existing Holders in the Fund are not prejudiced. After the Initial Offer Period, the Subscription Price at which the Shares will be issued on a Dealing Day shall be the Net Asset Value per share of the relevant class.
- 2.2 Where shares are issued based on the Net Asset Value per share as outlined in the preceding paragraph, the Net Asset Value per share of the relevant class shall be ascertained by:
- (a) determining that proportion of the Net Asset Value of the relevant Fund which is attributable to the relevant class of shares as at the Valuation Point for the relevant Dealing Day;

- (b) where the class of shares is a Hedged Currency Share Class, a Derivative Specific Share Class, Asset-Specific Share Class or New Issues Share Class adding to or deducting from (as the case may be) the sum calculated in accordance with sub-paragraph 2.2(a) above the costs and gains/losses of any currency hedging or derivative transactions effected in respect of that class;
  - (c) dividing the sum calculated in accordance with sub-paragraph 2.2(a) or 2.2(b) above, as applicable, by the number of shares of the relevant class in issue or deemed to be in issue in the relevant Fund at the Valuation Point for the relevant Dealing Day; and
  - (d) rounding the resulting amount so determined mathematically to four decimal places of the unit of the currency in which such share is designated (**unit** for such purposes being the smallest fraction of the relevant currency which is legal tender in the country of issue of that currency) or to such other number of decimal places or significant figures as the Directors may from time to time determine, provided in the case of an Authorised Money Market Fund designated as a LVNAV MMF or a Public Debt CNAV MMF valuing assets on the amortised cost basis the resulting amount will be rounded to two decimal places in accordance with the Money Market Fund Regulation.
- 2.3 For the purposes of this Clause, shares which have been allotted shall be deemed to be in issue from the close of business on the Dealing Day on which they are allotted and shares which have been repurchased shall be deemed to cease to be in issue at the close of business on the Dealing Day of such repurchase.
- 2.4 In calculating the Subscription Price, the Directors may on any Dealing Day where there are net subscriptions adjust the Subscription Price by adding an anti-dilution levy to cover dealing costs and to preserve the value of the underlying assets of a Fund.

### 3 Allotment of shares for non-cash consideration

- 3.1 The Directors may, subject to the provisions of the Act and the investment objective and policies of the relevant Fund, in their absolute discretion allot shares against the vesting in the Depositary on behalf of the ICAV (provided the nature of the Investments to be transferred to the relevant Fund would qualify as investments of such Fund in accordance with the investment objective, policies and restrictions of the Fund) of any Investments and in connection therewith the following provisions shall apply:
- (a) the number of shares to be allotted (which will only be allotted after the Investments have been vested in the Depositary or arrangements have been made to vest the Investments with the Depositary on behalf of the ICAV) shall be not more than that number which would have fallen to be issued for cash on the basis that the amount of such cash was an amount equal to the value as at the relevant Valuation Point for the relevant Dealing Day of the Investments to be vested in the Depositary on behalf of the ICAV, as determined in accordance with sub-paragraph 3.1(c) below;
  - (b) the Directors may provide that the whole or any part of the Duties and Charges arising in connection with the vesting of the Investments in the Depositary on behalf of the ICAV shall be paid by the ICAV or by the person to whom the shares are to be issued or partly by the ICAV and partly by such person;
  - (c) the value of the Investments to be vested in the Depositary on behalf of the ICAV shall be determined by the Directors on such basis as they shall decide so long as such value does not exceed the highest amount which would be obtained if the Investments were valued in accordance with Appendix II hereof;

- (d) in the case of the initial issue of shares of any class, the Depositary shall determine the number of shares of the relevant class to be allotted against the vesting in the Depositary on behalf of the ICAV of any Investments; and
- (e) the Depositary is satisfied that the terms of such allotment will not be such as are likely to result in any material prejudice to existing Holders.

#### 4 **Preferential Treatment**

Any preferential treatment which Holders may obtain will be disclosed in the Prospectus or relevant Supplement. The Prospectus or relevant Supplement shall describe how the ICAV will ensure the fair treatment of Holders where any Holder obtains preferential treatment or the right to obtain preferential treatment. The description of such preferential treatment shall include the type of preferential treatment and, where relevant, the type of Holders that may obtain such preferential treatment and where relevant their legal or economic links to the ICAV.

#### 5 **Preliminary charge**

The Directors may require any person to whom shares of any class are to be allotted to pay to the ICAV or any of its appointees or as any of them may direct, for its or their absolute use and benefit, a preliminary charge of such amount as may be determined by the Directors but not exceeding 6 per cent of the Subscription Price per share of the relevant class being allotted. The Directors may on any Dealing Day differentiate between applicants as to the amount of the preliminary charge required to be paid to the ICAV, or its appointees or as they may direct and as to the amount of preliminary charge to be levied on each class of share (subject to the maximum aforesaid).

#### 6 **No shares allotted when calculation of Net Asset Value suspended**

The Directors may in their absolute discretion determine that no shares shall be allotted or issued during any period when the determination of the Net Asset Value of the relevant Fund is suspended pursuant to Clause 18 below. The Directors will notify investors applying for shares of such suspension at the time of application. Any application for shares which is not withdrawn shall, subject to the provisions of this Instrument of Incorporation, be dealt with on the first Dealing Day after the suspension is lifted.

#### 7 **Issue of fractions of shares**

Where payments or other consideration received by or on behalf of the ICAV in respect of the issue or allotment of shares are not an exact multiple of the Subscription Price for those shares, a fraction of a share may be allotted to the investor who shall be registered as the Holder of such a fraction provided that any holding of shares is a multiple of 1/1000 part of a share or such other fractional amount as the Directors may determine from time to time. Rights, entitlements and benefits of a Holder of a share under this Instrument of Incorporation are granted to a Holder of a fraction of a share in proportion to the fraction of a share held by him and, except where the context otherwise requires or is otherwise provided herein, reference in this Instrument of Incorporation to **share** shall include a fraction of a share. Notwithstanding anything contained in this Instrument of Incorporation, the Holder of a fraction of a share may not exercise any voting rights in respect of such share.

#### 8 **Minimum Initial Investment Amount**

The Directors may in their absolute discretion decline to issue shares of any class to satisfy any initial application unless the amount in value of the shares to which an application relates equals or exceeds the Minimum Initial Investment Amount or its equivalent in another currency provided that in no circumstances may the Directors issue shares of any class to satisfy any initial application where the amount in value of the shares to which an application relates does not equal or exceed the minimum amount required by the Competent Authority to be invested by such investor for the ICAV to obtain Qualifying Investor AIF status. Thereafter, Holders may make additional subscriptions for shares having a value, at the then current Subscription Price of not less than the Minimum Additional Investment Amount or its equivalent in another currency.



## FUNDS

### 9 Funds

- 9.1 All consideration, other than the preliminary charge (if any) payable to the ICAV or its appointees or as any of them may determine pursuant to Clause 5 of this Appendix, received by or on behalf of the ICAV for the allotment or issue of shares of a Fund, or if there is more than one class of shares in a particular Fund, of all such classes, together with all Investments in which such consideration is invested or reinvested, all income, earnings, profits and proceeds thereof shall be segregated and kept separate from all other monies of the ICAV and such assets and monies shall be referred to as a **Fund** there being one Fund in respect of each class (or all such classes, as the case may be) of shares and to which the following provisions shall apply:
- (a) for each Fund the ICAV shall keep separate books and records in which all transactions relating to the relevant Fund shall be recorded and, in particular, the proceeds from the allotment and issue of shares of each class in the Fund, the Investments and the liabilities and income and expenditure attributable thereto shall be applied or charged to such Fund subject to the provisions of this Clause 9;
  - (b) any Asset derived from any other asset(s) (whether cash or otherwise) comprised in any Fund shall be applied in the books and records of the ICAV to the same Fund as the asset from which it was derived and any increase or diminution in the value of such an asset shall be applied to the relevant Fund.
  - (c) in the event that there are any assets of the ICAV which the Directors do not consider are attributable to a particular Fund or Funds, the Directors shall, with the approval of the Depositary, allocate such assets to and among any one or more of the Funds in such manner and on such basis as they, in their discretion, deem fair and equitable; and the Directors shall have the power to and may at any time and from time to time, with the approval of the Depositary, vary the basis in relation to assets previously allocated.
  - (d) each Fund shall be charged with the liabilities, expenses, costs, charges or reserves of the ICAV in respect of or attributable to that Fund and any such liabilities, expenses, costs, charges or reserves of the ICAV not attributable to any particular Fund or Funds shall be allocated and charged by the Directors, with the approval of the Depositary, in such manner and on such basis as the Directors, in their sole and absolute discretion deem fair and equitable, and the Directors shall have the power to and may at any time and from time to time, with the approval of the Depositary, vary such basis including, where circumstances so permit, the re-allocation of such liabilities, expenses, costs, charges and reserves.
  - (e) where hedging or derivative strategies are used in relation to a Fund or class of shares, the financial instruments used to implement such strategies shall be deemed to be assets or liabilities (as the case may be) of the relevant Fund as a whole but will be clearly attributable to a specific class and the gains/losses on and the costs of the relevant financial instruments will accrue solely to the relevant class of shares.
  - (f) in the event that any Asset attributable to a Fund is taken in execution of a liability not attributable to that Fund, the provisions of Section 36 of the Act shall apply.
- 9.2 Subject as otherwise provided herein, the Assets held in each Fund shall be applied solely in respect of the shares of the class (or classes as the case may be) to which such Fund appertains and shall not be used to discharge directly or indirectly the liabilities of or claims against any other Fund and shall not be available for any such purpose.

- 9.3 If the Directors shall determine that a sufficient amount of subscription monies (such amount to be determined by the Directors in their discretion) have not been received during the Initial Offer Period of a Fund, the Directors may determine in their discretion not to proceed to launch that Fund and shall return the subscription monies to each investor at their risk and expense.
- 9.4 The ICAV may from time to time, with the prior approval of the Competent Authority, obtain for a given Fund authorisation as an Authorised Money Market Fund and in particular as either a variable net asset value money market fund ("**VNAV MMF**"), a public debt constant net asset value money market fund ("**public debt CNAV MMF**") or a low volatility net asset value money market fund ("**LVNAV MMF**") as specified in the Prospectus.

## 10 Fund exchanges

- 10.1 Unless otherwise determined by the Directors and subject to the provisions of the Act, the Prospectus (including any restrictions on repurchases in open ended with limited liquidity or closed ended Funds) and to this Instrument of Incorporation and as hereinafter provided a Holder holding shares in any class in a Fund (the **first class**) on any Dealing Day shall have the right from time to time to exchange all or any of such shares for shares of another class in the same Fund or for shares which are available for issue in another Fund (the **new class**) (such class being either an existing class or a class agreed by the Directors to be brought into existence with effect from the relevant Dealing Day) provided that all criteria for applying for the new shares have been met on the following terms:
- (a) the Holder shall give to the ICAV or its authorised agent(s) instructions (hereinafter called an **Exchange Notice**) in such form as the Directors may from time to time determine.
  - (b) the exchange of the shares specified in the Exchange Notice pursuant to this Clause 11 shall occur on a Dealing Day for the first class and the new class in respect of Exchange Notices received on or prior to the relevant Dealing Deadline for that Dealing Day (or prior to such other time of day as the Directors may determine either generally or in relation to a particular Fund or in any specific case) by the ICAV or its authorised agent(s) or on such other Dealing Day as the Directors at the request of the Holder may agree the ICAV or its authorised agents may in their discretion accept Exchange Notices received after the Dealing Deadline for the relevant Dealing Day provided the Exchange Notices are received prior to the relevant Valuation Point. The Directors may at their discretion refuse to accept an Exchange Notice if, due to its size or otherwise, realisation of such amounts from assets of one Fund and re-investment of an equivalent in another Fund would not be in the best interests of the Holders of shares in the relevant Funds. A Holder's entitlement to shares as recorded in the Register shall be altered accordingly with effect from that Dealing Day.
- 10.2 Exchange of the shares of the first class specified in the Exchange Notice shall be effected in the following manner, that is to say:
- (a) such shares of the first class shall be repurchased by the issue of shares of the new class;
  - (b) the shares of the new class shall be issued in respect of and in proportion to (or as nearly as may be in proportion to) the holding of the shares of the first class which is being exchanged; and
  - (c) the proportion in which shares of the new class are to be issued in respect of shares of the first class shall be determined in accordance with paragraph 10.3 below;

Provided always that the right of a Holder to exchange his shares in the first class for shares in the new class conferred by this Clause 10 shall be conditional upon the ICAV having sufficient available share capital to enable the exchange to be implemented as aforesaid.

- 10.3 The Directors shall determine the number of shares of the new class to be issued on exchange in accordance with the following formula:

$$S = \frac{[R \times (RP \times ER) - F]}{SP}$$

where:

**R** is the number of shares of the first class specified in the Exchange Notice which the Holder thereof has requested to be exchanged;

**S** is the number of shares of the new class to be issued;

**RP** is the Repurchase Price per share of the first class as calculated as at the relevant Valuation Point for the Dealing Day on which the exchange is to be effected;

**ER** in the case of an exchange of shares designated in the same currency is 1. In any other case, the value of ER is the currency conversion factor determined by the Directors at the Valuation Point for the relevant Dealing Day as representing the effective rate of exchange applicable to the transfer of assets relating to the first and new classes of shares after adjusting such rate as may be necessary to reflect the effective costs of making such transfer;

**SP** is the Subscription Price per share for the new class as calculated as at the relevant Valuation Point for the Dealing Day on which the exchange is to be effected; and

**F** is the fee payable (if any) on the exchange of shares (as set out in paragraph 10.4 below).

**AND** the number of shares of the new class to be created or issued pursuant to this Clause 10 shall be so created or issued in respect of each of the shares of the first class being exchanged in the proportion (or as nearly as may be in the proportion) S to R where S and R have the meanings ascribed to them above.

- 10.4 On any exchange of shares pursuant to this Clause 10, the Directors may add to the Subscription Price per share for the shares of the new class to be issued a fee, for payment to the ICAV or any of its appointees or as any of them may direct not exceeding 2 per cent (or such higher amount as may be permitted by the Competent Authority and set out in the Prospectus or relevant Supplement) of the Repurchase Price per share of shares in the first class to be repurchased calculated as at the relevant Valuation Point for the Dealing Day on which the exchange is effected.

- 10.5 Requests for the exchange of shares as an initial investment in a new class will only be made if the value of the shares to be exchanged is equal to or exceeds the Minimum Initial Investment Amount for the new class. The Directors may refuse to give effect to any Exchange Notice if to do so would cause the relevant Holder's holding in the first class to fall below the Minimum Shareholding specified for that class.

- 10.6 Shares in a class may not be exchanged for shares in another class during any period when the calculation of the Net Asset Value of the relevant Fund or either of the relevant Funds as the case may be is suspended by reason of a declaration by the Directors pursuant to Clause 18 of this Appendix. Applicants will be notified of such suspension at the time of application and any request for the exchange of shares not withdrawn shall, subject to the provisions of this Instrument of Incorporation, be dealt with on the first Dealing Day after such suspension is lifted.

## 11 Termination of Funds

- 11.1 A Fund may be wound up pursuant to Section 37 of the Act and in such event the provisions of Clause 98 shall apply mutatis mutandis in respect of the Fund.
- 11.2 Any Fund may be terminated and/or all of the shares of a Fund (or any class of a Fund) may be repurchased by the Directors, in their sole and absolute discretion, by notice in writing to the Depositary in any of the following events:
- (a) by giving not less than 30 days' notice in writing to the relevant Holders;
  - (b) if at any time the Net Asset Value of the relevant Fund shall be less than such amount as may be determined by the Directors in respect of that Fund;
  - (c) if any Fund shall cease to be authorised or otherwise officially approved;
  - (d) if any law shall be passed which renders it illegal or in the opinion of the Directors impracticable or inadvisable to continue the ICAV or relevant Fund;
  - (e) by not less than 30 days' nor more than 60 days' notice to Holders if, within 90 days from the date of the Depositary serving notice of termination of the Depositary Agreement, another depositary acceptable to the ICAV and the Competent Authority has not been appointed to act as depositary;
  - (f) if such termination is provided for in the Prospectus or relevant Supplement; or
  - (g) if the Directors consider that it is in the best interests of the Holders of the ICAV or relevant Fund.

The decision of the Directors in any of the events specified herein shall be final and binding on all the parties concerned but the Directors shall be under no liability on account of any failure to terminate the relevant Fund pursuant to this Clause or otherwise.

- 11.3 Subject to the applicable requirements of the Competent Authority as may be amended from time to time, the initial duration of each closed ended Fund will be such period as may be disclosed in the Supplement for the Fund (save for the provisions below allowing for an extension). At the end of the duration of a Fund, the Fund will terminate and each terminating Fund will repurchase all outstanding Shares and will apply to the Competent Authority for revocation of approval or convert into an open ended Fund, the relevant details of which will be set out in the Supplement for the Fund. The duration of a closed ended Fund may be extended subject to the approval of the Holders in Fund and in accordance with the requirements of the Competent Authority.
- 11.4 The Directors shall give notice of termination of a Fund to the Holders of shares in the relevant Fund and by such notice fix the date at which such termination is to take effect, which date shall be for such period after the service of such notice as the Directors shall in their sole and absolute discretion determine.
- 11.5 With effect on and from the date as at which any Fund is to terminate or in the case of sub-paragraph 11.6(a) below such other date as the Directors may determine:
- (a) no shares of the relevant Fund may be issued or sold by the ICAV;
  - (b) the investment manager shall, on the instructions of the Directors, realise all the Assets then comprised in the relevant Fund (which realisation shall be carried out and completed in such manner and within such period after the termination of the relevant Fund as the Directors think advisable);
  - (c) the Depositary shall, on the instructions of the Directors from time to time, distribute to the Holders of shares of the relevant Fund in proportion to their respective interests in the relevant Fund all net cash proceeds derived from the realisation of the relevant Fund and available for the purpose of such distribution,

provided that the Depositary shall not be bound (except in the case of the final distribution) to distribute any of the monies for the time being in its hands the amount of which is insufficient to pay Euro 1 or its equivalent amount in the relevant currency in respect of each share of the relevant Fund and provided also that the Depositary shall be entitled to retain out of any monies in its hands as part of the relevant Fund full provision for all costs, charges, expenses, claims and demands incurred, made or apprehended by the Depositary or the Directors in connection with or arising out of the termination of the relevant Fund and out of the monies so retained to be indemnified and saved harmless against any such costs, charges, expenses, claims and demands; and

- (d) every such distribution referred to above shall be made in such manner as the Directors shall, in their sole and absolute discretion, determine but shall be made only against production of the certificates or warrants relating to the shares of the relevant Fund if issued in respect of which the same is made and upon delivery to the Depositary of such form of request for payment as the Depositary shall in its absolute discretion require. Any unclaimed proceeds or other cash held by the Depositary hereunder may at the expiration of twelve months from the date upon which the same were payable be paid into court subject to the right of the Depositary to deduct therefrom any expenses it may incur in making such payment.

11.6 The Directors shall have the power to propose and implement a reconstruction and/or amalgamation of the ICAV or any Fund or Funds on such terms and conditions as are approved by the Directors subject to the following conditions namely:

- (a) that the prior approval of the Competent Authority has been obtained; and
- (b) that the Holders of shares in the relevant Fund or Funds have been circulated with particulars of the scheme of reconstruction and/or amalgamation in a form approved by the Directors and a special resolution of the Holders of shares in the relevant Fund or Funds has been passed approving the said scheme.

The relevant scheme of reconstruction and/or amalgamation shall take effect upon such conditions being satisfied or upon such later date as the scheme may provide or as the Directors may determine whereupon the terms of such scheme shall be binding upon all the Holders and the Directors shall have the power to and shall do all such acts and things as may be necessary for the implementation thereof.

## **RIGHT OF REPURCHASE**

### **12 Holders' right to request a repurchase of shares**

The Directors may establish open ended, open ended with limited liquidity, limited liquidity and closed ended Funds. Holders who subscribe for shares in open ended, open ended with limited liquidity and limited liquidity Funds shall have the right to request the ICAV to repurchase their shares, other than in the case of the Special Situation Shares, in accordance with the provisions of Clause 13 below. The Directors shall have the power to determine the terms on which shares in, open ended with limited liquidity Funds, limited liquidity Funds, Special Situation Shares and/or closed ended Funds will be repurchased by the ICAV and such terms will be set out in the Prospectus and/or each relevant Supplement.

### **13 Repurchase mechanism**

13.1 Subject to the provisions of the Act, the Prospectus and this Instrument of Incorporation and subject as hereinafter provided the ICAV shall, on receipt by it or its authorised agent(s) of a request (which request may, at the Directors' discretion, either generally or in relation to any specific request, be made in writing, by facsimile or by another method, for example, electronically or by telephone in accordance with the procedure set out in the Prospectus or in such other form as the Directors may, from time to time, determine) by a Holder of shares (the **Applicant**), repurchase all or any portion of the shares held by

the Applicant at the Repurchase Price, determined in accordance with Clause 14 of this Appendix, or procure the purchase thereof at not less than the Repurchase Price on the relevant Dealing Day. Such request to repurchase must be accompanied by the duly endorsed certificate or certificates (if any) issued for the shares to which it relates.

**PROVIDED THAT:**

- (a) The repurchase of shares pursuant to this Clause shall be made on a Dealing Day in respect of requests (equal or greater to the Minimum Repurchase Amount if any, subject to the discretion of the Directors to allow lesser amounts) received by the ICAV or its authorised agent on or prior to the Dealing Deadline for that Dealing Day.
- (b) Any such request received after the Dealing Deadline for a Dealing Day shall, subject as may be provided in the relevant Supplement for an open ended with limited liquidity, limited liquidity or closed ended Fund and unless the Directors determine otherwise, and provided it is received before the relevant Valuation Point, be treated as having been received prior to the following Dealing Deadline.
- (c) If the determination of the Net Asset Value of the relevant Fund is suspended on any Dealing Day by reason of a declaration by the Directors pursuant to Clause 19 of this Appendix, an Applicant may withdraw his request to have his shares repurchased pursuant to this Clause. If the request is not so withdrawn the ICAV shall be at liberty to repurchase the shares on the Dealing Day next following the end of the suspension.
- (d) Subject as aforesaid and to the discretion of the Directors, an Applicant shall not be entitled to withdraw a request duly made in accordance with this Clause.
- (e) The ICAV may retain a sufficient portion of the amount payable to the Applicant in respect of the repurchase to pay any taxation imposed or required to be withheld by any jurisdiction or its tax authorities, including the Revenue Commissioners, in respect of the repurchase of the shares.
- (f) Any amount payable to the Applicant in connection with the repurchase of shares shall, at the risk and cost of the Applicant, be paid in the same currency as that in which the shares are designated or in such other currency as the Directors shall determine. Any such amount may, at the option of the Directors (but at the risk and cost of the Applicant) be remitted by or on behalf of the ICAV by electronic transfer to the bank account specified by the Applicant not later than the relevant Settlement Date. In all other instances any such amount shall be sent or at the option of the Directors, and at the request of the Applicant (but at his risk and cost) by post in the form of a negotiable instrument at the Applicant's risk by or on behalf of the ICAV to the Applicant not later than the relevant Settlement Date. In the case of an open ended Fund, the Settlement Date for payment of repurchase proceeds must not exceed 90 calendar days from the receipt by or on behalf of the ICAV of a repurchase request from a Holder of shares in such Fund (or such other period as may be permitted by the Competent Authority from time to time and as may be disclosed in the relevant Supplement), provided that this period may be extended to 95 calendar days (or such other period as may be permitted by the Competent Authority from time to time and as may be disclosed in the relevant Supplement), where such Fund invests in other investment funds and in such circumstances the payment of such repurchase proceeds may not reflect the frequency of the Dealing Day of the relevant Fund. If the amount to be paid by the ICAV as aforesaid shall not be expressed in the currency in which the shares which the ICAV has repurchased were designated then the rate of exchange between that currency and the currency agreed for payment shall be such rate as the Directors shall consider appropriate. The cost of conversion (if any) shall be debited from the

converted payment. The certificate of the Directors as to the conversion rate applicable and as to the cost of conversion shall be conclusive and binding on all persons.

- (g) Subject to written instructions from the Applicant to the ICAV (or its authorised agent) directing otherwise, which the ICAV (or its authorised agent) may require to be verified or otherwise supported by additional documentation, the ICAV (or its authorised agent) shall pay the proceeds of repurchase to the Applicant.
  - (h) If requested, the Directors may, in their absolute discretion and subject to the prior approval of the Depositary, agree to designate additional Dealing Days and Valuation Points for the repurchase of shares relating to any Fund which will be open to all Holders in the relevant Fund and which will be notified in advance to all Holders of the relevant Fund.
- 13.2 The repurchase of shares under the provisions of this Clause shall be deemed to be effected immediately after the Valuation Point for the relevant Dealing Day. Shares repurchased in accordance with the provisions of this Clause shall be deemed to cease to be in issue at the close of business on the Dealing Day on which they are repurchased.
- 13.3 The ICAV shall account to the Holder or to the person entitled to such shares for the net proceeds of such repurchase by carrying all moneys in respect thereof as a debt of the ICAV and the ICAV shall be deemed to be a debtor and not a trustee in respect thereof for such Holder or other person.
- 13.4 Upon the repurchase of a share being effected, the Applicant shall cease to be entitled to any rights in respect thereof (excepting always the right to receive a dividend which has been declared in respect thereof prior to such repurchase being effected) and accordingly his name shall be removed from the Register with respect thereto and the shares shall be treated as cancelled and the amount of issued share capital in respect of such class of shares shall be reduced accordingly.
- 13.5 The Directors may in their absolute discretion accept instructions from a Holder to cancel a repurchase request which he/she has submitted to the ICAV (or its agent) provided such instructions are received by the ICAV (or its agent) before the shares have been repurchased. The ICAV may charge such Holder any fees or expenses incurred in processing and/or cancelling the repurchase request.

#### **14 Repurchase price of shares**

- 14.1 The Repurchase Price per share of the relevant class shall be an amount as determined by the Directors on the relevant Dealing Day referred to in sub-paragraph 13.1(a) above by:
- (a) determining that proportion of the Net Asset Value of the relevant Fund which is attributable to the relevant class or series of shares as at the Valuation Point for the relevant Dealing Day;
  - (b) where the class of share is a Hedged Currency Share Class, a Derivative Specific Share Class, Asset Specific Share Class or New Issues Share Class, adding to or deducting from (as the case may be) the sum calculated in accordance with sub-paragraph 14.1(a) above the costs and gains/losses of any derivative or currency hedging transactions effected in respect of that class;
  - (c) dividing the sum calculated in accordance with paragraph 14.1(a) or 14.1(b), as applicable, above by the number of shares of the relevant class in issue or deemed to be in issue in the relevant Fund at the Valuation Point for the relevant Dealing Day; and

- (d) rounding the amount so determined mathematically to four decimal places of the unit of the currency of the shares (**unit** for such purposes being the smallest fraction of the relevant currency which is legal tender in the country of issue of that currency) or to such other number of decimal places or significant figures as the Directors may from time to time determine.
- 14.2 The Directors may on any Dealing Day require an Applicant to pay to the ICAV or any of its appointees or as any of them may direct, for its or their absolute use and benefit, a Repurchase Charge in respect of each share to be repurchased of not more than 5 per cent of the Net Asset Value (or such higher amount as may be permitted by the Competent Authority and set out in the relevant Supplement) of a share of the relevant class prevailing on that Dealing Day. The amount of any such charge may be deducted from the amount to be paid by the ICAV to the Applicant in respect of the shares to be repurchased. The Directors may on any Dealing Day differentiate between Applicants as to the amount of the Repurchase Charge required to be paid to the ICAV, or its appointees or as they may direct and as to the amount of Repurchase Charge to be levied on each class of share (subject to the maximum aforesaid). Subject to the applicable requirements of the Competent Authority as may be amended from time to time, an increase in the maximum Repurchase Charge applicable to a closed ended Fund will require the approval of Holders in the Fund by special resolution where there is no opportunity for Holders in such Fund to request the repurchase of their shares in the Fund or otherwise exit the Fund or otherwise approval by ordinary resolution of the relevant Holders.
- 14.3 Such portion of the Repurchase Price of any shares repurchased on a Dealing Day (except a Dealing Day which is a record day for the declaration of a dividend) as the Directors in their absolute discretion consider appropriate shall be deemed to be a distribution to the relevant Applicant of the proportion of the undistributed net revenue accrued to the relevant Fund up to such Dealing Day attributable to the shares in respect of which such Repurchase Price is payable.
- 14.4 Where any tax is payable to the Revenue Commissioners in respect of a repurchase of shares by a Holder who is or is deemed to be a Taxable Irish Person or is acting on behalf of such a person, the Repurchase Price shall be reduced by an amount equal to such tax which shall be paid by or on behalf of the ICAV to the authorities.
- 14.5 In calculating the Repurchase Price, the Directors may on any Dealing Day where there are net redemptions adjust the Repurchase Price by deducting an anti-dilution levy to cover dealing costs and to preserve the value of the underlying assets of a Fund.

## 15 Limitations on repurchase

- 15.1 The terms on which shares in open ended with limited liquidity and limited liquidity Funds will be repurchased are entirely at the discretion of the Directors who have the right to refuse a repurchase request. Shares not repurchased, but which would otherwise have been repurchased, will be carried forward for repurchase on the next Dealing Day (subject to the discretion of the Directors to refuse repurchases).
- 15.2 In addition for open ended Funds in circumstances where repurchase requests on any Dealing Day are for shares representing more than 10 per cent in the case of monthly or more frequently dealing Funds (25 per cent in the case of quarterly dealing Funds) of the Net Asset Value of any Fund in issue at the Valuation Point for that Dealing Day, the ICAV shall be at liberty to scale down the number of shares to be repurchased in response to each request pro rata (or in such other manner as the Directors consider appropriate taking into account the best interests of the redeeming and existing Holders) to such extent as may be necessary to ensure that the foregoing limit is not exceeded and may carry forward for repurchase to the next Dealing Day the balance of each request and so on to each succeeding Dealing Day until each request has been dealt with in full, **PROVIDED THAT** in respect of open ended Funds, requests for repurchase that have been carried forward from an earlier Dealing Day shall (subject always to the



foregoing limits and unless otherwise determined by the Directors) be dealt with in priority (on a rateable basis) to later requests. Open ended Funds will, when requested, repurchase 10 per cent of the Net Assets Value of the Funds on a monthly basis for monthly dealing Funds or 25 per cent of the Net Asset Value of the Funds on a quarterly basis for quarterly dealing Funds where required in order to continue to be classified as open ended Funds by the Competent Authority and subject to Clause 16 below.

15.3 Special Situation Shares may not be repurchased at the option of the Holder, but the Directors in their sole and absolute discretion may determine that the Special Situation Shares shall be repurchased on the realisation in whole or in part of a Special Investment. At that time the Directors or their delegate will at their sole and absolute discretion give the Holder of the Special Situation Shares notice in writing of such realisation and of (i) their intention to repurchase a corresponding portion of the relevant Special Situation Shares and number of participating shares of corresponding value thereto, or to redesignate a corresponding portion of such Special Situation Shares as participating shares of a corresponding value or (ii) the possibility for the Holders of the Special Situation Shares to request the repurchase of their Special Situation Shares on a Dealing Day designated by the Directors in the notice for such purpose.

15.4

- (a) If in respect of any Applicant the repurchase amount in respect of shares held by him to be repurchased on any Dealing Day amount to more than 5 per cent of the Net Asset Value of a Fund; the Directors shall have the power, at their sole discretion, to divide in specie the whole or any part of the Assets of the relevant Fund and shall have the right to elect by notice in writing to the Applicant (such notice to be sent by the ICAV to the Applicant within three Business Days of the relevant Dealing Day and in any event before the relevant Settlement Date) to appropriate and transfer Assets to him in full or part satisfaction of the Repurchase Price or any part of the said Repurchase Price (provided that such a distribution would not be prejudicial to the interests of the remaining Holders in such Fund). Alternatively, where it is not possible to transfer all or part of the Assets to the Applicant, the ICAV shall have the right to elect to sell all or any part of the Assets so appropriated and to arrange for the payment to the Applicant of the net proceeds of such sale in satisfaction or part satisfaction of the Repurchase Price or any part of the Repurchase Price. In addition, with the consent of the Applicant, the ICAV may, in circumstances not covered by the foregoing for example where a repurchase request is less than 5 per cent of the New Asset Value of a Fund, appropriate and transfer Assets to the Applicant in full or part satisfaction of the Repurchase Price or any part of the Repurchase Price (provided that such a distribution would not be prejudicial to the interests of the remaining Holders in such Fund). In each case the allocation of Assets to the Applicant will be subject to the approval of the Depositary.
- (b) Where a notice of election is served under sub-paragraph 15.4(a) of this Clause on an Applicant, the Applicant may by a further notice served on the ICAV (such notice to be received by the ICAV within two Business Days of the deemed receipt by the Applicant of the notice of election served under sub-paragraph 15.4(a) of this Clause) require the ICAV instead of transferring the Assets in question to arrange:-
- (i) for a sale of the Assets; and
  - (ii) for payment to the Applicant of the net proceeds of sale.

No such notice is required to be given by the Applicant where the Supplement for the relevant Fund provides for an irrevocable instruction to be given by a holder of shares in the relevant Fund for such a sale and payment in these circumstances.

- (c) Where there is a transfer of Assets pursuant to sub-paragraph 15.4(a) above, the Depositary shall transfer to the Applicant his proportionate share of the Assets of the relevant Fund. For the purposes of this paragraph proportionate share means such part of each type of Asset in the relevant Fund as is proportionate to or as nearly as practicable proportionate to the Applicant's share or such selection from the Assets of the relevant Fund as the Directors shall, following consultation with the Depositary, decide is reasonable having regard to the need to be fair both to the Applicant and continuing Holders of shares in the relevant Fund.
  - (d) Where there is to be a sale of Assets under sub-paragraph 15.4(a) above:
    - (i) the ICAV shall forthwith notify the Depositary of that fact and shall arrange for the sale of the Assets that would have been transferred under sub-paragraph 15.4(a) above (other than Assets which are in cash in the relevant currency for the purposes of the repurchase); and
    - (ii) the Depositary shall on receipt of such evidence of title as it may require pay to the Applicant the net proceeds of the sale and any relevant amounts in cash.
- 15.5 If any request to the ICAV to repurchase shares of any class shall reduce the number of shares of the relevant class held by the Applicant below the Minimum Shareholding such request may be treated by the Directors as a request to repurchase the Applicant's entire holding. The foregoing shall not prevent a repurchase of the whole of a holding of shares of any class less than the Minimum Shareholding nor shall this paragraph apply in circumstances where as a result of the ICAV exercising its rights to scale down any repurchase requests, in accordance with paragraph 15.1 above, a Holder's holding of shares is reduced below the Minimum Shareholding.
- 15.6 If any repurchase requests received by the Directors would necessitate, in the opinion of the Directors, the breaking of deposits at a penalty or the realisation of Investments at a discount below their value, as calculated in accordance with Appendix II, the Repurchase Price in respect of the relevant shares may be reduced by a proportionate part of such reduction in value or penalty which will be suffered by the relevant Fund in such manner as the Directors may consider fair and equitable and which is approved by the Depositary. Alternatively, the Directors may arrange for the ICAV to borrow funds in accordance with Clause 65 subject always to any borrowing restrictions in force in relation to the ICAV or the relevant Fund, and the costs of such borrowings may be apportioned as aforesaid to such extent as the Directors may consider fair and equitable.
- 15.7 The ICAV will not be permitted to repurchase shares if, after payment of any amount in connection with such repurchase, the Net Asset Value of the issued share capital of the ICAV would be equal to or less than €2 or the foreign currency equivalent thereof. The foregoing shall not apply to a repurchase request permitted by the Directors in contemplation of the dissolution of the ICAV in accordance with the Act.
- 15.8 The Directors reserve the right to withhold payment of repurchase proceeds at their sole discretion for such period of time as they may think fit in circumstances where they determine it is appropriate or necessary to do so to comply with any anti-money laundering procedures and legislation or any regulation, code of practice or guidance note promulgated under relevant legislation applicable to the ICAV or its service providers, directly or indirectly, in any jurisdiction.

## 16 **No shares repurchased when calculation of Net Asset Value suspended**

The Directors may, in their absolute discretion, determine that no shares will be repurchased and no repurchase proceeds paid during any period when the determination of the Net Asset Value of the relevant Fund is suspended pursuant to Clause 18 below. Holders applying for a repurchase of their shares will be notified of such suspension at the time of application. Any application which

is not withdrawn shall, subject to the provisions of this Instrument of Incorporation, be dealt with on the first Dealing Day for the relevant Fund after such suspension is lifted.

## **DETERMINATION OF NET ASSET VALUE**

### **17 Determination of Net Asset Value**

The Net Asset Value of a Fund shall be determined at the Valuation Point in accordance with Appendix II. In the case of an Authorised Money Market Fund, the Net Asset Value of such Fund will be calculated on at least each Business Day (i.e. a daily basis).

### **18 Suspension of determination of Net Asset Value/Postponement of a Dealing Day**

18.1 The Directors may at any time declare a temporary suspension of the determination of the Net Asset Value of a Fund and the issue, repurchase and exchange of shares and the payment of repurchase proceeds during:

- (a) any period when any of the principal markets or stock exchanges on which a substantial portion of the Investments of the relevant Fund from time to time are quoted, listed or dealt is closed, otherwise than for ordinary holidays, or during which dealings therein are restricted or suspended; or
- (b) any period when, as a result of political, economic, military or monetary events or any circumstances outside the control, responsibility and power of the Directors, disposal or valuation of a substantial portion of the Investments of the relevant Fund is not reasonably practicable without this being seriously detrimental to the interests of the Holders of the relevant Fund or if, in the opinion of the Directors, the Net Asset Value of the Fund cannot be fairly calculated; or
- (c) any breakdown in the means of communication normally employed in determining the price of a substantial portion of the Investments of the relevant Fund or when for any other reason the current prices on any Market of any of the Investments of the relevant Fund cannot be promptly and accurately ascertained; or
- (d) any period during which any transfer of funds involved in the realisation or acquisition of Investments of the relevant Fund or payments due on repurchase of shares of the relevant Fund cannot, in the opinion of the Directors, be effected at normal prices or rates of exchange; or
- (e) any period when the ICAV is unable to repatriate funds required for the purpose of making payments due on the repurchase of shares in the relevant Fund; or
- (f) any period in the opinion of the Directors such suspension is justified having regard to the interests of the relevant Fund; or
- (g) following the circulation to Holders of a notice of a general meeting at which a resolution proposing to wind up the ICAV or terminate the relevant Fund is to be considered; or
- (h) where the Directors have determined to terminate a Fund in accordance with paragraph 11 of this Appendix; or
- (i) such other circumstances set out in the Prospectus.

18.2 The Directors may postpone any Dealing Day for a Fund to the next Business Day if in the opinion of the Directors, a substantial portion of the Investments of the relevant Fund cannot be valued on an equitable basis and such difficulty is expected to be overcome within one Business Day.

19 **Notification of suspension to Competent Authority, Stock Exchanges and Holders**

Any such suspension of the determination of the Net Asset Value of a Fund shall be notified to the Competent Authority immediately and in any event within the same Business Day on which such suspension occurred. If the shares are listed on the official list of the Irish Stock Exchange or any other exchange any such suspension shall be notified to the Irish Stock Exchange and such other exchange within the time frame specified above. Details of any such suspension will also be notified to all Holders who have requested the issue, repurchase or exchange of shares relating to the relevant Fund.

20 **Compulsory Repurchase or Transfer Of Shares**

20.1 The Directors shall have power (but shall not be under any duty) to impose such restrictions as they may think necessary for the purpose of ensuring that no shares of any class are acquired by or held by or transferred to (and accordingly may redeem such shares held) directly or indirectly by any person or entity who in the opinion of the Director, is not a Qualifying Investor or Accredited Investor, a U.S. Person (unless the Directors determine (i) the transaction is permitted under an exemption available under the securities laws of the United States and (ii) that the relevant Fund and ICAV continue to be entitled to an exemption from registration as an investment company under the securities laws of the United States if such person holds shares), an individual under the age of 18 (or such other age as the Directors may think fit); who appears to be in breach of any law or requirement of any country or government authority or by virtue of which such person is not qualified to hold shares, or held directly or beneficially by a person who is in the opinion of the Directors any of the following:

- (a) any person who is not an Accredited Investor or a Qualifying Investor; or
- (b) any person who is under the age of 18 (or such other age as the Directors may think fit); or
- (c) any person or entity who breached or falsified representations on subscription documents (including as to its status under the US Employee Retirement Income Security Act of 1974, as amended (the **ERISA**)); or
- (d) any person who holds less than the Minimum Shareholding; or
- (e) any person who appears to be in breach of any law or requirement of any country or governmental authority or by virtue of which such person is not qualified to hold such shares or if the holding of the shares by any person is unlawful; or
- (f) any U.S. Person (other than pursuant to an exemption available under the laws of the United States); or
- (g) any person who might cause the Fund to comply with registration or filing requirements in any jurisdiction with which it would not otherwise be required to comply; or
- (h) any person or persons in circumstances which, (whether directly or indirectly affecting such person or persons and whether taken alone or in conjunction with any other person or persons connected or not, or any other circumstances appearing to the Directors to be relevant) in the opinion of the Directors might result in the ICAV incurring any liability to taxation or suffering pecuniary, legal or administrative disadvantages (including endeavouring to ensure that the relevant Fund's assets are not considered "plan assets" for the purpose of ERISA and the related code) or being in breach of any law or regulation (including all relevant anti-money laundering laws and regulations) which the ICAV or relevant Fund might not otherwise have incurred, suffered or breached (including without limitation, where a Holder fails to provide the ICAV with information required to satisfy obligations of a

Fund, the ICAV, the Depositary, the administrator, the investment manager or any delegate thereof in respect of such Holder); or

- (i) any person who is not eligible to invest in the relevant Fund or class in accordance with the Prospectus or relevant Supplement.

References in this Instrument of Incorporation to Permitted Investor means any person other than any of the persons specified above.

- 20.2 The Directors shall, unless any Director has reason to believe otherwise, be entitled to assume without enquiry that none of the shares are held in such a way as to entitle the Directors to give a notice in respect thereof pursuant to paragraph 20.3 below. The Directors may, however, upon an application for shares or at any other time and from time to time require such evidence and/or undertakings to be furnished to them in connection with the matters stated in paragraph 20.1 above as they shall in their discretion deem sufficient or as they may require for the purpose of any restriction imposed pursuant thereto or for compliance with any anti-money laundering provisions applicable to the ICAV. In the event of such evidence and/or undertakings not being so provided within such reasonable period (not being less than 21 days after service of notice requiring the same) as may be specified by the Directors in the said notice, the Directors may, in their absolute discretion, treat any shares held by such a Holder or joint Holder as being held in such a way as to entitle them to serve a notice in respect thereof pursuant to paragraph 20.3 below.
- 20.3 If it shall come to the notice of the Directors that any shares are or may be owned or held directly or beneficially by any person who is not a Permitted Investor (the **relevant shares**), the Directors may give notice to the person in whose name the relevant shares are registered requiring him to transfer (and/or procure the disposal of interests in) the relevant shares to a person who is in the opinion of the Directors a Permitted Investor. If any person upon whom such a notice is served pursuant to this paragraph does not within 21 days after the giving of such notice (or such extended time as the Directors in their absolute discretion shall consider reasonable) transfer the relevant shares to a Permitted Investor, or establish to the satisfaction of the Directors (whose judgement shall be final and binding) that he is not subject to such restrictions, the Directors may in their absolute discretion upon the expiration of such 21 days either arrange the transfer of all the relevant shares to a Permitted Investor in accordance with paragraph 20.4 below or arrange for the relevant shares to be repurchased by the ICAV at the relevant Repurchase Price. The Holder of the relevant shares shall be bound forthwith to deliver his certificate (if any) to the Directors 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 transfer or repurchase, as the case may be, of the relevant shares by the ICAV.
- 20.4 A person who becomes aware that he holds or owns relevant shares shall forthwith unless he has already received a notice pursuant to paragraph 20.3 above transfer all his relevant shares to a Permitted Investor or with the approval of the Directors request the repurchase of the shares.
- 20.5 A transfer of relevant shares arranged by the Directors pursuant to paragraph 20.3 above shall be by way of sale at the best price reasonably obtainable and may be of all of or part only of the relevant shares with a balance available for transfer to other Permitted Investors or repurchase by the ICAV. Any payment received by the ICAV for the relevant shares so transferred shall be paid to the person whose shares have been so transferred subject to paragraph 20.6 below.
- 20.6 Payment of any amount due to such person pursuant to paragraphs 20.3, 20.4, 20.5 above shall be subject to any requisite exchange control consents first having been obtained and the ICAV not being in breach of any other law or regulation. The amount due to such person will be deposited by the ICAV in a bank for payment to such person upon such consents being obtained and against surrender of the certificate, if any, representing the relevant shares previously held by such person. Upon deposit of such

amount as aforesaid such person shall have no further interest in such relevant shares or any of them or any claim against the ICAV in respect thereof except the right to receive such amount so deposited (without interest) upon such consents as aforesaid being obtained.

- 20.7 The Directors shall not be required to give any reasons for any decision, determination or declaration taken or made in accordance with this Clause. The exercise of the powers conferred by this Clause 21 shall not be questioned or invalidated in any case on the grounds that there was insufficient evidence of direct or beneficial ownership of shares by any person or that the true, direct or beneficial owner of any shares was otherwise than appeared to the Directors at the relevant date provided that the powers shall be exercised in good faith.
- 20.8 Notwithstanding any other provisions of this Instrument of Incorporation, where the ICAV is required to pay tax or on the occurrence of a chargeable event as defined in Section 739(B) of the TCA or on the transfer of shares by a Holder who is or is deemed to be a Taxable Irish Person or is acting on behalf of such a person, the ICAV shall be entitled to repurchase and cancel a sufficient portion of the Holder's shares and to appropriate the proceeds thereof as is necessary to discharge the amount of taxation payable in respect of the transfer or the relevant chargeable event.
- 20.9 Without limiting the generality of the foregoing, the Directors may take either of the following actions or any reasonable additional or ancillary actions as they deem necessary in their absolute discretion to comply with FATCA and/or CRS: (i) require any holder to provide such information or confirmations as necessary from time to time, or (ii) share such information with any relevant tax or other government authority including but not limited to the Revenue Commissioners or the IRS. Where any Holder has failed to provide such information or confirmation as requested or is in any other respect deemed to be a recalcitrant account-holder for the purposes of FATCA and/or CRS or is for any other reason deemed not to be compliant with FATCA and/or CRS or would prejudice the ICAV's ability to comply with FATCA and/or CRS, the ICAV may repurchase and cancel the Holder's shares and/or compel or effect the sale of those shares or take any other such actions as may reasonably be deemed necessary to enable the ICAV to comply with FATCA and/or CRS.
- 20.10 The Directors may, in accordance with the terms of the Prospectus, compulsorily repurchase all of the shares of any Fund at the end of the life of the relevant Fund and may compulsorily repurchase all of the shares of an investor on the termination of any Client Agreement relating to that investor.
- 20.11 In addition, the Directors may provide for the mandatory repurchase of shares in other circumstances as set out in the Prospectus and/or the relevant Supplement and repurchase such Shares accordingly, which include where the Directors determine in their sole discretion that a distributing class in a Fund established as a short term money market fund (the "**Relevant Class**") may not be able to maintain a stable Net Asset Value per share due to its net yield (i.e. the yield net of all costs and expenses) being negative, they may:
- (i) calculate the amount required for the Relevant Class to maintain a stable Net Asset Value per share (the "**Yield Shortfall**");
  - (ii) calculate the total number of Shares in the Relevant Class that equates in value to the Yield Shortfall (the "**Total Number**");
  - (iii) calculate, in accordance with the size of each Holder's shareholding in the Relevant Class, each Holder's pro-rata share of the Total Number (the "**Pro-Rata Negative Yield**"); and
  - (iv) repurchase from each Holder in the Relevant Class their Pro-Rata Negative Yield (Shares repurchased in this manner, the "**Repurchased Shares**") and cancel the

Repurchased Shares, with the value/proceeds attributable to those Shares (which would ordinarily have been paid to Holders) being retained by the Relevant Class as required to offset the negative net yield.

#### 20.12 Total Repurchase

- (a) The ICAV may on any Dealing Day on giving reasonable notice to affected Holders repurchase all of the shares in any Fund, class of shares or Series not previously repurchased at the Repurchase Price, if the Net Asset Value of such Fund or Class on such Dealing Day is less than the minimum viable size as may be determined by the Directors from time to time.
- (b) The ICAV may by giving not less than twenty-one Clear Days' notice to the Holders of the relevant Fund, class or Series expiring on a Dealing Day of its intention to repurchase such shares, repurchase at the Repurchase Price on such Dealing Day, all of the shares in any Fund, class or Series or all Funds, classes or Series not previously repurchased.
- (c) The ICAV may, on a Dealing Day, repurchase at the Repurchase Price all of the shares in any Fund, class or Series not previously repurchased with the sanction of a special resolution of the Holders of such Fund, Class or Series.
- (d) If all of the shares of the ICAV or of any Fund, class Series are to be repurchased as aforesaid the ICAV, with the approval of the Holders of the ICAV or the relevant Fund, class or Series by ordinary resolution, may divide amongst the Holders in specie all or part of the assets of the ICAV or the relevant Fund, class or Series according to the Net Asset Value provided that if any Holder requests, at the expense of such Holder, the ICAV shall sell any asset or assets proposed to be so distributed and the distribution to such Holders of the cash proceeds of such sale.
- (e) If all the shares in the ICAV or a Fund, class or Series are to be repurchased as aforesaid and the whole or any part of the business or property of the relevant Fund or any of the assets of the ICAV are proposed to be transferred or sold to another company (hereinafter called the "Transferee") the Directors may, with the sanction of a special resolution of the ICAV or the relevant Fund, class or Series conferring either a general authority on the Directors or an authority in respect of any particular arrangement, receive in compensation or part compensation for such transfer or sale shares, units, policies or other like interests or property in or of the Transferee for distribution among the said Holders, or may enter into any other arrangement whereby the said Holders may instead of or in addition to receiving cash or property participate in the profits of or receive any other benefit from the Transferee.

## INVESTMENT OF ASSETS

### 21 Investment of Assets of the ICAV

- 21.1 The Directors shall subject to the restrictions and limits imposed under this Instrument of Incorporation, the Act and in the case of an Authorised Money Market Fund, the Money Market Fund Regulation determine the investment objectives and policies (including the permissible forms of Investments) and restrictions applying to the ICAV and any Fund and the Assets shall be invested in accordance with the investment objectives, policies and restrictions determined by the Directors.
- 21.2 Subject to the prior approval of the Competent Authority, the ICAV may wholly own any entity, which the Directors consider it necessary or desirable for the ICAV to incorporate or acquire or utilise. All share certificates issued to the ICAV relating to a Fund in respect of its holding in any such entity shall be held by the Depositary or its nominees.

- 21.3 The Directors may decide to invest in one or more collective investment undertakings, including collective investment undertakings with which the ICAV is linked by common management or control or by a substantial direct or indirect holding subject to any restrictions and limits imposed under the Act. This may include, without limitation, investment of up to 100 per cent of the Net Asset Value of a Fund in another collective investment undertaking or sub-fund thereof subject to any restrictions or limits imposed in the Prospectus<sup>4</sup>, under the Act, the requirements of the Competent Authority and in the case of an Authorised Money Market Fund, the Money Market Fund Regulation.
- 21.4 The Directors may decide to retain, during such time or times as they think fit, all or any amount of cash of any Fund in any currency or currencies either in cash or on deposit with, or in certificates of deposit or other banking instruments issued by, the Depositary or any banker or other financial institution in any part of the world including any appointee of the ICAV or any associate or affiliate of such appointee subject to the provisions of the Central Bank Acts, 1942 to 2012, as amended by the Central Bank and Financial Services Regulatory Authority of Ireland Act, 2003 (as may be further amended, supplemented or replaced from time to time);
- 21.5 Subject to the Money Market Fund Regulation and to the approval of the Competent Authority, a Fund that is an Authorised Money Market Fund may invest up to 100 per cent of the Net Asset Value of the Fund in different money market instruments issued or guaranteed separately or jointly by the European Union, the national, regional and local administrations of the Member States or their central banks, the European Central Bank, the European Investment Bank, the European Investment Fund, the European Stability Mechanism, the European Financial Stability Facility, a central authority or central bank of a third country, the International Monetary Fund, the International Bank for Reconstruction and Development, the Council of Europe Development Bank, the European Bank for Reconstruction and Development, the Bank for International Settlements, or any other relevant international financial institution or organisation to which one or more member states of the European Union belong, provided that the relevant Fund holds money market instruments from at least six different issues by the issuer with money market instruments from any one issue not exceeding 30% of its net assets.
- 21.6 Subject to the investment objectives, policies and restrictions determined by the Directors, the ICAV may acquire or utilise derivative contracts of any description under any conditions and within any limits applicable to the ICAV laid down by the Competent Authority from time to time for the purposes of the Act.

## 22 Cross Investment

Subject to the provisions of Section 47 of the Act and the requirements of the Competent Authority, the ICAV may on behalf of a Fund acquire Shares in another Fund.

## 23 Internal Credit Quality Assessment

- 23.1 The AIFM shall, in accordance with the requirements of the Money Market Fund Regulation and with respect to those Funds which are Authorised Money Market Funds, establish, implement and consistently apply a prudent internal credit quality assessment procedure for determining the credit quality of money market instruments, securitisations and asset-backed commercial paper ("ABCPs") in which it is intended an Authorised Money Market Fund will invest, taking into account the issuer of the instrument and the characteristics of the instrument itself. The AIFM shall ensure that the information used in applying the internal credit quality assessment procedure is of sufficient quality, up-to-date and from reliable sources. The internal assessment procedure shall be based on prudent, systematic and continuous assessment methodologies. The methodologies used shall be subject to validation by the AIFM based on historical experience and

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<sup>4</sup> We have included reference to the Prospectus in order to address the possibility of UCITS investing in a Fund.



empirical evidence, including back testing. The AIFM shall ensure that the internal credit quality assessment procedure complies with all of the following general principles:

- (a) an effective process is to be established to obtain and update relevant information on the issuer and the instrument's characteristics;
- (b) adequate measures are to be adopted and implemented to ensure that the internal credit quality assessment is based on a thorough analysis of the information that is available and pertinent, and includes all relevant driving factors that influence the creditworthiness of the issuer and the credit quality of the instrument;
- (c) the internal credit quality assessment procedure is to be monitored on an ongoing basis and all credit quality assessments shall be reviewed at least annually;
- (d) while there is to be no mechanistic over-reliance on external ratings in accordance with Article 5a of Regulation (EC) No 1060/2009, the AIFM shall undertake a new credit quality assessment for money market instruments, securitisations and ABCPs when there is a material change that could have an impact on the existing assessment of the instrument;
- (e) the credit quality assessment methodologies are to be reviewed at least annually by the AIFM to determine whether they remain appropriate for the current portfolio and external conditions. Where the AIFM becomes aware of errors in the credit quality assessment methodology or in its application, it shall immediately correct those errors; and
- (f) when methodologies, models or key assumptions used in the internal credit quality assessment procedure are changed, the AIFM shall review all affected internal credit quality assessments as soon as possible.

## 24 Liquidity Management Procedures

24.1 The AIFM shall, in accordance with the requirements of the Money Market Fund Regulation, establish, implement and consistently apply prudent and rigorous liquidity management procedures for any Fund established as a public debt CNAV MMF or an LNAV MMF to ensure compliance with any liquidity thresholds applicable to such funds. In particular, the AIFM shall consider applying (in the circumstances set out in Article 34(1) of the Money Market Fund Regulation) one or more of the measures permitted by Article 34(1) of the Money Market Fund Regulation, which (depending on the circumstances and notwithstanding anything else to the contrary in these Articles) may include:

- (a) imposing liquidity fees on redemptions that adequately reflect the cost to the relevant Fund of achieving liquidity and ensure that Holders who remain in the relevant Fund are not unfairly disadvantaged when other Holders redeem their shares during the period;
- (b) imposing redemption gates that limit the amount of shares to be redeemed on any one working day to a maximum of 10 % of the shares in the relevant Fund for any period up to 15 Business Days;
- (c) imposing a suspension of redemptions for any period up to 15 Business Days; or
- (d) taking no immediate action other than fulfilling the obligation laid down in Article 24(2) of the Money Market Fund Regulation.

## DEPOSITARY

## 25 Appointment of Depositary

The Directors shall subject to the prior approval of the Competent Authority appoint a Depositary and shall entrust the Assets to the Depositary who shall be responsible for the safe-keeping of the Assets (including any shares or assets of a subsidiary of the ICAV) and to perform its duties prescribed by the Act and, where applicable, the AIFM Legislation and such other duties upon such terms as the Directors may, from time to time, (with the agreement of the Depositary) determine.

## 26 Delegation by Depositary

26.1 The Depositary may pursuant to the Depositary Agreement and subject to the AIFM Legislation, appoint nominees, agents or other delegates to perform in whole or in part any of its duties or exercise any of its discretions as a Depositary. For the avoidance of doubt the Depositary may not delegate the performance of any of its fiduciary duties or discretions and its liability shall not be affected by the fact that it has entrusted to a third party some or all of the Assets in its safe-keeping, provided that the Depositary may discharge itself of liability in accordance with, and subject to, the conditions set out in the AIFM Regulations and, if applicable, the Depositary Agreement.

26.2 The Depositary may, where the law of a third country requires that certain 'financial instruments' (as that term is defined in the AIFM Regulations) are held in custody by a local entity and there are no local entities that satisfy the requirements specified in regulation 22, paragraph (11)(b)(iv), sub clause (II) of the AIFM Regulations, the Depositary can discharge itself of liability provided that the following conditions are met:

- (a) the investors of the relevant Fund have been duly informed of that discharge and of the circumstances justifying the discharge prior to their investment;
- (b) the ICAV instructed the Depositary to delegate the custody of such financial instruments to a local entity;
- (c) there is a written contract between the Depositary and the ICAV, which expressly allows such a discharge; and
- (d) there is a written contract between the Depositary and the third party that expressly transfers the liability of the Depositary to that local entity and makes it possible for the ICAV to make a claim against that local entity in respect of the loss of financial instruments or for the depositary to make such a claim on their behalf.

## 27 Remuneration of Depositary

27.1 In consideration for its services as Depositary, the Depositary shall be entitled to be paid by or on behalf of the ICAV out of the property of the ICAV:

- (a) a fee of such amount specified in the Depositary Agreement; and
- (b) reasonable expenses and disbursements incurred by the Depositary in the performance of its functions and all other charges or fees expressly authorised by the Depositary Agreement and/or disclosed in the Prospectus from time to time;

and the Depositary shall not be obliged to account to the Holders or any of them for any payment received in accordance with the foregoing provisions.

## 28 Retirement or replacement of Depositary

28.1 Subject to the prior approval of the Competent Authority, and in accordance with the terms of the Depositary Agreement (including the circumstances under which there may be effected and the procedures to be followed with respect to the replacement of the Depositary set out therein), the Depositary may be removed or retire and a new Depositary appointed in the manner specified in paragraph 25.

- 28.2 In the event of the Depositary desiring to retire or on being removed in accordance with paragraph 28, having regard to the interests of Holders, the ICAV shall, with the prior approval of the Competent Authority, appoint a duly qualified corporation which is approved by the Competent Authority to be the Depositary in place of the Depositary so retiring or being removed on or before the date on which such retirement or removal is to take effect and the ICAV shall not replace the Depositary without the approval of the Competent Authority. The ICAV shall only terminate the appointment of and the Depositary shall only be removed by the ICAV on the appointment of a successor Depositary or on the revocation of the authorisation of the ICAV by the Competent Authority. In the event of the Depositary giving notice to the ICAV of its desire to retire or in the event of the ICAV giving notice to the Depositary of the Depositary's removal and no successor Depositary has been appointed within such period as may be agreed between the ICAV and the Depositary, the Depositary shall be entitled to request the ICAV to redeem all the then issued Shares of the ICAV or to convene an extraordinary general meeting to consider a resolution to wind up the ICAV. Following such repurchase or the passing of any such resolution, the ICAV shall be wound up in accordance with the Act and this Instrument of Incorporation. The Depositary will remain in office until authorisation of the ICAV has been revoked by the Competent Authority.
- 28.3 The Competent Authority may replace the Depositary with another Depositary.

## **MANAGEMENT COMPANY**

### **29 Appointment of Management Company**

The Directors may subject to the prior approval of the Competent Authority appoint a management company to manage the ICAV and perform such duties upon such terms as the Directors may, from time to time, (with the agreement of management company) determine.

### **30 Remuneration of Management Company**

- 30.1 In consideration for its services as management company, the management company shall be entitled to be paid by or on behalf of the ICAV out of the assets of the ICAV:
- (a) a fee of such amount specified in the agreement with the management company or otherwise agreed from time to time and disclosed in the Prospectus; and
  - (b) reasonable expenses and disbursements incurred by the management company in the performance of its functions and all other charges or fees expressly authorised by the agreement with the management company and/or disclosed in the Prospectus from time to time.

### **31 Retirement or replacement of Management Company**

- 31.1 Subject to the prior approval of the Competent Authority, and in accordance with the terms of the management agreement (including the circumstances under which there may be effected and the procedures to be followed with respect to the replacement of the management company set out therein), the management company may be removed or retire and a new management company appointed in the manner specified in paragraph 31.2.
- 31.2 In the event of the management company desiring to retire or on being removed in accordance with paragraph 31.1, having regard to the interests of Shareholders, the ICAV shall, with the prior approval of the Competent Authority, appoint a duly qualified corporation which is approved by the Competent Authority to be the management company in place of the management company so retiring or being removed on or before the date on which such retirement or removal is to take effect or the Directors shall determine not to appoint a replacement management company, provided that the ICAV

shall not replace the management company without the approval of the Competent Authority.

31.3 The Competent Authority may replace a management company appointed by the ICAV.

## **ALTERNATIVE INVESTMENT FUND MANAGER**

### **32 Appointment of Alternative Investment Fund Manager**

The Directors may subject to the prior approval of the Competent Authority appoint an external AIFM or seek authorisation of the ICAV to perform the duties prescribed by the AIFM Legislation.

Subject to the appointment of an external AIFM or the authorisation of the ICAV pursuant to the AIFM Regulations, the information required to be made available to prospective investors pursuant to the AIFM Regulations shall be provided by the ICAV or where an external AIFM has been appointed by that external alternative investment fund manager.

### **33 Remuneration of Alternative Investment Fund Manager**

33.1 In the event of an external AIFM being appointed to the ICAV, in consideration for its services as alternative investment fund manager, it shall be entitled to be paid by or on behalf of the ICAV out of the assets of the ICAV:

- (a) a fee of such amount specified in the agreement with the alternative investment fund manager or otherwise agreed from time to time and disclosed in the Prospectus; and
- (b) reasonable expenses and disbursements incurred by the alternative investment fund manager in the performance of its functions and all other charges or fees expressly authorised by the agreement with the alternative investment fund manager and/or disclosed in the Prospectus from time to time.

### **34 Retirement or replacement of Alternative Investment Fund Manager**

34.1 In the event of an external entity being appointed as the alternative investment fund manager to the ICAV, subject to the prior approval of the Competent Authority, and in accordance with the terms of the agreement with the alternative investment fund manager (including the circumstances under which there may be effected and the procedures to be followed with respect to the replacement of the alternative investment fund manager set out therein), the alternative investment fund manager may be removed or retire and a new alternative investment fund manager appointed in the manner specified in paragraph 34.2

34.2 In the event of the external AIFM desiring to retire or on being removed in accordance with paragraph 34.1, having regard to the interests of Holders, the ICAV may, with the prior approval of the Competent Authority, appoint a duly qualified corporation which is approved by the Competent Authority to be the alternative investment fund manager in place of the alternative investment fund manager so retiring or being removed or the ICAV shall be authorised as an internally managed alternative investment fund on or before the date on which such retirement or removal is to take effect, provided that the ICAV shall not replace the alternative investment fund manager without the approval of the Competent Authority.

34.3 The Competent Authority may replace the alternative investment fund manager.

## **EQUALISATION PAYMENTS**

### **35 Equalisation Payments**

- 35.1 On any allotment or issue of any shares of any class after the Initial Offer Period, if the Directors are operating an Equalisation Account in relation to the relevant Fund (but not otherwise), the Subscription Price in respect of each such share subscribed for should include an Equalisation Payment the same to be repayable in whole or in part as is hereinafter provided.
- 35.2 In the event of an Equalisation Account being operated in respect of any Fund, all Equalisation Payments received in accordance with the paragraph above, or deemed to have been received, shall be credited to the Equalisation Account in respect of the relevant Fund. Any amounts paid by way of Equalisation Payment shall be returnable in whole or in part to the payer only in the events specified in paragraph 35.3 below and not otherwise.
- 35.3 The Holder of a share on which an Equalisation Payment was paid or deemed to be paid on its issue shall be entitled to payment from the relevant Equalisation Account of a capital sum in the amount hereinafter provided on the payment of the first dividend thereon in respect of the same accounting period after the date of issue of such share but prior to any repurchase being made subsequent to the date of issue of such share.
- 35.4 The capital sum payable pursuant to paragraph 35.3 above shall be an amount equal to the Equalisation Payment paid or deemed to be paid on the issue of such share or, if the Directors so think fit, a sum calculated by dividing the aggregate of all Equalisation Payments standing to the credit of the relevant Equalisation Account at the date to which the relevant dividend relates, by the number of shares in respect of which such capital sums are payable PROVIDED that in so doing such shares may be divided into two or more groups issued within different periods of time as may be selected by the Directors in any one accounting period and the capital sum payable on each share in each such group shall be a sum calculated by dividing the aggregate of all Equalisation Payments standing to the credit of the relevant Equalisation Account in respect of the shares of each such group by the number of shares in such group. Provided further that in no circumstances shall the capital sum payable in respect of any one share pursuant to this paragraph exceed the amount of the dividend declared on such share.
- 35.5 Any capital sums repaid to a Holder in accordance with the provisions of this Clause shall release the ICAV from any liability to repay to the Holder the Equalisation Payment paid, and such Holder shall accept any such capital sum in full and final satisfaction of any Equalisation Payment otherwise payable.

## APPENDIX II

### 1 Determination of Net Asset Value

- 1.1 The Net Asset Value of any Fund (i.e. the value of the assets of a Fund having deducted the liabilities (excluding Holders equity) of that Fund therefrom) or any class thereof or share shall be expressed in the currency in which the Fund or the shares are designated or in such other currency as the Directors may determine, from time to time, and shall be determined, in accordance with the valuation rules set out hereafter.
- 1.2 For the purposes of such valuation, Assets of each Fund, (which shall include Assets of its wholly owned subsidiaries) shall be determined to include but are not limited to:-
- (a) all cash in hand, on deposit, or on call including any interest accrued thereon as at the relevant Valuation Point and all accounts receivable, (ii) all bills, demand notes, certificates of deposit, and promissory notes, (iii) all bonds, shares, stock, securities, obligations, leveraged loans, debentures, debenture stock, forward rate agreements, subscription rights, warrants, promissory notes, futures contracts, options, commodities, asset backed securities, mortgage backed securities, swap contracts, contracts for differences, fixed rate securities, variable and floating rate securities, securities in respect of which the return and/or repurchase amount is calculated by reference to any index, price or rate, monetary and financial instruments of all kinds, (iv) all stock and cash dividends and cash distributions to be received by the Fund and not yet received by it but declared to stockholders of record on a date on or before the relevant Valuation Point as at which the Net Asset Value is determined, (v) all interest accrued on or before the relevant Valuation Point on any interest-bearing securities owned by the Fund except to the extent that the same is included or reflected in, the principal value of such security, (vi) all other Investments of the Fund, (vii) the preliminary expenses incurred in establishing the Fund which are payable by the ICAV and which may include the cost of issuing, distributing, marketing and promoting shares of the Fund insofar as the same have not been written off and (viii) all other Assets of the Fund of every kind and nature including prepaid expenses as valued and defined from time to time by the Directors.
- 1.3 The Directors shall be entitled to determine in relation to any preliminary costs, charges, fees and expenses that the same may be amortised over such period as they think fit.
- 1.4 The Assets and liabilities of each Fund shall be valued in accordance with the valuation policy of the ICAV or where an external AIFM is appointed, the valuation policy of the external alternative investment fund manager, contained and consistent with the provisions outlined in the Prospectus. Specific details on the method of valuation of the Assets and liabilities of each Fund shall be set out clearly and unambiguously in the valuation policy of the ICAV or external AIFM (where appointed) and shall include the following:
- (a) details of the competence and independence of the personnel who are effectively carrying out the valuation of assets;
- (b) the specific investment strategies of the relevant Fund;
- (c) the controls over the selection of valuation inputs and the assets that the relevant Fund might invest in;
- (d) the escalation channels for resolving differences in values for Assets;
- (e) the valuation of any adjustments related to the size and liquidity of positions, or to changes in the market conditions, as appropriate;
- (f) the appropriate time for closing the books for valuation purposes; and

- (g) the appropriate frequency for valuing assets.

Any variation from the models used to value the assets of a Fund shall be explained and justified in an update to the ICAV's or external alternative investment fund manager's (where appointed) valuation policy including the reason for the change of the model, and details on the new model and the rationale for using it.

1.5 The Directors may, in order to achieve a constant Net Asset Value per Share, value Investments in the following manner:

- (a) for a Fund which is authorised as a public debt CNAV MMF, using amortised cost in accordance with Article 29(6) of the Money Market Fund Regulation, and
- (b) for a Fund which is authorised as an LVNAV MMF, using amortised cost in accordance with Article 29(7) of the Money Market Fund Regulation;

The Directors may, in accordance with Article 33(2) of the Money Market Fund Regulation, use such values to calculate the subscription price and redemption price with the constant Net Asset Value per Share being rounded to the nearest percentage point.

1.6 The liabilities of the ICAV and where the context so admits or requires any Fund shall be deemed without limitation to include:

- (a) the costs of dealing in the Assets of the ICAV;
- (b) interest incurred in effecting, or varying the terms of, borrowings;
- (c) all administrative expenses payable and/or accrued;
- (d) any costs incurred in respect of meetings of Holders;
- (e) costs incurred in respect of the establishment and maintenance of the Register;
- (f) the audit fees and expenses of the Auditor;
- (g) costs incurred in respect of the distribution of income to Holders;
- (h) costs incurred in respect of the preparation and publication of prices of shares and of prospectuses, annual and interim reports and financial statements;
- (i) regulatory, legal and other professional fees and expenses incurred in connection with the business of the ICAV;
- (j) costs and expenses incurred in respect of the formation of the ICAV and the initial offer of shares in the ICAV which may be amortised over such period or periods as the Directors may determine;
- (k) duties and charges, all taxes or government or regulatory duties which may be payable on the assets, income or expenses of the ICAV and bank charges and commissions incurred by or on behalf of the ICAV in the course of its business;
- (l) all fees and expenses incurred in connection with the tax compliance obligations of the ICAV including expenses incurred in connection with the preparation and/or filing of tax returns and/or reports including expenses incurred in connection with FATCA and CRS compliance, due diligence and reporting;
- (m) costs and expenses incurred in modifying this Instrument of Incorporation and in respect of any agreement entered into by or in relation to the ICAV from time to time;

- (n) unless otherwise agreed fees, expenses and disbursements of the Depositary, any manager, any external alternative investment fund manager, the investment manager/adviser, the administrator, and any other appointees of the ICAV including where appropriate any performance fees payable;
  - (o) secretarial fees and all costs incurred by the ICAV in complying with statutory requirements imposed upon it;
  - (p) Directors' fees and expenses;
  - (q) any fees of any regulatory authority in a country or territory outside Ireland and, if applicable, any fees levied by the Competent Authority;
  - (r) the fees and expenses including overheads, administrative costs, expenses and commissions incurred by any distributor appointed to market and distribute the shares;
  - (s) the fees and expenses of any paying agent or representative appointed in another jurisdiction in compliance with the law or other requirements of that jurisdiction;
  - (t) all costs and expenses (including copyright expenses) incurred in relation to the marketing and promotion of the ICAV and the sale of the shares;
  - (u) any amount payable under indemnity provisions contained in this Instrument of Incorporation or any agreement with any appointee of the ICAV;
  - (v) all sums payable in respect of any policy of insurance taken out by the ICAV on behalf of the Directors in respect of directors' and officers' liability insurance cover;
  - (w) all known liabilities including the amount of any unpaid dividend declared upon the shares or for the payment of moneys and other outstanding payments on shares previously repurchased;
  - (x) legal and other professional fees and expenses incurred in any proceedings instituted or defended to enforce, protect, safeguard, defend or recover the rights or assets of the ICAV; and
  - (y) the costs associated with terminating and or liquidating the ICAV and/or a Fund;
  - (z) all other liabilities of the ICAV of whatsoever kind and nature including an appropriate provision for taxes (other than taxes taken into account as Duties and Charges) and contingent liabilities as determined by the Directors, from time to time.
- 1.7 In determining the amount of such liabilities the Directors may calculate administrative and other expenses of a regular or recurring nature on an estimated figure for yearly or other periods in advance and accrue the same in equal proportions over any such period.
- 1.8 The Directors may at their discretion apply to the Net Asset Value of a Fund a sum representing a provision for Duties and Charges relating to the acquisition and disposal of Investments of the Fund.
- 1.9 Where the Directors determine to do so in the circumstances described more particularly in the Prospectus they may charge a Dilution Adjustment. The charging of a Dilution Adjustment may either reduce the repurchase price or increase the subscription price of the shares in a Fund. Where a Dilution Adjustment is made, it will increase the Net Asset Value per share where the Fund receives net subscriptions and reduce the Net Asset Value per share where the Fund receives net repurchases.



- 1.10 Subject to the provisions of this Instrument of Incorporation and the requirements of the Competent Authority, the Directors may determine that certain fees and expenses incurred by the ICAV and its Funds including, without limitation, formation costs and expenses and management/investment management fees and expenses (including any performance fee payable) will be charged to capital.
- 1.11 Subject to the applicable requirements of the Competent Authority as may be amended from time to time, any proposed increase in maximum annual fee of the investment manager, management company or alternative investment fund manager payable directly out of the assets of open ended, open ended with limited liquidity, limited liquidity or closed ended Funds (where there is an opportunity to redeem or otherwise exit a Fund) will be subject to the approval of at least 50 per cent of votes cast at a general meeting of Holders in the Fund. Subject as aforesaid, any proposed increase in maximum annual fee of the investment manager, management company or alternative investment fund manager payable directly out of the assets of a closed ended Fund where there is no opportunity to redeem or otherwise exit a closed ended Fund will be subject to the approval of a special resolution of the Holders in such closed ended Fund.