

**INSTRUMENT OF INCORPORATION**

**OF**

**PRESCIENT GLOBAL FUNDS ICAV**

**AN UMBRELLA TYPE IRISH COLLECTIVE ASSET-MANAGEMENT VEHICLE WITH VARIABLE  
CAPITAL AND SEGREGATED LIABILITY BETWEEN FUNDS  
(AS ADOPTED BY SPECIAL RESOLUTION DATED 21 OCTOBER 2019 AND FURTHER AMENDED  
ON 1 FEBRUARY 2022)**

**DILLON  EUSTACE**

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## PART I - PRELIMINARY

### 1. Definitions

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

"Accounting Date", means in the case of each Fund, 30 June in each year unless otherwise set out in the relevant Fund Supplement, or such other date as the Directors may from time to time decide and notify in advance to the Central Bank.

"Accounting Period", means, in respect of each Fund, a period ending on an Accounting Date and commencing on the day following expiry of the immediately preceding Accounting Period.

"Act" means the Irish Collective Asset-management Vehicles Act, 2015 and every modification, consolidation, amendment or re-enactment of the same.

"1933 Act", the United States Securities Act of 1933, as amended.

"Administration Agreement", any Agreement for the time being subsisting between the ICAV and/or the Manager and the Administrator relating to the appointment and duties of the Administrator, where applicable.

"Administrator", any person, firm or corporation which may be appointed by the Manager to act as administrator of the ICAV or any Fund.

"Applicant", an applicant for Shares in a Fund.

"Associate" in relation to a corporation means a holding company or a subsidiary of such corporation or a subsidiary of the holding company of such corporation and in relation to an individual or firm or other unincorporated body, means any corporation directly or indirectly controlled by such person.

"Auditors", the auditors for the time being of the ICAV.

"Base Currency", means the currency of account of a Fund as specified in the relevant Supplement for that Fund.

"Board", the board of Directors of the ICAV from time to time including a duly authorised committee thereof.

"Business Day", in relation to any Fund, shall bear the same meaning as set out in the Prospectus and/or the relevant Supplement for that Fund.

“Central Bank UCITS Regulations” means the Central Bank (Supervision and Enforcement) Act 2013 (Section 48(1) (Undertakings for Collective Investment in Transferable Securities) Regulations 2019 as may be amended, consolidated or substituted from time to time.

“Central Bank”, the Central Bank of Ireland (which definition shall include any regulatory body which may replace or assume the regulatory responsibility of the Central Bank, with regard to collective investment schemes).

“Central Bank Requirements” means the Regulations, the Central Bank UCITS Regulations, and any other statutory instrument, regulations, rules, conditions, notices, requirements or legally binding guidance of the Central Bank issued from time to time applicable to the ICAV, any Fund and/or the Depositary.

"Class", a particular division of Shares in a Fund.

"Clear Days", 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.

“Dealing Day” means in relation to a Fund such Business Day or Business Days as shall be determined by the Directors from time to time and specified in the relevant Supplement for that Fund provided always that there shall be at least two Dealing Days every month occurring at regular intervals.

“Depositary”, any corporation appointed and for the time being acting as Depositary of the ICAV.

“Depositary Agreement”, means any agreement made between the ICAV and/or the Manager and the Depositary relating to the appointment and duties of the Depositary as amended from time to time.

"Directors", the Directors of the ICAV for the time being, or as the case may be, the Directors present at a meeting of the Board.

“Distribution Agreement”, any agreement made between the ICAV and/or the Manager and any Distributor relating to the appointment and duties of the Distributor.

“Distributor” one or more persons, firms or corporations appointed and for the time being acting as distributor of Shares in the ICAV.

"Duties and Charges", in relation to any Fund, all stamp and other duties, taxes, governmental charges, brokerage, bank charges, foreign commission, exchange commissions and spreads, custodian and sub-custodian charges (relating to sales and purchases) transfer fees, registration fees and other duties and charges whether in connection with the original acquisition or increase of the assets of the relevant Fund or the creation, issue, sale, conversion or repurchase of Shares or the sale or purchase of Shares or the sale of purchase of Investments or in respect of certificates or otherwise which may have become or may be payable in respect of or prior to or in connection with or arising out of or upon the occasion of the transaction or dealing in respect of which such duties and charges are payable but shall not include any commission payable to

agents on sales and purchases of Shares or any commission, taxes charges or costs which may have been taken into account in ascertaining the Net Asset Value of Shares in the relevant Fund.

“Equalisation Credit” as may be defined in the Prospectus from time to time.

“Euro or €”, the lawful currency of the participating member states of the European Union which have adopted the single currency in accordance with the EC Treaty of Rome dated 25th March, 1957 (as amended by the Maastricht Treaty dated 7th February 1992).

“Euronext Dublin”, the Irish Stock Exchange.

“Fund” a sub-fund of the ICAV representing the designation by the Directors of a particular Class of Shares as a sub-fund, the proceeds of issue of which are pooled separately and invested in accordance with the investment objectives applicable to such sub-fund.

“Holder”, a holder of Shares.

“ICAV”, Prescient Global Funds ICAV.

“Instrument”, this instrument of incorporation as may be amended from time to time.

“Investment Manager”, any person, firm or corporation appointed and for the time being acting as investment manager to the ICAV or any Fund.

“Investment Management Agreement”, any investment management agreement made between the ICAV and/or the Manager and the Investment Manager relating to the appointment and duties of the Investment Manager as amended from time to time subject to the Central Bank Requirements.

“In writing”, any written, printed or lithographed or photographed material or represented by any other substitute for writing or partly one and partly another.

“Initial Offer Period”, the period set by the Directors in relation to any Class of Shares as the period during which such Shares are initially on offer.

“Initial Offer Price(s)”, the price(s) at which Shares in any Fund are offered for purchase or subscription during the Initial Offer Period.

“Investment or Investments”, any of the assets or property including without limitation transferable securities, liquid financial assets, derivative instruments, money market instruments, units of collective investment schemes and deposits which may be acquired or held or disposed of by the ICAV and financial derivative instruments and techniques and instruments relating to transferable securities and money market instruments employed by the ICAV for efficient portfolio management.

“Ireland” the Republic of Ireland.



"Manager", any person firm or corporation appointed and for the time being acting as manager of the ICAV's affairs.

"Management Agreement" any management agreement made between the ICAV and the Manager relating to the appointment and duties of the Manager as amended from time to time subject to the Central Bank Requirements.

"Member", a person who is registered as the holder of Shares or Subscriber Shares in the Register of Members for the time being kept by the Company.

"Member State" a member state of the European Union.

"Minimum Holding", the minimum number or value of Shares which must be held by a Shareholder in a Fund or Class as determined by the Directors.

"Minimum Investment Amount", such amount or number of Shares as the Directors may from time to time prescribe in a Prospectus in respect of any Fund as the minimum initial subscription amount for Shares or number of Shares of the relevant Class. The Directors may in their sole discretion waive or reduce the Minimum Investment Amount in accordance with Central Bank Requirements.

"Minimum Additional Investment Amount", such amount or number of Shares as the Directors may from time to time prescribe in a Prospectus in respect of any Fund as the minimum amount of any subscription by any Member for additional Shares or additional number of Shares of the relevant Class. The Directors may in their sole discretion waive or reduce the Minimum Additional Investment Amount in accordance with Central Bank Requirements.

"Money Market Instruments" means instruments normally dealt in on the money market which are liquid and have a value which can be accurately determined at any time and which comply with any Central Bank Requirements.

"Net Asset Value" or "Net Asset Value of Shares", in respect of any Fund, the amount determined in accordance with Clauses 17 to 18 inclusive of this Instrument.

"Offer Price", the sum of the Subscription Price and the preliminary charge (if any) applicable to Shares of the particular Fund.

"Office", the registered office of the ICAV.

"Ordinary Resolution" means a resolution of the Members of the ICAV or of the Shareholders of a particular Fund or Class of Shares passed by (i) a simple majority of the votes cast in person or by proxy at a general meeting of the ICAV, Fund or Class of Shares or (ii) a resolution in writing signed by all of the Members (or such other majority of Members as approved by the Directors, permitted under the Act and disclosed in the Prospectus or Supplement for the relevant Fund) of the ICAV, the relevant Fund or Class of Shares for the time being entitled to attend and vote on such resolution at a general meeting.

"Organisational Expenses" the organisational expenses incurred by the ICAV in the conversion to, formation and establishment of the ICAV or a Fund or Class and the raising of its share capital including without limitation the fees of the professional advisers of the ICAV, commissions payable to brokers and others for underwriting placing, selling or guaranteeing or procuring the underwriting, placing, selling of or guaranteeing the subscription for any shares or securities of the ICAV and any costs or expenses (whether incurred directly by the ICAV or not) incurred in connection therewith or with any subsequent application for a listing or quotation of any of the Shares in the ICAV on any Recognised Exchange or any application for registration, authorisation or recognition of the ICAV in any country and any other expenses which the Directors consider to be in the nature of such expenses.

"OTC", means over-the-counter.

"Prospectus" any prospectus issued by the ICAV from time to time in accordance with Central Bank Requirements in connection with the purchase of or subscription for Shares of any Class.

"Redemption", shall include repurchase and "redeemed" shall be construed accordingly.

"Redemption Price", in respect of any Fund the price at which Shares can be repurchased or redeemed, calculated in accordance with Clause 20.

"Register" means the register maintained by or on behalf of the ICAV in which are listed the names of the Members of the ICAV.

"Registration Number", the registration allotted to each Share.

"Recognised Exchanges", the stock exchanges and regulated markets set out in the Prospectus of the ICAV and which meet the Central Bank Requirements (to be regulated, operate regularly, be recognized and open to the public), as may be amended from time to time.

"Regulations", the European Communities (Undertakings for Collective Investment in Transferable Securities) UCITS Regulations, 2011 (S.I. No. 352 of 2011) as amended, and as may be further consolidated or substituted from time to time.

"Relevant Time", such hour of the day set out as the time limit for the purposes of this Instrument as may be specified by the Directors in relation to any Class of Shares, from time to time.

"Seal", the Common Seal of the ICAV, if applicable.

"Secretary", any person appointed by the Directors to perform any of the duties of the Secretary of the ICAV.

"Share" means a redeemable participating share in the capital of the ICAV as more particularly described in Clause 4 of this Instrument and designated in one or more Funds, issued in accordance with this Instrument and having the rights provided for under this Instrument.

"Shareholder", the registered holder of Shares of any Class of the ICAV.

"Signed", includes a signature or representation of a signature affixed by mechanical means.

"Special Resolution" means a special resolution of the Members of the ICAV or the Shareholders of a particular Fund or Class of Shares passed by (i) not less than 75% of the votes cast in person or by proxy at a general meeting of the ICAV, a Fund or Class of Shares or (ii) a resolution in writing signed by all of the Members (or such other majority of Members as approved by the Directors, permitted under the Act and disclosed in the Prospectus or Supplement for the relevant Fund) of the ICAV, the relevant Fund or Class of Shares for the time being entitled to attend and vote on such resolution at a general meeting.

"State", Ireland.

"Subscriber Share", a redeemable non-participating share in the capital of the ICAV issued in accordance with and having the rights provided for in this Instrument.

"Standing Redemption And Payment Instructions" instructions specifying a named and numbered account at one bank to which the proceeds of the redemption or sale of any Shares are to be paid.

"Subscription Price", the price at which Shares of any Class can be subscribed as calculated and determined in accordance with this Instrument.

"Supplement", a Supplement to the Prospectus outlining information in respect of a Fund and/or Class.

"UCITS" means an Undertaking for Collective Investment in Transferable Securities established pursuant to the UCITS Directive. 2009/65/EEC of 13 July, 2009 as amended by Directive 2014/91/EU of the European Parliament and of the Council as amended, consolidated or substituted from time to time.

"UCITS Directive", means Undertakings for the Collective Investment in Transferable Securities (UCITS) Directive 2009/65/EC as amended from time to time.

"United States" or "U.S.", the United States of America or any of its territories, possessions or areas subject to its jurisdiction including the states and the Federal District of Columbia.

"United States Dollars" and "US\$", the lawful currency of the United States.

"United States Person", such meaning as set out in the Prospectus.

"Valuation Point", in respect of any Fund, the time or times as may be specified in the relevant Prospectus or Supplement for the valuation of its assets and liabilities or such other time as the Directors may determine and notify to Shareholders.

- 1.2 All Members shall be bound by the terms of this Instrument to the same extent as if it had been signed and sealed by each Member.

- 1.3 Unless specifically defined in this Instrument or the context otherwise requires, words or expressions contained in this Instrument shall bear the same meaning as in the Act but excluding any statutory modification thereof not in force when this Instrument become binding on the ICAV.

References to Clauses are to Clauses of this Instrument and any reference in a Clause to a paragraph or sub-paragraph shall be a reference to a paragraph or sub-paragraph of the Clause in which the reference is contained unless it appears from the context that a reference to some other provision is intended.

The headings and captions included in this Instrument are inserted for convenience of reference only and shall not be considered a part of or affect the construction or interpretation of this Instrument.

In this Instrument, 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 (whether corporate or not).

References to enactments and to provisions of enactments shall include reference to any modifications or re-enactments thereof for the time being in force.

Except as otherwise expressly provided, references to times of day shall be to local time in Ireland.

The word "currency" shall refer to the currency in which the Shares concerned are designated.

## **2. Objective**

- 2.1 The ICAV is an umbrella type Irish Collective Asset-management Vehicle with variable capital and with segregated liability between Funds established as an undertaking for collective investment in transferable securities pursuant to the Regulations.

- 2.2 The sole object of the ICAV is the collective investment in either or both transferable securities and other liquid financial assets referred to in Regulation 68 of the Regulations of capital raised from the public and which operates on the principle of risk spreading. The ICAV may take any measure and carry out any operations which it may deem useful or necessary to the accomplishment and development of its purpose to the full extent permitted by applicable law, the Regulations and the Central Bank Requirements, including the powers listed hereafter. The powers of the ICAV to attain the said object are:-

- a. To carry on the business of an Irish Collective Asset-management Vehicle and for that purpose to acquire, dispose of, invest in and hold by way of investment either in the name of the ICAV, or in that of any nominee:-
  - i. shares, stocks, warrants, debentures, debenture stock, loan stock, bonds, notes, financial instruments, obligations and whether or not fully paid up and whether or not payment is to be made at the time of issue or on a delayed delivery basis and

to subscribe for the same, either conditionally or otherwise, subject to such terms and conditions (if any) as may be thought fit to enter into underwriting and similar contracts with respect thereto and to exercise and enforce all rights and powers conferred by or incidental to the ownership thereof;

- ii. certificates of deposit, treasury bills, trade bills, bank acceptances, bills of exchange, money market instruments, fixed rate securities, units, variable or floating rate securities, securities in respect of which the return and or redemption amount is calculated by reference to any index, price or rate;
  - iii. commercial paper, promissory notes, obligations and securities and financial instruments of all kinds created, issued or guaranteed by any government, sovereign, state, ruler, dominion, colony, commissioners, public body or authority, supreme, trust, municipal, local, supranational authority 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;
  - iv. contracts (including contracts which are not traded on an exchange and which are not readily realisable investments) on and for physical commodities, currencies, futures contracts, options on futures contracts and on physical commodities, cash and forward contracts, foreign exchange commitments, swaps and other commodity-related contracts;
  - v. units of or participation in any unit trust scheme, mutual fund or collective investment scheme in any part of the world (including without limitation the ICAV) pursuant to and in accordance with Regulation 32A of the Regulations as amended from time to time;
  - vi. policies of assurance and insurance;
  - vii. domestic and foreign currency; and
  - viii. any present or future rights and interests to or in any of the foregoing, and from time to 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.
- b. To acquire and dispose of any such assets or property specified in Clause 2.2 (a) by original subscription, contract, tender, purchase, exchange, transfer, assignment, participation whether in syndicates or otherwise, and whether or not fully paid up and whether or not payment is to be made at the time of issue or on a delayed delivery basis and to subscribe for the same, either conditionally or otherwise, subject to such terms and conditions (if any) as may be thought fit and to exercise and enforce all rights and powers conferred by or incidental to the ownership thereof and advance, deposit or lend securities and/or property (being those items which the ICAV is empowered to invest or

otherwise deal in pursuant to Clause 2.2 (a) above) 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;

- c. To employ, utilise, acquire or dispose of derivative instruments and techniques of all kinds whether for the purposes of investment and/or for the efficient management of the ICAV's assets as may be permitted by the Regulations and the Central Bank UCITS Regulations and in particular, without prejudice to the generality of the foregoing, to enter into, accept, issue, write and otherwise deal with rate swap transactions, swap options, basis swaps, forward rate transactions, equity or equity index swaps, equity or equity index options, bond options, interest rate options, foreign exchange transactions, cap transactions, floor transactions, collar transactions, currency swap transactions, cross-currency rate swap transactions, currency options, credit protection transactions, credit swaps, credit default swaps, credit default options, total return swaps, credit spread transactions, repurchase transactions, reverse repurchase transactions, buy/sell-back transactions, securities lending transactions when issued, delayed delivery transactions, or forward purchases or sales of a security, or other financial instrument or interest (including any option with respect to any of these transactions) forwards, swaps, futures, options or other derivatives on one or more rates, currencies, equity securities or other equity instruments, debt securities or other debt instruments, economic indices or measures of economic risk or value, or other benchmarks against which payments or deliveries are to be made and any combination of these transactions or other instruments which are similar thereto or derived therefrom whether for the purpose of investment, making a profit or avoiding a loss or managing a currency or interest rate exposure or any other exposure or for any other purpose;
- d. Only in the cases and under the conditions specified in the Regulations and the Central Bank UCITS Regulations to establish or acquire any wholly owned subsidiary or subsidiaries of the ICAV for the benefit of the ICAV as a whole or one or more sub-funds established or to be established by the ICAV (the investments, assets and shares of which are held by the Depositary) with the prior approval of the Central Bank and to capitalise any such subsidiary in any manner as the Directors of the ICAV may from time to time consider appropriate including by way of share capital, loan or otherwise;
- e. To advance, deposit or lend money, securities and/or property (being those items which the ICAV is empowered to invest or otherwise deal in pursuant to Clause 2.2 (a) and (b) above) 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;
- f. To exercise and enforce all rights and powers conferred by or incidental to the ownership of any such shares, stock, obligations, bonds, notes, financial instruments or other securities;

- g. To carry on the business of an Irish Collective Asset-management Vehicle and to invest the funds of the ICAV in or upon or otherwise acquire hold and deal in securities and investments of every kind;
- h. 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;
- i. 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 other purpose which the ICAV may think expedient;
- j. To receive moneys 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 in particular by the issue of, bonds, debentures or debenture stock, perpetual or redeemable, and to secure the repayment of any money borrowed, raised or owing by mortgage, charge or lien against the whole or any part of the ICAV's undertaking, property or assets (whether present or future) including its uncalled capital or generally in any other manner as the Directors shall from time to time determine, and also by a similar mortgage charge or lien to secure or guarantee the performance of any obligation or liability undertaken by the ICAV or any person or company;
- k. To acquire (by way of investment or otherwise) by purchase, exchange, lease, hire, fee farm grant or otherwise, either for an estate in fee simple or for any less estate or other estate or interest, whether immediate or reversionary and whether vested or contingent, any lands, tenements or hereditaments of any tenure, whether subject or not to any charges or incumbrances, real or personal property wheresoever situate of any kind or of any tenure or any interest in the same; and to hold, farm, work and manage and to let, sublet, mortgage or charge land and buildings of any kind, reversions, interests, annuities, life policies, and any other property real or personal, movable or immovable, either absolutely or conditionally, and either subject or not to any mortgage, charge, ground rent or other rents or incumbrances;
- l. To erect or secure the erection or construction of buildings of any kind with a view to occupying or letting them and to enter into any contracts or leases and to grant any licences necessary to effect the same;
- m. 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 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 and to pay all the expenses of or incidental to such promotion and for such purposes subject to the Regulations and the Central Bank UCITS Regulations to establish subsidiary companies;

- n. To create, issue, make, draw, accept, endorse, execute, discount, negotiate and otherwise deal with redeemable debentures, bonds or other obligations, bills of exchange, cheques, promissory notes, letters of credit or other negotiable or transferable instruments;
- o. To redeem or otherwise acquire in any manner permitted by law and on such terms and in such manner as the ICAV may think fit any shares in the capital of the ICAV;
- p. To guarantee, support or secure, whether by personal covenant or by mortgaging or charging all or any part of the undertaking, property and assets (present and future) and uncalled capital of the ICAV or by both such methods the performance of the obligations of, and the repayment or payment of the principal amounts of and the premiums, interest and dividends on any security of any person, firm or company;
- q. To lend the funds of the ICAV with or without security and at interest or free of interest and on such terms and conditions as the Directors shall from time to time determine;
- r. To issue loan stock on such terms as the ICAV may deem appropriate including rights to convert such loan stock into shares in the ICAV;
- s. 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 paid up shares, debentures, or obligations of the ICAV or undertake all or any of the liabilities of such person, firm, association or company;
- t. To accumulate capital for any of the purposes of the ICAV, and to appropriate any of the ICAV's assets to specific purposes, either conditionally or unconditionally, and to admit any class or section of those who have any dealings with the ICAV to any share in the profits thereof or in the profits of any particular branch of the ICAV's business or to any other special rights, privileges, advantages or benefits;
- u. To reduce the share capital of the ICAV in any manner permitted by law;
- v. To make gifts or grant bonuses to officers or other persons who are or have been in the employment of the ICAV and to allow any such persons to have the use and enjoyment of such property, chattels or other assets belonging to the ICAV upon such terms as the ICAV shall think fit;
- w. 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;
- x. 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;

- y. To employ any person, firm, company or other body to provide services to the ICAV incidental to the pursuit of its objects and/or 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;
- z. To remunerate any person, firm or ICAV rendering services to the ICAV;
- (aa) 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 ICAV is authorised to carry on or engage in, or any business or transaction capable of being conducted so as directly or indirectly to benefit the ICAV, and to take or otherwise acquire and hold, sell, re-issue, or otherwise deal with shares or stock in or securities or obligations of, and to subsidise or otherwise assist any such securities or obligations or any dividends upon any such shares or stock;
- (ab) 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;
- (ac) 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;
- (ad) To distribute among the members of the ICAV in specie any assets of the ICAV or any proceeds of sale or disposal of any assets of the ICAV and in particular to repay any surplus or premiums on any shares of the ICAV;
- (ae) 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 whether or not for the purpose of a merger, amalgamation or otherwise 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;
- (af) 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;

- (ag) 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;
- (ah) 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 and the ongoing operation of its business activities, 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;
- (ai) 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;
- (aj) 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;
- (ak) To the extent permitted by law to obtain and hold, either alone or jointly with any person or ICAV, insurance cover in respect of any risk of the ICAV and any persons who are or were at any time its directors, officers, employees and agents and to pay any premium thereon;
- (al) To create, maintain, invest and deal with any reserve or sinking funds for redemption of obligations of the ICAV, or for depreciation of works or stock, or any other purpose of the ICAV;
- (am) To the extent permitted by law undertake the office of administrator, committee, manager, secretary, registrar, attorney, delegate, substitute or treasurer and to perform and discharge or contract with any person or company to discharge, the duties and functions incidental thereto;
- (an) To procure the ICAV or its share capital to be registered, authorised or recognised with any body or association in any foreign country, colony, dependency, municipality or place;
- (ao) 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;
- (ap) Each of the ancillary objects and powers of the ICAV (whether enumerated or not) is to be interpreted and exercised as ancillary to the main object but separate from and ranking equally to any other ancillary power;

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

### **3. Organisational Expenses**

3.1 Any Organisational Expenses payable by the ICAV may in the accounts of the ICAV be carried forward and amortised in such manner and over such period as the Directors may determine and the Directors may at any time and from time to time determine to lengthen or shorten any such period. Any Organisational Expenses attributable to one or more Funds shall be allocated between the relevant Funds pro rata and shall be subject to such adjustment following the establishment of new Funds as the Directors may determine.

3.2 The ICAV and/or each Fund or each Class, where expenses or liabilities are attributable specifically to a Class, shall also bear the following expenses and liabilities or, where appropriate, its pro rata share thereof subject to adjustment to take account of expenses and/or liabilities attributable to one or more Classes:-

- (i) all fees and expenses payable to or incurred by the ICAV, the Manager, the Depositary, the Administrator, the Investment Manager (including any performance fee) and/or any adviser or distributor appointed by or on behalf of the ICAV and their respective delegates;
- (ii) Duties and Charges, all taxes or government 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;
- (iii) all fees and expenses of the Directors;
- (iv) the remuneration and expenses of any paying agent or representative appointed in any jurisdiction in compliance with the law or other requirements of that jurisdiction;
- (v) the remuneration, commissions and expenses incurred or payable in the marketing, promotion and distribution of Shares including without limitation commissions payable to any person in consideration of his subscribing or agreeing to subscribe or procuring or agreeing to procure subscriptions for any Shares in the ICAV and the costs and expenses of preparation and distribution of all marketing material and advertisements;
- (vi) all fees and expenses connected with the preparation, publication and supply of information to Members and the public including, without limitation, the cost of preparing, translating, printing, distributing the Prospectus and any periodic updates thereof, the annual audited report, the half-yearly reports and any other periodic reports and the

calculation, publication and circulation of the Net Asset Value per Share and of any notices given to Members in whatever manner;

- (vii) all fees and expenses incurred or payable in registering and maintaining a Fund or Class registered with any and all governmental and/or rating agencies, clearance and/or settlement systems and/or any exchanges in any various countries and jurisdictions including, but not limited to, all translation expenses;
- (viii) all fees and expenses incurred or payable in listing and in maintaining the listing of the Shares on Euronext Dublin (or other exchange or market to which Shares may be admitted);
- (ix) legal and other professional fees and expenses incurred by the ICAV or by or on behalf of its delegates in any actions taken or proceedings instituted or defended to enforce, protect, safeguard, defend or recover the rights or property of the ICAV;
- (x) any amount payable under indemnity provisions contained in this Instrument or any agreement with any functionary of the ICAV other than provisions indemnifying the functionary against claims arising from negligence, fraud, wilful default, breach of duty or breach of trust;
- (xi) all sums payable in respect of any policy of insurance taken out by the ICAV including, without limitation, any policy in respect of directors' and officers' liability insurance cover;
- (xii) all other liabilities and contingent liabilities of the ICAV of whatsoever kind and all fees and expenses incurred in connection with the ICAV's operation and management including, without limitation, all ICAV secretarial expenses and all Companies Registration Office filings and statutory fees and all regulatory fees;
- (xiii) all expenses involved in obtaining and maintaining a credit rating for the ICAV from any rating agency;
- (xiv) all fees and expenses of the Auditors, tax, legal and other professional advisers and ICAV secretarial fees and any valuer or other supplier of services to the ICAV;
- (xv) the costs of any amalgamation or restructuring of the ICAV or any Fund;
- (xvi) the costs of winding up the ICAV or terminating any Fund;
- (xvii) all fees and expenses incurred in connection with the convening and holding of Members' and Directors' meetings;
- (xviii) all statutory fees, regulatory fees or levies imposed by the Central Bank or any other statutory or regulatory body on the ICAV or any Fund;
- (xix) all investment management research fees incurred by the relevant Fund or Class;

- (xx) all other liabilities and contingent liabilities of the ICAV or any Fund of whatsoever kind and all fees and expenses incurred in connection with the operation, administration and management of the ICAV or any Fund or as may be deemed incidental or conducive to objectives, powers or policy of the ICAV or the policies of a Fund;
- (xxi) all other fees and all expenses incurred in connection with the ICAV's operation and management;

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

All recurring expenses will be charged against current income or against realised and unrealised capital gains, and, if the Directors so determine and subject to Central Bank Requirements, against the capital or assets of the ICAV or Fund or against that proportion thereof attributable to the relevant Class as the Directors may from time to time decide and may be carried forward and amortised in such manner and over such period as the Directors may determine and the Directors may at any time lengthen or shorten any such period.

## **PART II – SHARE CAPITAL AND RIGHTS**

### **4. Share Capital and Allotment of Shares**

- (a) The Directors are hereby generally and unconditionally authorised to exercise all the powers of the ICAV to allot and issue shares in the ICAV on such terms and in such manner as they may think fit, in each case in accordance with this Instrument, any applicable Central Bank Requirements and the Act.
- (b) The share capital of the ICAV shall be equal at all times to the value for the time being of the issued share capital of the ICAV. The actual value of the paid up share capital of the ICAV shall at all times be equal to the value of the assets of the ICAV after deduction of its liabilities. The share capital of the ICAV is to be divided into a specified number of shares without assigning any nominal value to them.
- (c) Shares of the ICAV shall be divided into Shares of no nominal value and Subscriber Shares of no nominal value. The authorised share capital of the ICAV is 60,000 redeemable Subscriber Shares of no par value and 500,000,000,000 Shares of no par value provided however that any shares that have been redeemed shall be deemed never to have been issued for the purpose of calculating the maximum amount of shares to be issued. The ICAV shall issue shares as fully paid up in accordance with this Instrument, Central Bank Requirements and the Act. The liability of Members in respect of payment on their shares shall be limited to the amount, if any, unpaid, on the shares respectively held by them. As more specifically described in Clause 19 of this Instrument, Shares shall at the request of any of the Shareholders, be purchased by the ICAV directly or indirectly out of the Investments of the ICAV unless and to the extent as may be provided for in this Instrument, approved by the Central Bank and subject to such requirements as may be imposed by the Central Bank under the Act or any other enactment.

- (d) The Directors may issue any of the unclassified shares in the capital of the ICAV as Shares in a particular Fund and, if required, a particular Class in a Fund. The ICAV is an umbrella type Irish collective asset-management vehicle comprising separate Funds, which may comprise one or more Classes of Shares and with segregated liability between Funds. The Investments of each Fund shall belong exclusively to the relevant Fund and shall not be used to discharge directly or indirectly the liabilities of or claims against any other Fund. No Shareholder shall have any interest in the Investments of any Fund. Subject to the Act, any liability incurred on behalf of or attributable to any Fund shall be discharged solely out of the assets of that Fund. On or before the issue of any Share the Directors shall specify the Class and Fund in relation to which such Share is designated. Different Classes of Shares shall not be treated as separate Classes for voting purposes unless the matter being voted upon would constitute a variation or abrogation of the rights of the relevant Class.
- (e) The Directors may from time to time establish, with the prior approval of the Central Bank, additional Funds and/or in accordance with the Central Bank Requirements, designate additional Classes and issue Shares in such Funds or Classes.
- (f) Subject to the Central Bank Requirements, the Directors may in their absolute discretion differentiate between the Shares in any Class or Fund including without limitation as to the fees payable in respect thereof, dividend policy, currency denomination, voting rights, return of capital, hedging, use of techniques and instruments for efficient portfolio management or to provide protection against exchange risks and such Shares may have preferred, deferred or other special rights, privileges or restrictions attached thereto. Subject to the Central Bank Requirements and with the prior approval of the Central Bank, the ICAV may establish hedged and/or unhedged Classes of Shares in any Fund.
- (g) All monies payable for or in respect of Shares (including without limitation the subscription and repurchase monies in respect thereof) shall be paid in the currency in which such Share is designated or in such other currency as the Directors shall determine either generally or in relation to a particular Class of Shares or in any specific case.
- (h) 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 and may cease to offer Shares in the ICAV for allotment or subscription for a definite period or otherwise.
- (i) Without prejudice to any special rights previously conferred on the holders of any existing Shares or Class of Shares, any Share in the ICAV may be issued with such preferred, deferred, or other rights or restrictions, whether in regard to dividends, voting, return of capital or otherwise, as the Directors may from time to time determine.
- (j) Subject to the foregoing, the Shares of the ICAV shall be at the disposal of the Directors and (subject to the provisions of the Act) they may allot, grant options over or otherwise dispose of them to such persons on such terms and conditions and at such times as they may consider to be in the best interests of the ICAV and the Members.

- (k) The Directors may delegate to any duly authorised Director or officer of the ICAV, or to any duly authorised person, the duties of accepting the subscription for, receiving payment for, and delivering, such new Shares.
- (l) On any issue of Shares, the ICAV may pay any brokerage or commissions.

## **5. Shares**

- (a) Shares may only be issued fully paid and shall have no par value.
- (b) The rights and restrictions attaching to Shares shall be as follows:-
  - i) the holder of each whole Share shall, on a vote taken on a show of hands, be entitled to one vote per holder and, on a poll, be entitled to one vote per Share;
  - ii) the holder of each Share shall be entitled to such dividends as the Directors may from time to time declare;
  - iii) in the event of a winding up or dissolution of the ICAV the holder of each Share shall have the rights referred to in Clause 117.

## **6. Subscriber Shares**

- (a) Subscriber Shares shall have no par value.
- (b) Subscriber Shares shall be subject to requisition under Clause 28 of this Instrument.
- (c) The holder of a Subscriber Share shall on a vote taken on a show of hands, be entitled to one vote and, on a poll, be entitled to one vote for all Subscriber Shares held.
- (d) The holders of the Subscriber Shares shall not participate in the dividends or assets attributable to Shares by the ICAV and the dividends, if any, and net assets attributable to the Subscriber Shares shall be segregated from and shall not form part of the other assets of the ICAV.
- (e) In the event of a winding up or dissolution of the ICAV, the holder of a Subscriber Share shall have the rights referred to in Clause 117.

## **7. Variation of Rights**

- (a) The rights attaching to any Class or Fund may, whether or not the ICAV is being wound up, be varied or abrogated with the consent in writing of the holders of three-fourths of the issued Shares of that Class or Fund, or with the sanction of an Ordinary Resolution passed at a separate general meeting of the Shareholders of that Class or Fund. To every such separate general meeting the provisions of these presents relating to general meetings shall apply provided that the necessary quorum at any such meeting (other than an adjourned meeting) shall be two Shareholders holding or representing by proxy at

least one third of the issued Shares of the Fund or Class in question and, at an adjourned meeting, one Shareholder holding Shares of the Fund or Class in question or his proxy.

- (b) 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 the terms of issue of the Shares of that Class, be deemed to be varied by the creation or issue of further Shares ranking pari passu therewith.

## 8. Funds

All consideration, other than the preliminary charge (if any) pursuant to Clause 14, received by the ICAV for the allotment or issue of Shares of each Class, 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 in the Fund to which such Class relates from all other monies of the ICAV and to which the following provisions shall apply:-

- (a) the records and accounts of each Fund shall be maintained separately in the Base Currency of the relevant Fund with the assets and liabilities being allocated to the relevant Fund;
- (b) for each Fund, the ICAV shall keep separate records in which all transactions relating to the relevant Fund shall be recorded and to which the proceeds from the issue of Shares in each Fund and the assets and liabilities and income and expenditure attributable to each Fund shall be applied subject to the provisions of this Clause;
- (c) subject to paragraph (f) & (i), the assets of each Fund shall belong exclusively to that Fund, shall be segregated, in the records of the Depositary, from the assets of other Funds, 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;
- (d) the proceeds from the issue of each Class of Share shall be applied to the relevant Fund established for that Class of Share, and the assets and liabilities and income and expenditure attributable thereto shall be applied to such Fund subject to the provisions of this Instrument;
- (e) where any asset is derived from another asset, the derived asset shall be applied to the same Fund as the assets from which it was derived and on each revaluation of an asset the increase or diminution in value shall be applied to the relevant Fund;
- (f) in the case of any asset which the Directors do not consider as attributable to a particular Fund or Funds, the Directors shall have discretion, subject to the approval of the Depositary and the Auditors, to determine the basis upon which any asset shall be allocated between relevant Funds from time to time and to vary such basis provided that the approval of the Depositary and of the Auditors shall not be required in any case where the asset is allocated between all Funds pro rata to their Net Asset Values at the time when the allocation is made;



- (g) where the ICAV incurs a liability which relates to any asset of a particular Fund or to any action taken in connection with an asset of a particular Fund, such liability shall be allocated to that Fund;
- (h) in the case of any liability which the Directors do not consider as attributable to a particular Fund or Funds, the Directors shall have discretion, subject to the approval of the Depositary and the Auditors, to determine the basis upon which any liability shall be allocated between Funds or as between Share Classes in the same Fund (including conditions as to the subsequent re-allocation thereof if circumstances so permit) and shall have power at any time and from time to time to vary such basis, provided that the approval of the Depositary and the Auditors shall not be required in any case where a liability is allocated to the Fund or Funds (or to a Share, Class or Classes in a particular fund) to which in the opinion of the Directors it relates or if in the opinion of the Directors it does not relate to any particular Fund or Funds, between all the Funds pro rata to their Net Asset Values;
- (i) subject to the approval of the Depositary and the Auditors, the Directors may transfer any assets to and from Funds if, as a result of a creditor proceeding against certain of the assets of the ICAV or otherwise, a liability would be borne in a different manner from that in which it would have been borne above or in any similar circumstances;
- (j) where hedging strategies are used in relation to a Fund or Class, the financial instruments used to implement such strategies shall be deemed to be assets or liabilities (as the case may be) of the relevant Fund as a whole but the gains/losses on and the costs of the relevant financial instruments will accrue solely to the relevant Class. Any currency hedging transaction relating to a Hedged Currency Share Class shall be valued in accordance with Clause 18 hereof and shall be clearly allocated to the relevant Hedged Currency Share Class;

Provided that all liabilities of or attributable to a Fund shall be discharged solely out of the assets of that Fund and the costs of or attributable to a Fund shall not be applied in satisfaction of any liability incurred on behalf of or attributable to any other Fund.

## **9. Trusts Not Recognised**

No notice of any trust, express, implied or constructive shall be entered on the Register and, except as required by law, no person shall be recognised by the ICAV as holding any Shares 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 (except only as by this Instrument or by law otherwise provided) any other rights in respect of any Share except an absolute right to the entirety thereof in the registered holder. This shall not preclude the ICAV from requiring a Member 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.

## PART III - SHARES

### 10. Dealing Days

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

Provided that there shall be at least two Dealing Day in each calendar month (occurring at regular intervals) and in the event of any change in a Dealing Day reasonable notice thereof shall be given by the Directors to Shareholders in the relevant Fund or Class.

### 11. Issue of Shares

- (a) Subject as hereinafter provided, the ICAV, on receipt by it or its authorised agents of the following:-
  - (i) an irrevocable application for Shares in such form as the Directors may from time to time determine;
  - (ii) such declarations as to the applicant's status, identity residence or otherwise as the Directors from time to time may require; and
  - (iii) payment for Shares in such manner and within such usual time limits as the ICAV from time to time may specify;

may issue any Shares at the Offer Price for each Class of Share determined in accordance with Clause 12 of this Instrument, or provided that the application referred to in sub-paragraph (a) (i) above has been received may allot such Shares pending receipt of cleared funds and/or such information and declarations referred to in sub-paragraph (a) (ii) above. Applications should be made in such form as the Directors determine from time to time and set out in the Prospectus. The Directors may in their absolute discretion refuse to accept or may reject an application for Shares in the ICAV or may accept applications in whole or in part. If an application is rejected, any monies received will be returned to the applicant (but without interest, costs or compensation) as soon as possible.

- (b) Payment for Shares shall be made in such currency at such time, place and manner and to such person on behalf of the ICAV as the Directors may from time to time determine.
- (c) The allotment of Shares shall (unless the Directors otherwise agree) be made on terms that (unless settlement has already been effected) the applicant shall effect settlement

within such period and in such currency or currencies as the Directors or their delegate may determine to be appropriate to receive subscriptions and otherwise in the manner determined by the Directors as disclosed in the Prospectus. If payment in full in cleared funds in respect of a subscription has not been received by the Relevant Time or in the event of non-clearance, any allotment of Shares made in respect of such application may be cancelled. In such event and notwithstanding cancellation of the application, the ICAV or its delegate may charge the applicant for any expense incurred by it or the ICAV for any loss to any Fund arising out of such non-receipt or non-clearance provided always that if the Directors receive payment for Shares in a currency other than the Base Currency the Directors may convert or arrange for the conversion of such monies received into the Base Currency and shall be entitled to deduct therefrom all expenses incurred in such conversion. The Directors may, at their discretion and in accordance with Clause 12(c) hereof, allot Shares for consideration other than cash or may sell, dispose of or otherwise convert such non-cash consideration into cash and apply such non-cash consideration (net of expenses incurred in the conversion) for the purchase of Shares. The Director shall not be bound but shall be entitled to await the arrival of cleared funds in the Base Currency in settlement before proceeding to issue the Shares.

- (d) The issue or allotment of Shares pursuant to this Clause shall be made on the Dealing Day on which the application is received provided that such application is received, in respect of an application to be made during the Initial Offer Period, before the expiry of such period and, in respect of an application made after the Initial Offer Period no later than the Relevant Time for receipt thereof. If the application is received outside the Relevant Time unless otherwise determined by the Directors and provided it is before the Valuation Point, it shall be treated as an application for Shares on the Dealing Day following such receipt.
- (e) The ICAV may (at the option of the Directors) satisfy any application for the allotment of Shares of any Class by procuring the transfer to the applicant of fully-paid Shares of the relevant Class and the effective date of such transfer shall be the relevant Dealing Day. In any such case, references in this Instrument to allotting Shares shall where appropriate be taken as references to procuring the transfer of Shares.
- (f) No allotment shall be made under Clause 4 in respect of an application which would result in the applicant subscribing less than the Minimum Investment Amount or holding less than any Minimum Holding provided that the Directors may subject to Central Bank Requirements, in their discretion, waive or reduce the Minimum Investment Amount or Minimum Holding with respect to any Shareholder or applicant for Shares.
- (g) Allotment of Shares may take place provisionally notwithstanding that cleared funds or the original papers specified in Clause 11 (a) hereof have not been received by the ICAV or its authorised agent PROVIDED THAT if such funds and papers have not been received within such period as the Directors may determine, the Directors may cancel any allotment made and make any necessary alteration in the relevant Register and such Shares shall be deemed never to have been issued. The ICAV may charge the applicant or, if the applicant is a Shareholder, redeem or sell all or part of his holding of Shares and use the proceeds thereof to satisfy and make good any loss, cost, expense or fees

suffered by the ICAV as a result of non receipt of such funds or papers within such time limits as may be specified by the Directors.

- (h) For the purposes of Clauses 12, 18(c) and 19:-
  - (i) Shares of the Class concerned which have been allotted but not issued on a Dealing Day shall be deemed to be in issue on receipt of payment therefor and Shares of the Class concerned whose allotment has been cancelled and the relevant application monies have not been returned to the applicant on or prior to a Dealing Day shall be deemed to cease to be in issue at the close of business on the day of such cancellation; and
  - (ii) Shares of the Class concerned which have been repurchased on a Dealing Day in accordance with Clause 19 shall be deemed to have ceased to be in issue at the close of business on the Dealing Day on which they are repurchased.
- (i) Where an amount received for Shares applied for is not an exact multiple of their Offer Price:-
  - (i) where the amount is equal to or greater than .001 of the Offer Price for a Share, a fraction of a Share shall be allotted to the incoming member who shall be registered as the holder of such a fraction; and
  - (ii) where the amount received is less than .001 of the Offer Price for a Share, such amount will not be returned to the applicant but will be retained by the ICAV in order to defray administration costs.

In addition to the foregoing, the Directors may determine not to return any amount received for Shares which is less than a whole unit of denomination specified by them of any particular currency.

The rights, entitlement and benefits of the holder of a Share under the Clauses are granted to a holder of a fraction of a Share in proportion to the fraction of the Share held by him and, except where the context otherwise requires or is otherwise provided herein, reference in the Clauses to "Share" shall include a fraction of a Share. Notwithstanding anything contained in the Clauses the holder of a fraction of a Share may not exercise any voting rights in respect of such fraction of a Share.
- (j) The Directors reserve the right from time to time to resolve to close any Fund, Class or Classes of Shares to new subscriptions from existing Shareholders and/or new applicants, for (i) a specified period, (ii) until they otherwise determine or (iii) on a permanent basis. During any such period, Shares of that Fund or Class(es) will not be available for subscription and the Directors are not required to provide advance notice of such closure to Shareholders.
- (k) The Directors may at their discretion levy a Performance Fee to be paid to such parties and in such form as described in the Prospectus. If applicable, at the end of each

Performance Fee calculation period (the "Calculation Period"), the Performance Fee per Share may be calculated in respect of all Shares subscribed on each Dealing Day during that Calculation Period as described in the Prospectus.

## 12. Offer/Subscription Price per Share

- (a) The Initial Offer Price(s) per Share at which Shares of any Class shall be allotted and issued during the Initial Offer Period shall be determined by the Directors at least twice per calendar month at regular intervals.
- (b) Save as provided in paragraph (c) the Subscription Price per Share of any Class to be issued subsequent to the initial issue(s) following the Initial Offer Period shall be ascertained on the relevant Dealing Day by:-
  - (i) determining the Net Asset Value of the relevant Class of Shares calculated in respect of the Valuation Point on the Dealing Day on which the subscription is to be made under Clauses 17 and 18 of this Instrument and adding thereto such sum as the Directors may consider represents an appropriate figure for Duties and Charges and any other amounts necessary to account for actual expenditure on the purchase of underlying investments;
  - (ii) dividing the amount calculated under (a) above by the number of Shares of the Class in issue or deemed to be in issue at the relevant Valuation Point;
  - (iii) in the event of subscription applications exceeding redemption requests for the relevant Fund on any Dealing Day and if the Directors so determine, the Directors may on any dealing day on which there are net subscriptions adjust, as relevant, the subscription price by adding an anti-dilution levy to cover dealing costs and to preserve the value of the underlying assets of the ICAV and/or the relevant Fund as the Directors may determine;
  - (iv) adjusting such amount as may be necessary to round the resulting amount to the nearest three decimal places, (or such other number of decimal places as the Directors deem appropriate), of the currency in which such Shares are designated.
- (c) Subject to the provisions of the Act and the Regulations, the Directors on any Dealing Day may issue Shares of any Class on terms providing for settlement to be made by the vesting in the ICAV of any Investments and in connection therewith the following provisions shall apply:-
  - (i) in the case of a person who is not an existing Shareholder no Shares shall be issued until the person concerned shall have completed and delivered to the ICAV or its duly authorised agent an Application Form as required under this Instrument and satisfied all the requirements of the Directors, any distributor and the ICAV or its delegate as to the application;

- (ii) the nature of the Investments to be transferred into the relevant Fund are such as would qualify as Investments of such Fund in accordance with the investment objectives, policies and restrictions of such Fund;
- (iii) no Shares shall be issued until the Investments shall have been vested in the Depositary or any sub-custodian to the Depositary's satisfaction or arrangements have been made to vest the Investments in the Depositary or any sub-custodian to the Depositary's satisfaction and the Depositary shall be satisfied that the terms of such settlement will not be such as are likely to result in any material prejudice to the existing Shareholders of the relevant Fund;
- (iv) any exchange shall be effected upon the terms (including provision for paying any expenses of the exchange and any preliminary charge as would have been payable for Shares issued for cash) that the number of Shares issued shall not exceed the number which would have been issued for cash against payment of a sum equal to the value of the Investments concerned calculated in accordance with the principles set out in Clause 18(c). Such sum may be increased by such amount as the Directors may consider represents an appropriate provision for Duties and Charges which would have been incurred by the relevant Fund in the acquisition of the Investments by purchase for cash or decreased by such amount as the Directors may consider represents any Duties or Charges to be paid to the relevant Class Fund as a result of the direct acquisition by the Fund of the Investment.

### **13. Minimum Investment Amount**

The Directors may decline to issue Shares to satisfy any application unless:-

- (a) the amount in value of the Shares to which an application relates equals or exceeds:-
  - (i) the Minimum Investment Amount or its equivalent in another currency or such amount as the Directors may from time to time determine in relation to any Class of Shares; or
  - (ii) such minimum amount of investment in Classes of Shares as the Directors may from time to time determine where an application is made for Shares of two or more Classes; or
- (b) the applicant is already the holder of Shares and the amount in value of the Shares to which the application relates equals or exceeds the Minimum Additional Investment Amount or such other amount as the Directors may determine.

### **14. Preliminary Charge**

The Directors may, in their absolute discretion, require any person to whom any Class of Shares are to be allotted to pay to the ICAV, the Manager or any duly authorised agent of the ICAV or the Manager for the absolute use and benefit of the ICAV or, if the ICAV has appointed a Manager,

the Manager, or as the ICAV or, if the ICAV has appointed a Manager, the Manager may direct either upon the initial issue of Shares or on a contingent deferred basis a preliminary charge at a rate to be determined by the Directors by reference to the aggregate amount subscribed but not exceeding in respect of each Share to be allotted an amount equal to 5.00 % of the Subscription Price (or such lesser amount as may be specified in a Prospectus) for such Share rounded up to the nearest two decimal places of the currency in which such Shares is designated. 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 any duly authorised agent of the ICAV as to the amount of initial preliminary charge to be levied on each Class of Shares (subject to the maximum aforesaid). The sum of Subscription Price and the preliminary charge shall be the Offer Price.

#### **15. Suspension of Issue**

No Shares of any particular Class shall be allotted or issued during any period when the determination of the Net Asset Value of that Class of Share is suspended pursuant to this Instrument hereof except those for which applications have been previously received and accepted by the ICAV or its authorised agent.

#### **16. Restrictions on Shareholders/Qualified Holders**

- (a) The Directors may impose such restrictions as they may think necessary for the purpose of ensuring that no Shares in the ICAV are acquired or held directly or beneficially by:
  - (i) any person in breach of the law or requirements of any country or governmental authority by virtue of which such person is not qualified to hold Shares including without limitation any exchange control regulations;
  - (ii) a US Person other than pursuant to an exemption available under the Securities Act;
  - (iii) any person, whose holding would cause or be likely to cause the ICAV to be required to register as an “investment ICAV” under the United States Investment Company Act of 1940 or to register any class of its securities under the Securities Act or similar statute;
  - (iv) any person or persons in circumstances (whether directly or indirectly affecting such person or persons and whether taken alone or in conjunction with any other person or persons connected or not, or any other circumstances appearing to the Directors to be relevant) which in the opinion of the Directors might result in the ICAV or the Shareholders as a whole or any Fund or Class incurring any liability to taxation or suffering legal, pecuniary, regulatory or material administrative disadvantage which the ICAV or the Shareholders as a whole or any Fund or Class might not otherwise have incurred or suffered;
  - (v) any person who does not supply any information or declarations required by the Directors (including inter alia any declarations or information required pursuant to

anti-money laundering or counter terrorist financing requirements) within seven days of a request to do so;

- (vi) any person who holds less than the Minimum Holding; or
- (vii) such other category of investor as may be disclosed in the Prospectus or relevant Supplement from time to time;

and the Directors may reject in their discretion any application for Shares by or any transfer of Shares to any persons who are so excluded from purchasing or holding Shares and pursuant to Clause 19 (f) below at any time repurchase or require the transfer of Shares held by Shareholders who are so excluded from purchasing or holding shares.

- (b) The Directors shall be entitled to assume without enquiry that none of the Shares are held in contravention of Clause 16 provided that the Directors may upon an application for Shares or at any other time and from time to time require such evidence and/or undertakings to be furnished to them in connection with the matters stated in 16(a) as they shall in their discretion deem sufficient.
- (c)
  - (i) No person holding shares in contravention of this Clause 16 shall be entitled to be registered as a holder of Shares and the Directors shall upon an application for any Class of Shares or (subject as herein provided) on a transfer of any Class of Shares or at any other time and from time to time require such evidence to be furnished to them in this connection as they shall in their discretion deem sufficient and in default of such evidence being furnished to the satisfaction of the Directors, the Directors may require the repurchase or transfer of such Shares pursuant to this Instrument.
  - (ii) A holder of Shares in contravention of Clause 16 shall promptly either give to the ICAV a redemption notice in respect of such Shares or shall promptly transfer such Shares to a person duly qualified to hold the same.
  - (iii) If it shall come to the notice of the Directors or if the Directors shall have reason to believe that any Shares are owned directly or beneficially by any person or persons in breach of any restrictions imposed by the Directors pursuant to this Clause 16, the Directors may require the repurchase or transfer of such Shares in accordance with Clause 21 hereof.
- (d) Any person or persons to whom Clause 16(a) applies shall indemnify the ICAV, the Directors, the Manager, the Investment Manager, the Administrator, the Distributors, the Depository and any Shareholder for any loss suffered by or any or all of them as a result of such person or persons acquiring or holding Shares in the ICAV.



## PART IV - DETERMINATION OF NET ASSET VALUE

### 17. Determination of Net Asset Value

- (a) The Directors shall on or with respect to each Dealing Day determine the Net Asset Value of each Fund or, if there are different Classes within a Fund, attributable to each Class and the Net Asset Value per Share in accordance with the following provisions.
- (b) The Net Asset Value of a Fund shall be determined as at the Valuation Point for the relevant Dealing Day by ascertaining the value of the assets of the Fund pursuant to Clause 18 hereof, having regard to the principles specified in, and making such additions, deductions and adjustments as are appropriate pursuant to Clause 18(c). The Net Asset Value attributable to a Class shall be determined as at the Valuation Point for the relevant Dealing Day by calculating that portion of the Net Asset Value of the relevant Fund attributable to the relevant Class as at the Valuation Point by reference to the number of Shares in issue or deemed to be in issue in each Class on the relevant Dealing Day subject to adjustment to take account of assets and/or liabilities attributable to each Class. The Net Asset Value of a Fund will be expressed in the Base Currency of the Fund, or in such other currency as the Manager may determine either generally or in relation to a particular Class or in a specific case.
- (c) The Net Asset Value per Share shall be determined as at the Valuation Point on or with respect to each Dealing Day by dividing the Net Asset Value of the relevant Fund or attributable to a Class by the number of Shares in issue or deemed to be in issue in such Fund or Class at the Valuation Point on or with respect to the relevant Dealing Day and rounding the resulting total to such number of decimal places as may be determined by the Directors from time to time.
- (d) The Directors shall ensure that the Net Asset Value per Share is made readily available for the relevant Shareholders.

### 18. Valuation of Investments

- (a) The value of the Investments of each Fund shall be determined as at the Valuation Point as follows:-
  - (i) Securities which are quoted, listed or traded on a Recognised Exchange will be valued as at the relevant Valuation Point at last traded price on the principal exchange or market for such investment (or if the last traded price is not available, at the mid market price). Where a security is listed or dealt in on more than one Recognised Exchange the relevant exchange or market shall be the principal stock exchange or market on which the security is listed or dealt on or the exchange or market which the Directors determine provides the fairest criteria in determining a value for the relevant investment. Investments listed or traded on a Recognised Exchange, but acquired or traded at a premium or at a discount outside or off the relevant exchange or market may be valued taking into account the level of premium or discount at the Valuation Point provided that the Depositary shall be

satisfied that the adoption of such a procedure is justifiable in the context of establishing the probable realisation value of the security;

- (ii) The value of any security which is not quoted, listed or dealt in on a Recognised Exchange or which is so quoted, listed or dealt but for which no such quotation or value is available or the available quotation or value is not representative of the fair market value shall be the probable realisation value as estimated with care and good faith by (i) the Directors or the Manager or (ii) a competent person, firm or corporation (including the Investment Manager) selected by the Directors and approved for the purpose by the Depositary or (iii) any other means provided that the value is approved by the Depositary. Where reliable market quotations are not available for fixed income securities the value of such securities may be determined using matrix methodology compiled by the Directors whereby such securities are valued by reference to the valuation of other securities which are comparable in rating, yield, due date and other characteristics;
- (iii) Cash in hand or on deposit will be valued at nominal/face value plus accrued interest, where applicable, to the end of the relevant day on which the Valuation Point occurs;
- (iv) Exchange traded futures and option contracts (including futures) traded on a regulated market shall be valued at the settlement price as determined by the market. If the settlement price is not available, the value of such investments shall be the probable realisation value as determined with care and in good faith by (i) the Directors or (ii) a competent person firm or corporation (including the Investment Manager) selected by the Directors and approved for the purpose by the Depositary or (iii) any other means provided that the value is approved by the Depositary.

OTC derivative contracts must be subject to reliable and verifiable valuation on a daily basis.

Subject to the provisions of EMIR which requires OTC derivative contracts which are not cleared with a clearing counterparty to be valued on the basis of a mark to market value of the derivative contract (or if market conditions prevent marking to market, a reliable and prudent marking to model), OTC derivative contracts may be valued either using the counterparty valuation or an alternative valuation;

- (v) Units in collective investment schemes shall be valued at the latest available net asset value per unit or bid price as published by the relevant collective investment scheme fund or, where or, where consistent with the valuation policy relating to a particular Fund, on a mid-price or offer price basis. Alternatively, if the relevant collective investment scheme is listed or traded on a Recognised Exchange, in accordance with Clause 18 (a) (i) hereof;
- (vi) Where it is not the intention or the objective of the Directors to value the portfolio of the relevant Fund as a whole using the amortised cost method of valuation, Money

Market Instruments may be valued using the amortised cost method of valuation in accordance with the Central Bank's Requirements;

- (vii) The Directors may, with the approval of the Depositary, adjust the value of any Investment if, having regard to its currency, marketability, applicable interest rates, anticipated rates of dividend, maturity, liquidity or any other relevant considerations, they consider that such adjustment is required to reflect the fair value thereof. The Directors shall document clearly the rationale for adjusting the value of any such Investment;
  - (viii) Any value expressed otherwise than in the Base Currency of the relevant Fund shall be converted into the Base Currency of the relevant Fund at the exchange rate (whether official or otherwise) which the Directors shall determine to be appropriate;
  - (ix) Where the value of any Investment is not ascertainable as described above, the value shall be the probable realisation value estimated by the Directors with care and in good faith or by a competent person approved for the purpose by the Depositary.
- (b) If the Directors deem it necessary a specific Investment may be valued using an alternative method of valuation approved by the Depositary provided the rationale and methodologies used are clearly documented.
- (c) In calculating the value of assets of the ICAV and each Fund the following principles will apply:
- (i) the Directors may value the Investments of a Fund (i) at lowest market dealing bid prices where on any Dealing Day the value of all redemption requests received exceeds the value of all applications for Shares received for that Dealing Day or at highest market dealing offer prices where on any Dealing Day the value of all applications for Shares received for that Dealing Day exceeds the value of all redemption requests received for that Dealing Day, in each case in order to preserve the value of the Shares held by existing Shareholders; (ii) at bid and offer prices where a bid and offer value is used to determine the price at which shares are issued and redeemed; or (iii) at mid prices; provided in each case that the valuation policy selected by the Directors shall be applied consistently with respect to the ICAV and, as appropriate, individual Funds for so long as the ICAV or Funds as the case may be are operated on a going concern basis;
  - (ii) For the purposes of calculating the net asset value of a Fund or Class only, every Share agreed to be issued by the Directors with respect to each Dealing Day shall not be deemed to be in issue at the Valuation Point for the relevant Dealing Day and the assets of the relevant Fund or Class shall be deemed to include only cash and property in the hands of the Depositary;

- (iii) where Investments have been agreed to be purchased or sold but such purchase or sale has not been completed, such Investments shall be included or excluded and the gross purchase or net sale consideration excluded or included as the case may require as if such purchase or sale had been duly completed unless the Directors have reason to believe such purchase or sale will not be completed;
- (iv) there shall be added to the assets of the relevant Fund any actual or estimated amount of any taxation of a capital nature which may be recoverable by the ICAV which is attributable to that Fund;
- (v) there shall be added to the assets of each relevant Fund a sum representing unamortised expenses and a sum representing any interest, dividends or other income accrued but not received unless the Directors are of the opinion that such interest, dividends or other income are unlikely to be paid or received in full in which case the value thereof shall be arrived at after making such discount as the Directors or their delegate (with the approval of the Depositary) may consider appropriate in such case to reflect the true value thereof;
- (vi) there shall be added to the assets of each relevant Fund the total amount (whether actual or estimated by the Directors or their delegate) of any claims for repayment of any taxation levied on income or capital gains including claims in respect of double taxation relief; and
- (vii) where notice of the redemption of Shares has been received by the ICAV with respect to a Dealing Day and the cancellation of such Shares has not been completed, the shares to be redeemed shall be deemed to be in issue at the Valuation Point and the value of the assets of the relevant Fund shall not be deemed to be reduced by the amount payable upon such redemption;
- (viii) there shall be deducted from the assets of the relevant Fund:
  - (i) the total amount of any actual or estimated liabilities properly payable out of the assets of the relevant Fund including any and all outstanding borrowings of the ICAV in respect of the relevant Fund, interest, fees and expenses payable on such borrowings and any estimated liability for tax and such amount in respect of contingent or projected expenses as the Directors consider fair and reasonable as of the relevant Valuation Point;
  - (ii) such sum in respect of tax (if any) on income or capital gains realised on the Investments of the relevant Fund as in the estimate of the Directors will become payable;
  - (iii) the amount (if any) of any distribution declared by the Shareholders of the relevant Fund or the Directors pursuant to Clauses 96 and 97 hereof but not distributed in respect thereof;

- (iv) the fees and expenses of the Manager, the Administrator, the Depositary, the Investment Manager, any Distributor and any other providers of services to the ICAV accrued but remaining unpaid together with a sum equal to the value added tax chargeable thereon (if any);
  - (v) the total amount (whether actual or estimated by the Directors) of any other liabilities properly payable out of the assets of the relevant Fund (including all establishment, operational and ongoing administrative fees, costs and expenses) as of the relevant Valuation Point;
  - (vi) an amount as of the relevant Valuation Point representing the projected liability of the relevant Fund in respect of costs and expenses to be incurred by the relevant Fund in the event of a subsequent liquidation;
  - (vii) an amount as of the relevant Valuation Point representing the projected liability of the relevant calls on Shares in respect of any warrants issued and/or options written by the relevant Fund or Class of Shares;
  - (viii) any other liability of the type referred to in Clause 3.2 hereof.
- (d) Without prejudice to Clause 71 hereof the Directors may delegate any of their powers, authorities and discretions in relation to the determination of the value of any Investment to the Manager, a committee of the Directors or to any other duly authorised person and may delegate the calculation of Net Asset Value in accordance with the requirements of the Central Bank UCITS Regulations. In the absence of negligence, fraud or wilful default every decision taken by the Directors or any committee of the Directors or by the Manager or any duly authorised person on behalf of the ICAV in determining the value of any Investment or calculating the Net Asset Value shall be final and binding on the ICAV and on present, past or future Shareholders.

## **PART V - REDEMPTION OF SHARES**

### **19. Redemption**

- (a) As is more specifically described herein below, the ICAV has the power to redeem its own outstanding fully paid Shares on any Dealing Day. Subject as hereinafter provided, the ICAV shall, on receipt by the ICAV or its duly authorised agents of a redemption request in such form as may be prescribed by the ICAV in relation to any Fund by a holder of Shares (the "Applicant") and any other information as the ICAV may reasonably require which request shall, save as provided in this Clause, be irrevocable, repurchase or redeem all or any portion of the Shares held by the Applicant at the Redemption Price (as hereinafter set out) for each such Share of the Class concerned determined in accordance with the provisions of this Instrument, or procure the purchase thereof at not less than the Redemption Price PROVIDED THAT:-
- (i) the redemption of Shares of any Class pursuant to this Clause shall be made on the Dealing Day on which a written request in a form prescribed by the ICAV

(“Redemption Form”) is received if it is received by the ICAV or its delegate before the Relevant time on such Business Day and, if received after the Relevant Time unless otherwise determined by the Directors and provided it is received before the Valuation Point, the request shall be treated as having been received on the Dealing Day following receipt;

- (ii) the Directors may (at their discretion) refuse a request for redemption if as a result of the implementation of such request the Member would hold less than the Minimum Holding or if less than such minimum redemption amount as determined by the Directors and set out in the Prospectus. If the Directors refuse such a request, they shall notify the Member of such refusal and the reason therefor and invite the Member either to discontinue with a request for redemption or to require redemption of the Member’s entire holding. If any request for redemption is pursued by the Member which, if implemented, would result in the Member holding less than the Minimum Holding, the Directors shall have power to compulsorily redeem the whole of that Member’s holding of Shares;
  - (iii) in the event that the determination of the Net Asset Value per Share has been suspended in accordance with Clause 22, the right of the Applicant to have his Shares repurchased or redeemed pursuant to this Clause, shall be similarly suspended and during the period of suspension he may withdraw his request for redemption. Any withdrawal of a request for redemption under the provisions of this Clause shall be made in writing and shall only be effective if actually received by the ICAV or its duly authorised agent before termination of the period of suspension. If the request is not so withdrawn the redemption of the Shares shall be made on the Dealing Day next following the end of the suspension or on such earlier day following the end of the suspension as the Directors at the request of the Applicant may agree;
- (b) Redemption Forms may be sent in writing or by facsimile at the risk of the relevant Shareholder or in such other form (including electronically) as is determined by the Directors and disclosed in the Prospectus. In the case of a holder of Shares which is a corporation, a list of authorised signatories must be provided by the corporation to the ICAV or its authorised agents in the event that the signatories at repurchase differ from signatories on the most recent application form submitted by the holder.
  - (c) The redemption under the provisions of this Clause shall be deemed to be effected immediately after the Valuation Point on the Dealing Day or such day as may be agreed or determined pursuant to paragraph (a) above of this Clause 19 but the relevant Shares shall remain in existence until they cease to be in issue in accordance with Clause 11(h).
  - (d) Upon the redemption of a Share being effected pursuant to this Instrument, the Holder shall cease to be entitled to any rights in respect thereof (excepting always the right to receive a dividend (if any) which has been declared in respect thereof prior to such redemption being effected) and accordingly his name shall be removed from the Register with respect thereto, the relevant Shares shall be treated as cancelled and the amount of

issued share capital in respect of Shares shall be reduced by the appropriate amount of the Redemption Price paid by the ICAV.

- (e) Where the ICAV receives in respect of any Dealing Day requests for redemptions which in the aggregate exceed at least 10% of the total number of Shares in issue in that Fund or exceed at least 10% of the Net Asset Value of that Fund on that Dealing Day, the Directors or the Manager, if in their sole discretion acting in good faith believe it shall be necessary or desirable in order not to prejudice the interests of the Shareholders not making such request, or on the grounds of liquidity or other like reason, may refuse to redeem any Shares in excess of 10% of the total number of Shares in issue in that Fund or in excess of 10% of the Net Asset Value of that Fund in respect of which redemption requests have been received as aforesaid. In this event, each such request for redemption or conversion of Shares of the relevant Fund shall be reduced pro rata so that all such requests cover no more than 10% of the total number of Shares outstanding in that Fund on that Dealing Day and shall treat the outstanding redemption requests as if they were received on each subsequent Dealing Day until all the Shares to which the original request related have been redeemed. Requests for redemption which have been carried forward from an earlier Dealing Day shall (subject always to the foregoing limits) be complied with as determined by the Directors and disclosed in the Prospectus.
- (f) (i) If it shall come to the notice of the Directors or if the Directors shall have reason to believe that any Shares are owned directly or beneficially by any person in breach of the restrictions imposed by Clause 16 above, the Directors may (i) give notice to such person requiring him to (a) transfer such Shares to a person who is qualified or entitled to own such Shares or (b) to give a request in accordance with this Instrument for the redemption of such Shares in accordance with paragraph (a) above or (c) to give notice (in such form as the Directors deem appropriate) of their intention to compulsorily redeem and/or cancel such number of Shares held by such person as is required. The Directors may charge any such Shareholder, any legal, accounting or administration costs associated with such compulsory redemption and may apply the proceeds of such compulsory redemption in the discharge of any taxation or withholding tax arising as a result of the holding or beneficial ownership of Shares by such person including any interest or penalties payable thereon. In the event of a compulsory redemption, the redemption price will be determined as of the Valuation Point in respect of the relevant Dealing Day specified by the Directors in their notice to the Shareholder;

If any person upon whom such a notice is served pursuant to this sub-paragraph does not within thirty days after such notice:-

- A. transfer his Shares to a person qualified to own such Shares;
- B. request the ICAV to redeem his Shares; or
- C. establish to the satisfaction of the Directors (whose judgement shall be final and binding and conclusive) that he is not subject to such restrictions;

he shall be deemed upon the expiration of such thirty days to have given a request in accordance with this Instrument for the redemption of all his Shares pursuant to paragraph (a) above and the Directors shall be entitled to appoint any person to sign on his behalf such documents as may be required for the purpose of the redemption of the said Shares by the ICAV;

- (ii) A person who becomes aware that he is holding or owning Shares in breach of any such restrictions as aforesaid shall forthwith unless he has already received a notice pursuant to sub-paragraph (i) above either transfer all his Shares to a person qualified to own such Shares or give a request in writing for the redemption of all his Shares pursuant to paragraph (a) above;
  - (iii) Payment of any amount due to such person pursuant to sub-paragraph (i) or (ii) above shall be subject to any requisite exchange control approvals first having been obtained and the amount due to such person will be deposited by the ICAV in a bank for payment to such person upon such approvals being obtained. Upon deposit of such amount as aforesaid such person shall have no further interest in such Shares or any of them or any claim against the ICAV in respect of such Shares except the right to receive such amounts so deposited (without interest) upon such approvals as aforesaid being obtained.
- (g) Settlement of any redemption or transfer effected pursuant to Clause 19 (f) hereof, shall be effected by depositing the redemption monies or proceeds of sale in a bank for payment to the person entitled subject to such consents as may be necessary being obtained. Upon deposit of the redemption monies as aforesaid such person shall have no further interest in such Shares or any of them or any claim in respect thereof except the right to claim without recourse to the ICAV the redemption monies so deposited without interest.
- (h) Where, in any case involving a redemption of less than the entire of an Applicant's holding of Shares, any amount representing the redemption monies for such Shares is not an exact multiple of their Redemption Price:-
- (i) where the amount is equal to or greater than .001 of the Redemption Price of a Share, a fraction of a Share shall be allotted to the Applicant who shall be registered as the holder of such a fraction;
  - (ii) where the amount received is less than .001 of the Redemption Price of a Share, such amount will not be returned to the Applicant but will be retained by the ICAV in order to defray administration costs.

In addition to the foregoing, the Directors may determine not to return any amount for Shares which is less than a whole unit of denomination specified by them of any particular currency.

- (i) The ICAV or its delegate, may at its discretion and with the consent of the individual Shareholders satisfy any request for redemption of Shares by the transfer in specie to



those Shareholders of Investments having a value equal to the redemption price for the Shares redeemed as if the redemption proceeds were paid in cash less any redemption charge and other expenses of the transfer provided that the Investments allocation is subject to the approval of the Depositary. A determination to provide redemption in specie may be solely at the discretion of the Manager where the redeeming Shareholder requests redemption of a number of Shares that represent at least 5% or more of the Net Asset Value of the relevant Fund. In this event the ICAV will if requested sell the asset or assets proposed to be distributed in specie and distribute to such Shareholders the cash proceeds of such sale less the costs of such sale which shall be borne by the relevant Shareholders.

- (j) If the discretion conferred by paragraph (i) is exercised, the Directors shall notify the Depositary and shall supply to the Depositary particulars of the Investments to be transferred and the amount of cash to be paid to the Shareholder. All stamp duties, transfer and registration fees in respect of such transfers shall be payable by the Shareholder.
- (k) Where all the Shares in a Class or Fund have been redeemed, the Directors may subsequent to such redemption make a subsequent issue of Shares in that Class or Fund at a Subscription Price per Share determined by the Directors. Any such issue of Shares pursuant to this Clause shall be in accordance with the Central Bank Requirements.

## **20. The Redemption Price**

- (a) The Redemption Price for a Share of any Class shall be an amount as determined by the Directors on the relevant Dealing Day by:-
  - (i) determining the Net Asset Value of the relevant Class of Shares as at the Valuation Point on the Dealing Day in accordance with the provisions of Clauses 17 to 18 and deducting therefrom such sums as the Directors may consider represents an appropriate provision for Duties and Charges and any other amounts necessary to account for the actual price of underlying assets;
  - (ii) dividing the amount calculated under (i) above by the number of Shares of the relevant Class then in issue or deemed to be in issue of the relevant Valuation Point;
  - (iii) in the event of requests for redemption exceeding subscription applications for the relevant Fund on any Dealing Day and if the Directors so determine, the Directors may on any dealing day on which there are net redemptions adjust, as relevant, the redemption price by deducting an anti-dilution levy to cover dealing costs and to preserve the value of the underlying assets of the ICAV and/or the relevant Fund as the Directors determine; and
  - (iv) adjusting such amount as may be necessary to round the resulting amount to the nearest three decimal places, (or such other number of decimal places as the Directors deem appropriate), of the currency in which such Shares are designated;

- (b) Any certificate as to the Redemption Price given in good faith (and in the absence of negligence or manifest error) by or on behalf of the Directors shall be binding on all parties.
- (c) A redemption charge not exceeding 3% of the Net Asset Value per Share may be deducted from the Net Asset Value per Share for the absolute use and benefit of the Manager or as it may direct and the Directors may, subject to the Central Bank Requirements, at their discretion waive, either wholly or partially, such redemption charge or differentiate between Shareholders as to the amount of such redemption charge, if any, within the permitted limit. A redeeming Shareholder may also be entitled to receive additional redemption proceeds if any Equalisation Credit paid at the time of subscription has not been fully applied as at the relevant Dealing Day on which Shares are to be redeemed.
- (d) Payment of redemption proceeds shall be made in the Base Currency (unless otherwise requested in writing and to the cost of the Shareholder) and shall be dispatched no later than ten (10) Business Days after the latest time for receipt of redemption requests for the relevant Dealing Day provided the required documentation has been provided to the Manager. Redemption Proceeds will be paid by telegraphic transfer (less expenses) to the bank account indicated on the Shareholders' most recent form for application for Shares or other written instructions to the ICAV or its authorised agents.

The ICAV shall not increase the maximum charge relating to the redemption or repurchase of Shares as set out in Clause 20(c) of these presents, without prior approval of Shareholders given on the basis of a simple majority of votes cast in a general meeting or with the prior written approval of all Shareholders of the ICAV. In the event of an increase in the redemption or repurchase charge a reasonable notification period shall be provided by the ICAV to enable relevant Shareholders to redeem their shares prior to the implementation of the increase in accordance with the Central Bank Requirements.

## **21. Compulsory Redemption**

- (a) The ICAV shall have the right at any time to redeem without penalty:
  - (i) Shares of any Class if, in the opinion of the Directors, such redemption would eliminate or reduce the exposure of the ICAV or its Members to adverse tax consequences or other consequences of a nature contemplated by Clause 19(f) above under the laws of any country;
  - (ii) Shares of any Class if circumstances in accordance with which the provisions of Clause 19(a)(ii) of this Instrument apply; or
  - (iii) all the Shares of a particular Fund if not less than 75% of the holders in value of the Shares of the Fund (carrying voting rights at general meetings of the ICAV) approve of the redemption of all the Shares by the Director, at general meetings of

the Fund of which not more than twelve and not less than four week's notice has been given; or

- (iv) if at the discretion of the Directors, after the first anniversary of the first issue of Shares in any Fund, the Net Asset Value of that Fund falls below the amount specified by the Directors in respect of such Fund in the Prospectus; or
  - (v) On the giving of not less than four nor more than twelve weeks' notice to the Shareholders of the relevant Fund or Class expiring on a Dealing Day, redeem at the Redemption Price on such Dealing Day, all the Shares in any Fund or Class or all Funds or Classes not previously redeemed; or
  - (vi) Shares of any Class held by a Shareholder in breach of any restrictions on ownership from time to time as set out in the Prospectus; any person who does not clear such anti-money laundering checks as the Directors may determine; or any person who has not provided such information or certifications (including without limitation information about such Shareholder's direct and indirect owners) that may reasonably be requested by the ICAV to allow the ICAV or any related or affiliated entity to (a) satisfy any information reporting requirements imposed by any reporting regime including (but not limited to) FATCA and / or OECD Common Reporting Standards ("CRS"); and (b) satisfy any requirements necessary to avoid withholding taxes under any reporting regime including (but not limited to) FATCA and / or CRS with respect to any payments to be received or made by the ICAV; or any person 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 such shares; or any person, who within seven (7) days of a request by or on behalf of the Directors, does not supply any information or declaration required pursuant to the terms of the Prospectus.
- (b) If all the Shares in the ICAV or a Fund or Class are to be redeemed 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 ICAV (hereinafter called "the Transferee") the ICAV may, with the sanction of a Special Resolution of the ICAV or the relevant Fund or Class conferring either a general authority on the Directors or an authority in respect of any particular arrangement, receive in compensation or part compensation for such transfer or sale shares, units, policies or other like interests or property in or of the Transferee for distribution among the said Shareholders, or may enter into any other arrangement whereby the said Shareholders may in lieu of receiving cash or property or in addition thereto participate in the profits of or receive any other benefit from the Transferee.
- (c) If all of the Shares in a particular Fund or Class are to be redeemed as aforesaid the Directors, with the sanction of an Ordinary Resolution of the relevant Fund or Class, may divide amongst the Shareholders in specie all or part of the assets of the relevant Fund or Class according to the Net Asset Value of the Shares then held by each Shareholder in the relevant Fund or Class in accordance with Clause 18 hereof provided that any Shareholder shall be entitled to request, at the expense of such Shareholder, the sale of

any asset or assets proposed to be so distributed and the distribution to such Shareholder of the cash proceeds of such sale.

- (d) The ICAV shall redeem without penalty and the Directors shall apply for revocation of the authorisation of the ICAV by the Central Bank if the Depositary has served notice of its intention to retire under the terms of the Depositary Agreement (and has not revoked such notice) and no new depositary has been formally approved and appointed within 90 days of the date of service of such notice.
- (e) The Directors may also redeem any Shares held by a Shareholder for the purposes of satisfying any performance fee payable by that Shareholder to the Investment Manager in respect of a particular Class.
- (f) The ICAV shall be entitled to redeem any Share of a Shareholder or any Share to which a person is entitled by transmission provided that:-
  - (i) for a period of six years no confirmation of ownership of Shares sent by the ICAV through the post in a pre-paid letter addressed to the Shareholder or to the person entitled by transmission to the Share at his address on the Register or the last known address given by the Shareholder or the person entitled by transmission to which confirmations of the ownership of shares are to be sent has been cashed or acknowledged and no communication has been received by the ICAV from the Shareholder or the persons entitled by transmission;
  - (ii) at the expiration of the said period of six years the ICAV has given notice of its intention to redeem such Share or Shares by notice sent by pre-paid letter addressed to the Shareholder or to the person entitled by transmission to the Share at his address on the Register or to the last known address given by the Shareholder or the person entitled by transmission or by advertisement in a national daily newspaper published in Ireland or in a newspaper circulating in the area in which the address of the Shareholder is located;
  - (iii) during the period of three months after the date of the giving of such notice and prior to the exercise of the power of redemption the ICAV has not received any communication from the Shareholder or person entitled by transmission; and
  - (iv) if the Shares are quoted on a stock exchange the ICAV has first given notice in writing to the appropriate section of such stock exchange of its intention to redeem such Shares, if it is required to do so under the rules of such stock exchange;
  - (v) The ICAV shall account to the Shareholder or to the person entitled to such Shares for the net proceeds of such redemption by carrying all moneys in respect thereof as a permanent debt of the ICAV and the ICAV shall be deemed to be a debtor and not a trustee in respect thereof for such Shareholder or other person.

## PART VI - SUSPENSION OF REDEMPTION, VALUATION AND DEALINGS

### 22. Temporary Suspensions

- (a) The Directors may declare a temporary suspension of the determination of the Net Asset Value of any Fund or attributable to a class and/or of the issue, redemption and conversion of Shares in any Class or Fund in the following circumstances:
- (i) during the whole or any part of any period when any of the principal markets on which any significant proportion of Investments of the relevant Fund from time to time are quoted, listed, traded or dealt in is closed (otherwise than for customary weekend or ordinary holidays) or during which dealings therein are restricted or suspended or trading on any relevant futures exchange or market is restricted or suspended;
  - (ii) during the whole or any part of any period when, as a result of political, economic, military or monetary events or any other circumstances outside the control, responsibility or power of the Directors, in which in the opinion of the Directors, any disposal or valuation of Investments of the relevant Fund is not reasonably practicable or would be detrimental to the interests of owners of Shares in general or the owner of Shares of the relevant Fund or if, in the opinion of the Directors, the Redemption Price cannot be fairly calculated or such disposal would be materially prejudicial to the owners of Shares in general or the owners of Shares in the relevant Fund;
  - (iii) during the whole or part of any period when any breakdown which occurs in the means of which communication normally employed in determining the value of the Investments of the ICAV or when for any other reason the value of any of the Investments or other assets of the relevant Fund cannot reasonably or fairly be ascertained;
  - (iv) during the whole or part of any period when subscriptions proceeds cannot be transmitted to or from the account of any Fund or the ICAV is unable to repatriate funds required for the purposes of making redemption payments or when such payments cannot, in the opinion of the Directors, be effected at normal prices or normal rates of exchange or during which any transfer of funds involved in the realisation or acquisition of Investments or when payments due or redemption cannot, in the opinion of the Directors, be effected at normal prices or normal rates of exchange;
  - (v) upon mutual agreement between the ICAV and the Depositary for the purpose of winding up the ICAV or terminating any Fund or Class;
  - (vi) if any other reason makes it impossible or impracticable to determine the value of a substantial portion of the Investments of the ICAV or any Fund;

- (vii) during any other period when the Directors determine that it is in the best interests of the Shareholders (or Shareholders in the relevant Fund or Class) to do so; or
  - (viii) where so instructed by the Central Bank to do so.
- (b) Any such suspension shall take effect immediately and thereafter there shall be no determination of Net Asset Value and issue of Shares or redemption of Shares until the Directors shall declare the suspension at an end except that the suspension shall terminate in any event on the first Business Day on which:-
- (i) the condition giving rise to the suspension shall have ceased to exist; and
  - (ii) no other condition under which suspension is authorised under paragraph (a) of this Clause shall exist.

### **23. Notification of Suspensions**

Any such suspension of the determination of the Net Asset Value of Shares and the issue and redemption of Shares shall be notified

- (a) to Euronext Dublin (if listed) without delay and immediately to the Central Bank by the ICAV;
- (b) published in such publication(s) as the Directors may determine.

## **PART VII - CLASS FUND CONVERSIONS**

### **24. Class Fund Conversions**

Subject to Clauses 22 and 23 above and as hereinafter provided the holder of any Shares of any Fund or Class (the "Original Fund") on any Dealing Day may request the conversion of all or any Shares held by him in one Fund into Shares of another Class of the same Fund or into Shares of a Class in another Fund of the ICAV (the "New Fund") either existing or established on the following terms. The Directors may at their discretion impose a minimum conversion amount in relation to any particular Fund or Class or refuse to accept a conversion request without assigning any reason therefor:

- (a) the Shareholder may request the conversion of Shares by giving to the ICAV a switching form (the "Switching Form") in such form and by such time and means as the Directors may from time to time determine together with such evidence of title as the Directors may require;
- (b) the Switching Form must be received by the ICAV on a day which is a Dealing Day for the Original Fund and the New Fund or on such other Dealing Days as the Directors may determine PROVIDED THAT the Directors may, in their discretion, accept a conversion request for processing on a Dealing Day notwithstanding that such request may have been received after the time specified from time to time by the Directors for the receipt of

conversion requests for such Dealing Day so long as such conversion request is received prior to the Valuation Point for the relevant Dealing Day;

- (c) conversion of the Shares in the Original Fund specified in the Switching Form shall be effected in the following manner, that is to say:-
- (i) such Shares in the Original Fund shall be redeemed by the issue of Shares in the New Fund;
  - (ii) the Shares in the New Fund shall be issued in respect of and in proportion to (or as nearly as may be in proportion to) the holding of the Shares in the Original Fund which is being converted; and
  - (iii) the proportion in which Shares in the New Fund are to be issued in respect of Shares of the Original Fund shall be determined in accordance with the provisions of this Clause;

Provided always that the Shares proposed to be converted have a value at the time of conversion not less than the value of the Minimum Investment Amount for the New Fund or such other amount as may be determined by the Directors from time to time, the Shareholder otherwise satisfies the criteria determined by the Directors for investment in the New Fund; and the right of a Shareholder to convert his Shares for Shares of another Fund conferred by this Clause shall be conditional upon the ICAV having sufficient available share capital to enable the conversion to be implemented as aforesaid.

- (d) if the conversion would result in the Shareholder owning a number of Shares of either the Original Fund or the New Fund of a value which is less than the Minimum Holding, the Directors may, if they think fit, convert the whole of the applicant's holding of Shares of the Original Fund to Shares in the New Fund or refuse to effect any conversion from the Original Fund;
- (e) The Directors shall determine the number of Shares of the relevant Class of the New Fund to be issued on an exchange in accordance with the following formula:-

$$A = B \times (C \times D \times F)$$

E

- Where:-
- A = the number of Shares of the New Fund to be allotted;
  - B = the number of Shares of the Original Fund to be exchanged;
  - C = the Redemption Price per Share of the Original Fund as at the relevant Dealing Day;

- D = the currency conversion factor determined by the Administrator as representing the effective rate of exchange of settlement on the relevant Dealing Day applicable to the transfer of assets between the relevant Funds (where base currencies of the relevant Funds are different) or where the base currencies of the relevant Funds are the same, D = 1;
- E = the Subscription Price per Share for the New Fund in respect of the Valuation Point on the relevant Dealing Day; and
- F = the switching factor to be applied to switching between Funds with different settlement dates. This factor will be determined by the Administrator as being derived from the borrowing rate of interest (which may be retail or business depending on the volume of switching) where the settlement date for Shares in the New Fund is earlier than the settlement date for Shares in the Original Fund. In such circumstances, this factor shall operate to compensate the New Fund for late settlement. In all other cases, including where the settlement date of the relevant Funds are the same, F=1.

The number of Shares of the New Fund to be created or issued pursuant to this Clause shall be so created or issued in respect of each of the Shares of the Original Fund being exchanged in proportion (or as nearly as may be in the proportion A to B where A and B have.

- (f) The general provisions on procedures related to redemption will equally apply to conversion.
- (g) The conversion of the Shares of the Original Fund specified in the Switching Form for Shares of the New Fund shall (subject to paragraph (b) above) take place at the next Valuation Point following receipt of the Switching Form and the holder's entitlement to Shares as recorded in the Register shall be altered accordingly with effect from that time.
- (h) A Shareholder requesting conversion shall not without the written consent of the ICAV or its authorised agent be entitled to withdraw a Switching Form duly made in accordance with this Clause except in circumstances in which he would be entitled to withdraw a request for redemption of Shares.
- (i) Conversion of Shares specified in a Switching Form may, subject to the Regulations, the Central Bank UCITS Regulations and these presents, be effected in such manner as may be determined by the Directors and without prejudice to the generality of the foregoing



may be effected by the redemption of Shares of the Original Fund (save that the redemption monies shall not be released to the Shareholder requesting conversion) and the issue of Shares in the New Fund.

- (j) The Directors may charge a fee on conversion of Shares in any Fund or Class into another Fund or Class or another Class in the same Fund as set out in the Prospectus of the ICAV.
- (k) The Directors (or their delegate) may at their discretion, refuse to effect a conversion request without giving any reason for such refusal.

## **PART VIII - CONFIRMATIONS OF OWNERSHIP**

### **25. Confirmation of Ownership**

- (a) A Member of the ICAV shall have his title to Shares / Subscriber Shares evidenced by having his name, address, details of the number of Shares / Subscriber Shares held by him (including without limitation fractions of Shares / Subscriber Shares) and such other details as required pursuant to the Act and by the ICAV entered in the Register. Share certificates shall not be issued and a Member whose name appears in the Register shall be issued with a written confirmation of entry in the Register of the number of Shares / Subscriber Shares held by him including without limitation fractions of shares. Subject to Central Bank Requirements, nothing in this Instrument shall preclude title to any Shares / Subscriber 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.
- (b) The ICAV shall maintain the Register in accordance with the Act. The Register shall be kept available for inspection by any person entitled to inspect it in accordance with the Act and 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.
- (c) Every person whose name is entered as a Member in the Register shall receive a written confirmation of ownership of the relevant Class(es) of Shares including without limitation fractions of Shares or may, at the discretion of the Directors, be entitled on written request to receive a certificate representing the number of shares held by him.
- (d) The Register may be kept electronically or in accordance with some other mechanical or electrical system provided legible evidence can be produced therefrom to satisfy the requirements of applicable law and of this Instrument.

### **26. Calls on Subscriber Shares**

- (a) The Directors may from time to time make calls upon the Members in respect of any moneys unpaid on the Subscriber Shares provided that (except as otherwise fixed by the conditions of application or allotment) no call on any Shares shall be payable at less than fourteen days from the date fixed for the payment of the last preceding call, and each

Member shall (subject to being given at least fourteen days' notice specifying the time or times and place of payment) pay to the ICAV at the time or times and place so specified the amount called on his Subscriber Shares. A call may be payable by installments. A call may be revoked or postponed as the Directors may determine. A call shall be deemed to have been made at the time when the resolution of the Directors authorising the call was passed.

- (b) The Directors may, if they think fit, receive from any Member willing to advance the same all or any part of the money uncalled and unpaid upon the Subscriber Shares held by him beyond the sums actually called up thereon as a payment in advance of calls, and such payment in advance of calls shall extinguish, so far as the same shall extend, the liability upon the Subscriber Shares in respect of which it is advanced, and upon the money so received, or so much thereof as from time to time exceeds the amount of the calls then made upon the Shares in respect of which it has been received.

## **PART IX - TRANSFER OF SHARES**

### **27. Procedure on Transfer**

- (a) The transfer of Shares shall be effected in such denomination as the Directors may from time to time decide in accordance with the following provisions.
- (b) All transfers of Shares may be effected by transfer in writing or such other form as determined by the Directors accompanied by such evidence of ownership as the Directors may require to prove the right of the transferor to make the transfer ("**Instrument of Transfer**"), signed by or on behalf of the transferor and every transfer shall state the full name and address of the transferor and transferee. No transfer of Subscriber Shares may be effected without the prior written consent of the ICAV.
- (c) The Directors may from time to time specify a fee for the registration of instruments of transfer provided that the maximum fee may not exceed 5% of the Net Asset Value of the Shares the subject matter of the transfer on the Dealing Day immediately preceding the date of the transfer and which may be retained for the sole use and benefit of the ICAV or the Manager or the Distributor as the Directors in their absolute discretion may determine.
- (d) No Share of any Class has been or will be registered under the 1933 Act or the securities laws of any State of the United States. Accordingly, Shares of any Class may not be offered, sold, transferred or delivered, directly or indirectly, in the United States or to, or for the account of, a United States Person at any time without the prior consent of the Directors, which consent may be granted or withheld in the sole discretion of the Directors.
- (e) If a transferee who is a United States Person applies to register a transfer of Shares and if as a result of such transfer the number of holders of Shares known to the ICAV to be United States Persons would exceed such number as the Directors may from time to time determine or the ICAV otherwise becomes aware that a holder of Shares is a United States Person who acquired Shares without the prior consent of the Directors, the ICAV

will refuse to register the transfer in favour of the United States Person and/or may direct the United States Person to sell his Shares within 30 days and provide to the ICAV evidence of the sale by him or to make the request that the ICAV repurchase the Shares pursuant to Clause 21(f). If the United States Person fails to comply with the direction, the ICAV will compulsorily repurchase the holding of Shares of such United States Person pursuant to Clause 21.

- (f) 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.
- (g) The Directors may at their discretion decline to register any transfer of a Share if:
  - i. in consequence of such transfer the transferor or the transferee would hold a number of Shares less than the Minimum Holding or the transferee would hold less than the Minimum Investment Amount;
  - ii. where they are aware or believe that such transfer would or might be likely to result in the beneficial ownership of such Shares by a person in contravention of any restrictions on ownership imposed by the Directors or might result in legal, regulatory, pecuniary, taxation or material administrative disadvantage to the relevant Fund or Class or Shareholders as a whole;
  - iii. the Instrument of Transfer is not deposited at the Office or such other place as the Directors may reasonably require, accompanied by such evidence as the Directors may reasonably require to show the right of the transferor to make the transfer, such relevant information and declarations as the Directors may reasonably require from the transferee including, without limitation, information and declarations of the type which may be requested from an applicant for Shares in the ICAV and such fee as may from time to time be specified by the Directors for the registration of any Instrument of Transfer;
  - iv. all applicable taxes and/stamp duties have not been paid in respect of the Instrument of Transfer;
  - v. in consequence of such transfer, any provisions of this Instrument would be contravened or the transfer would produce a result inconsistent with any provisions of the Prospectus or any provision of law (including any law that is for the time being in force in a country or territory other than Ireland); or
  - vi. in any other circumstances determined by the Directors and detailed in the Prospectus.

## **28. Purchase of Subscriber Shares**

- (a) The Directors may at any time after the Initial Offer Period direct that any Subscriber Shares not held by the ICAV or its nominee(s) shall be compulsorily purchased from the

holder thereof at a price not to exceed the consideration paid for such Subscriber Shares in the following manner:-

- (i) The Directors shall serve a notice (hereinafter called a "Purchase Notice") upon the person appearing in the Register as the holder of the Subscriber Shares to be purchased ("the Vendor") specifying the Subscriber Shares to be purchased as aforesaid, the price to be paid for such Shares, the person in whose favour such holder must execute a transfer of such Shares and the place at which the purchase price in respect of such shares is payable. Any Purchase Notice may be served upon the Vendor by mailing such notice in a pre-paid registered envelope addressed to the Vendor at his address shown in the Register. The Vendor shall thereupon forthwith be obliged to deliver to the ICAV within ten days from the date of the Purchase Notice a duly executed transfer of the shares specified in the Purchase Notice in favour of the person specified in the Purchase Notice;
  - (ii) In the event of the Vendor failing to carry out the sale of any Subscriber Shares which he shall have become bound to transfer as outlined in paragraph (i) above, the Directors may authorise some person to execute a transfer of such share(s) in accordance with the direction of the Directors and may give good receipt for the purchase price of such share, and may register the transferee or transferees as holder or holders of such shares and thereupon the transferee or transferees shall become indefeasibly entitled to such shares.
- (b) After the Initial Offer Period, any holder of Subscriber Shares in the ICAV may (subject to the Subscriber Shares held by such holder being fully paid) by notice in writing to the ICAV, request the ICAV to purchase any such Subscriber Shares held by such holder at a price not to exceed the consideration paid for such Subscriber Shares. The ICAV shall, within thirty days of receipt of such request, complete the purchase of such Subscriber Shares and make arrangements with the holder for payment to him of the purchase monies therefor.

## **29. Entry in Register**

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.

Nothing herein shall prejudice the power of the ICAV to register as a Member any person to whom the rights to any shares in the ICAV has been transmitted by operation of law.

## **30. Refusal to Register Transfers**

In addition to the circumstances set out at Clause 27(g) above, the Directors may in their absolute discretion, without assigning any reason therefor, decline to recognise any transfer of shares:-

- (a) unless the Instrument of Transfer in proper form is deposited at the Office or such other place as the Directors may reasonably require together with such other evidence as the Directors may reasonably require to show the right of the transferor to make the transfer

and satisfying the Directors as to their requirements in relation to money laundering that they may require from time to time; or

(b) where the transfer of a share or any renunciation of any allotment made is in respect of a Subscriber Share which is not fully paid;

(c) unless the Instrument of Transfer relates to Shares of one Class only.

**31. Procedure on Refusal**

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

**32. Suspension on Transfers**

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

**33. Retention of Transfer Instruments**

Subject to Clause 119 below all Instruments of Transfer which shall be registered shall be retained by the ICAV, but any Instrument of Transfer which the Directors may decline to register shall (except in any case of fraud) be returned to the person depositing the same.

**34. Absence of Registration Fees**

No registration fee shall be charged for the registration of any Instrument of Transfer or other document relating to or affecting the title to any share.

**PART X - TRANSMISSION OF SHARES**

**35. Death of Member**

In the case of the death of a Member, the survivors or survivor where the deceased was a joint holder, and the executors or administrators of the deceased where he was a sole or only surviving holder, shall be the only persons recognised by the ICAV as having title to his interest in the shares held by such a Member, but nothing in this Clause shall release the estate of the deceased holder whether sole or joint from any liability in respect of any share solely or jointly held by him.

### **36. Transfer/Transmission - Special Circumstances**

Any guardian of an infant Member and any guardian, curator or other legal representative of a Member under legal disability and any person entitled to a share in consequence of the death, bankruptcy or insolvency of a Member shall, upon producing such evidence of his title as the Directors may require, have the right either to be registered himself as the holder of the Share or to make such transfer thereof as the deceased, bankrupt or insolvent Member or Member under a disability could have made, but the Directors shall in any case have the same right to refuse or suspend registration as they would have had in the case of a transfer of the share by the Member under disability or by the deceased, bankrupt or insolvent Member before the death, bankruptcy or insolvency or by the Member under legal disability before such disability.

If the person so becoming entitled elects to be registered himself, he shall deliver or send to the ICAV a notice in writing signed by him stating that he so elects. If he shall elect to have his nominee registered, he shall signify his election by signing and delivering or sending to the ICAV an Instrument of Transfer of such share or shares in favour of his nominee. Any transfer by such person so entitled shall be as valid as if they had been a Member at the time of the execution of the Instrument of Transfer.

All the limitations, restrictions and provisions of this Instrument relating to the right to transfer and the registration of transfers of shares shall be applicable to any notice or Instrument of Transfer given or made pursuant to this Clause as if the death or bankruptcy of the Member or other event giving rise to the transmission had not occurred and the notice of Instrument of Transfer were an Instrument of Transfer signed by that Member.

### **37. Rights before Registration**

- (a) A person becoming entitled to a share in consequence of the death, insolvency or bankruptcy of a Member or otherwise by operation of law shall upon production of such evidence of his title as the Directors may require, have the right to receive and may give a discharge for all dividends and other moneys payable or other advantages due on or in respect of the share, but he shall not be entitled to receive notice of or to attend or vote at meetings of the ICAV, nor save as aforesaid, to any of the rights or privileges of a Member unless and until he shall be registered as a Member in respect of the shares PROVIDED ALWAYS that the Directors may at any time give notice requiring any such person to elect either to be registered himself or to transfer the share and if the notice is not complied with within ninety days, the Directors may thereafter withhold all dividends or other moneys payable or other advantages due in respect of the share until the requirements of the notice have been complied with.
- (b) A transfer of shares or other interest of a deceased Member made by the deceased Member's personal representative shall, although the personal representative is not a Member of the ICAV, be valid as if they had been such a Member at the time of the execution of the Instrument of Transfer.
- (c) No person whatsoever shall be entitled to be registered on the Register until such person

has provided the Directors with such relevant information and/or documentation as they may require.

## **PART XI - ALTERATION OF SHARE CAPITAL**

### **38 Increase of Capital**

- (a) The ICAV may from time to time by Ordinary Resolution increase its capital by such number of shares as the resolution shall prescribe.
- (b) Except so far as otherwise provided by the conditions of issue or by this Instrument, any capital raised by the creation of new shares shall be considered part of the pre-existing share capital of the ICAV and shall be subject to the provisions herein contained with reference to transfer and transmission, and otherwise.

### **39. Consolidation, Sub-Division and Cancellation of Capital**

The ICAV may from time to time by Ordinary Resolution:-

- (a) consolidate and divide all or any of its share capital into a smaller number of shares than its existing shares;
- (b) subject to the provisions of the Act, sub-divide its shares, or any of them, into a larger number of Shares than that fixed by this Instrument; or
- (c) cancel any shares which, at the date of the passing of the Ordinary Resolution in that behalf, have not been taken, or agreed to be taken, by any person, and diminish the amount of its share capital by the amount of the shares so cancelled.

### **40. Reduction of Capital**

In addition to any rights of the ICAV specifically conferred by this Instrument to reduce its share capital, the ICAV from time to time, by Special Resolution, may reduce its share capital in any way and in any manner subject to any incident authorised or consent required by law.

## **PART XII - GENERAL MEETINGS**

### **41. Annual General Meeting**

- (a) The ICAV shall in each year hold a general meeting as its annual general meeting in addition to any other meetings, where general or otherwise, it may hold in that year.
- (b) No more than 15 months may elapse between the date of one annual general meeting of the ICAV and the date of the next.
- (c) The Directors of the ICAV may elect to dispense with the holding of an annual general meeting by giving 60 days' written notice to all of the ICAV's Members. Any election made

hereunder shall have effect for the year in which it is made and subsequent years, but does not affect any liability already incurred by reason of default in holding an annual general meeting. However, where an election made hereunder has effect for a year, (i) one or more Members of the ICAV holding, or together holding, not less than 10 % of the voting rights in the ICAV or (ii) the Auditors may require the ICAV to hold an annual general meeting in that year by giving notice in writing to the ICAV in the previous year or at least one month before the end of that year and the ICAV shall hold the required meeting.

#### **42. Extraordinary General Meetings**

All general meetings (other than Annual General Meetings) shall be called Extraordinary General Meetings.

#### **43. Convening General Meetings**

- (a) The Directors may convene general meetings. The Directors may call an Extraordinary General Meeting whenever they think fit and Extraordinary General Meetings may also be convened on such requisition, or in default may be convened by such requisitionists and in such manner as provided by the Act. If at any time there are not within the State sufficient Directors capable of forming a quorum, any Director or Member of the ICAV may convene an Extraordinary General Meeting in the same manner as nearly as possible as that in which General Meetings may be convened by the Directors.
- (b) One or more Members of the ICAV holding, or together holding, at any time not less than 50% of the voting rights in the ICAV may convene an extraordinary general meeting of the ICAV.
- (c) The Directors of the ICAV shall, at the request of one or more Members holding, or together holding, at the date of the making of the request, not less than 10% of the voting rights in the ICAV, proceed to convene an extraordinary general meeting of the ICAV. The request shall state the objects of the meeting and shall be signed by those making the request and deposited at the Office of the ICAV and may consist of several documents in like form each signed by one or more of those making the request. If the Directors do not within 21 days after the date of the deposit of the request proceed to convene a meeting to be held within 2 months after that date, those making the request, or any of them representing more than 50% cent of the total voting rights of all of them, may themselves convene a meeting, but any meeting so convened shall not be held more than 3 months after the date the request was first made. Any reasonable expenses incurred by those making the request by reason of the failure of the Directors duly to convene a meeting shall be repaid to those making the request by the ICAV and any sum so repaid shall be retained by the ICAV out of any sums due or to become due from the ICAV by way of fees or other remuneration in respect of their services to such of the Directors as were in default. In the case of a meeting at which a special resolution is to be proposed, the Directors shall be deemed not to have duly convened any such meeting if they do not give such due notice of it.



- (d) A meeting convened by Members under Clause 43(b) or Clause 43(c) shall be convened in the same manner as nearly as possible as that in which meetings of Members are to be convened by Directors.

**44. Notice of General Meetings.**

- (a) Any General Meeting (called for the passing of a Special Resolution or Ordinary Resolution) shall be called by not less than fourteen Clear Days' notice which, in each case, shall specify the place, the day and the hour of the meeting, and in the case of special business the general nature of such business (and in the case of an annual general meeting that the meeting is an annual general meeting) and shall be given in the manner hereinafter provided to such persons as are under the provisions of this Instrument or the conditions of issue of the shares held by them entitled to receive notices from the ICAV.
- (b) The Directors and the Auditors shall be entitled to receive notice of and attend and speak at any General Meeting of the ICAV. The Directors may in their discretion consider requests from other parties.
- (c) In every notice calling a meeting of the ICAV, there shall appear with reasonable prominence a statement that a Member entitled to attend and vote is entitled to appoint one or more proxies to attend and vote instead of him and that a proxy need not also be a Member.
- (d) The accidental omission to give notice to or the non-receipt of notice by any person entitled to receive notice shall not invalidate the proceedings at any General Meeting nor shall it invalidate that person's entitlement to vote at the relevant meeting.

**PART XIII - PROCEEDINGS AT GENERAL MEETINGS**

**45. Business to be Transacted**

All business shall be deemed special that is transacted at an Extraordinary General Meeting as also will all business that is transacted at an Annual General Meeting with the exception of the consideration of the statutory financial statements of the ICAV and the reports of the Directors and Auditors; the appointment or re-appointment of the Auditors; the authorisation of the Directors to approve the remuneration of the Auditors, the election of Directors in the place of those retiring, and the review by the Members of the ICAV's affairs.

**46. Quorum for General Meetings**

- (a) No business other than the appointment of a Chairman shall be transacted at any general meeting unless a quorum of Members is present at the time when the meeting proceeds to business. Subject as provided in this Instrument and except as provided in this Instrument in relation to an adjourned meeting, two persons entitled to vote upon the business to be transacted, each being a Member or a proxy for a Member, or a duly authorised representative of a corporate Member, shall be a quorum for all purposes.

- (b) 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 and at such other time and place as the Directors may determine. If at such adjourned meeting such a quorum is not present within half an hour from the time appointed for holding the meeting, then 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, the Members present shall be a quorum.

**47. Chairman of General Meetings**

- (a) The Chairman (if any) or, in his absence, the Deputy Chairman (if any) of the Board 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.
- (b) 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 the holding of the meeting, the Members present and entitled to vote shall choose some Member present to be Chairman of the meeting.

**48. Directors, the Manager, the Investment Manager, the Administrator, the Auditors and the Depositary Right to attend General Meetings**

The Directors, the Manager, the Investment Manager, the Administrator and the Depositary shall be entitled, notwithstanding that he/she is not a Member, 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 Auditors.

The accidental omission to give notice to or the non-receipt of notice by any person entitled to receive notice shall not invalidate the proceedings at any general meeting.

**49. Adjournment of General Meetings**

The Chairman, with the consent of a meeting at which a quorum is present, may (and shall if so directed by the meeting) 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 thirty days or more, 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.

#### **50. 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 such a 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.

#### **51. Entitlement to Demand Poll**

A poll may be demanded:-

- (a) by the Chairman of the meeting;
- (b) by at least three Members present (in person or by proxy) having the right to vote at the meeting;
- (c) by any Member or Members present (in person or by proxy) representing not less than one-tenth of the total voting rights of all the Members having the right to vote at the meeting, or any Member or Members holding shares conferring the right to vote at the meeting being shares on which an aggregate sum has been paid up equal to not less than one-tenth of the total sum paid up on the Shares conferring that right.

The right to demand a poll may be withdrawn by the person or persons who have made the demand. If a poll is duly demanded it is to be taken in such a manner as the Chairperson directs (however a poll demanded with regard to the election of a Chairperson or on a question of adjournment must be taken forthwith). On a poll a Member, whether present in person or by proxy, who is entitled to more than one vote need not, if he or she votes, use all of his or her votes or cast them in the same way.

#### **52. Taking of a Poll**

- (a) Save as provided in paragraph (b) of this Clause, a poll shall be taken in such manner as the Chairman directs and he may in the event of a poll, appoint scrutineers (who need not be Members) 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.
- (b) 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 has been 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 and no notice need be given of a poll not taken immediately.

- (c) On a poll votes may be given either personally (to include by telephone and electronic means provided there are reasonable procedures in place to verify that the instructions have been given by the relevant Shareholders) or by proxy.

**53. Votes of Members**

Votes may be given either personally or by proxy. Subject to any rights or restrictions for the time being attached to any Class of Shares, on a show of hands every holder of shares who (being an individual) is present in person or (being a corporation) is present by a duly authorised representative shall have one vote and on a poll every member in person or by proxy shall have one vote for every Share of which he is the holder. A holder of Shares of more than one vote need not cast all his votes or cast all the votes he uses in the same way.

**54. 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.

**55. 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 shares.

**56. 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 for the deposit of instruments of proxy, not less than forty-eight hours 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.

**57. 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 for all purposes. Any such objection made in due time shall be referred to the Chairman of the meeting, whose decision shall be final and conclusive.

**58. Appointment of Proxy**

Every Member entitled to attend and vote at a general meeting may appoint a proxy to attend, speak and vote on his behalf. A proxy need not be a Member. An instrument of proxy shall be in such form (including, electronic form or otherwise) as the Directors may approve, and shall be executed by or on behalf of the appointor. The signature to 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.

**59. Deposit of Proxy Instruments**

The instrument appointing a proxy (in electronic form or otherwise) and any authority under which it is executed or a copy certified notarially or in some other way approved by the Directors, shall be communicated by electronic means or deposited at the Office or (at the option of the Member) 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 not less than forty-eight hours 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 taking of the poll at which it is to be used, and in default shall not be treated as valid PROVIDED THAT:-

- (a) in the case of a meeting which is adjourned to, or a poll which is to be taken on, it shall be sufficient if the instrument of proxy and any such authority and certification thereof as aforesaid is lodged with the Secretary at the commencement of the adjourned meeting or the taking of the poll; and
- (b) 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.

No instrument appointing a proxy shall be valid after the expiration of twelve months from the date named in it as the date of its execution, except at an adjourned meeting or on a poll demanded at a meeting or an adjourned meeting in cases where the meeting was originally held within twelve months from such date. The depositing of the instrument of proxy and the power or attorney or other authority (if any) may, rather than it being effected by sending or delivering the instrument, be effected by communicating the instrument to the ICAV by electronic means.

**60. Effect of Proxy Instruments**

Deposit of an instrument of proxy in respect of a meeting shall not preclude a Member 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.

**61. Effect of Revocation of Proxy or of Authorisation**

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 the 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.

**62. Representation of Bodies Corporate**

Any corporation which is a Member of the ICAV 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 at any meeting of any Class of Members of the ICAV, and the person so authorised shall be entitled to exercise the same powers on behalf of the corporation which he represents as that corporation could exercise if it were an individual Member of the ICAV and such corporation shall for the purposes of this Instrument be deemed to be present in person at any such meeting if a person so authorised is present there at.

**63. Written Resolutions**

A resolution in writing signed by all the Members of the ICAV, or Shareholders of a Fund or Class for the time being entitled to attend and vote on such resolution at a general meeting (or being bodies corporate by their duly appointed representatives) shall be as valid and effective for all purposes as if the resolution had been passed at a general meeting of the ICAV, Fund or Class duly convened and held and may consist of several instruments in the like form each executed by or on behalf of one or more Members (or Shareholders, as appropriate), and if described as an ordinary resolution or a special resolution shall be deemed to be an Ordinary Resolution or Special Resolution (as the case may be) within the meaning of this Instrument. A resolution passed in accordance with this Clause 63 may consist of several documents in like form each signed by or on behalf of one or more Members or Shareholders, as appropriate. 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.

The provisions of Part XIII of this Instrument save to the extent expressly provided herein or therein with regard to meetings of the Funds or Classes shall apply mutatis mutandis to separate

meetings of each Fund or Class of Shareholders at which a resolution varying the rights of Shareholders in such Fund or Class is tabled.

#### **PART XIV - DIRECTORS**

##### **64. Number of Directors**

The number of the Directors shall not be less than 2. A Director may only be appointed with the approval of the Central Bank. The continuing Directors may act notwithstanding any vacancy in their body, provided that if the number of the Directors is reduced below the prescribed minimum, the remaining Director or Directors shall appoint forthwith an additional Director or additional Directors to make up such minimum or shall convene a general meeting of the ICAV for the purpose of making such appointment. If there is no Director or Directors able or willing to act then any two shareholders may summon a general meeting for the purpose of appointing Directors. Directors are not required to retire by rotation.

##### **65. Share Qualifications and Restrictions on Directors**

A Director shall not require a share qualification. The provisions of the Act relating to restrictions on directors of an insolvent company or disqualifying persons from being appointed or acting as a director or other officer, statutory auditor, receiver or liquidator, or being in any way (directly or indirectly) concerned or taking part in the promotion, formation or management of a company shall apply to the ICAV.

##### **66. Ordinary Remuneration of Directors**

Subject to the requirements of the Act, the Directors of the ICAV for the time being are entitled to such remuneration as may be determined by the Directors and disclosed in the Prospectus or in the annual or semi-annual report issued by the ICAV from time to time. The ICAV shall not make to any Director any payment by way of compensation for loss of office, or as consideration for or in connection with retirement from office, unless the following conditions are satisfied, (a) that particulars relating to the proposed payment (including its amount) are disclosed to Members, and (b) that the proposal is approved by Ordinary Resolution of the ICAV in a general meeting.

##### **67. 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 or who devotes special attention to the business, may be paid such extra remuneration by way of salary, commission or otherwise as the Directors may determine.

##### **68. Expenses of Directors**

Subject to the requirements of the Central Bank, the Directors may be paid, inter alia, for travelling, hotel and other expenses properly incurred by them in connection with their attendance at meetings of Directors or committees of Directors or general meetings or separate meetings of

the holders of any Class of Shares or of debentures of the ICAV or otherwise in connection the discharge of their duties.

**69. Alternate Directors**

- (a) Subject to the requirements of the Act, any Director may appoint by writing under his hand any person (including another Director) to be his alternate.
- (b) An alternate Director shall be entitled to receive notices of all meetings of the Directors and of all meetings of committees of 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). If he himself shall be a Director or attends a meeting as an alternate for more than one Director, his voting rights shall be cumulative, provided however, that he shall count as one for the purposes of determining a quorum. To such extent as the Directors may from time to time determine in relation to any committee of the Directors, the foregoing provisions of this paragraph shall also apply mutatis mutandis to any meeting of any such committee of which his appointor is a member. An alternate Director shall not save as aforesaid or as otherwise herein provided have power to act as a Director nor shall he be deemed to be a Director.
- (c) Save as otherwise provided in this Instrument, an alternate Director shall be deemed for all purposes to be a Director and shall alone be responsible for his own acts and defaults and he shall not be deemed to be the agent of the Director appointing him. 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 last mentioned remuneration as shall be agreed between the alternate and the Director appointing him.
- (d) 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, any appointment of an alternate Director made by him which was in force immediately prior to his retirement shall continue after his re-appointment.
- (e) Any appointment or revocation by a Director under this Clause 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.
- (f) An alternate Director shall be entitled to contract and be interested in and benefit from contracts or arrangements or transactions and to be repaid expenses and to be indemnified to the same extent mutatis mutandis as if he were a Director but he shall not be entitled to receive from the ICAV in respect of his appointment as alternate Director any remuneration except only such part (if any) of the remuneration otherwise payable to his appointor as such appointor may by notice in writing to the ICAV from time to time direct.



## PART XV - POWERS OF DIRECTORS

### 70. Directors' Powers

- (a) Subject to the provisions of the Regulations and this Instrument and to any directions by the Members given by Ordinary Resolution, not being inconsistent with this Instrument or with the Act, the business of the ICAV shall be managed by the Directors who may do all such acts and things and exercise all the powers of the ICAV as are by this Instrument required to be done or exercised by the ICAV in general meeting. No alteration of this Instrument and no direction made by the ICAV in general meeting shall invalidate any prior act of the Directors which would have been valid if that alteration had not been made or such direction had not been given. The powers given by this Clause shall not be limited or restricted by any special authority or power given to the Directors by this Instrument and a meeting of Directors at which a quorum is present may exercise all powers exercisable by the Directors.
- (b) A Director of the ICAV shall owe the principal fiduciary duties to the ICAV (and the ICAV alone) as set out in the Act.
- (c) If a Director of the ICAV considers in good faith that it is in the interests of the ICAV or relevant Fund for a transaction or engagement to be entered into and carried into effect, a Director may restrict his power to exercise an independent judgement in the future by agreeing to act in a particular way to achieve this.
- (d) The acts of a Director of the ICAV shall be valid despite any defect which may be discovered in the relevant Director's appointment or qualification.

### 71. Power to Delegate

The Directors may, whether by standing resolution, power of attorney or otherwise, delegate all or any of their powers, authorities or discretions for such period and subject to such conditions as they may think fit including without limitation but subject to the Regulations and the Central Bank UCITS Regulations relating to the issue and repurchase of Shares, the calculation of the Net Asset Value per Share, the declaration and payment of dividends and the management, investment management and administration of the ICAV, to the Manager or to any duly authorised ICAV, firm or other person subject to such terms and conditions as the Directors in their absolute discretion may resolve and, subject to the Regulations and the Central Bank UCITS Regulations, may also authorise the Manager or any such ICAV, firm or person to delegate all or any of the powers, authorities and discretions so delegated.

### 72. Appointment of Attorneys

The Directors, from time to time and at any time by power of attorney, may appoint any ICAV, firm or person or any fluctuating body of persons, whether nominated directly or indirectly by the Directors, to be the attorney or attorneys of the ICAV for such purposes and with such powers, authorities and discretions (not exceeding those vested in or exercisable by the Directors under

this Instrument) and for such period and subject to such conditions as they may think fit. Any such power of attorney may contain such provisions for the protection of persons dealing with any such attorney as the Directors may think fit and may also authorise any such attorney to sub-delegate all or any of the powers, authorities and discretions vested in him. Notwithstanding the generality of the foregoing, the Directors may appoint an attorney for the purpose of exercising their power to allot relevant securities as more particularly described in Clause 4 hereof.

### **73. Payments and Receipts**

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

### **74. Investment Objectives**

- (a) The Directors shall determine the investment objectives and policies (including the permissible forms of Investments) and restrictions applying to each Fund and the investment objectives of each Fund from time to time determined by the ICAV shall be as set out in any Prospectus.
- (b) The ICAV and each Fund may invest only in those Investments permitted by the Regulations and the Central Bank UCITS Regulations subject to the limitations and restrictions set out in the Regulations and the Central Bank UCITS Regulations and any derogations there from permitted by the Central Bank.
- (c) The ICAV and each Fund, and in accordance with the Regulations and the Central Bank Requirements, each Class, may employ derivative instruments and techniques and instruments for the purposes of investment and efficient portfolio management and the ICAV and each Fund and each Class may employ derivative instruments and techniques and instruments intended to provide protection against exchange risks in each case under the conditions and within the limits laid down from time to time by the Central Bank.
- (d) For the purpose of providing margin or collateral in respect of transactions in and the use of derivative instruments and techniques and instruments, the ICAV shall be entitled:-
  - (i) to transfer, deposit, mortgage, charge or encumber any Investments forming part of the ICAV or the relevant Fund;
  - (ii) to vest any such Investments in the relevant Recognised Exchange or market or counterparty or any ICAV controlled by such Recognised Exchange or market or any counterparty and used for the purpose of receive margin and/or cover or in a nominee of the Depositary; and/or
  - (iii) to give or obtain the guarantee of a bank (and to provide any necessary counter-security therefor) and deposit such guarantee or cash, with a Recognised

Exchange or counterparty or any ICAV controlled by such Recognised Exchange or counterparty and used for the purpose of receiving margin and/or cover.

- (e) With the exception of permitted investments in unlisted securities and over the counter derivative instruments investment by the ICAV and each Fund in securities or financial derivative instruments will be made only in securities or financial derivative instruments listed or traded on a stock exchange or market (including derivative markets) which meets with the regulatory criteria (regulated, operate regularly, be recognised and open to the public) and which are listed or traded on a Recognised Exchange listed in the Prospectus.
- (f) Subject to authorisation by the Central Bank each Fund may invest up to 100% of its net assets in transferable securities and money market instruments issued or guaranteed by any Member State, its local authorities, non-Member State or public international bodies of which one or more Member States are members, drawn from the following list of issuers:
- i. OECD Governments;
  - ii. Government of Singapore;
  - iii. Government of the People's Republic of China;
  - iv. Government of Brazil (provided the issues are of investment grade);
  - v. Government of India (provided the issues are of investment grade);
  - vi. European Investment Bank;
  - vii. European Bank for Reconstruction & Development;
  - viii. International Finance Corporation;
  - ix. International Monetary Fund;
  - x. Euratom;
  - xi. The Asian Development Bank;
  - xii. The European Central Bank;
  - xiii. Council of Europe;
  - xiv. Eurofima;
  - xv. African Development Bank;
  - xvi. The International Bank for Reconstruction & Development (the World Bank);
  - xvii. The Inter American Development Bank;
  - xviii. European Union;
  - xix. Federal National Mortgage Association (Fannie Mae);
  - xx. Federal Home Loan Mortgage Corporation (Freddie Mac);
  - xxi. Government National Mortgage Association (Ginnie Mae);
  - xxii. Student Loan Marketing Association (Sallie Mae);
  - xxiii. Federal Home Loan Bank;
  - xxiv. Federal Farm Credit Bank;
  - xxv. Tennessee Valley Authority;
  - xxvi. Straight-A Funding LLC;
  - xxvii. Export - Import Bank;

provided that if more than 35% of the net assets of a Fund are invested in such securities, the Fund must hold securities from at least six different issues with

securities from any one issue not exceeding 30% of the net assets of the relevant Fund.

- (g) The ICAV or a Fund may for the purposes and under the conditions specified in the Regulations and the Central Bank Requirements own all the issued share capital of any private company, which in the interests of Shareholders the Directors consider it necessary or desirable for the ICAV to incorporate or acquire or utilise in connection with the ICAV or a Fund. All assets and shares of such a company will be held by the Depositary or its sub-custodian or nominee.
- (h) A Fund may in accordance with the Central Bank Requirements replicate the composition of a stock or debt securities or other financial index which is recognised by the Central Bank.
- (i) A Fund may hold ancillary liquid assets.

#### **75. Borrowing Powers and Efficient Portfolio Management**

- (a) Subject to any limits and conditions laid down by the Central Bank, the Directors or their delegate may exercise all powers of the ICAV to borrow money or raise money and to transfer, mortgage, pledge or charge its undertaking, property and assets (both present and future) or any part thereof and to issue bonds, notes, debentures or other securities whether outright or as security for any debts or obligations of the ICAV. The ICAV may not borrow more than 10% of the Net Asset Value of each Fund provided that such borrowing is on a temporary basis for the account of the relevant Fund.
- (b) To achieve its investment objectives the ICAV may employ techniques and instruments relating to the Investments subject to the conditions and within the limits from time to time laid down by the Central Bank intended to provide protection against exchange risks.
- (c) The ICAV may lend securities for the purpose of efficient portfolio management, in accordance with the Regulations, the Central Bank UCITS Regulations and any additional guidelines laid down from time to time by the Central Bank.

### **PART XVI - APPOINTMENT AND DISQUALIFICATION OF DIRECTORS**

#### **76. Eligibility for Appointment**

- (a) No person shall be appointed a Director at any general meeting unless he is 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 Member qualified to vote at the meeting has 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 and not less than three quarters of all Members entitled to attend and vote at general meetings of the ICAV vote in favour of the appointment of the person referred to in such notice.

- (b) The Members shall have the power at a general meeting of the ICAV to appoint any person to be a Director provided that a motion for the appointment of two or more persons as Directors of the ICAV by a single resolution shall not be made unless a resolution that it shall be so made has first been agreed to by the meeting without any vote being given against it.

**77. Appointment of Additional Directors**

- a) 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.
- b) The Directors may appoint a person who is willing to act to be a Director in accordance with Central Bank Requirements, 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 fixed by or in accordance with this Instrument as the maximum number of Directors.

**78. Disqualification of Directors**

- (a) The office of a Director shall be vacated ipso facto if:
  - (i) he ceases to be a Director by virtue of any provision of the Act or he becomes prohibited by law from being a Director;
  - (ii) he becomes bankrupt or makes any arrangement or composition with his creditors generally;
  - (iii) if, in the opinion of a majority of the Directors, he becomes of unsound mind;
  - (iv) in the opinion of a majority of the Directors, he becomes incapable by reason of mental disorder of discharging his duties as a Director;
  - (v) he resigns his office by notice to the ICAV;
  - (vi) he is convicted of an indictable offence and the Directors determine that as a result of such conviction he should cease to be a Director;
  - (vii) 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;
  - (viii) if he is requested by a majority of the other Directors (not being less than two in number) to vacate office;

- (ix) if he is removed from office by an Ordinary Resolution of the ICAV; or
  - (x) if he ceases to be approved to act as a Director by the Central Bank.
- (b) The ICAV may by Ordinary Resolution of which extended notice has been given in accordance with the provisions of the Act remove a Director before the end of the Director's period of office despite anything in this Instrument or in any agreement between the ICAV and the Director and may, by Ordinary Resolution, appoint another Director in his stead, in accordance with the provisions of the Act. Nothing in this Clause 78 shall be taken as depriving a person removed hereunder of compensation or damages payable to him in respect of the termination of this appointment as Director or of any appointment terminating with that of the Director.

## **PART XVII - DIRECTORS' OFFICES AND INTERESTS**

### **79. Executive Offices**

- (a) The Directors may appoint one or more of their body to the office of Managing Director or Joint Managing Director or to any other executive office under the ICAV (including, where considered appropriate, the office of Chairman) on such terms and for such period as they may determine and, without prejudice to the terms of any contract entered into in any particular case, may revoke any such appointment at any time.
- (b) The Directors may entrust to and confer upon the Managing Director or any Director holding any executive office any of the powers exercisable by them as Directors upon such terms and conditions and with such restrictions as they think fit, and either collaterally with or to the exclusion of their own powers, and may from time to time revoke, withdraw, alter or vary all or any of such powers.
- (c) Every Managing Director shall be liable to be dismissed or removed from his position as Managing Director by the Directors and another person appointed in his place. The Directors may, however, enter into an agreement with any person who is or is about to become a Managing Director with regard to the length and terms of his employment, but so that the remedy of any such person for any breach of such agreement shall be in damages only and he shall have no right or claim to continue in such office contrary to the will of the Directors or of the ICAV in general meeting.
- (d) A Director holding any such executive office shall receive such remuneration, whether in addition to or in substitution for his ordinary remuneration as a Director and whether by way of salary, commission, participation in profits or otherwise or partly in one way and partly in another, as the Directors may determine.
- (e) The appointment of any Director to the office of Chairman or Managing or Joint Managing Director shall determine automatically if he ceases to be a Director but without prejudice to any claim for damages for breach of any contract of service between him and the ICAV.

- (f) The appointment of any Director to any other executive office shall not determine automatically if he ceases from any cause to be a Director unless the contract or resolution under which he holds office shall expressly state otherwise, in which event such determination shall be without prejudice to any claim for damages for breach of any contract of service between him and the ICAV.
- i. A Director may hold any other office or place of profit under the ICAV (except that of Auditor) in conjunction with his office of Director, and may act in a professional capacity to the ICAV, on such terms as to remuneration and otherwise as the Directors may determine;
  - ii. Any Director may act by himself or through his firm in a professional capacity for the ICAV, and he or his firm shall be entitled to remuneration for professional services as if he were not a Director, provided that nothing herein contained shall authorise a Director or his firm to act as Auditor;
  - iii. Any Director may continue to be or become a director, managing director, manager or other officer or shareholder of any company promoted by the ICAV or in which the ICAV may be interested or associated in business, and no such Director shall be accountable for any remuneration or other benefits received by him as a director, managing director, manager, or other officer or shareholder of any such other company. The Directors may exercise the voting power conferred by the shares in any other company held or owned by the ICAV or exercisable by them as directors of such other company, in such manner in all respects as they think fit (including the exercise thereof in favour of any resolution appointing themselves or any of them directors, managing directors, managers or other officers of such company, or voting or providing for the payment of remuneration to the directors, managing directors, managers or other officers of such company);
  - iv. The ICAV may by Special Resolution suspend or relax the provisions of this Clause to any extent or ratify any transaction not duly authorised by reason of a contravention hereof.

#### **80. Directors' Interests**

- (a) It shall be the duty of each Director of the ICAV who is in any way, whether directly or indirectly, interested in a contract or proposed contract with the ICAV to declare the nature of his or her interest at a meeting of the Directors of the ICAV.
- (b) Subject to the provisions of the Act, and provided that he has disclosed to the Directors the nature and extent of any interest of his, a Director notwithstanding his office:
  - (i) 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;

- (ii) 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
- (iii) 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.

For the purposes of this Clause:

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

#### **81. Restriction on Directors' Voting**

- (a) Save as otherwise provided by this Instrument, a Director shall not vote at a meeting of the Directors or a committee of Directors on any resolution concerning a matter in which he has, directly or indirectly, an interest which is material or a duty which conflicts or may conflict with the interests of the ICAV. 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.
- (b) A Director shall be entitled (in the absence of some other material interest than is indicated below) to vote (and be counted in the quorum) in respect of any resolutions concerning any of the following matters, namely:
  - (i) the giving of any security, guarantee or indemnity to him in respect of money lent by him to the 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;
  - (ii) 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 or by the giving of security under a guarantee or indemnity;
  - (iii) 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;

- (iv) any proposal concerning any other company in which he is interested, directly or indirectly and whether as an officer or shareholder or otherwise howsoever, provided that he is not the holder of or beneficially interested in 10% or more of the issued Shares of any Class of such company or of the voting rights available to members of such company (or of a third company through which his interest is derived) (any such interest being deemed for the purposes of this Clause to be a material interest in all circumstances);
  - (v) any proposal concerning the adoption, modification or operation of a superannuation fund or retirement benefits scheme under which he may benefit and which has been approved by or is subject to and conditional upon approval for taxation purposes by the appropriate Revenue authorities;
  - (vi) any proposal concerning the adoption, modification or operation of any scheme for enabling employees (including full time executive Directors) of the ICAV and/or any subsidiary thereof to acquire shares in the ICAV or any arrangement for the benefit of employees of the ICAV or any of its subsidiaries under which the Director benefits or may benefit;
  - (vii) any proposal concerning the purchase of any policy of insurance against directors' and officers' liability.
- (c) 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 ICAV in which the ICAV is interested, such proposals may be divided and considered in relation to each Director separately and in such case each of the Directors concerned (if not otherwise debarred from voting) shall be entitled to vote (and be counted in the quorum) in respect of each resolution except that concerning his own appointment.
- (d) If a question arises at a meeting of Directors or of a committee of Directors as to the materiality of a Director's interest or as to the right of any Director to vote and such question is not resolved by his voluntarily agreeing to abstain from voting, such question may be referred, before the conclusion of the meeting, to the chairman of the meeting and his ruling in relation to any Director other than himself shall be final and conclusive.
- (e) For the purposes of this Clause, an interest of a person who is connected with a Director (i.e within the meaning of Section 77 of the Act) shall be treated as an interest of the Director and, in relation to an alternate Director, an interest of his appointor shall be treated as an interest of the alternate Director.
- (f) 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.

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

## **PART XVIII - PROCEEDINGS OF DIRECTORS**

### **82. Convening and Regulation of Directors' Meetings**

- (a) Subject to the provisions of this Instrument, 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.
- (b) 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.

### **83. Quorum for Directors' Meetings**

- (a) The quorum necessary 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 2. A person who holds office only as an alternate Director shall, if his appointor 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.
- (b) The continuing Directors or a sole continuing Director may act notwithstanding any vacancies in their number, but if and so long as the number of Directors is reduced below the minimum number fixed by or in accordance with this Instrument, the continuing Directors may act for the purpose of filling of vacancies in their number, or of convening General Meetings of the ICAV, but for no other purpose. If there are no Directors or

Director able or willing to act, then any two Members may summon a General Meeting for the purpose of appointing Directors.

- (c) A meeting of the Directors for the time being at which a quorum is present shall be competent to exercise all powers, authorities and discretions for the time being exercisable by the Directors.
- (d) The Directors may delegate any of their powers or authorities or the exercise of discretion to committees consisting of such members of their body as they think fit. The meetings and proceedings of any such committee shall conform to the requirements as to quorum imposed under the provisions of this Clause and shall be governed by the provisions of these presents regulating the meetings and proceedings of the Directors so far as the same are applicable and are not superseded by any regulations imposed on them by the Directors.
- (e) Pursuant to the provisions of Clause 83 (d), the Directors may delegate their powers relating to the declaration of interim dividends to a committee consisting of two or more Directors.

#### **84. Voting at Directors' Meetings**

- (a) 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 second or casting vote. A Director who is also an alternate Director for one or more Directors shall be entitled in the absence of any such appointor from a meeting to a separate vote at such meeting on behalf of each such appointor in addition to his own vote.
- (b) 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 the 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.

#### **85. Telecommunication Meetings**

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

**86. Appointment of Chairman**

The Directors may from time to time elect and remove a Chairman and, if they think fit, a Deputy Chairman and determine the period for which they respectively are to hold office. The Chairman or failing him, the Deputy Chairman shall preside at all meetings of the Directors, but if there is no Chairman or Deputy Chairman, or if at any meeting the Chairman or Deputy Chairman is not present within five minutes after the time appointed for holding the same, the Directors present may choose one of their number to be Chairman of the Meeting.

**87. Validity of Acts of Directors**

All acts done by any meeting of Directors or of a committee of 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 any of them were disqualified from holding office, or had vacated office, or were not entitled to vote, shall be as valid as if every person had been duly appointed and was qualified and had continued to be a Director and had been entitled to vote.

**88. Minutes kept by Directors**

The Directors shall cause minutes to be made of:-

- (a) all appointments of officers made by the Directors;
- (b) the names of the Directors present at each meeting of the Directors and of any committee of Directors;
- (c) all resolutions and proceedings of all meetings of the ICAV and of the Directors and of committees of Directors.

Any such minutes if purporting to be signed by the Chairman of the meeting at which the proceedings took place, or by the Chairman of the next succeeding meeting, shall, until the contrary be proved, be conclusive evidence of their proceedings.

Where minutes have been made of the proceedings at any general meeting of the ICAV (or any general meeting of a Fund or Class of Shares) or meeting of directors or committee of directors then, until the contrary is shown, the meeting shall be deemed to have been duly held and convened, and all proceedings at the meeting to have been duly had, and all appointments of directors or liquidators shall be deemed to be valid.

**89. Directors' Resolutions and Other Documents in Writing**

A resolution or other document in writing signed by all the Directors entitled to receive notice of a meeting of the Directors or of a committee of Directors shall be as valid as if it had been passed at a meeting of Directors or (as the case may be) a committee of Directors duly convened and held and may consist of several documents in the like form each signed by one or more Directors,

and such resolution or other document or documents when duly signed may be delivered or transmitted (unless the Directors 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 document 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 XIX – MANAGEMENT**

### **90. Appointment of Manager, Depositary, Investment Manager, Administrator, Distributor**

- (a) The ICAV, with the prior approval of the Central Bank, may appoint a person, firm or corporation to act as Manager of the ICAV's affairs upon such terms and conditions including the right to remuneration payable by the ICAV and with such powers of delegation and such restrictions as it (with the agreement of the Manager) thinks fit.
- (b)
  - (i) A Manager appointed by the ICAV shall be a person approved by the Central Bank and the terms of any Management Agreement shall be in accordance with the requirements of the Regulations and the Central Bank UCITS Regulations;
  - (ii) Subject to the terms of the Management Agreement, either party to the Management Agreement may terminate the Management Agreement upon providing the relevant notice and in such circumstances as set out in the Management Agreement. In the event of the Manager desiring to retire or the ICAV desiring to remove the Manager from office and the Directors determining to appoint a Manager in lieu of the Manager retiring or being replaced, the Directors of the ICAV shall use their reasonable endeavours to find a person, firm or corporation willing to act as Manager and subject to the prior approval of the Central Bank, the Directors shall appoint such person, firm or corporation to be Manager in place of the former Manager. Any such replacement of the Manager will be carried out in such a manner that ensures the protection of Shareholders;
  - (iii) The Manager may not retire or be removed from office until (i) the Directors shall have found a corporation willing to act as Manager and such corporation shall have been appointed Manager in place of the former Manager or (ii) the Directors shall have determined to seek authorisation from the Central Bank as a self managed ICAV pursuant to the Regulations and such authorisation has been obtained;
  - (iv) The Manager may also be replaced by the Central Bank in accordance with the provisions of the Regulations. (v) On the appointment of a new Manager which is not within the "Prescient" group of companies and unless the Manager otherwise consents, the Directors shall request the Secretary to convene an extraordinary general meeting of Shareholders of the ICAV at which there shall

be proposed a Special Resolution to change the name of the ICAV to a name not including the words "Prescient" and otherwise in accordance with the Central Bank Requirements.

- (c) The Directors shall, subject to the approval of the Central Bank, appoint a Depositary in accordance with the terms of the Depositary Agreement who shall:-
  - (i) be responsible for the safekeeping of all the assets of the ICAV and all of its subsidiaries;
  - (ii) perform the duties prescribed by the Regulations; and
  - (iii) perform such other duties upon such terms as the Directors may from time to time agree in writing with the Depositary and the Depositary shall have power to appoint sub-custodians.
- (d) The Depositary shall be a company prior approved for the purpose by the Central Bank in advance and the terms of any Depositary Agreement shall be in accordance with the Central Bank Requirements.
- (e) The ICAV, or in the event of appointment of a Manager by the ICAV, the Manager may appoint (a) one or more persons, firms or corporations to act as investment manager for the purpose of managing the investment and reinvestment of the assets of the ICAV attributable to one or more Funds, and (b) a person, firm or corporation to act as Administrator of the ICAV for the purpose of administering the affairs of the ICAV and, in each case, to perform such other duties upon such terms and conditions including the right to remuneration payable by the ICAV as the Directors may from time to time (with the agreement of the said investment manager, or Administrator) determine.
- (f) The terms of any Investment Management Agreement and the appointment of an Investment Manager shall be in accordance with Central Bank Requirements.
- (g) The terms of any Administration Agreement and the appointment of an Administrator shall be in accordance with the requirements of the Regulations and the Central Bank UCITS Regulations.
- (h) The ICAV or, in the event of appointment of a Manager by the ICAV, the Manager may appoint one or more persons, firms or corporations to act as distributor(s) for the purpose of marketing and distributing the Shares of the ICAV and to perform such other duties upon such terms and conditions including the right to remuneration payable by the ICAV as the Directors may from time to time (with the agreement of the said distributors) determine.
- (i) The appointment of a Distributor shall be in accordance with Central Bank Requirements and any Distribution Agreement shall be in accordance with the Central Bank Requirements.

- (j) The terms of appointment of any Depositary may authorise such Depositary to appoint (with powers of sub-delegation) sub-custodians, nominees, agents or delegates at the expense of the ICAV or otherwise as determined by the Depositary and the ICAV.
- (k) In the event of the Depositary desiring to retire or the ICAV desiring to remove the Depositary from office, the Directors shall use their reasonable endeavours to find a corporation willing to act as depositary and subject to the prior approval of the Central Bank and Clause 90 (d), the Directors shall appoint such corporation to be Depositary in place of the former Depositary. The Depositary may not retire or be removed from office until the Directors shall have found a corporation willing to act as Depositary and such corporation shall have been appointed Depositary in place of the former Depositary.
- (l) If within a period of 90 days from the date on which (a) the Depositary notifies the ICAV of its desire to retire in accordance with the terms of the Depositary Agreement and has not withdrawn notice of its intention to so retire; (b) the appointment of the Depositary is terminated by the ICAV in accordance with the terms of the Depositary Agreement, or (c) the Depositary ceases to be qualified under Clause 90(d), no new Depositary has been appointed despite attempts by the ICAV to appoint a new Depositary and the current Depositary is unwilling or unable to act as such, then, the Directors shall instruct the Secretary to forthwith convene an extraordinary general meeting of the ICAV at which there shall be proposed an Ordinary Resolution to wind up the ICAV in accordance with the provisions of Clause 116. Notwithstanding anything set out above, the Depositary's appointment shall only terminate on revocation of the ICAV's authorisation by the Central Bank. Notwithstanding the above, the Central Bank may at any time replace the Depositary with another depositary in accordance with the provisions of the Regulations.

## **PART XX - THE SECRETARY**

### **91. Appointment of Secretary**

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

### **92. Assistant or Acting Secretary**

Anything required or authorised by the Act or this Instrument to be done by the Secretary may be done, if the office is vacant or there is for any other reason no Secretary readily available and capable of acting, by or to any assistant or acting secretary or, if there is no 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.

## **PART XXI – THE SEAL & AUTHORISED SIGNATORIES**

### **93. Use of Seal**

Unless otherwise determined by the Directors, the ICAV shall not have a common seal. In the event the ICAV provides itself with a Seal, the Directors shall provide for its safe custody. The Seal (if any) shall be used only by the authority of the Directors or of a committee of Directors authorised by the Directors in that behalf.

### **94. Same Effect as Seal**

Where the ICAV does not provide itself with a Seal as permitted by the Act, or where the ICAV does have a Seal, any document shall have the same effect as executed under the Seal if it is expressed (in whatever form of words) to be executed by the ICAV by two authorised signatories (each of the following being, for this purpose, a Director, the Secretary, or such other persons as authorised by the Directors in accordance with this Instrument) or by a Director alone provided that such signature is attested by a witness.

### **95. Authorised Signatories**

The Directors may from time to time as they think fit appoint one or more persons as authorised signatories of the ICAV for the purposes of signing and/or executing documents and for such other purposes as are provided for in the resolution, power of attorney, authorised signatory list or other authorisation granted by the Directors.

## **PART XXII - DIVIDENDS AND RESERVES**

### **96. Declaration of Dividends**

- i. Subject to the provisions of the Act, the ICAV may by Ordinary Resolution declare such dividends on any Class of Shares as appear to the Directors to be justified by the profits of the relevant Fund and no dividend shall exceed the amount recommended by the Directors. No dividend shall be payable to the holders of Subscriber Shares.
- ii. The Directors may if they think fit declare and pay such dividends in respect of any Shares in the ICAV as appear to the Directors to be justified, subject to any policy statement in relation to dividends in the Prospectus or any Supplement with respect to any Fund or Class.
- iii. The Directors may in their absolute discretion differentiate between the Shares in any Fund and Shares in different Classes within the same Fund as to the dividends declared on such Shares.
- iv. The Directors may determine that Shareholders will be entitled to receive in lieu of any dividend (or part thereof) in respect of any Shares in any Fund or Class an issue of additional Shares in proportion to the number of Shares held by them in the relevant Fund or Class credited as fully paid provided the number of additional Shares (including any



fractional entitlement) to be issued in lieu of any amount of dividend shall be as nearly as possible equal in value to but not in excess of the amount of such dividend at the date of issue of such additional Shares and for such purpose the Directors shall capitalise a sum equal to the aggregate value of dividends in respect of which additional Shares are proposed to be issued and apply the same in paying up in full the appropriate number of additional Shares for issue to the relevant Shareholders credited as fully paid up and the additional Shares so issued shall rank pari passu in all respects with the fully-paid Shares then in issue save only as regards participation in the relevant dividend (or share election in lieu) and the Directors may do all acts and things considered necessary or expedient to give effect to any such capitalisation, with full power to the Directors to make such provision as they may think fit in the case of Shares becoming distributable in fractions so that fractional entitlements are disregarded or rounded up or the benefit of fractional entitlements accrues to the ICAV or the ICAV issues fractions of Shares.

**97. Interim Dividends**

Subject to the provisions of the Act, the Directors may from time to time if they think fit, declare and pay such interim dividends on Shares of any Class as appear to the Directors to be justified by the profits of the relevant Fund.

**98. Source of Dividends**

The amount available for distribution in respect of any Accounting Period shall be the net income of the relevant Fund (whether in the form of dividends, interest or otherwise) and/or net realised gains (i.e. realised gains net of realised and unrealised losses) or net realised and unrealised gains (i.e. realised and unrealised gains net of realised and unrealised losses) during the Accounting Period, subject to such adjustments as may be appropriate under the following headings: -

- (a) addition or deduction of a sum by way of adjustment to allow for the effect of sales or purchases, cum or ex-dividend;
- (b) addition of a sum representing any interest or dividend or other income accrued but not received by the ICAV in respect of the relevant Fund or Class at the end of the Accounting Period and deduction of a sum representing (to the extent that an adjustment by way of addition has been made in respect of any previous Accounting Period) interest or dividends or other income accrued at the end of the previous Accounting Period;
- (c) addition of the amount (if any) available for distribution in respect of the last preceding Accounting Period but not distributed in respect thereof;
- (d) addition of a sum representing the estimated or actual repayment of tax resulting from any claims in respect of corporation tax relief or double taxation relief or otherwise;
- (e) deduction of the amount of any tax or other estimated or actual liability properly payable out of the income or gains of the ICAV in respect of the relevant Fund or Class;

- (f) deduction of a sum representing participation in income paid upon the cancellation of Shares during the Accounting Period;
- (g) deduction of such sum as the ICAV may think appropriate in respect of expenses of the relevant Fund or Class including but not limited to the Organisational Expenses, Duties and Charges, fees and expenses due to the Auditors, the Secretary, the legal and other professional advisers of the ICAV, the Directors, the Manager, the Depositary, the Administrator, and any Distributor or Investment Manager appointed by the ICAV, all expenses of and incidental to any amendments to the Prospectus and the Instrument of Incorporation and these presents expenses comprising all costs, charges, professional fees and disbursements bona fide incurred in respect of the computation, claiming or reclaiming of all taxation reliefs and payments, and any interest paid or payable on borrowings to the extent that such sum has not already been, nor will be deducted pursuant to Clause 3 of these presents PROVIDED ALWAYS that the ICAV shall not be responsible for any error in any estimates of corporation tax repayments or double taxation relief expected to be obtained or of any sums payable by way of taxation or of income receivable, and if the same shall not prove in all respects correct, the Directors shall ensure that any consequent deficiency or surplus shall be adjusted in the Accounting Period in which a further or final settlement is made of such tax repayment or liability or claim to relief or in the amount of any such estimated income receivable, and no adjustment shall be made to any dividend previously declared.

#### **99. Receipts**

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

#### **100. Dividends in Specie**

A general meeting declaring a dividend may direct, upon the recommendation of the Directors, that the Directors may satisfy any dividend or capital sum payable to holders of the Shares of any Class 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 provided that the ICAV shall if any Shareholder so requests sell any asset or assets proposed to be so distributed and distribute to such Shareholder the cash proceeds of such sale less the costs of any such sale which shall be borne by the relevant Shareholder.

#### **101. Ranking of Dividends**

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

#### **102. Payment of Dividends**

The ICAV may transmit any dividend or other amount payable in respect of any Share at the risk and cost of the relevant Shareholder in such form as the directors determine including by wire or

electronic transfer at the risk and cost of the relevant Shareholder or Shareholders to a designated account and transmission by wire or electronic transfer shall constitute a good discharge to the ICAV and the ICAV shall not be responsible for any loss arising in respect of such transmission.

Where the amount of any distribution payable to an individual Shareholder would be less than such amount as set out in the Prospectus (or its foreign currency equivalent), the Directors in their sole discretion may determine that such amount shall not be distributed but shall be retained and reinvested within and for the benefit of the relevant Fund or Class.

Where the amount of any dividend payable to an individual Shareholder would be less than such amount as may be disclosed from time to time in the Prospectus (or its foreign equivalent), the Directors in their sole discretion may determine not to pay any such dividend and instead issue and credit to the account of the relevant Shareholder such number of Shares in the relevant Fund or Class as are as nearly as possible equal in value to but not in excess of the amount of such dividends. A sales charge shall not be deducted from such amount.

**103. Dividends not to bear Interest**

No dividend or other moneys payable in respect of a Share shall bear interest against the ICAV unless otherwise provided by the rights attached to the Share.

**104. Payment to Holders on a Particular Date**

Any resolution declaring a dividend on Shares of any Class, whether a resolution of the ICAV in general meeting or a resolution of the Directors, may specify that the same may be payable to the persons registered as the holders of such Shares at the close of business on a particular date, notwithstanding that it may be a date prior to that on which the resolution is passed, and thereupon the dividend shall be payable to them in accordance with their respective holdings so registered, but without prejudice to the rights inter se of transferors and transferees of any such Shares in respect of such dividend. The provisions of this Clause shall apply, mutatis mutandis, to capitalisations to be effected in pursuance of this Instrument.

**105. Unclaimed Dividends**

All unclaimed dividends and other amounts payable as aforesaid may be invested or otherwise made use of for the benefit of the relevant Fund until claimed. Any dividend which has remained unclaimed for six years from the date of its declaration shall be forfeited automatically and shall revert to the relevant Fund, without the necessity for any declaration or other action by the ICAV. The payment by the Directors of any unclaimed dividend or other moneys payable on or in respect of a Share into a separate account shall not constitute the ICAV a trustee in respect thereof.

**106. Currency of Payment and Foreign Exchange Transactions**

Where payments in respect of subscription or redemption of Shares or dividend payments are tendered or requested in a major currency other than the Base Currency of the relevant Fund,

any necessary foreign exchange transactions will be arranged by the Administrator for the account of, and at the risk and expense of, the applicant at the time, in the case of subscriptions at the time cleared funds are received, in the case of redemptions at the time the request for redemption is received and accepted, and in the case of dividends at the time of payment. The exchange rate applicable to any such transactions will be the prevailing exchange rate quoted by the ICAV's bankers.

#### **107. Reserves**

- i. Before recommending any dividend, whether preferential or otherwise, the Directors may carry to reserve out of the profits of the ICAV such sums as they think proper. All sums standing to reserve may be applied from time to time in the discretion of the Directors for any purpose to which the profits of the ICAV may be properly applied and at the like discretion may be either employed in the business of the ICAV or invested in such Investments as the Directors may lawfully determine. The Directors may divide the reserve into such special funds as they think fit and may consolidate into one fund any special funds or any parts of any special funds into which the reserve may have been divided as they may lawfully determine. Any sum which the Directors may carry to reserve out of the unrealised profits of the ICAV shall not be mixed with any reserve to which profits available for distribution have been carried. The Directors may also carry forward, without placing the same to reserve, any profits which they may think it prudent not to divide.
- ii. If the ICAV is required to deduct, withhold or account for tax including any penalties and interest thereon upon the occurrence of certain events such as the encashment, redemption, disposal or deemed disposal of Shares by or payment of distribution to a Shareholder (whether upon a redemption or transfer of Shares or payment of a dividend or deemed disposal of Shares or otherwise) the Directors may deduct or arrange for the deduction from the proceeds due to be paid to a Shareholder of a cash amount equal to the liability or in accordance with the procedures in Clause 21 hereof may arrange for the compulsory redemption and cancellation of such number of Shares of such Shareholder as is sufficient after the deduction of any redemption charges to discharge any such liability and the relevant Shareholder shall indemnify and keep indemnified the ICAV against any loss suffered by it in connection with any obligation or liability to so deduct, withhold or account.

### **PART XXIII - CAPITALISATION OF PROFITS OR RESERVES**

#### **108. Distributable Profits and Reserves**

The ICAV in general meeting may resolve, upon the recommendation of the Directors, that it is desirable to capitalise any part of the amount for the time being standing to the credit of any of the ICAV's reserve accounts (including capital reserves) or to the credit of the profit and loss account or which is otherwise available for distribution and not required for payment of dividend on any shares with a preferential right to dividend amongst the Members may who would have been entitled thereto if distributed by way of dividend and in the same proportion on condition that the same be not paid in cash but be applied either in or towards paying up in full unissued shares of

the ICAV to be allotted and distributed credited as fully paid up to and amongst such Members in the proportion aforesaid, or partly in one way and partly in the other, and the Directors shall give effect to such resolution.

**109. Non-Distributable Profits and Reserves**

Without prejudice to any powers conferred on the Directors as aforesaid, the ICAV in general meeting may resolve, on the recommendation of the Directors, that it is desirable to capitalise any part of the amount for the time being standing to the credit of any of the ICAV's reserve accounts or to the credit of the profit and loss account which is not available for distribution by applying such sum in paying up in full unissued shares to be allotted as fully paid bonus shares to those members of the ICAV who would have been entitled to that sum if it were distributable and had been distributed by way of dividend (and in the same proportions) and the Directors shall give effect to such resolution.

**110. Implementation of Capitalisation Issues**

Whenever such a resolution is passed in pursuance of either of the two immediately preceding Clauses, the Directors shall make all appropriations and applications of the undivided profits resolved to be capitalised thereby and all allotments and issues of fully paid shares, if any, and generally shall do all acts and things required to give effect thereto with full power to the Directors to make such provisions as they shall think fit for payment in cash or otherwise for the case of shares becoming distributable in fractions and to authorise any person to enter on behalf of all the Members entitled thereto into an agreement with the ICAV providing for the allotment to them respectively, credited as fully paid up, of any further shares to which they may become entitled upon such capitalisation or (as the case may require) for the payment up by the ICAV on their behalf, by the application thereto of their respective proportions of the profits resolved to be capitalised, of the amounts or any part of the amounts remaining unpaid on their existing shares, and any agreement made under such authority shall be effective and binding on all such Members.

**PART XIV - NOTICES**

**111. Service of Notices**

Any notice or other document required to be served upon or sent to a Member may be given by posting or delivery to or leaving the same at his address as appearing on the Register or by transmitting the same by fax or other means of electronic communication to a fax number, e-mail address or other electronic identification provided to the ICAV or its delegate or by such other means as the Directors may determine and notify in advance to Members. Any such notices or documents shall be deemed to have been duly given if sent by pre-paid post 48 hours after posting and if delivered to or left at the Member's address as appearing on the Register on the day of delivery or on the next working day if delivered or left outside usual business hours and if sent by fax on the day of receipt of a transmission receipt and if sent by electronic communication when it has been transmitted to the electronic information system designated by the Member for the purpose of receiving electronic communications and otherwise as determined by the Directors and notified in advance to Members and in the case of joint Members shall be deemed duly given

if so done upon or to the first named on the Register. Any notice may be given by advertisement and shall be deemed to have been duly given if published in a national daily newspaper circulating in the country or countries where Shares are marketed or an advertisement is published stating where copies of such notices or documents may be obtained.

**112. Service on Joint Holders**

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

**113. Service on Transfer or Transmission of Shares**

Any notice or document served or sent in accordance with these presents shall notwithstanding that such Member be then dead or bankrupt and whether or not the ICAV has notice of his death or bankruptcy be deemed to have been duly served or sent and such service shall be deemed a sufficient service on or receipt by all persons interested (whether jointly with or as claiming through or under him) in the Shares concerned.

**114. Risk of Service**

Any certificate or notice or document which is served on or sent or given to a Member in accordance with these presents or dispatched by or on behalf of the ICAV in accordance with a Member's instructions shall be so served or sent or given or dispatched at the risk of such Member.

**115. Deemed Receipt to Notices**

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

**PART XXV - WINDING UP**

**116. Winding Up**

- (a) The ICAV may be wound up if:
  - (i) at any time the Net Asset Value of the ICAV falls below USD 10,000,000 or any other amount which shall be specified in the Prospectus of the ICAV from time to time on each Dealing Day for a period of four consecutive weeks and the Members of the ICAV resolve by Ordinary Resolution to wind up the ICAV and the provisions of the Act relating to a winding up on the occurrence of an event are complied with;
  - (ii) an event specified at Clause 90(l) hereof has occurred and the Shareholders of the ICAV resolve by Ordinary Resolution to wind up the ICAV and the provisions of the Act relating to a winding up on the occurrence of an event are complied with;

- (iii) the Members of the ICAV resolve to wind up the ICAV by Special Resolution provided that any Special Resolution to wind up the ICAV is in accordance with the summary approval procedure as provided for in the Act.
- (b) Notwithstanding any other provision contained in this Instrument, should the Directors at any time and in their absolute discretion resolve that it would be in the best interests of the Members to wind up the ICAV, then any such winding up shall be commenced in accordance with the summary approval procedure as provided for in the Act.
- (c) Any unclaimed dividends or unapplied balances in existence following the winding up of the ICAV shall be dealt with in accordance with Section 154(1) of the Act.
- (d) A Fund may be wound up as if the Fund were a separate ICAV in accordance with the provisions of this Clause 116 but, in any such case, the appointment of a liquidator or any provisional liquidator and the powers, rights, duties and responsibilities of the liquidator or any provisional liquidator shall be confined to the Fund or Funds which is or are being wound up. For such purposes, all references to the ICAV in this Clause 116 shall be read as referring to the Fund or Funds which are being wound up, all references to the Members shall be read as referring to the holders of Shares in the relevant Fund and all references to creditors shall be read as referring to creditors of the relevant Fund.
- (e) A Fund may also be terminated by the ICAV if, within a period of twelve months from the date of approval of the Fund by the Central Bank, the Fund has not launched.

#### **117. Distribution on Winding Up**

- (a) Subject to the provisions of the Act, in the event of a winding up of the ICAV, the liquidator shall firstly apply the assets of each Fund in such manner and order as he thinks fit in satisfaction of creditors' claims relating to the ICAV.
- (b) The liquidator shall apply the assets of each Fund in satisfaction of liabilities incurred on behalf of or attributable to such Fund and shall not apply the assets of any Fund in satisfaction of any liability incurred on behalf of or attributable to any other Fund.
- (c) The assets available for distribution among the Members shall then be applied in the following priority:-
  - (i) firstly, in the payment to the holders of the Shares of each Class of the Fund a sum in the Base Currency in which that Fund is designated or in any other currency selected by the liquidator as nearly as possible equal (at a rate of exchange determined by the liquidator) to the Net Asset Value of the Shares held by such holders of the relevant Class respectively as at the date of commencement to wind up;
  - (ii) secondly, in the payment to the holders of the Subscriber Shares of sums up to the nominal amount paid thereon out of the assets of the ICAV not comprised within

any Funds provided that if there are insufficient assets aforesaid to enable such payment to be made, no recourse shall be had to the assets comprised within any of the Funds; and

- (iii) thirdly, in the payment to the holders of each Classes of a Fund of any balance there remaining in the relevant Fund in proportion to the number of Shares held in the relevant Class; and
- (iv) fourthly, in the payment to the holders of the Shares of any balance then remaining and not comprised within any of the Funds or Classes such payment being made in proportion to the value of each Fund and within each Fund to the value of each Class and in proportion to the number of Shares held in each Class.

#### **118. Distribution in Specie**

If the ICAV shall be wound up, the liquidator may, with the authority of an Ordinary Resolution of the ICAV or with the prior written approval of all Members of the ICAV, divide among the Members (pro rata to the value of their respective Shareholdings in the ICAV) in specie the whole or any part of the assets of the ICAV, and whether or not the assets shall consist of property of a single kind provided that the ICAV shall if any Member so requests sell any asset or assets proposed to be so distributed and distribute to such Member the cash proceeds of such sale less the costs of any such sale which shall be borne by the relevant Member, 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 Members or different Classes of Members. The liquidator may vest any part of the assets in trustees upon such trusts for the benefit of Members 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 Member shall be compelled to accept any assets in respect of which there is liability. A Shareholder may require the liquidator instead of transferring any asset in specie to him/her, to arrange for a sale of the asset or assets and for payment to the Shareholder of the net proceeds of same with the cost of any such sale to be borne by the relevant Shareholder.

### **PART XXVI - MISCELLANEOUS**

#### **119. Destruction of Documents**

Subject and without prejudice to any applicable timeframes set down under the Central Bank Requirements, other applicable law or any contractual requirements to which the ICAV may be bound, the ICAV may destroy or otherwise dispose of any documents relating to the ICAV.

#### **120. Accounts**

- (a) The Directors shall cause to be kept such books of account as are necessary in relation to the conduct of its business or as are required by the Act, the Regulations and the Central Bank UCITS Regulations so as to enable the accounts of the ICAV to be prepared.



- (b) The ICAV may establish, maintain and operate one or more cash accounts in respect of each Fund and/or umbrella cash accounts and/or cash accounts in which more than one Fund participates, through which subscriptions, redemptions and other cash flows to and from investors can be managed or facilitated in accordance with Central Bank Requirements.
- (c) The accounting records shall be kept at the Office, or at such other place or places as the Directors shall think fit. If accounting records are kept at a place outside the State, there shall be sent to and kept at a place in the State and be at all reasonable times open to inspection by the Directors such information and returns relating to the business dealt with in the accounting records so kept as will:-
- (i) disclose with reasonable accuracy the financial position of that business at intervals not exceeding 6 months, and
  - (ii) enable to be prepared, in accordance with the Act, the ICAV's balance sheet, its profit and loss account or income and expenditure account and any other document containing information which is required by the Act.
- (d) The accounting records and any information and returns containing information required pursuant to the Act, shall be kept by the ICAV for a period of at least 6 years after the latest date to which they relate. The accounting records of the ICAV shall at all reasonable times be open to the inspection of the Directors and officers of the ICAV and the Auditors.
- (e) The Directors of the ICAV shall prepare accounts for each financial year as at each Accounting Date. The accounts shall include the following:
- (i) a balance sheet or statement of the assets and liabilities attributable to the ICAV;
  - (ii) a detailed income and expenditure account for the financial year; and
  - (iii) such other information provided for in the Act.
- The annual accounts shall give a true and fair view of the assets, liabilities and financial position of the ICAV at the end of the financial year and of the profit or loss of the ICAV for the financial year. The annual accounts shall be prepared in accordance with Central Bank Requirements and shall also contain such information as required by Central Bank Requirements.
- (f) The annual accounts of the ICAV shall, in accordance with the provisions of the Act, contain, so far as the information is contained in the ICAV's accounting records or the ICAV has the right to obtain it from the persons concerned:
- (i) the aggregate amount of the Directors' emoluments;
  - (ii) the aggregate amount of Directors', or former directors', pensions; and

- (iii) the aggregate amount of any compensation to Directors or former directors in respect of loss of office.
- (g) The annual accounts may be prepared in accordance with generally accepted accounting practice in the State, international financial reporting standards, or an alternative body of accounting standards.
- (h) The accounts of the ICAV shall for each financial year include a report from the Directors dealing, so far as is material for the appreciation of the state of the ICAV's affairs (and, if it has subsidiaries, of the affairs of the ICAV and its subsidiaries as a group), with:-
  - i. any change during the financial year in the nature of the business of the ICAV or of the ICAV's subsidiaries in the classes of business in which the ICAV has an interest whether as a member of another ICAV or a company or otherwise, and
  - ii. the amount, if any, which they recommend should be paid by way of dividend and the amount, if any, which they propose to carry to reserves.

The Directors' report shall contain the information prescribed in accordance with the Act and shall be approved and signed in accordance with the requirements of the Act.

- (i) The Directors shall arrange to have the Auditor to (i) audit the annual accounts prepared in accordance with Clause 120 and (ii) make a report on the audit to the Members of the ICAV as of the Accounting Date in each year. A copy of the Auditor's report shall be attached to the annual accounts and Director's report for the financial year to which the report relates. The Auditors' report shall state clearly the statutory auditors' opinion as to (a) whether the annual accounts give a true and fair view of (i) in the case of a balance sheet, of the assets, liabilities and financial position of the ICAV at the end of the financial year, (ii) in the case of a profit and loss account, of the profit or loss of the ICAV for the financial year, and (b) whether the annual accounts have been properly prepared in accordance with the relevant financial reporting framework. In preparing the Auditors' report, the Auditor shall (a) consider whether the information given in the Directors' report relating to the financial year is consistent with the accounts prepared by the ICAV for that year; and (b) state in the report whether, in the Auditor's opinion that information is, or is not, consistent with those accounts.
- (j) Copies of the said annual accounts shall be made available by the ICAV to all Members in the manner specified in the Prospectus not later than four months after the end of the period to which they relate.
- (k) Separate accounts may be prepared and presented in respect of a Fund or Funds which may have different Accounting Dates and all references in this Clause 120 to the ICAV be read as, where appropriate, referring to the Fund or Funds in respect of which the separate accounts are to be prepared.

## **121. Equalisation Account**

- (a) The Directors may from time to time at their discretion operate one or more equalisation accounts in respect of one or more Funds for such purposes and on such basis as may be determined by them including without limitation one or more equalisation accounts into which shall be credited or paid amounts paid by subscribers for Shares which the Directors estimate represent the portion of the Subscription Price estimated by the Directors as attributable, as at the date of issue of such Shares, to the amount which may be declared as dividends on the Shares in respect of which an equalisation account is maintained (an "Equalisation Payment") in the current Accounting Period and the Directors may provide for the payment out of such account or accounts of capital sums in the amount hereinafter provided to Shareholders holding Shares on which Equalisation Payments were paid or deemed to be paid at the time of making payment of the first dividend declared in respect of the Accounting Period in which the Equalisation Payment was made but prior to such redemption of shares or upon such basis as the Directors in their discretion, following consultation with the Auditors, determine.
- (b) Any capital sum payable pursuant to Clause 121 (a) above shall be an amount equal to the Equalisation Payment paid or deemed to be paid on the issue of a 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 and in so doing such Shares may be divided into two or more groups issued within different periods as may be selected by the Directors in any one Accounting Period so that 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 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.
- (c) Any capital sums repaid to a Shareholder in accordance with the provisions of this Clause shall release the ICAV from any liability to repay to such Shareholder the Equalisation Payment paid, and such Shareholder shall accept any such capital sum in full and final satisfaction of any Equalisation Payment otherwise payable.

## **122. Maintenance of Books of Accounts**

The books of account shall be kept at the Office, or at such other place as the Directors think fit, and shall always be open to inspection by the Directors. No Member (other than a Director) shall have the right of inspecting any account or book or document of the ICAV except as conferred by the Act or authorised by the Directors or by the ICAV in general meeting.

## **123. Approval of Accounts**

- (a) The Directors shall from time to time in accordance with the provisions of the Act, the Regulations and the Central Bank UCITS Regulations, cause to be prepared and to be

laid before the ICAV in general meeting such statutory financial statements, group accounts (if any) and reports as are specified in the Act and the Regulations made up to the Accounting Date in each year or such other date as the Directors may from time to time decide and such statutory financial statements shall contain a general summary of the assets and liabilities attributable to each Fund. The statutory financial statements of each Fund shall be accompanied by a report of the Directors as to the financial state and condition of the ICAV and the relevant Fund, and the amount (if any) which they have carried or propose to carry to reserve. The statutory financial statements of each Fund and the report of the Directors shall be signed on behalf of the Directors by at least two of the Directors. The Auditors' report shall be attached to the statutory financial statements of each Fund. The Auditors' report shall be read at the annual general meeting.

#### **124. Reports**

- (a) The Directors shall cause to be audited and certified by the Auditors an Annual Report relating to the management of the ICAV as of the Accounting Date in each year. Such Annual Report shall include the statutory financial statements duly audited by the Auditors and the Directors' report and the Auditors' report and shall be in a form approved by the Central Bank and shall contain such information required by the Act, the Regulations and the Central Bank UCITS Regulations. There shall be attached to such Annual Report, such additional information and reports as the Central Bank may specify.
- (b) A copy of the Annual Report including the statutory financial statements (including every document required by law to be annexed thereto) which is to be laid before the annual general meeting of the ICAV together with a copy of the Directors' report and the Auditors' report shall be sent or made available by the ICAV (including inter alia by use of electronic communication or access to a website), free of charge, to every person entitled under the Act to receive such documents not less than twenty one Clear Days before the date of the annual general meeting.
- (c) The ICAV shall prepare an unaudited half yearly report for the first six months of each financial year. Such report shall be in a form approved by the Central Bank and shall contain the information required under the Regulations and the Central Bank UCITS Regulations.
- (d) Copies of the said half-yearly report shall be published by the ICAV and made available to Shareholders in the manner specified in the Prospectus not later than two months after the end of the period to which they relate.
- (e) The ICAV shall provide the Central Bank with all reports and information to which it is entitled under the Regulations and the Central Bank UCITS Regulations.

#### **125. Auditors**

- (a) The ICAV shall at each annual general meeting appoint an Auditor or Auditors to hold office until the conclusion of the next annual general meeting.

- (b) The first Auditors shall be appointed by the Directors before the first general meeting, and they shall hold office until the conclusion of the first annual general meeting. Where no appointment is made by the Directors before the first general meeting, the first Auditors may be appointed in general meeting.
- (c) On the date on which the holding of an annual general meeting is dispensed with in accordance with the Act, any Auditor or Auditors appointed in accordance with Clause 125 (b) cease to hold office and the Directors shall immediately reappoint the Auditor or Auditors or appoint a new auditor or auditors.
- (d) Where the ICAV has dispensed of the requirement to hold annual general meetings in accordance with Clause 41 (c) the Directors shall appoint the Auditor or Auditors.
- (e) Where, in any case, no Auditors are appointed as required by Clause 125 (c), the Central Bank may appoint a person to fill the vacancy.
- (f) The appointment, removal and resignation of Auditors and the determination of eligibility for appointment as Auditors to the ICAV shall be governed by the provisions of the Act.
- (g) The remuneration of the Auditors who are appointed by the ICAV in general meeting shall be approved by the ICAV in general meeting or in such manner as the ICAV in general meeting may determine.
- (h) The remuneration of the Auditors who are appointed by the Directors or the Central Bank shall be fixed by the Directors or the Central Bank (and be payable by the ICAV in the case where it is fixed by the Bank).
- (i) The Auditors shall at all times have the right of access to the ICAV's accounting records and shall be entitled to require from the Directors and officers of the ICAV such information and explanations as the Auditors consider necessary for the performance of their duties.
- (j) The Auditors shall be entitled to (i) receive all notices of, and other communications relating to, any general meeting which any Member is entitled to receive, (ii) to attend any general meeting of the ICAV and (iii) to be heard at any general meeting at which any business of the meeting concerns them as Auditors. The right of an Auditor to attend and be heard at a general meeting is exercisable in the case of a body corporate or partnership by an individual authorised by it in writing to act as its representative at the meeting.

#### **126. Dealings by Administrator, etc**

Any person being the Manager, the Investment Manager, the Depositary or the Administrator and any associate of the Manager, the Investment Manager, the Depositary or the Administrator may:-

- (a) (provided that they are not in breach of Clause 16) become the owner of Shares in the ICAV and hold dispose or otherwise deal with Shares as if that person were not such a person; or
- (b) deal in property of any description on that person's individual account notwithstanding the fact that property of that description is included in the property of the ICAV; or
- (c) act as agent or principal in the sale or purchase of property to or from the Depositary for the account of the ICAV without that person having to account to any other such person, to the Members or to any of them for any profits or benefits made by or derived from or in connection with any such transaction, provided that such transactions are carried out as if effected on normal commercial terms negotiated at arms length.

**127. Amendment of this Instrument**

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

**128. Indemnity**

- (a) Subject to the provisions of and insofar as may be permitted by the Act and the Regulations, every person who is or has been a Director or alternate Director or Secretary or servant of the ICAV and such person's heirs, administrators and executors, shall be indemnified and secured harmless out of the assets and profits of the ICAV from and against all actions, costs, debts, claims, demands, suits, proceedings, judgements, decrees, charges, losses, damages, expenses, liabilities or obligations of any kind which he or his heirs, administrators or executors shall or may incur or sustain by reason of any contract entered into or any act done, concurred in, or omitted to be done by virtue of his being or having been a Director, Secretary or servant, provided that as permitted by the Act such indemnity shall not extend to any of the foregoing sustained or incurred as a result of any fraud, negligence, default, breach of duty or breach of trust of which they may be guilty in relation to the ICAV and the amount for which such indemnity is provided shall immediately attach as a lien on the property of the ICAV and have priority as between the Shareholders over all other claims. The provisions of this Clause 128(a) shall have effect only insofar as its provisions are not void under Section 190 of the Act as may be amended or replaced from time to time in accordance with the Central Bank Requirements.
- (b) The words "claim", "action", "suit" or "proceedings" shall apply to all claims, actions, suits or proceedings (civil, criminal, administrative, legislative, investigative or other, including appeals) and shall include, without limitation, legal fees, costs, judgements, amounts paid in settlement, fines, penalties and other liabilities.
- (c) The rights of indemnification herein provided shall be severable, shall not affect any other rights to which any Director, Secretary or employee may now or hereafter be entitled, shall continue as to a person who has ceased to be such a Director, Officer or employee

and shall ensure to the benefit of the heirs, executors and administrators of such a person.

- (d) The ICAV may make advances of expenses incurred in the defence of any claim, action, suit or proceedings against any person whom the ICAV is obliged to indemnify pursuant to this Clause.
- (e) In accordance with Section 190 of the Act, the Directors shall have the power to purchase and maintain for the benefit of any persons who are or were at any time Directors or officers of the ICAV insurance against any liability incurred by such persons in respect of any act or omission in the execution or discharge of their duties or in the exercise of their powers, and the Directors shall be entitled to vote and be counted in the quorum in respect of any resolution concerning the purchase of such insurance.
- (f) Subject to the provisions of and insofar as may be permitted by the Regulations, the Manager, the Administrator, the Investment Manager and the Depositary and the Distributor and any other person shall be entitled to such indemnity from the ICAV under such terms and subject to such conditions and exceptions and with such entitlement to have recourse to the assets of the ICAV with a view to meeting and discharging the costs thereof as shall be provided under the Management Agreement, Administration Agreement, the Investment Management Agreement, the Depositary Agreement or the Distribution Agreements (as applicable) or otherwise and the provisions in relation to indemnification set out in this Clause shall apply as appropriate to any such indemnity provided that no such indemnity shall extend to any matters arising from the negligence, fraud or wilful default of the person so indemnified PROVIDED THAT in the case of the Depositary no such indemnity shall extend to any matters arising from breach of the minimum standard of liability applicable to the Depositary pursuant to the Regulations and the UCITS Directive.
- (g) The ICAV, the Manager, the Investment Manager, the Administrator, the Depositary and the Distributors shall be entitled to rely absolutely on any Standing Redemption and Payment Instructions and on any declaration received from a Shareholder or his agent as to residence or otherwise of such Shareholder and shall not incur liability in respect of any action taken or thing suffered by any of them in good faith in reliance upon any paper or document believed to be genuine and to have been sealed or signed by the proper parties nor be in any way liable for any forged or unauthorised signature on or any common seal affixed to any such document or for acting on or giving effect to any such forged or unauthorised signature or common seal but shall be entitled though not bound to require the signature of any person to be verified by a banker, broker or other responsible person or otherwise authenticated to its or their satisfaction.
- (h) The ICAV, the Manager, the Investment Manager, the Administrator, the Depositary and the Distributors shall incur no liability to the Shareholders for doing or (as the case may be) failing to do any act or thing which by reason of any provision of any present or future law or regulation made pursuant thereto, or of any decree, order or judgment of any court, or by reason of any request announcement or similar action (whether of binding legal effect or not) which may be taken or made by any person or body acting with or

purporting to exercise the authority of any government (whether legally or otherwise) either they or any of them shall be directed or requested to do or perform or to forbear from doing or performing. If for any reason it becomes impossible or impracticable to carry out any of the provisions of these presents none of the ICAV or the Manager or the Investment Manager or the Administrator or the Distributors or the Depositary shall be under any liability therefor or thereby. This Clause shall not, however, exempt the ICAV, the Manager, the Investment Manager, the Administrator, the Depositary and the Distributors from any liability they may incur as a result of a failure to adhere to their obligations as set out in the Act, the Regulations and/or the UCITS Directive.

- (i) For the avoidance of doubt no Director shall be liable for the acts or omissions of any other Director.
- (j) A holder of Shares shall indemnify the ICAV, the Directors, the Manager, the Investment Manager, the Administrator, the Distributors, the Depositary and any Shareholder for any loss incurred by the ICAV by virtue of the fact that the Holder acquired or held Shares in breach of this Instrument.

#### **129. Overriding Provisions.**

In the event of there being any conflict between the provisions of this Instrument and the Act or Central Bank Requirements, the Act or Central Bank Requirements shall prevail. Notwithstanding any other provision of these presents, the Directors shall have the power to (i) avail of any derogation or waiver granted to the ICAV by the Central Bank from any of Central Bank Requirements as reflected herein or otherwise and (ii) avail of any other changes in Central Bank Requirements or applicable law which at the date of these presents is currently restricted or prohibited under Central Bank Requirements or applicable law which would permit the ICAV to avail of greater flexibility than currently afforded by these presents provided always that the exercise of such powers shall be in accordance with Central Bank Requirements and applicable law.

#### **130. Governing Law**

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

#### **131. Disclaimer of Liability**

Subject to the provisions of 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 moneys 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 moneys 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.



### **132. Severability**

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

### **133 Segregation of Liability**

- (a) Notwithstanding any statutory provision or rule of law to the contrary, any liability incurred on behalf of or attributable to any Fund shall be discharged solely out of the assets of that Fund, and no Director, receiver, examiner, liquidator, provisional liquidator or other person shall apply or be obliged to apply the assets of any such Fund in satisfaction of any liability incurred on behalf of or attributable to any other Fund.
- (b) The assets allocated to a Fund shall be applied solely in respect of the Shares of such Fund and no Shareholder relating to such Fund shall have any claim or right to any asset allocated to any other Fund.
- (c) 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 affected. In the event that assets attributable to a Fund are taken in execution of a liability not attributable to that Fund, and in so far as such assets or compensation in respect hereof cannot otherwise be restored to that Fund, the Directors with the consent of the Depositary, shall certify or cause to be certified, the value of the assets lost to the Fund affected and transfer or pay from the assets of the Fund or Funds to which the liability was attributable, in priority to all other claims against such Fund or Funds, assets or sums sufficient to restore to the Fund affected, the value of the assets or sums lost to it.
- (d) The ICAV may sue and be sued in respect of a particular Fund and may exercise the same rights of set-off, if any, as between its Funds as apply at law in respect of an ICAV and the property of a Fund is subject to orders of the Irish courts as it would have been if the Fund were a separate legal person.
- (e) In any proceedings brought by any Shareholder of a particular Fund, any liability of the ICAV to such Shareholder in respect of such proceeding shall only be settled out of the assets of the Fund corresponding to such Shares without recourse in respect of such liability or any allocation of such liability to any other Fund of the ICAV.
- (f) 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 in discharge of some or all of the liabilities of any other Fund on the grounds of fraud or misrepresentation.

#### **134. Schemes of Amalgamation**

The Directors shall have the power to reconstruct and amalgamate the ICAV or any Fund on such terms and conditions as set out in a scheme of merger, reconstruction and amalgamation approved by the Directors subject to the following conditions namely:

- (i) that, where so required pursuant to the Central Bank Requirements, the prior approval of the Central Bank has been obtained; and
- (ii) that the Shareholders of the ICAV or of the relevant Fund have been circulated with particulars of the scheme in the form approved by the Directors and a Special Resolution of the Shareholders of the ICAV or of the relevant Fund has been passed approving the said scheme;

in which case the relevant scheme of merger, reconstruction and amalgamation shall take effect upon such conditions being satisfied or upon such later date as the scheme may provide whereupon the terms of such scheme shall be binding upon all the Shareholders who shall be bound to give effect thereof and the Directors shall do all such acts and things as may be necessary for the implementation thereof.