

THE IRISH COLLECTIVE ASSET-MANAGEMENT VEHICLE ACT 2015

AN UMBRELLA FUND WITH VARIABLE CAPITAL  
AND HAVING SEGREGATED LIABILITY BETWEEN ITS FUNDS

THE ROXBURY KBA FUND ICAV

INSTRUMENT OF INCORPORATION

We certify that the within copy to be a true  
copy of the original.

Dated this 9<sup>th</sup> day of September 2015



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**INSTRUMENT OF INCORPORATION**

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The Roxbury KBA Fund ICAV)

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**THE IRISH COLLECTIVE ASSET-MANAGEMENT VEHICLE ACT 2015**

**AN UMBRELLA FUND WITH VARIABLE CAPITAL AND HAVING SEGREGATED LIABILITY  
BETWEEN ITS FUNDS**

**INSTRUMENT OF INCORPORATION**

- of -

**THE ROXBURY KBA FUND ICAV**

**PART I - PRELIMINARY**

**1. Interpretation**

(a) In this Instrument the following expressions shall have the following meanings:

“Accounting Date”, 31 December in each year or such other date as the Directors may from time to time decide.

“Act”, the Irish Collective Asset-Management Vehicle Act 2015 and every statute or other provision of law modifying, extending or re-enacting same.

“1933 Act”, the United States Securities Act of 1933, as amended.

“1940 Act”, the United States Investment Company Act of 1940.

“Administration Agreement”, any agreement for the time being subsisting to which the ICAV and the Administrator are parties and relating to the appointment and duties of the Administrator.

“Administrator”, any person, firm or corporation appointed in accordance with the Central Bank Requirements and for the time being acting as administrator of the ICAV or any Fund.

“Application Form”, such form as the Directors may prescribe to be used for the purpose of the initial subscription for Shares in the relevant Fund.

“Auditors”, the auditors for the time being of the ICAV.

“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.

“Central Bank”, the Central Bank of Ireland or any successor thereof.

“Central Bank Requirements”, the conditions imposed by the Central Bank on UCITS investment funds authorised pursuant to the Regulations as same may be amended, replaced or re-enacted from time to time.

“Class”, Shares representing an interest in the Fund and designated as a Class of Shares within such Fund for the purposes of attributing different proportions of the Net Asset Value of the Fund to such Shares to accommodate different subscription, conversion and redemption charges, dividend arrangements, base currencies, hedging and/or fee arrangements specific to such Shares.

"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.

"Custodian", such person, firm or corporation as may be appointed and for the time being acting as Custodian of the assets of the ICAV pursuant to this Instrument under the terms and provisions of the Custodian Agreement with power to appoint sub-custodians.

"Custodian Agreement", any agreement for the time being subsisting between the ICAV and the Custodian and relating to the appointment and duties of the Custodian.

"Dealing Day", shall bear the same meaning as set out in the Prospectus or such other day as the Directors may from time to time determine in the case of any Fund, provided always that there shall be at least one Dealing Day per fortnight.

"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, or any duly authorised committee thereof.

"Duties and Charges", means in relation to any Fund, all stamp duties and other duties, taxes, governmental charges, imposts, levies, fees, exchange costs and commissions (including foreign exchange spreads), custodian and sub-custodian charges, transfer fees and expenses, agents' fees, brokerage fees, commissions, bank charges, registration fees and other duties and charges, including any provision for the spread or difference between the price at which any Investment was valued for the purpose of calculating the Net Asset Value per Share of any Fund and the estimated or actual price at which any such Investment is purchased or expected to be purchased, in the case of subscriptions to the relevant Fund, or sold or expected to be sold, in the case of redemptions from the relevant Fund, including, for the avoidance of doubt, any charges or costs arising from any adjustment to any derivative required as a result of a subscription or redemption, whether paid, payable or incurred or expected to be paid, payable or incurred in respect of the constitution, increase or reduction of all of the cash and other assets of the ICAV or the creation, acquisition, issue, conversion, exchange, purchase, holding, repurchase, redemption, sale or transfer of Shares (including, if relevant the issue or cancellation of certificates for Shares) or Investments by or on behalf of the ICAV.

"Funds", the Funds established and maintained in accordance with Clause 12 hereof which shall be kept separate from one another, to which all assets and liabilities, income and expenditure attributable or allocated to each such Fund shall be applied or charged.

"ICAV", the ICAV whose name appears on the heading to this Instrument.

"In writing", any material written, printed, lithographed, photographed, telexed, e-mailed, telefaxed 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 Fund as the period during which the Shares thereof are initially on offer at the Initial Offer Price(s).

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

"Instrument", this Instrument of Incorporation of the ICAV, as adopted or altered from time to time.

"Investment", any investment or other asset of any description in which the ICAV is entitled to trade or invest in accordance with the provisions of this Instrument and which is permitted by the Regulations.

"Investment Manager", any person appointed and for the time being acting as investment manager to the ICAV.

"Manager", any person appointed and for the time being acting as manager to the ICAV under the terms and provisions of the Management Agreement.

ICAV and the Manager in relation to the appointment and duties of the Manager.

"Member", a Shareholder or Subscriber Shareholder.

"Minimum Holding", a holding of Shares in any Fund or across a number of Funds having an aggregate value of such minimum amount as determined by the Directors.

"Minimum Initial Subscription", such amount as the Directors may from time to time prescribe in a Prospectus in respect of any Fund as the minimum initial subscription for Shares of the relevant Class.

"Minimum Subsequent Subscription", such amount 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 of the relevant Class.

"Net Asset Value" or "Net Asset Value of a Class of Shares", the amount determined on any Valuation Point pursuant to Clauses 20 to 23 inclusive of this Instrument.

"Net Redemption Position", the position on any Dealing Day when total redemptions exceed total subscriptions.

"Net Subscription Position", the position on any Dealing Day when total subscriptions exceed total redemptions.

"Office", the registered office of the ICAV.

"Ordinary Resolution", a resolution of the ICAV or a Fund or of a Share Class in general meeting passed by a simple majority of the votes cast.

"Out of Pocket Expenses", all reasonable and properly vouched expenses agreed in writing between the ICAV and the relevant service provider and incurred in the course of business.

"Prospectus", any prospectus, together with any supplement or addendum thereto issued by the ICAV from time to time in connection with the purchase of or subscription for Shares of any Class.

"Qualified Holder", shall bear the same meaning as set out in the Prospectus.

"Redemption Price", the price at which Shares of any Class shall be repurchased or redeemed, calculated in accordance with Clause 26.

"Register", the register in which are listed the names of the holders of shares.

"Regulated Markets", the list of stock exchanges and regulated markets in which the assets of the ICAV may be invested from time to time, as set out in the Prospectus.

"Regulations", the European Communities (Undertakings for Collective Investment in Transferable Securities) Regulations 2011, as same may be amended, modified or supplemented from time to time.

"Relevant Time", the day and hour set out as the usual time limit for certain events as may be specified by the Directors in any Prospectus.

“Secretary”, any person appointed by the Directors to perform any of the duties of the secretary of the ICAV.

“Share”, a Share in the ICAV representing interests in a Fund issued in accordance with this Instrument and with the rights provided for under this Instrument.

“Shareholder”, a person who is registered as the holder of Shares in the Register.

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

“Special Resolution”, a Special Resolution of the ICAV passed in accordance with the Act.

“State”, Ireland.

“Subscriber Share”, a share which the subscribers to this Instrument agreed to subscribe for and entitling the holders thereof to attend and vote at general meetings of the ICAV as provided for in this Instrument but not to participate in the profits and assets of the ICAV except for a return of paid up capital on a redemption or on a winding-up of the ICAV as provided for in this Instrument.

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

“Taxes Act”, the Taxes Consolidation Act 1997, as amended, (of Ireland).

“The Irish Stock Exchange”, the Irish Stock Exchange Limited.

“UCITS”, Undertakings for Collective Investment in Transferable Securities as defined in the Regulations, as may be amended.

“United Kingdom”, the United Kingdom of Great Britain and Northern Ireland.

“United States” and “US”, the United States of America or any of its territories, possessions, any State of the United States and the Federal District of Columbia, or other areas subject to its jurisdiction.

“US Person”, shall bear the same meaning as set out in the Prospectus.

“Valuation Point”, in respect of any Fund such time and day as the Directors may from time to time determine in relation to the valuation of the assets and liabilities of a Fund as disclosed in the Prospectus.

- (b) 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.
- (c) 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.
- (d) 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.



- (e) 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).
- (f) References to enactments and to provisions of enactments shall include reference to any modifications or re-enactments thereof for the time being in force.
- (g) Except as otherwise expressly provided, references to times of day shall be to local time in Ireland.
- (h) The word "currency" shall refer to the currency in which the Fund concerned is designated.

## 2. **Establishment Expenses**

All fees and expenses relating to the establishment of the ICAV, the initial Fund of the ICAV and the fees and expenses of the advisers to the ICAV will be borne by the ICAV and will be amortised over the first 60 months of the lifetime of the ICAV or such other period as the Directors may determine. These establishment expenses will be charged as between the various Funds and Classes established by the ICAV within the amortisation period on such terms and in such manner as the Directors deem fair and equitable and provided that each such Fund and Class of Shares will bear its own direct establishment costs (where applicable). The fees and expenses within each Fund and Class thereof will be set out in the relevant Supplement.

## PART II - CONSTITUTION AND OBJECT

### 3. **Constitution**

- (a) The head office of the ICAV is situated in Ireland.
- (b) The name of the ICAV is The Roxbury KBA Fund ICAV.
- (c) No change in the name of the ICAV shall be made without the approval of the Central Bank and any such change shall be in accordance with the Act and the Central Bank's requirements.
- (d) The ICAV's Shareholders are not liable for the debts of the ICAV.

### 4. **Object**

- (a) The ICAV has as its sole object the collective investment of its funds in property and giving Shareholders the benefit of the results of the management of its funds.
- (b) The powers of the ICAV to attain the said object are:
  - (i) To carry on the business of an Irish collective asset-management vehicle and for that purpose to acquire, dispose of, invest or participate in and hold by way of investment either in the name of the ICAV, or in that of any nominee, bank acceptances, bills of exchange, bonds, certificates of deposit, collateralised obligations, commercial paper, contracts for differences, currency (both domestic and foreign), debenture stock, debentures, fixed rate securities, forward rate agreements, futures contracts, loans, loan stock, money market instruments, notes, obligations and securities and financial instruments of all kinds created, issued or guaranteed by any partnership, trust, of whatsoever nature wherever formed or registered or carrying on business or issued or guaranteed by any government, government instrumentality, political subdivisions, sovereign, state, ruler, dependant, state, territory, commonwealth, 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 or not fully paid

up, whether with limited or unlimited liability constituted or carrying on business or activities in any part of the world, options contracts, participation certificates, policies of assurance and insurance, promissory notes, securities in respect of which the return and/or redemption amount is calculated by reference to any index, price or rate, securities (of variable or floating rate), shares, stocks, structured bonds, structured debentures, structured notes, swap contracts, trade bills, treasury bills, units, units of or participation in any unit trust scheme, mutual fund or collective investment scheme in any part of the world, warrants, and any present or future rights and interests to or in any of the foregoing by original subscription, tender, purchase, exchange, underwriting, participation 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, 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 and from time to time to acquire, invest in, sell, exchange, lend, vary, grant or dispose of and grant and dispose of options over any of the foregoing and to subscribe for the same subject to such terms and conditions (if any) as may be thought fit and to exercise and enforce all rights and powers conferred by or incidental to the ownership or holding of any of the foregoing or if any legal or equitable interest therein and to deposit money (or place money on current account) with such persons in such currencies and otherwise on such terms as may seem expedient.

- (ii) 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 4 (b) (i) 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.
- (iii) To employ, utilise or invest in derivative instruments and techniques of all kinds and for direct investment purposes, where permitted by a Fund's investment objectives and policies, and/or the efficient management of the ICAV's assets as may be permitted by the UCITS Regulations and, in particular and without prejudice to the generality of the foregoing, to enter into, accept, issue and otherwise deal with sale and repurchase agreements, futures contracts, index futures, options, securities lending agreements, short sales agreements, when-issued, delayed delivery and forward commitment agreements, foreign currency spot and forward rate exchange contracts, forward rate agreements, swaps, collars, floors and caps and other foreign exchange or interest rate hedging and investment arrangements.
- (iv) 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.
- (v) 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.
- (vi) 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 object thereof, or for any other purpose which the ICAV may think expedient.

- (vii) 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.
- (viii) 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 object thereof, or for any other purpose which may seem directly or indirectly calculated to benefit the ICAV.
- (ix) To create, issue, make, draw, accept, endorse, execute, discount, negotiate and otherwise deal with redeemable debentures, bonds or other obligations, bills of exchange, promissory notes, letters of credit or other negotiable or transferable instruments.
- (x) 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.
- (xi) 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 including (without prejudice to the generality of the foregoing) any company which is for the time being the ICAV's holding company or subsidiary as defined by section 7 of the Companies Act 2014 or another subsidiary as defined by the said Section of the ICAV's holding company or otherwise associated with the ICAV in business.
- (xii) 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.
- (xiii) 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.
- (xiv) 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.
- (xv) Where required for the direct pursuit of the business of the ICAV, to acquire by purchase, lease, exchange, hire or otherwise lands and real or personal property wheresoever situate of any kind or of any tenure or any interest in the same; to erect and construct houses, buildings or works of every description on any land of the ICAV, or upon any other lands or property, and

to pull down, rebuild, enlarge, alter or improve existing houses, buildings or works thereon and generally to manage deal with and improve the property of the ICAV; and to sell, lease, let, mortgage or otherwise dispose of the lands, houses, buildings, and other property of the ICAV.

- (xvi) To take out, acquire, surrender and assign policies of assurance with any insurance company or companies it may think fit payable at fixed or uncertain dates or upon the happening of any contingency whatsoever and to pay the premiums thereon.
- (xvii) 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.
- (xviii) To reduce the share capital of the ICAV in any manner permitted by law.
- (xix) To establish and support or aid in the establishment and support of associations, institutions and conveniences calculated to benefit any of the employees or ex-employees of the ICAV or any associated company, or the dependants or connections of such persons, and to grant pensions and allowances and to make payment towards insurance and to subscribe or guarantee money for charitable or benevolent objects or for any exhibition, or for any public general or useful object.
- (xx) 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.
- (xxi) 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.
- (xxii) 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 object of the ICAV.
- (xxiii) To employ any person, firm, company or other body to investigate and examine the conditions, prospects, values, character and circumstances of any business concern or undertaking and generally of any assets, concessions, properties or rights.
- (xxiv) 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.
- (xxv) 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.

- (xxvi) 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.
- (xxvii) To distribute among the Shareholders of the ICAV in kind 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.
- (xxviii) To sell, let, develop, dispose of or otherwise deal with the undertaking or all or any part of the property real or personal, rights or privileges of the ICAV upon such terms as the ICAV may think fit, with power to accept as the consideration, any shares, stocks, debentures, securities or obligations of or interest in any other company.
- (xxix) 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.
- (xxx) 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.
- (xxxi) To pay out of the funds of the ICAV all expenses which the ICAV may lawfully pay incidental to the formation, registration and advertising of or raising money for the ICAV and the issue of its capital or any Class thereof, including brokerage and commissions for obtaining applications for or taking, placing or procuring the underwriting of shares, stocks, debentures, bonds or other securities of the ICAV and any other expenses which the Directors shall consider to be in the nature of establishment expenses.
- (xxxii) To pay for any property or rights acquired by the ICAV either in cash or by the issue of fully or partly paid shares of the ICAV.
- (xxxiii) 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 branches, offices, trustees, agents, attorneys or otherwise, and either alone or in conjunction with others and to contract for the carrying on of any operation connected with the ICAV's business by any person or company in any part of the world
- (xxxiv) To procure the ICAV to be registered or recognised in any part of the world outside Ireland.
- (xxxv) To do all such other things as the ICAV may deem incidental or conducive to the attainment of any of the object of the ICAV.

(xxxvi) Each of the ancillary powers of the ICAV (whether enumerated or not) is to be interpreted and exercised as ancillary to the object of the ICAV but separate from and ranking equally to any other ancillary power.

(xxxvii) to do all such other things as may be deemed incidental or conducive to the attainment of the object of the ICAV;

(xxxviii) to do all such other things in any part of the world, whether as principals, agents, contractors, trustees or otherwise, and either by or through trustees, agents, sub-contractors or otherwise and either alone or in partnership or in conjunction with any person or company, and to contract for the carrying on of any operation connected with the ICAV's business by any person.

- (c) Each of the powers of the ICAV (whether enumerated or not) is to be interpreted and exercised as ancillary to the object but separate from and ranking equally to any other power.
- (d) Subject to the provisions of the Act, the business of the ICAV shall be commenced as soon after the incorporation of the ICAV as the Directors think fit.
- (e) The ICAV may pursue its investment objectives by utilising an intermediate investment vehicle, such as a trust or company and by advancing monies for investment by such trust or company by way of loan, subscription for equity capital or otherwise, provided that where the ICAV uses a company as an intermediate vehicle, the ICAV shall maintain beneficial ownership of all of the issued share capital of such company and the shares in such company and the assets of such company shall be kept under the control of the Custodian or its sub-custodians.

#### 5. **Type of vehicle**

- (a) The ICAV is a variable capital investment corporate body established pursuant to the Act and which is constituted as an umbrella fund with segregated liability between sub-funds.
- (b) The ICAV is for the purposes of the Central Bank's rules categorised as a UCITS scheme.

### **PART III - SHARE CAPITAL AND RIGHTS**

#### 6. **Share Capital**

- (a) The share capital of the ICAV is €2.00 divided into 2 Subscriber Shares of €1.00 each and 5,000,000,000 Shares of no par value initially designated as unclassified shares each having the rights appearing in this Instrument. The minimum number of Shares in issue shall not be less than 2 and the maximum number of Shares in issue shall not be more than 2 Subscriber Shares of €1.00 each and 5,000,000,000 Shares of no par value.
- (b) The actual value of the paid-up share capital of the ICAV shall be at all times equal to the value of the assets of any kind of the ICAV after the deduction of its liabilities.
- (c) The Subscriber Shares shall not participate in the dividends or assets of any Fund.

#### 7. **Allotment of Shares**

- (a) The Directors may designate the Shares into such Classes and Funds as they may from time to time determine with such rights or restrictions attaching thereto as they may from time to time determine and may designate one or more Classes to a separate Fund. Any new Fund must be established on receipt of the prior approval of the Central Bank. The creation of Participating Shares of other Classes of a Fund shall be effected in accordance with the requirements of the Central Bank. On or before the issue of any

Shares the Directors shall determine the currency in which and the Class to which such Shares shall be designated, and the Shares shall be divided into one or more Classes and may be designated in the same currency or in different currencies. All monies payable for or in respect of Participating Shares (including without limitation the subscription and redemption monies in respect thereof) shall be paid in the currency in which such Participating Share is designated or in such other currency as the Directors shall determine either generally or in relation to a particular Class or in any specific case.

Financial instruments may be used on behalf of specific Classes in accordance with the provisions of this Clause, the Prospectus and the Central Bank Requirements. Where (i) a Class or Classes denominated in different currencies are created within a Fund and currency hedging transactions are entered into in order to hedge any relevant currency exposure; (ii) interest rate hedging transactions are entered into in respect of a specific Class or Classes; or (iii) financial instruments are utilised on behalf of a specific Class or Classes in accordance with the requirements of the Central Bank, in each case such transactions will be clearly attributable to a specific Class and any costs and any resultant gains/losses of the relevant hedging transactions and/or financial instruments will accrue solely to the relevant Class.

- (b) The Directors are hereby generally and unconditionally authorised to exercise all the powers of the ICAV to allot Shares. The maximum amount of Shares which may be allotted under the authority hereby conferred shall be the number of the authorised but unissued Shares in the capital of the ICAV from time to time and for the time being, provided however that any Shares which have been redeemed shall be deemed never to have been issued for the purpose of calculating the maximum amount of Shares which may be issued.
- (c) The Directors are hereby authorised from time to time to re-designate any existing Class and merge any Class with any other Class, provided that Shareholders in such Classes are first notified by the ICAV. Subject to the Regulations, the Directors may also resolve to merge a Class of Shares with a Class of Shares in any other UCITS whether authorised by the Central Bank under the Regulations or in any other Member State
- (d) For the purpose of enabling Shares of one Class to be re-designated or converted into Shares of another Class, the ICAV may take such action as may be necessary to vary or abrogate the rights attached to Shares of one Class to be converted so that such rights are replaced by the rights attached to the other Class into which the Shares of the original Class are to be converted.
- (e) 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, without assigning reasons therefor.
- (f) 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.
- (g) 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 and of this Instrument) 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 Shareholders.
- (h) Subject to the provisions of the Act and the Central Bank Requirements, Shares of any Fund may be acquired, by way of subscription or transfer for consideration, or redeemed, by another Fund for the purpose of cross investment by one Fund to another.

## 8. Rights in Scheme Property

No Shareholder shall have any interest in the underlying assets of the ICAV and the rights which attach to each Share of any given Class are:

- (a) the right, in accordance with this Instrument, to participate in or receive profits or income arising from the acquisition, holding, management or disposal of ICAV property;
- (b) the right, in accordance with this Instrument, to vote at any annual general meeting or general meeting of the ICAV or at any relevant Class meeting; and
- (c) such other rights as may be provided for in this Instrument of the ICAV in relation to shares of that Class, subject to the Central Bank Requirements.

## 9. Shares

- (a) Shares may only be issued fully paid and shall have no par value.
- (b) The actual value of the paid up share capital of each class of Shares in the ICAV shall at all times be equal to the Net Asset Value of such class of Shares.
- (c) The actual value of the paid up share capital of the ICAV shall at all times be equal to the value for the time being of the issued share capital of the ICAV.
- (d) The rights and restrictions attaching to Shares shall be as follows:
  - A. subject to paragraph B., the registered 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;
  - B. the Directors may establish a Class or Classes of Shares of a Fund the holders of which shares shall be entitled to receive notice of, attend, speak at but not vote on any resolution proposed at such meeting of the ICAV. In applying for Shares in such a Class, an applicant shall acknowledge that he is investing in a Class which does not carry rights to vote at meetings of the ICAV.
- (e) The liability of the Members of the ICAV shall be limited to the amount, if any, unpaid on the Shares and Subscriber Shares (as applicable) respectively held by them.
- (f) The assets of the ICAV shall belong exclusively to the ICAV and no Member shall have any interest in the assets of the ICAV.
- (g) The registered holder of each Share shall be entitled to such dividends as the Directors may from time to time declare.
- (h) In the event of a winding up or dissolution of the ICAV the registered holder of a Share shall have the rights referred to in Clause 127(b).

## 10. Subscriber Shares

- (a) Subscriber Shares shall only be issued at their par value of €1.00 each.
- (b) Any Subscriber Shares not held by Roxbury Asset Management Limited or its nominees shall be subject to requisition under Clause 24 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 per Subscriber Share.
- (d) The holders of the Subscriber Shares shall not be entitled to any dividends whatsoever in respect of their holding of Subscriber Shares.



- (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 127(b).

#### 11. Variation of Rights

- (a) The rights attached to any Class of Shares of the ICAV or any subsidiary 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 with the sanction of a Special Resolution passed at a separate general meeting of the holders of the Shares of the Class. To every such separate general meeting the provisions of this Instrument relating to general meetings shall apply but so that the necessary quorum at any such meeting other than an adjourned meeting shall be two persons holding or representing by proxy at least one third in nominal value of the issued Shares of the Class in question and, at an adjourned meeting, one person holding Shares of the Class in question or his proxy. Any holder of Shares of the Class in question present in person or by proxy may demand a poll.
- (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.

#### 12. Segregated Liability between Funds

All consideration, other than the preliminary charge (if any) pursuant to Clause 17, 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;
- (b) the liabilities of each Fund shall be attributable exclusively to that Fund. Any liability incurred on behalf of or attributable to any Fund shall be discharged solely out of the assets of that Fund;
- (c) the assets of each Fund shall belong exclusively to that Fund, shall be segregated in the records of the Custodian 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 where an asset or a liability of the ICAV (not being attributable to Subscriber Shares) cannot be considered as being attributable to a particular Fund, the Directors shall have the discretion, subject to the approval of the Custodian, to determine the basis upon which such asset or liability shall be allocated between the Funds and the Directors shall have power at any time and from time to time subject to the approval of the Custodian to vary such basis, provided that the approval of the Custodian shall not be required in any case where the asset or liability is allocated between all Funds pro rata to their Net Asset Values;

- (g) each Fund shall be charged with the liabilities, expenses, costs, charges or reserves of the ICAV in respect of or attributable to that Fund and any such liabilities, expenses, costs, charges or reserves of the ICAV not attributable to any particular Fund or Funds shall be allocated and charged by the Directors with the approval of the Custodian in such manner and on such basis as the Directors in their discretion deem fair and equitable and the Directors shall have the power to and may at any time from time to time with the approval of the Custodian vary such basis including where certain circumstances so permit, the reallocation of such liabilities, expenses, costs, charges and reserves provided that the approval of the Auditors shall not be required in any case where the asset or liability is allocated between all Funds pro rata to their Net Asset Values;
- (h) if, as a result of a creditor proceeding against certain of the assets of the ICAV or otherwise, a liability, expense, cost, charge or reserve would be borne in a different manner from that in which it has been borne under paragraph (e) above, or in any similar circumstances, the Directors may transfer in the books and records of the ICAV any assets to and from any of the Funds; and
- (h) where the assets of the ICAV (if any) attributable to the Subscriber Shares give rise to any net profits, the Directors may allocate assets representing such net profits to such Fund or Funds as they deem appropriate.

### 13. **Trusts Not Recognised**

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 IV - PARTICIPATING SHARES**

### 14. **Issue of Shares**

- (a) Subject as hereinafter provided, the ICAV, on receipt by its authorised agents of the following:
  - (i) an application for Shares in such form as the Directors may from time to time determine including by telephone or In writing;
  - (ii) such information and declarations as to the applicant's identity, status, residence and otherwise as the Directors or their authorised agent may from time to time require; and
  - (iii) consideration for the Shares in such manner and at such time and place as the Directors from time to time may specify, provided that if payment is made in cash in a currency other than the currency designated for the Shares, the ICAV may convert or arrange for the conversion of the monies received into the currency designated for the Shares and shall be entitled to deduct therefrom all expenses incurred in connection with the conversion;

may allot and issue Shares of any Class at the Subscription Price on the relevant day, provided that if any such application is received after such time as specified in the Prospectus (or other time as the Directors may determine), the ICAV may refuse the application or defer the allotment or issue of such Shares until the next succeeding Dealing Day and provided further that if the information and declarations required pursuant to sub-paragraph (ii) of this Clause 14(a) and consideration in respect of the

Shares and the original application form are not received by the ICAV within such period as the Directors may determine the Directors may cancel any provisional allotment and/or issue of Shares in respect thereof and if so cancelled the relevant consideration shall be returnable to the applicant at his risk (after deducting such amount, if any, as the Directors may in their absolute discretion think fit, any such amount so deducted being retained by the ICAV for its own benefit) and until return it may be made use of by the ICAV for its own benefit.

- (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) If payment in cleared funds in respect of a subscription has not been received by the Relevant Time, any allotment of Shares made in respect of such application may be cancelled. In the event of the non-clearance of subscription monies, any allotment in respect of an application may be cancelled. The Shareholder shall indemnify the ICAV for any loss suffered by the ICAV as a result of a failure by the Member to pay the subscription monies by the Relevant Time. In addition, the ICAV will have the right to sell all or part of the applicant's holding of Shares in the relevant Class or any other Class of the ICAV in order to meet those charges.

The Directors may, at their discretion, permit an investor to submit subscription monies up until such time after the relevant Dealing Day as may be specified in the relevant Prospectus. In this event, the ICAV may temporarily borrow an amount equal to the subscription and invest the amount borrowed in accordance with the investment objective and policies of the relevant Fund. Once the required subscription monies have been received, the ICAV will use this to repay the borrowings. The ICAV reserves the right to charge the relevant Shareholder for any interest or other costs incurred by the ICAV as a result of this borrowing. If the Shareholder fails to reimburse the ICAV for those charges, the ICAV will have the right to sell all or part of the applicant's holdings of Shares in the Fund or any other Fund of the ICAV in order to meet those charges.

- (d) Where the payment of the Subscription Price (either in the case of a subscription during an Initial Offer Period or a subsequent subscription) is satisfied (in whole or in part) by the transfer of Investments,
  - (i) the number of Shares to be issued shall not exceed the amount that would be issued for the cash equivalent of such Investments on the basis that the amount of such cash was an amount equal to the value of the Investments to be so vested in the Custodian as determined by the ICAV on the relevant Dealing Day;
  - (ii) the nature of the Investments transferred is such that the Investments would qualify as Investments for the relevant Fund in accordance with the investment objective, policies and restrictions of the relevant Fund;
  - (iii) the assets have been vested in, or arrangements have been made to vest the assets in, the Custodian or its sub-custodian, nominee or agent and the Custodian is satisfied that there is unlikely to be any material prejudice to the Shareholders of the relevant Class.
- (e) The issue or allotment of Shares pursuant to this Clause shall be made on the Dealing Day in respect of 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, it may be treated as an application for Shares on the Dealing Day following such receipt.
- (f) 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.

- (g) For the purposes of this Instrument:
  - (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 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 redeemed on a Dealing Day in accordance with Clause 24 shall be deemed to have ceased to be in issue at the close of business on the Dealing Day on which they are redeemed.
- (h) The Directors shall be entitled, but not obliged, to issue fractions of Shares up to such number of decimal places as the Directors may determine where the net consideration received by the ICAV is insufficient to purchase an integral number of Shares, provided however that fractions of Shares shall not carry any voting rights and provided further that the Net Asset Value per fraction of a Share of any Class shall be equal to the fraction of the Net Asset Value of the Share of such Class at the time of issue of such fraction of a Share and any dividend payable on such fraction of a Share shall be calculated accordingly.
- (i) In calculating the Subscription Price of a Share, the Directors may, in accordance with the provisions of the Prospectus, on any Dealing Day when net subscriptions exceed such percentage of the Net Asset Value as the Directors may determine, adjust the Subscription Price by adding an anti-dilution levy to cover dealing costs and to preserve the value of the underlying assets of the Fund. In calculating the Redemption Price of a Share, the Directors may, in accordance with the provisions of the Prospectus, on any Dealing Day when net redemptions exceed such percentage of the Net Asset Value as the Directors may determine, adjust the Redemption Price by deducting an anti-dilution levy to cover dealing costs and to preserve the value of the underlying assets of the Fund.
- (j) Applications for the issue of Shares will be irrevocable unless the Directors, or a delegate, otherwise agree.

**15. Subscription Price per Share of any Class/Single Swinging Price**

- (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, and may be increased by such figure as the Directors consider represents an appropriate amount for Duties and Charges and Spreads (as defined in paragraph (b)(iii) below), as may be disclosed in the Prospectus.
- (b) Save as provided in paragraph (d) the Subscription Price per Share of any Class to be issued subsequent to the Initial Offer Period shall be ascertained by:
  - (i) determining the Net Asset Value of the Shares attributable to a Class calculated as at the Valuation Point for the relevant Dealing Day on which the subscription is to be made under Clauses 20 to 23 of this Instrument and adding thereto such sum as the Directors may consider represents an appropriate figure for Duties and Charges; and
  - (ii) dividing the amount calculated under (i) above by the number of Shares of such Class of the relevant Fund in issue or deemed to be in issue at the relevant Valuation Point; and

- (iii) unless otherwise provided in the Prospectus, in respect of a Fund, making an adjustment to the resultant amount to reflect the fact that the actual cost of purchasing or selling assets of a Fund may deviate from the valuation principles used and set out in Clauses 20 to 23 due to Duties and Charges and spreads from buying and selling prices ("Spreads") of the assets which have an adverse effect on the value of a Fund known as "dilution". To mitigate the effects of dilution, the Directors may, at their discretion, make a dilution adjustment to the resultant amount at (ii) above by adding thereto, when such Fund is in a Net Subscription Position, and deducting therefrom, when such Fund is in a Net Redemption Position, such figure as the Directors consider represents an appropriate amount for Duties and Charges and Spreads. This discretion will be exercised as set out in the Prospectus; or
  - (iv) where provided in the Prospectus in respect of a Fund, the provisions of Clause 15(b)(iii) will not apply but instead such sums as the Directors may consider represents an appropriate figure for Duties and Charges and any other amounts necessary to account for the actual expenditure on the purchase of underlying investments shall be added to the figure calculated at Clause 15(b)(i); and
  - (v) adding thereto such amount as may be necessary to round the resulting amount to such number of decimal places, as the Directors deem appropriate, of the currency in which the relevant Class is designated.
- (c) Save as provided for in paragraph (b) and (d), the Subscription Price per Share of any Class of the relevant Fund to be issued subsequent to the Initial Offer Period may also be issued at the Initial Offer Price or a fixed price determined by the Directors, where, in the opinion of the Directors, the nature of the Fund means that the Net Asset Value per Share is not reflective of the true or fair value of the Subscription Price. The issuing of Shares in a Fund after the Initial Offer Period at the Initial Offer Price or a fixed price must be approved by the Central Bank and may be subject to a subscription or equalisation charge to ensure that all Shareholders are treated equitably. In addition, confirmation must be provided to the Central Bank that such issue will not result in any prejudice to the existing Shareholders of the ICAV.
  - (d) Shares may be issued to Shareholders at their Net Asset Value on a relevant Dealing Day in circumstances where requests have been received for redemption of the same number of Shares in the same Fund on that Dealing Day.
  - (e) Notwithstanding the foregoing, subscription monies received during the Initial Offer Period may be returned to investors and the launch of the Fund or a Class postponed in the event that, in the Directors' opinion, insufficient monies are received during the Initial Offer Period to launch the Fund or Class as a viable concern.
  - (f) Subject to the provisions of the Act, 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 Administrator an Application Form as required under this Instrument and satisfied all the requirements of the Directors and Administrator as to such person's application;
    - (ii) the nature of the Investments transferred into the relevant Fund are such as would qualify as Investments of that 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 Custodian or any sub-custodian to the Custodian's satisfaction and the Custodian

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) the Directors are satisfied that the terms of any exchange would not be such as would be likely to result in any prejudice to remaining Shareholders and provided that any such exchange shall be effected upon the terms (including provision for paying any expenses of the exchange and any subscription fee 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 21(b). 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 and Charges to be paid to the relevant Fund as a result of the direct acquisition by the Fund of the Investments.

#### **16. Minimum Subscription**

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

- (a)
  - (i) the amount in value of the Shares to which an application relates equals or exceeds the Minimum Initial Subscription 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;

provided that the aggregate amount in value of the Shares to which an application relates shall not be less than the Minimum Holding; 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 Subsequent Subscription or such other amount as the Directors may determine.

#### **17. Fees**

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 or any duly authorised agent of the ICAV for its absolute use and benefit (and/or such person or persons promoting the subscription and distribution of Shares as the Directors may determine) a subscription fee 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 7% of the Subscription Price for such Share rounded up to such number of decimal places as the Director may determine 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 subscription fee required to be paid to the ICAV or any duly authorised agent of the ICAV for its absolute use and benefit, and as to the amount of subscription fee to be levied on each Class (subject to the maximum aforesaid).

#### **18. 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 is suspended pursuant to this Instrument except those for which applications have been previously received and accepted by the ICAV or its authorised agent.

## 19. **Restrictions on Members/Qualified Holders**

The Directors shall have power (but shall not be under any duty) to impose such restrictions as they may think necessary for the purpose of ensuring that no Shares of any Class are acquired or held directly or beneficially by:

- (a) any person who is not a Qualified Holder;
- (b) 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 incurring any liability to taxation or suffering fiscal, legal or regulatory disadvantages or a material administrative disadvantage which the ICAV might not otherwise have incurred or suffered or the ICAV being required to register under the 1940 Act or similar statute successor thereto or to register any class of its securities under the 1933 Act or similar statute successor thereto;
- (c) no person other than a Qualified Holder shall be or remain registered as a holder of Shares and the Directors may upon receipt of 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.
- (d) a holder of any Class who shall cease to be a Qualified Holder shall promptly either give to the ICAV a redemption notice in respect of such Shares or shall promptly transfer such Shares to a Qualified Holder;
- (e) if the Directors shall in their absolute discretion consider that any holder of any Class is not a Qualified Holder (or at any time while registered as a holder of such Shares has not been a Qualified Holder), the Directors may require the redemption or transfer of such Shares in accordance with Clause 24 hereof.

## **PART V - DETERMINATION OF NET ASSET VALUE**

### 20. **Net Asset Value of Shares**

- (a) The Net Asset Value of a Fund shall be calculated at each Valuation Point and shall be the value of all the assets comprised in the relevant Fund (including income accrued but not collected) less all the liabilities attributable to the relevant Fund (including a provision for Duties and Charges accrued expenses and fees and other liabilities) and subject to the Act and the Central Bank Requirements.
- (b) The Net Asset Value of a Fund shall be expressed in the base currency of that Fund (translated where necessary at such rate of exchange as the Directors think fit).
- (c) The Net Asset Value of a Class of Shares within a Fund shall be calculated as follows:
  - (i) determining the allocation ratios for each Class of Shares which shall be done by dividing the figure calculated in A. below for each Class of Shares by the figure calculated in B. below:
    - A. adding the Net Asset Value of each Class of Shares for the previous Valuation Point and the value of Shareholder activity (i.e. net subscription/redemptions/switches placed as of the previous Valuation Point) for the current Valuation Point for each Class of Shares;

- B. adding the total of the Net Asset Values for all Classes of Shares for the previous Valuation Point and the value of Shareholder activity (i.e. net subscriptions/redemptions/switches placed as of the previous Valuation Point) for the current Valuation Point for all Classes of Shares;
- (ii) allocating the ICAV's income, expenses and realised and unrealised gains and losses accrued for the current Valuation Point to each Class of Shares with the amount to be allocated being calculated by multiplying the aggregate of such accrued amounts by the ratios determined in (i);
- (iii) adding the figures from (ii) as allocated for each Class of Shares to the expenses accrued, distributions declared and the value of Shareholder activity (i.e. net subscriptions/redemptions/switches) for the current Valuation Point which are solely attributed to each specific Class of Shares. An expense will be attributed to a specific Class of Shares which is specifically attributable to that Class;
- (iv) adding the results of (iii) for each Class of Shares to the Net Asset Value of the previous Valuation Point of the respective Class of Shares.
- (d) The costs and related liabilities/benefits arising from instruments entered into for the purposes of hedging the currency exposures for the benefit of any particular Class of a Fund shall be attributable exclusively to that Class.
- (e) The Net Asset Value of a Class of Shares within a Fund shall be expressed in the base currency in which the Fund is designated (except, where the currency of designation of the particular Class is different to the base currency of the Fund, it shall be expressed in the currency in which that Class is designated) (converted, where necessary at such rate of exchange as the Directors think fit).
- (f) The Net Asset Value of a Share within a Class shall be determined by dividing the Net Asset Value of the relevant Class by the number of Shares in that Class in issue and deemed to be in issue.

## 21. **Assets of the ICAV's Funds**

- (a) The assets of the ICAV and each of the Funds shall be deemed to include inter alia:
  - (i) all cash in hand, on deposit, or on call including any interest accrued thereon and all accounts receivable;
  - (ii) all bills, demand notes, certificates of deposit and promissory notes;
  - (iii) all bonds, forward currency transactions, time notes, shares, stock, units of or participations in Investment Funds/mutual funds, debentures, debenture stock, subscription rights, warrants, futures contracts, options contracts, swap contracts, forward contracts, contracts for differences, fixed rate securities, floating rate securities, securities in respect of which the return and/or redemption amount is calculated by reference to any index, price or rate, financial instruments and other investments and securities owned or contracted for in respect of the ICAV, other than rights and securities issued by it;
  - (iv) all stock and cash dividends and cash distributions to be received in respect of a Fund and not yet received by the ICAV but declared to stockholders on record on a date on or before the day as of which the Net Asset Value is being determined;
  - (v) all subscription payments due but not yet received by the ICAV;
  - (vi) all interest accrued on any interest-bearing securities owned by the ICAV except to the extent that the same is included or reflected in, the principal value of such security;



- (vii) all other Investments of the ICAV;
  - (viii) the establishment costs attributable to the ICAV and the initial Funds and the cost of issuing and distributing Shares of the ICAV insofar as the same have not been written off; and
  - (ix) all other assets of the ICAV of every kind and nature including prepaid expenses as valued and defined from time to time by the Directors.
- (b) The valuation principles to be used in valuing the ICAV's assets are as follows:
- (i) the Directors shall be entitled to use the amortised cost method of valuation, whereby Investments are valued at their cost of acquisition adjusted for amortisation of premium or accretion of discount on the Investments rather than at the current market value of the Investments. However, the amortised cost method of valuation may only be used in relation to Funds which comply with the Central Bank's requirements for short term money market funds and where a review of the amortised cost valuation vis-à-vis the market valuation is carried out in accordance with the Central Bank's guidelines. Money market instruments in a non-money market fund may be valued on an amortised basis, in accordance with the Central Bank's requirements ;
  - (ii) the value of any Investment which is quoted, listed or normally dealt in on a regulated market, including units or shares in exchange-traded funds, shall (save in the specific cases set out above or in the relevant paragraphs below) be based on the closing mid-market price on such Regulated Markets as at the last Valuation Point or the last traded price when no closing mid-market price is available, provided that :
    - A. if an Investment is quoted, listed or normally dealt in on more than one regulated market, the Directors may select any one of such markets for the foregoing purposes (provided that the Directors have determined that such market constitutes the main market for such Investment or provides the fairest criteria for valuing such securities) and once selected a market shall be used for future calculations of the Net Asset Value with respect to that Investment unless the Directors otherwise determine; and
    - B. in the case of any Investment which is quoted, listed or normally dealt in on a regulated market but in respect of which for any reason, prices on that market may not be available at any relevant time, or, in the opinion of the Directors, may not be representative, the value therefor shall be the probable realisation value thereof estimated with care and in good faith by a competent person appointed by the Directors (and approved for that purpose by the Custodian); and
    - C. in the case of any Investment which is quoted, listed or normally dealt in on a regulated market but acquired or traded at a premium or at a discount outside or off the relevant regulated market, the Investment may be valued taking into account the level of premium or discount at the date of the valuation. The Custodian must ensure that the adoption of such a procedure is justifiable in the context of establishing the probable realisation value of the Investment;
  - (iii) the value of any Investment which is not quoted, listed or normally dealt in on a regulated market shall be the probable realisable value therefor estimated with care and in good faith by a competent person appointed by the Directors (and approved for the purpose by the Custodian);

- (iv) the value of any Investment which is a share of, unit of or participation in an open-ended collective investment scheme shall be the latest available net asset value for the Investment as published by the collective investment scheme in question or, where such Investment is quoted, listed or dealt in on a Regulated Market, may be a value determined in accordance with the provisions of paragraph (b)(ii) above;
- (v) the value of any prepaid expenses, cash dividends and interest declared or accrued as aforesaid and not yet received shall be deemed to be the full amount thereof unless in any case the Directors are of the opinion that the same is 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 (with the approval of the Custodian) may consider appropriate in such case to reflect the true value thereof;
- (vi) deposits/cash in hand shall be valued at their /face/nominal amount plus accrued interest from the date on which the same were acquired or made;
- (vii) treasury bills shall be valued at the closing mid-market price on the market on which same are traded or admitted to trading as at the Valuation Point, provided that where such price is not available, same shall be valued at the probable realisation value therefor estimated with care and good faith by a competent person appointed by the Directors (and approved for the purpose by the Custodian);
- (viii) bonds, notes, debenture stocks, certificates of deposit, bank acceptances, trade bills and similar assets shall be valued at the closing mid-market price on the market on which these assets are traded or admitted for trading (being the market which is the sole market or in the opinion of the Directors the principal market on which the assets in question are quoted or dealt in) plus any interest accrued thereon from the date on which same were acquired;
- (ix) the value of any futures contracts and options (including index futures) which are dealt in on a Regulated Market shall be the settlement price as determined by the market in question, provided that if such settlement price is not available for any reason or is unrepresentative, same shall be valued at the probable realisation value thereof estimated with care and good faith by a competent person appointed by the Directors (and approved for the purpose by the Custodian);
- (x) the value of any OTC FDI contracts shall be:
  - A. the quotation from the counterparty provided that such quotation is provided on at least a daily basis and verified at least weekly by a person independent of the counterparty and who is approved for the purpose by the Custodian; or
  - B. an alternative valuation as the Directors may determine in accordance with the requirements of the Central Bank. This may be a valuation that is provided on at least a daily basis by a competent person (which may be the ICAV) or an independent pricing vendor provided that the appointed party has adequate means to perform the valuation appointed by the Directors and approved for that purpose by the Custodian (or a valuation by any other means, provided that the value is approved by the Custodian). The valuation principles employed must follow best international practice established by bodies such as IOSCO (International Organisation of Securities Commission) and AIMA (the Alternative Investment Management Association) and any such alternative valuation must be reconciled to that of the counterparty on a monthly basis. Where significant differences arise on the monthly reconciliation, these must be promptly investigated and explained;

- (xi) Notwithstanding the foregoing provisions, OTC FDI contracts may, alternatively be valued in accordance with the requirements of relevant regulations and/or the requirements of the Central Bank of Ireland;
  - (xii) forward foreign exchange and interest rate swaps contracts may be valued in accordance paragraph (x) or (xi) or by reference to freely available market quotations (in which case there is no requirement to have such prices independently verified or reconciled to the counterparty valuation);
  - (xiii) notwithstanding any of the foregoing sub-paragraphs, the Directors with the approval of the Custodian may adjust the value of any Investment if, having regard to currency, applicable rate of interest, maturity, marketability and/or such other considerations as they may deem relevant, they consider that such adjustment is required to reflect the fair value thereof;
  - (xiv) if in any case a particular value is not ascertainable as above provided or if the Directors shall consider that some other method of valuation better reflects the fair value of the relevant Investment then in such case the method of valuation of the relevant Investment shall be such as the Directors shall decide with the approval of the Custodian;
  - (xv) the Directors may, in order to comply with any applicable accounting standards, present the value of any assets of the ICAV in financial statements to Shareholders in a manner different to that set out in this Cause.
- (c) Any certificate as to Net Asset Value of Shares 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.

## 22. Liabilities attributable to each Fund

- (a) The ICAV may pay out of the assets of each Fund:
  - (i) the fees and expenses of establishing the ICAV and / or any Fund;
  - (ii) the fees and expenses connected with the winding-up or liquidation of the ICAV and / or any Fund;
  - (iii) the fees and expenses (including transaction charges and Out of Pocket Expenses) payable to the ICAV's service providers (including the Manager, Investment Manager, the Administrator and the Custodian) and to any sub-custodian appointed by the Custodian in respect of such Fund;
  - (iv) any fees in respect of circulating details of the Net Asset Value (including publishing prices) and Net Asset Value per Share and Net Asset Value per Share per class;
  - (v) stamp duties;
  - (vi) the Central Bank's industry funding levy;
  - (vii) taxes;
  - (viii) corporate secretarial fees;
  - (ix) rating fees (if any);
  - (x) execution only brokerage or other expenses of acquiring and disposing of Investments;

- (xi) all expenses incurred in relation to the registration of any Investments into and transfer of any Investments out of the name of the ICAV, a Fund or the Custodian, or any sub-custodian or their nominees or the holding of any Investment or the custody of Investments and/or any documents or title thereto (including bank charges, insurance of documents of title against loss in shipment, transit or otherwise) and charges made by the registrar or agents of the Custodian or any sub-custodian for acceptance of documents for safe custody, retention and/or delivery;
- (xii) all expenses incurred in the collection of income and administration of the ICAV;
- (xiii) all costs and expenses of Shareholders' meetings and preparing resolutions of Shareholders;
- (xiv) fees and expenses of the auditors, tax, legal and other professional advisers of the ICAV;
- (xv) fees and expenses of any portfolio monitoring and/or proxy voting agents;
- (xvi) fees connected with listing of Shares on any stock exchange;
- (xvii) fees and expenses in connection with any marketing material, services, advertisements of the ICAV and the Shares issued or to be issued, the distribution of Shares and costs of registration and agency fees (which shall be at normal commercial rates) of the ICAV in jurisdictions outside Ireland;
- (xviii) all fees of any sub-distributors, applying agents or local representatives (which shall be at normal commercial rates) required to facilitate the authorisation or registration of the ICAV and/or any Fund and the marketing of Shares in any jurisdiction;
- (xix) costs of preparing, printing and distributing the Prospectus, Key Investor Information Documents, reports, accounts and any explanatory memoranda;
- (xx) any necessary translation fees;
- (xxi) any costs incurred as a result of periodic updates of the Prospectus or Key Investor Information Document, or of a change in law or the introduction of any new law (including any costs incurred as a result of compliance with any applicable code, whether or not having the force of law);
- (xxii) in respect of each financial year of the ICAV in which expenses are being determined, such proportion (if any) of any establishment expenses as are being amortised in that year;
- (xxiii) all fees and costs relating to a scheme of reconstruction and amalgamation (to the extent it has not been agreed that such expenses should be borne by other parties);
- (xxiv) any interest on any borrowings of the ICAV;
- (xxv) fees connected with the winding-up of the ICAV, any Fund or termination of any class of Shares;
- (xxvi) all fees and expenses of the Directors and any Directors' insurance premia;
- (xxvii) any other fees and expenses relating to the management and administration of the ICAV or attributable to the ICAV's Investments;
- (xxviii) all costs and expenses incurred by the ICAV and any of their appointees;

- (xxix) any other fees and expenses deemed appropriate by the Directors;
- (xxx) all other liabilities of the ICAV of whatsoever kind and nature except liabilities represented by Shares in the ICAV and reserves (other than reserves authorised or approved by the Directors for Duties and Charges or contingencies).

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

- (b) The liabilities attributable to each Class of Shares shall be deemed to include (without limitation):
  - (i) the fees and expenses of any service provider to the ICAV attributable to the relevant Class of Shares;
  - (ii) fees and expenses involved in notifying the Central Bank of the marketing of the Shares of the relevant Class;
  - (iii) fees and expenses involved in registering and maintaining registrations of the Shares of the relevant Class for sale in any jurisdiction outside Ireland, including the preparation of prospectuses;
  - (iv) expenses in connection with the listing of the Shares Class on any securities exchange.
- (c) For the purposes of this Clause 22:
  - (i) Investments to be transferred to or monies payable to the ICAV in respect of the allotment of Shares of any Class shall be deemed to be an asset of the relevant Fund as at the time at which such shares are deemed to be in issue in accordance with Clause 14(f) of this Instrument; and
  - (ii) Investments to be transferred from or monies payable by the ICAV on the redemption or redemption by the ICAV of Shares pursuant to redemption requests or monies payable by the ICAV as a result of the cancellation of allotments shall be deemed to be a liability of the relevant Fund from the time at which such Shares are deemed to cease to be in issue in accordance with Clause 14(f) of this Instrument; and
  - (iii) Investments or monies due to be transferred from one Fund to another pursuant to any switching between Funds pursuant to Clause 30 shall be deemed to be a liability of the original Fund and an asset of the new Fund immediately after the Valuation Point for the Dealing Day on which the dealing form has been received or deemed to be received by the Administrator in accordance with Clause 30.

### **23. General Provisions on Valuation**

- (a) Any assets held, including funds on deposit and amounts payable to the ICAV and any liabilities and amounts payable by the ICAV in respect of any Fund in a currency other than that in which that Fund is designated shall be translated into the currency of that Fund at such rate of exchange as the Directors may think fit.
- (b) Where the current price of an Investment is quoted "ex" any dividend (including stock dividend), interest or other rights to which the relevant Fund is entitled but such dividend, interest or the property to which such rights relate has not been received and is not taken into account under any other provisions of this Clause, the amount of such dividend, interest, property or cash shall be taken into account.

- (c) Any entity wholly owned by the ICAV, established with the prior approval of the Central Bank, shall be valued on the basis of its net assets (being the value of its assets minus its liabilities) and in valuing its net assets, the provisions of Clauses 20 to 23 inclusive shall mutatis mutandis apply.
- (d) Any certificate as to Net Asset Value of Shares 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.
- (e) Notwithstanding the provisions of this Instrument, the fees, expenses and liabilities of a Fund may be charged to the capital of a Fund in accordance with the Central Bank requirements.

#### **PART VI - REDEMPTION OF PARTICIPATING SHARES**

#### **24. Redemption**

- (a) Subject to the provisions of the Act and the Central Bank Requirements, and 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 a Fund from a holder of Shares (the "Redemption Form" and the "Applicant" respectively) which request shall, save as provided in this Clause, be irrevocable, 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 request shall not result in a Shareholder holding less than the Minimum Holding (or such lesser amount as the ICAV may determine);
  - (ii) the redemption of Shares of any Class pursuant to this Clause shall be made on the Dealing Day following the Business Day on which the request is received before the Relevant Time on such Business Day and, if received after the Relevant Time, the request shall (unless otherwise determined by the Directors) be treated as having been received on the next following Business Day.
  - (iii) in the event that the determination of the Net Asset Value of the relevant Fund has been suspended in accordance with Clause 28, the right of the Applicant to have his Shares 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.
- (c) The redemption under the provisions of this Clause shall be deemed to be effected immediately after the Valuation Point for the Dealing Day or such day as may be agreed or determined pursuant to paragraph (a) above of this Clause 24 but such Shares shall remain in existence until they cease to be in issue in accordance with Clause 14(f).
- (d) Upon the redemption of a Share being effected pursuant to this Instrument, the Applicant 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) Redemption facilities will be provided in the manner set out in the Prospectus. Where the ICAV receives in respect of any Dealing Day requests for redemption or switching (which, at the discretion of the ICAV, may exclude requests for redemption in kind) which in the aggregate amount to more than 10% of the Net Asset Value of any Fund, each such request for redemption or switching of Shares of the relevant Fund may, at the discretion of the ICAV and to the extent that any proceeds for such redemptions have not already been paid, be reduced pro rata so that all such requests (which may exclude redemptions in kind) cover no more than 10% of the Net Asset Value of the relevant Fund. Any part of a redemption or switching request to which effect is not given by reason of the exercise of this power by the ICAV shall be treated as if a request had been made in respect of the next Dealing Day and each succeeding Dealing Day (in relation to which the ICAV shall have the same power) until the original requests have been satisfied in full provided always that requests for redemption or switching that remain to be satisfied by reason of the exercise of this power by the ICAV shall be complied with in priority to later requests.
- (f) (i) If it shall come to the notice of the Directors that any Shares are owned directly or beneficially by any person in breach of the restrictions imposed by Clause 19 above, the Directors may give notice to such person requiring him to transfer such Shares to a person who is qualified or entitled to own such Shares or to give a request in writing for the redemption of such Shares in accordance with paragraph (a) above. 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 writing 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 will be deposited by the ICAV in a bank for payment to such person against surrender of the Shares previously held by such person. 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).
- (g) 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 a fraction of a Share shall be registered in the name of the Applicant who shall be registered as the holder of such a fraction provided however that such fraction of a Share as may be set out in the relevant

Prospectus is not required to be registered and amounts representing such fraction of a Share 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.

- (h) In circumstances in which the ICAV shall be able to procure a purchase of a redeeming Shareholder's Shares, although no actual redemption shall be effected, where a purchase is procured in these circumstances a redeeming Shareholder shall be paid the sale proceeds.
- (i) The ICAV may redeem Shares of any Class of a Fund by way of exchange for Investments provided that:
  - (i) the redemption request is completed and delivered to the Administrator as required by this Instrument and the redemption request otherwise satisfies all of the requirements of the Directors as to such request and, save as provided at (iii) below the Shareholder seeking redemption of Shares, agrees to such course of action;
  - (ii) the Directors and the Custodian are satisfied that the terms of any exchange would not be such as would be likely to result in any material prejudice to the remaining Shareholders, and have elected that instead of the Shares being redeemed in cash, the redemption shall be satisfied in specie by the transfer to the Shareholder of Investments provided that the value thereof shall not exceed the amount which otherwise would have been payable on a cash redemption and provided that the transfer of Investments is approved by the Custodian. Such value may be reduced by such amount as the Directors may consider represents any Duties and Charges to be paid to the Fund as a result of the direct transfer by the ICAV of the Investments or increased by such amount as the Directors may consider represents any appropriate provision for Duties and Charges which would have been incurred by the ICAV in the disposition of the Investments to be transferred. The shortfall (if any) between the value of the Investments transferred on a redemption in specie and the redemption proceeds which would have been payable on a cash redemption shall be satisfied in cash. Any decline in the value of the Investments to be transferred in settlement of a redemption between the relevant Dealing Day and the day on which Investments are delivered to the redeeming Shareholder shall be borne by the redeeming Shareholders; and
  - (iii) if a redeeming Shareholder requests redemption of a number of Shares that represents 5% or more of the Net Asset Value of a Fund, the Directors may in their sole discretion redeem the Shares by way of exchange for Investment and in such circumstances the ICAV will, if requested by the redeeming Shareholder, sell the Investments on behalf of the Shareholder (the cost of the sale can be charged to the Shareholder). This limit may be varied as may be permitted by the Central Bank and will be set out in the Prospectus.
- (j) If the discretion conferred upon the ICAV above is exercised, the ICAV shall notify the Custodian and shall supply to the Custodian particulars of the Investments to be transferred and any amount of cash to be paid to the Shareholder. Any allocation of Investments pursuant to an in specie redemption is subject to the approval of the Custodian.
- (k) The Shareholders of any Fund may, by way of Special Resolution, and subject to the Central Bank Requirements, authorise the amalgamation/merger of the Fund with any other collective investment scheme or schemes or any compartment or compartments thereof, which amalgamation/merger may involve the redemption of the Shares of the relevant Fund and the transfer of the whole or part of the assets of the Fund to the



depository/custodian/trustee (who may or may not be regulated by the Central Bank) of the relevant collective investment scheme or schemes.

- (l) The Shareholders of any Fund may, by way of Special Resolution, and subject to the Central Bank Requirements, authorise the amalgamation/merger of the Fund with any other Fund, which amalgamation/merger will involve the redemption of Shares of the relevant Fund and the transfer of the whole or part of the assets of the Fund to that other Fund.

## 25. Restrictions on Redemptions

- (a) Shares shall be redeemed pursuant to this Clause at the Net Asset Value per Share as at the Valuation Point immediately preceding the relevant Business Day or where such Business Day is also a Valuation Point, at the Net Asset Value per Share as at the relevant Business Day as determined in accordance with the provisions of Clauses 20 to 23 less such sum as the Directors, in their absolute discretion, may from time to time determine as an appropriate provision for Duties and Charges in relation to the realisation or cancellation of the Shares to be redeemed and subject always to the resulting total being adjusted downwards to the nearest lowest denomination of the relevant currency or currencies.
- (b) If all the Shares in the relevant Fund are to be redeemed as aforesaid the Directors may, with the sanction of a Special Resolution, divide amongst the Shareholders in specie all or part of the assets of the relevant Fund according to the number of the Shares then held by each Shareholder in the relevant Fund.

## 26. The Redemption Price/Single Swinging Price

- (a) Save as provided in paragraph (b) below 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 calculated as at the Valuation Point for the relevant Dealing Day in accordance with the provisions of Clauses 20 to 23;
  - (ii) dividing the amount calculated under (i) above by the number of Shares of such Class of the relevant Fund in issue or deemed to be in issue at the relevant Valuation Point; and
  - (iii) unless otherwise provided in the Prospectus in respect of a Fund, making an adjustment to the resultant amount to reflect the fact that the actual cost of purchasing or selling assets of a Fund may deviate from the valuation principles used and set out in Clauses 20 to 23 due to Duties and Charges and Spreads from buying and selling prices of the assets which have an adverse effect on the value of a Fund known as "dilution". To mitigate the effects of dilution, the Directors may, at their discretion, make a dilution adjustment to the resultant amount at (ii) above by adding thereto, when such Fund is in a Net Subscription Position, and deducting therefrom, when such Fund is in a Net Redemption Position, such figure as the Directors consider represents an appropriate amount for Duties and Charges and Spreads. This discretion will be exercised as set out in the Prospectus; or
  - (iv) where provided in respect of a Fund, the provisions of Clause 26(a)(iii) will not apply but instead 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 sale price of underlying investments shall be deducted from the figure calculated at Clause 26(a)(i); and

- (v) deducting therefrom such amount as may be necessary to round the resulting amount to such number of decimal places as the Directors deem appropriate of the currency in which the relevant Class is designated.
- (b) Shares may be redeemed at their Net Asset Value on a relevant Dealing Day in circumstances where applications have been received for subscriptions of the same number of Shares in the same Fund on that Dealing Day.
- (c) If any redemption requests received by the Directors would necessitate, in the opinion of the Directors, the breaking of deposits at a penalty or the realisation of Investments at a discount below their value, as calculated in accordance with Clause 22, the Redemption Price in respect of the relevant Shares may be reduced by a proportionate part of such reduction in value or penalty which will be suffered by the relevant Fund in such manner as the Directors may consider fair and equitable and which is approved by the Depositary. Alternatively, the Directors may arrange for the ICAV to borrow funds in accordance with Clause 82 subject always to any borrowing restrictions in force in relation to the ICAV or the relevant Fund, and the costs of such borrowings may be apportioned as aforesaid to such extent as the Directors may consider fair and equitable.
- (d) 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.
- (e) Notwithstanding any other provision of this Instrument, if the ICAV becomes liable to account for tax in any jurisdiction in the event that a Shareholder or beneficial owner of a Share were to receive a distribution in respect of his Shares or to dispose (or be deemed to have disposed) of his Shares in any way ("Chargeable Event"), the ICAV shall be entitled to deduct from the payment arising on a Chargeable Event an amount equal to the appropriate tax and/or where applicable, to appropriate or cancel such number of Shares held by the Shareholder or such beneficial owner as are required to meet the amount of tax. The relevant Shareholder shall indemnify and keep the ICAV indemnified against all loss arising to the ICAV by reason of the ICAV becoming liable to account for such tax in any jurisdiction on the happening of a Chargeable Event if no such deduction, appropriation or cancellation has been made.
- (f) The Directors may, in their absolute discretion, and in the circumstances set out in the Prospectus, deduct from the Redemption Price for the absolute use and benefit of the ICAV a redemption charge in respect of Shares of any Class which have been redeemed or transferred (at the request of the Member) provided however that such redemption charge shall not exceed 3% per cent of the Net Asset Value of the relevant Shares on the relevant Dealing Day rounded to such number of decimal points as the ICAV may determine of the designated currency of the Class in the relevant Fund.
- (g) The maximum redemption charge shall not be increased without the unanimous consent of all Shareholders.
- (h) In the event of an increase in the maximum redemption charge the ICAV shall provide a reasonable notification period to enable Shareholders redeem their Shares prior to the implementation of the increase (save where the increase has been unanimously approved by the Shareholders).
- (i) Payment of redemption proceeds shall normally be made in the currency of the Class as set out in the relevant redemption request and generally within 10 Business Days of the relevant Dealing Deadline (subject to Clause 28). Redemption proceeds will be paid by wire transfer (less expenses) or cheque to the bank account detailed on the Application Form or as subsequently notified to the Administrator in writing. If no such instructions have been given redemption proceeds will be sent by post to the relevant Shareholder's address as set out in the Shareholder's Register and, in the case of joint holders, the joint holder whose name stands first in the Shareholder's Register.

## 27. Compulsory Redemption

- (a) All the Shares of the ICAV or the Shares of any Fund or class of Shares may be compulsorily redeemed:
- (i) where Shares are or become owned, directly or indirectly, by or for the benefit of any person in breach of any restrictions on ownership from time to time specified by the Directors;
  - (ii) in circumstances in accordance with which the provisions of Clause 24(a)(ii) of this Instrument apply;
  - (iii) where, in the opinion of the Directors, such redemption would eliminate or reduce the exposure of the ICAV or its Shareholders to adverse tax or regulatory consequences or if Shares are held by a Shareholder who is not a Qualified Holder;
  - (iv) where not less than 75% of the Shareholders (voting at the meeting either in person or by proxy) approve of the redemption of the Shares at a general meeting of the relevant Share class of which not less than 21 days notice has been given;
  - (v) at the discretion of the Directors, after the first anniversary of the first issue of Shares of the relevant class if the Net Asset Value of the relevant class falls below the minimum holding amount set out in respect of a Fund for a period of ten (10) Business Days or more;
  - (vi) at the discretion of the Directors, if the Fund ceases to be listed on a stock exchange;
  - (vii) a Shareholder has not completed the anti-money laundering procedures to the satisfaction of the ICAV and/or the Administrator; or
  - (viii) at the discretion of the Directors acting reasonably, upon the provision of reasonable notice to a Shareholder.
- (b) The ICAV shall redeem without charge all Shares if the Custodian has served notice of its intention to retire under the terms of the Custodian Agreement (and has not revoked such notice) and no new Custodian has been formally approved and appointed by the ICAV within 90 days of the date of service of such notice. In such circumstances, the Custodian shall not cease to be the Custodian of the ICAV until the Central Bank has revoked the authorisation of the ICAV under the Act and the Central Bank Requirements.

## **PART VII - SUSPENSION OF REDEMPTION, VALUATION AND DEALINGS**

### 28. Temporary Suspensions/Delays

- (a) The Directors may declare a temporary suspension of the determination of the Net Asset Value of any particular Fund and of the issue and redemption of the Shares of the relevant Fund:
- (i) during the whole or any part of any period when any of the principal markets or stock exchanges on which any significant portion of the 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 and power of the Directors, any disposal or valuation of Investments

of the relevant Fund is not, in the opinion of the Directors, reasonably practicable without this being prejudicial to, or detrimental to the interests of, owners of Shares in general or the owners of Shares of the relevant Fund or if, in the opinion of the Directors, the Net Asset Value cannot fairly be calculated;

- (iii) during the whole or any part of any period when any breakdown occurs in the means of communication normally employed in determining the value of any of the Investments of the Fund or when for any other reason the value of any of the Investments or other assets of the Fund cannot reasonably or fairly be ascertained;
  - (iv) during the whole or any part of any period when the ICAV is unable to repatriate funds required for the purpose 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 there are difficulties or it is envisaged that there will be difficulties, in the transfer of monies or assets required for subscriptions, redemptions or trading;
  - (v) upon the publication of a notice convening a general meeting of Shareholders for the purposes of resolving to wind up the ICAV;
  - (vi) during any period in which a counterparty with which the ICAV has entered into a swap transaction is unable to make any payment due or owing under the swap, including where it is unable to repatriate or exchange at a reasonable rate the proceeds of its underlying hedge;
  - (vii) during any period when the Directors, in their discretion, consider suspension to be required in the interests of the ICAV, a Fund, or the Shareholders of a Fund;
  - (viii) during any period during which the Directors, in their discretion, consider suspension to be required for the purposes of effecting a merger, amalgamation or restructuring of a Fund or of the ICAV; or
  - (ix) if the suspension is required by the Central Bank in accordance with the Regulations or the Central Bank Requirements.
- (b) Any such suspension shall take effect at such time as the Directors shall declare but not later than the close of business on the Business Day next following the declaration and, thereafter, there shall be no determination of the Net Asset Value of the relevant Fund and issue of Shares or redemption of Shares of the relevant Fund 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.
- (c) The Directors may postpone the payment of a redemption payment (or portion thereof) in circumstances where Investments of the relevant Fund cannot be liquidated in a timely fashion to meet redemption requirements without having a significant adverse effect on the relevant Fund but only to the extent that the ICAV has not received funds in respect of the liquidation of Investments. Any such postponement shall take effect at such time as the Directors shall declare (which declaration will be made within three Business Days after the relevant Dealing Day) and shall end on the earliest to occur of:
- (i) the receipt by the ICAV of funds in respect of the liquidation of all the relevant Investments;
  - (ii) the borrowing by the ICAV of sums required to meet such payment obligations; and

- (iii) the first Business Day after a period of thirty days following the day on which such declaration is made.

**29. Notification of Suspensions**

Any such suspension of the determination of the Net Asset Value of a Class and the issue and redemption of Shares shall be notified by the ICAV immediately (and in any event during the Business Day on which the suspension took place) to the Central Bank and any other competent authority.

**PART VIII - FUND SWITCHES**

**30. Fund Switches**

Subject to Clauses 24 and 25 above and as hereinafter provided the holder of any Shares of any Class of a Fund on any Dealing Day shall have the right from time to time to exchange such minimum amount and value of his holding of Shares in such Fund which as may be specified by the Directors, to Shares of such Class or Classes of the same Fund or other Fund or Funds as may be specified by the Directors on such terms as may be specified by the Directors in the relevant Prospectus.

**PART IX - CERTIFICATES AND CONFIRMATIONS OF OWNERSHIP**

**31. Confirmation of Ownership**

Every person whose name is entered as a Shareholder in the Register shall receive a written confirmation of:

- (a) ownership of the relevant Class(es) of Shares; and
- (b) entry of his name on the Register.

The ICAV shall not issue share certificates to any Shareholder.

**32. 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 Subscriber 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 instalments. 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 X - TRANSFER OF SHARES**

### 33. Procedure on Transfer

- (a) All transfers of shares shall be effected by an instrument in writing in any usual or common form approved by the Directors or by such other means as the ICAV may prescribe from time to time where such means are in accordance with the Central Bank Requirements. No transfer of Subscriber Shares or of Shares in a Side Pocket Share Class may be effected without the prior written consent of the ICAV. The instrument of transfer must comply with the requirements of Sections 42 to 45 of the Act, shall be signed by or on behalf of the transferor and need not be signed by the transferee. 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.
- (b) 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 US 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 but which will not in any case be granted if, as the result thereof, the number of Participating Shareholders who are US Persons would exceed such number as may be specified by the Directors or in the absence of specification, 50.
- (c) If a transferee who is a US 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 US Persons would exceed such number as the Directors may from time to time determine (or in the absence of determination, 50) or the ICAV otherwise becomes aware that a holder of Shares is a US Person who acquired Shares without the prior consent of the Directors, the ICAV will refuse to register the transfer in favour of the US Person and/or may direct the US 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 redeem the Shares pursuant to Clause 24. If the US Person fails to comply with the direction, the ICAV will compulsorily redeem the holding of Shares of such US Person pursuant to Clause 27.
- (d) The Directors may, within 2 months of receipt of the relevant instrument of transfer, decline to register any transfer of a Share:
  - (i) where they are aware or reasonably believe that such transfer would result in the legal or beneficial ownership of such Shares by a person who is not a Qualified Holder or expose the ICAV to adverse tax or regulatory consequences;
  - (ii) to a person who is not already a Shareholder, if as a result of such transfer, the proposed transferee would not be the holder of a Minimum Holding of Shares; or
  - (iii) if as a result of such transfer the transferor's holding would drop below the Minimum Holding.
- (e) If the Directors decline to register a transfer of any share they shall, within two months after the date on which the instrument of transfer was lodged with the ICAV, send to the transferee notice of the refusal.
- (f) The registration of any transfers may be suspended at such times and for such periods as the Directors from time to time may determine, **PROVIDED ALWAYS** (but subject to the provisions hereof) that such registration of transfers shall not be suspended for more than thirty days in any year.

### 34. Purchase of Subscriber Shares

The Directors may at any time direct that any Subscriber Shares not held by Roxbury Asset Management Limited or its nominee(s) shall be compulsorily purchased from the holder thereof at the price of €1 per Subscriber Share in the following manner:

- (a) 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 Subscriber Shares, the person in whose favour such holder must execute a transfer of such Subscriber Shares and the place at which the purchase price in respect of such Subscriber 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.
- (b) 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 (a) above, the Directors may authorise some person to execute a transfer of such Subscriber Share(s) in accordance with the direction of the Directors and may give good receipt for the purchase price of such Subscriber Share, and may register the transferee or transferees as holder or holders of such Subscriber Shares and thereupon the transferee or transferees shall become indefeasibly entitled to such Subscriber Shares.

**35. Entry in Register**

The instrument of transfer of a Share shall be Signed by or on behalf of the transferor. The transferor shall be deemed to remain the holder of the Share until the name of the transferee is entered in the Register in respect of such Share.

**36. Refusal to Register Transfers**

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 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 to prevent money laundering as they may apply from time to time;
- (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;
- (d) such transfer will be likely to result in the legal and beneficial ownership of such Shares by a person who is not a Qualified Holder;
- (e) where the holding of such Shares would result in regulatory, pecuniary, legal, taxation or material administrative disadvantage for the relevant Fund or its Shareholders as a whole.

**37. Procedure on Refusal**

If the Directors decline to register a transfer of any share they shall, within two months after the date on which the transfer was lodged with the ICAV, send to the transferee notice of the refusal.

**38. 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 one year.

**39. Retention of Transfer Instruments**

Subject to Clause 129 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.

**40. Absence of Registration Fees**

No fee shall be charged to the Member for the registration of any instrument of transfer or other document relating to or affecting the title to any share.

**PART XI - TRANSMISSION OF SHARES**

**41. 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.

**42. Transfer/Transmission - Special Circumstances**

Any curator or other legal representative of a Member under legal disability and any person entitled to a share in consequence of the death or bankruptcy 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 or bankrupt 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 or bankrupt Member before the death or bankruptcy or by the Member under legal disability before such disability.

**43. Rights before Registration**

A person becoming entitled to a share in consequence of the death or bankruptcy of a Member shall 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.

**44. ICAV's power to sell Shares**

- (a) The ICAV may sell in such manner as the Directors decide at the best price reasonably obtainable a Share of a Member or a Share to which a person is entitled by transmission if:



- (i) during a period of 12 years the ICAV has paid at least three dividends (whether interim or final) in respect of the Share and during that period no dividend cheque or warrant sent by the ICAV through the post in a pre-paid letter addressed to the Member or the person at his address on the Register or the last known address given by the Member or the person to which cheques and warrants are to be sent has been cashed;
  - (ii) on or after the expiry of the period referred to in Clause 44(a)(i), the ICAV has given notice of its intention to sell the Share by advertisement in a national newspaper circulating in Ireland and in a newspaper circulating in the area in which the address referred to in Clause 44(a)(i) is located; and
  - (iii) during the period commencing at the start of period referred to in Clause 44(a)(i) and ending on the date three months after the date of publication of the advertisement specified in Clause 44(a)(ii) the ICAV has not received any communication from the Member or the person.
- (b) If during the period commencing at the start of period referred to in Clause 44(a)(i) and ending on the date when all the requirements in Clause 44(a)(i) to (iii) have been satisfied a further Share has been issued in respect of a right attaching to a Share held at the start of that period or of any previously so issued during that period and all the requirements in Clause 44(a)(i) to (iii) have been satisfied in respect of the further Share, the ICAV may also sell the further Share.
- (c) The transferee is not bound to see the application of the purchase money and his title to the Share is not affected by any irregularity in or invalidity of the procedure or manner of the sale.
- (d) The ICAV shall account to the Member or other person for the net proceeds of the sale by carrying an amount in respect of the net proceeds to a separate account which is a permanent debt of the ICAV. The ICAV is deemed to be a debtor and not a trustee for the member or other person in respect of that amount. The Board may invest or otherwise use for the ICAV's benefit an amount carried to a separate account until it is claimed. Any money earned on an amount so invested or used belongs to the ICAV and is not obliged to account for it to the Member or other person.

## PART XII - ALTERATION OF SHARE CAPITAL

### 45. **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.

### 46. **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 Clause 6 (a); 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.

**47. 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 XIII - GENERAL MEETINGS**

**48. Annual General Meeting**

- (a) The ICAV shall in each year hold a general meeting as its Annual General Meeting in addition to any other meeting in that year and specify the meeting as such in the notices calling it. Not more than fifteen months shall elapse between the date of one Annual General Meeting of the ICAV and that of the next PROVIDED THAT so long as the ICAV holds its first Annual General Meeting within eighteen months of its incorporation it need not hold it in the year of its incorporation or in the following year. Subsequent Annual General Meetings shall be held once in each year.
- (b) The Directors may elect to dispense with the holding of an annual general meeting by giving sixty days' written notice to all Shareholders. Any such election shall have effect for the year in which it is made and subsequent years, but shall not affect any liability already incurred by reason of default in holding an annual general meeting.

**49. Extraordinary General Meetings**

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

**50. Convening General Meetings**

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 any two Members 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.

**51. Notice of General Meetings**

- (a) Subject to the provisions of the Act allowing a general meeting to be called by shorter notice, an Annual General Meeting and an Extraordinary General Meeting called for the passing of a Special Resolution shall be called by at least twenty-one Clear Days' notice and all other Extraordinary General Meetings shall be called by at least fourteen Clear Days' notice.
- (b) Any notice convening a general meeting shall specify the time and place of the meeting, the general nature of that business, and, in reasonable prominence state that a Member entitled to attend and vote is entitled to appoint a proxy to attend, speak and vote in his place and that a proxy need not be a Member. It shall also give particulars of any Directors who are recommended by the Directors for appointment as Directors at the meeting, or in respect of whom notice has been duly given to the ICAV of the intention to propose them for appointment as Directors at the meeting. Subject to any restrictions imposed on any Shares, the notice shall be given to all the Members and those persons listed in Clause 125.

- (c) The accidental omission to give notice of a meeting to, or the non-receipt of notice of a meeting by, any person entitled to receive notice shall not invalidate the proceedings at the meeting.
- (d) Where, by any provision contained in the Act, extended notice is required of a resolution, the resolution shall not be effective (except where the Directors of the ICAV have resolved to submit it) unless notice of the intention to move it has been given to the ICAV not less than twenty-eight days (or such shorter period as the Act permit) before the meeting at which it is moved, and the ICAV shall give to the Members notice of any such resolution as required by and in accordance with the provisions of the Act.

#### **PART XIV - PROCEEDINGS AT GENERAL MEETINGS**

##### **52. 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 accounts and the balance sheet and the reports of the Directors and Auditors, the election of Directors and Auditors in the place of those retiring and the appointment and the fixing of the remuneration of the Auditors. Save as may be otherwise provided in this Instrument, the provisions of this Instrument relating to Extraordinary General Meetings shall apply mutatis mutandis to class meetings and meetings of Shareholders in a Fund.

##### **53. 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. 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.

##### **54. 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 one of the Members present to be Chairman of the meeting.

**55. Directors' and Auditors' Right to Attend General Meetings**

A Director shall be entitled, notwithstanding that he is not a Member, to attend and speak at any general meeting and at any separate meeting of the holders of any Fund or 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.

**56. 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 fourteen days or more sine die, at least seven Clear Days' notice shall be given specifying the time and meeting and the general nature of the business to be transacted. Save as aforesaid, it shall not be necessary to give any notice of an adjourned meeting.

**57. 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.

**58. Entitlement to Demand Poll**

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

- (a) by the Chairman of the meeting;
- (b) by at least five 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.

**59. 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.

- (c) No notice need be given of a poll not taken forthwith if the time and place at which it is to be taken are announced at the meeting at which it is demanded. In any other case at least seven Clear Days' notice shall be given specifying the time and place at which the poll is to be taken.

**60. 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 Member present in person and every proxy 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.

**61. 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.

**62. 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.

**63. 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.

**64. 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.

**65. Appointment of Proxy**

- (a) 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 the form set out below or such other form 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.

**THE ROXBURY KBA FUND ICAV**

I/We  
of

being a Member/Members of the above named ICAV hereby

appoint  
of  
or failing him  
or  
as my/our proxy to vote for me/us on my/our behalf at the (Annual or Extraordinary as the case may be) General Meeting of the ICAV to be held on the        day of 20    , and at any adjournment thereof.

Signed this        day of        .

This form is to be used\* in favour of/abstain/against the Resolution.

Unless otherwise instructed, the proxy will vote or abstain from voting as he thinks fit.

\* Strike out whichever is not desired.

- (b) The Directors may, in their absolute discretion, accept proxy forms which are delivered electronically or by other data transmission process subject to any limitations, restrictions or conditions that they decide. If so, then:-
- (i) the requirements of paragraph (a) that the proxy form be in writing, and otherwise as to the form and execution of the proxy shall not apply but the Directors may require such other evidence as to the efficacy of the proxy as they deem appropriate; and
  - (ii) references in this Instrument to an instrument of proxy and to its deposit at the office or with the Secretary shall be respectively construed as including reference to any form of proxy permitted by this Instrument and to its delivery or transmission to the ICAV in such manner as the Directors may prescribe.

#### 66. Deposit of Proxy Instruments

- (a) The instrument appointing a proxy and any authority under which it is executed or a copy certified notarially or in some other way approved by the Directors, shall be deposited at the Office or (at the option of the 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 such time as the Directors may determine from time to time 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:
- (i) in the case of a meeting which is adjourned to, or a poll which is to be taken on, a date which is less than seven days after the date of the meeting which was adjourned or at which the poll was demanded, 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;
  - (ii) at the discretion of the Directors, an instrument appointing a proxy and any authority and certification thereof deposited as aforesaid may be treated as valid notwithstanding that it has been deposited less than forty-eight hours before the Relevant Time; and
  - (iii) 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.

- (b) The deposit of the instrument of proxy referred to in Clause 67(a) may, rather than its being effected by sending or delivering the instrument, be effected by communicating the instrument to the ICAV by electronic means, and this sub-section likewise applies to the depositing of anything else referred to in Clause 67(a).

**67. 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.

**68. 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 its 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.

**69. 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 thereat.

**70. Written Resolutions**

A resolution in writing executed by or on behalf of each Member who would have been entitled to vote upon it if it had been proposed at a meeting which he was present shall be as effectual as if it had been passed at a general meeting duly convened and held and may consist of several instruments in the like form each executed by or on behalf of one or more Members. 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.

**PART XV - DIRECTORS**

**71. Number of Directors**

The number of the Directors shall not be less than two. A Director may only be appointed if the approval of the Central Bank to such appointment has been obtained. The Directors holding office on the date this Instrument comes into force shall continue to hold office subject to the provisions of this Instrument. 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 Members may summon a general meeting for the purpose of appointing Directors.

**72. Share Qualifications**

A Director shall not require a share qualification.

**73. Ordinary Remuneration of Directors**

Each Director shall be entitled to such remuneration for his services as the Directors shall from time to time resolve provided that no Director may be paid in excess of a figure set out in the Prospectus without the approval of the Board. Such remuneration shall be deemed to accrue from day to day.

**74. 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 normal 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.

**75. Expenses of Directors**

The Directors may be paid all 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 with the discharge of their duties.

**76. Alternate Directors**

- (a) 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).
- (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 by rotation or otherwise but is re-appointed or deemed to have been re-appointed at the meeting at which he retires, any appointment of an alternate Director made by him which was in force immediately prior to 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.

**PART XVI - POWERS OF DIRECTORS**

**77. Directors' Powers**

Subject to the provisions of the Act, 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 not by the Act or 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.

**78. Power to Delegate**

Without prejudice to the generality of the last preceding Clause, the Directors may delegate any of their powers and discretions to any Director or to any committee consisting of one or more Directors together with such other persons (if any) as may be appointed to such committee by the Directors provided that a majority of the members of each committee appointed by the Directors shall at all times consist of Directors and that no resolution of any such committee shall be effective unless a majority of the members of the committee present at the meeting at which it was passed are Directors. The power or discretion which may be delegated to any such committee shall include (without limitation) any powers and discretions whose exercise involves or may involve the payment of remuneration to, or the conferring of any other benefit on, all or any of the Directors. Any such delegation may be made subject to any conditions the Directors may impose, and either collaterally with or to the exclusion of their own powers and may be revoked. Subject to any such conditions, the proceedings of a committee with two or more members shall be governed by the provisions of this Instrument regulating the proceedings of Directors so far as they are capable of applying.

**79. Appointment of Attorneys**

The Directors, from time to time and at any time by power of attorney, may appoint any company, firm or person or any fluctuating body of persons, whether nominated directly or indirectly by the Directors, to be the attorney or attorneys of the ICAV for such purposes and with such powers, authorities and discretions (not exceeding those vested in or exercisable by the Directors under this Instrument) and for such period and subject to such conditions as they may think fit. Any such power of attorney may contain such provisions for the protection of persons dealing with any such attorney as the Directors may think fit and may also authorise any such attorney to sub-delegate all or any of the powers, authorities and discretions vested in him. Notwithstanding the generality of the foregoing, the Directors may appoint an attorney for the purpose of exercising their power to allot relevant securities as more particularly described in Clause 7 hereof.

**80. 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.

**81. Investment Objectives and Policies**

- (a) Subject to the provisions of the Regulations the Directors shall determine the investment objectives and policies (including the permissible forms of Investments) and restrictions applying to each Fund which shall be set out in any Prospectus.
- (b) The assets of each Fund shall be invested in Investments subject to the restrictions and limits imposed under the Regulations under this Instrument, and any Prospectus.
- (c) With the exception of permitted Investments in unlisted securities, each Fund will only invest in those securities and derivative instruments listed or traded on a stock exchange (including derivative markets) which meets with the regulatory criteria (it is regulated, operates regularly, is recognised and is open to the public) and which is listed in the Prospectus.

- (d) Subject to authorisation by the Central Bank more than 35% and up to 100% of the net assets of a Fund may be invested in transferable securities and money market instruments issued or guaranteed by any Member State, its local authorities, non-Member States or public international bodies of which one or more Member States are members and issued or guaranteed by any of the following:

OECD Governments (provided the relevant issues are investment grade), Government of the People's Republic of China, Government of Brazil (provided the issues are of investment grade), Government of India (provided the issues are of investment grade), Government of Singapore, European Investment Bank, European Bank for Reconstruction and Development, International Finance Corporation, International Monetary Fund, Euratom, The Asian Development Bank, European Central Bank, Council of Europe, Eurofima, African Development Bank, International Bank for Reconstruction and Development (The World Bank), The Inter American Development Bank, European Union, Federal National Mortgage Association (Fannie Mae), Federal Home Loan Mortgage Corporation (Freddie Mac), Government National Mortgage Association (Ginnie Mae), Student Loan Marketing Association (Sallie Mae), Federal Home Loan Bank, Federal Farm Credit Bank, Tennessee Valley Authority and Straight-A Funding LLC.

Each Fund must hold securities from at least six different issues with securities from any one issue not exceeding 30% of its Net Asset Value.

- (e) The ICAV may (subject to the Regulations and the prior approval of the Central Bank) own all the issued share capital of any entity (the shares and assets of which shall be held by the Custodian) which the Directors consider it necessary or desirable for the ICAV, with the prior approval of the Central Bank, to incorporate or acquire or utilise in connection with the carrying on only of the business of management, advice or marketing in the country where that entity is located, in regard to the redemption of Shares at Shareholders' request exclusively on the ICAV's behalf. None of the limitations or restrictions referred to in paragraphs (a) or (b) above, shall apply to Investments in, loans to or deposits with any such entity, and for the purpose of paragraphs (a) and (b) above Investments or other property held by any such private company shall be deemed to be held directly for the ICAV.
- (f) Subject to the provisions of the Regulations, the ICAV may, invest up to 20% (35% in certain circumstances and only then in respect of a single issuer) of a Fund's net assets in transferable securities issued by the same body where the aim of the investment policy of the Fund is to replicate the composition of an index which is recognised by the Central Bank.
- (g) Investments made by the ICAV with respect to a Fund in units of a UCITS or other collective investment undertakings may not exceed, in aggregate, 10% of the assets of that Fund unless otherwise stated in the Prospectus.

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

- (a) Subject as hereinafter provided the Directors may exercise all the powers of the ICAV to borrow or raise money (including the power to borrow for the purpose of redeeming shares) and to hypothecate, mortgage, charge or pledge its undertaking, property, assets or any part thereof and to issue debentures, debenture stock or other securities, whether outright or as collateral security for any debt, liability or obligation of the ICAV or of any third party provided, however, that no borrowing may be undertaken or leverage incurred by the ICAV as a whole but rather solely by the ICAV when acting for and on behalf of a Fund.
- (b) Nothing herein contained shall permit the Directors or the ICAV to borrow other than in accordance with the provisions of the Regulations

- (c) 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 provided such techniques and instruments are used for efficient portfolio management or for providing protection against foreign exchange or interest rate risks.
- (d) The ICAV may lend securities for the purpose of efficient portfolio management, in accordance with the guidelines laid down from time to time by the Central Bank.

**PART XVII - APPOINTMENT, RETIREMENT AND DISQUALIFICATION OF DIRECTORS**

**83. Eligibility for Appointment**

- (a) No person shall be appointed a Director unless his appointment has been approved in writing by the Central Bank.
- (b) 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 was 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.

**84. 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, 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.

**85. Disqualification of Directors**

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

- (a) he ceases to be a Director by virtue of any provision of the Act or becomes prohibited by law from being a Director;
- (b) without prejudice to Clause 85(a), the Central Bank has issued a prohibition notice in respect of such Director;
- (c) he becomes a bankrupt or makes any arrangement or composition with his creditors generally;
- (d) in the opinion of a majority of the Directors, he becomes incapable by reason of mental disorder of discharging his duties as a Director;
- (e) he resigns from his office by notice to the ICAV;
- (f) 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;
- (g) by a resolution of a majority of his co-Directors (not being less than two in number), he is requested to vacate office;

- (h) without prejudice to Clause 86(b), a majority of the Directors are satisfied on reasonable grounds that he no longer complies with any standards of fitness and probity in a code issued by the Central Bank from time to time;
- (i) he shall for more than six (6) consecutive months have been absent without permission of the Directors from any 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 periods, and the Directors pass a resolution that he has by reason of such absence vacated office;
- (j) subsequent to his appointment, he becomes a resident in a jurisdiction other than Ireland and as a result thereof, a majority of the Directors are resident outside Ireland; or
- (k) if he is removed from office by an Ordinary Resolution in accordance with Section 62 of the Act.

**86. Suspension of Director**

A Director shall comply immediately with any suspension notice issued by the Central Bank in respect of such Director and shall accordingly cease performing any or all of the functions of his office as may be specified in the notice. For so long as a suspension notice is in force any Director the subject of such notice shall not attend any meetings of the Directors and shall not be counted in the quorum thereat.

**PART XVIII - DIRECTORS' OFFICES AND INTERESTS**

**87. 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) 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.
- (c) 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.
- (d) 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.
- (e) 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.

**88. Directors' Interests**

- (a) Subject to the provisions of the Act, and provided that he has disclosed to the Directors the nature and extent of any material interest of his, a Director notwithstanding his office:

- (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.
- (b) No Director or intending Director shall be disqualified by his office from contracting with the ICAV either as vendor, purchaser or otherwise, nor shall any such contract or any contract or arrangement entered into by or on behalf of the other company in which any Director shall be in any way interested be avoided nor shall any Director so contracting or being so interested be liable to account to the ICAV for any profit realised by any such contract or arrangement by reason of such Director holding that office or of the fiduciary relationship thereby established. The nature of a Director's interest must be declared by him at the meeting of the Directors at which the question of entering into the contract or arrangement is first taken into consideration, or if the Director was not at the date of that meeting interested in the proposed contract or arrangement at the next meeting of the Directors held after he became so interested, and in a case where the Director becomes interested in a contract or arrangement after it is made, at the first meeting of the Directors held after he becomes so interested.
- (c) A copy of every declaration made and notice given under this Clause shall be entered within three days after the making or giving thereof in a book kept for this purpose. Such book shall be open for inspection without charge by any Director, Secretary, Auditor or Shareholder at the registered office of the ICAV and shall be produced at every general meeting of the ICAV and at any meeting of the Directors if any Director so requests in sufficient time to enable the book to be available at the meeting.
- (d) For the purposes of this Clause:
- (i) a general notice given to the Directors by a Director to the effect that: (a) he or she is a member of a specified ICAV, company or firm and is to be regarded as interested in any contract which may, after the date of the notice, be made with that ICAV, company or firm, or (b) he or she is to be regarded as interested in any contract which may after the date of the notice be made with a specified person who is connected with him or her (within the meaning specified in the Act), shall be deemed to be a sufficient declaration of interest in relation to any such contract; 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.
- (e) No such notice such as is mentioned in Clause 89(d)(i) shall be of effect unless either it is given at a meeting of the Directors or the Director takes reasonable steps to secure that it is brought up and read at the next meeting of the Directors after it is given.
- (f) This Clause applies in relation to a Shadow Director of the ICAV as it applies in relation to a Director of the ICAV, except that the Shadow Director shall declare his or her interest, not at a meeting of the Directors but by a notice in writing to the directors which is either:-
- (i) a specific notice given before the date of the meeting at which, if he or she had

been a director, the declaration would be required to be given; or

- (ii) a notice which under Clause 89(d)(i) is deemed to be a sufficient declaration of that interest or would fall to be so treated apart from Clause 89(e).

#### 89. **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; or
  - (vii) any proposal concerning the giving to him or any indemnity pursuant to the provisions of the Clauses or concerning any insurance the ICAV is able to purchase and/or maintain for or for the benefit of any Directors or for the persons who include Directors.
- (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 company in which the ICAV is interested, such proposals may be divided and considered in relation to each Director separately and in such case each of

the Directors concerned (if not debarred from voting under Clause 90 (b)(iv)) 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 the spouse or a minor child of a Director shall be treated as an interest of the Director and, in relation to an alternate Director, an interest of his 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.

#### **PART XIX - PROCEEDINGS OF DIRECTORS**

##### **90. 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, facsimile, 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.

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

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 two. 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.

##### **92. 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, facsimile, 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.

**93. 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.

**94. 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.

**95. 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.

**96. 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.

**97. 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 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, e-mail 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 XX - MANAGEMENT

### 98. **Manager**

- (a) Without prejudice to the generality of this instrument, the Directors may appoint (with the prior approval of the Central Bank) any person, firm or corporation to act as Manager to the ICAV in accordance with the terms of the Management Agreement and may entrust to and confer upon the Manager so appointed any of the relevant powers duties discretions and/or functions exercisable by them as Directors, upon such terms and conditions including the right to remuneration payable by the ICAV and with such powers of delegation and such restrictions as they think fit and either collaterally with or to the exclusion of their own powers and in particular, the Manager shall have the right to appoint an Investment Manager and an Administrator. In the event that the Manager shall resign or be dismissed or his appointment shall otherwise terminate the Directors shall use their best endeavours to appoint subject to the approval of the Central Bank some other person firm or corporation to act as Manager in his place.
- (b) In consideration for its services as Manager, the Manager shall be entitled to be paid by the ICAV out of the property of each Fund a fee of such amount as is specified in the Management Agreement together with expenses and disbursements incurred by the Manager in the performance of its functions and all other charges and fees expressly authorised by the Management Agreement.

### 99. **Custodian**

- (a) The Directors shall, subject to the approval of the Central Bank, appoint a Custodian in accordance with the terms of the Custodian Agreement who shall be entrusted with holding of the assets of the ICAV and all of its subsidiaries (established in accordance with the Central Bank Requirements) for safekeeping, perform its duties prescribed by the Central Bank Requirements and the Custodian Agreement and perform such other duties upon such terms as the Directors may from time to time agree In writing with the Custodian and the Custodian shall have power to appoint sub-custodians.
- (b) In consideration for its services as Custodian the Custodian shall be entitled to be paid by the ICAV, unless otherwise agreed, out of the property of each Fund:
  - (i) fees of such amount as are specified in the Custodian Agreement (together with Valued Added Tax thereon) or any letters exchanged between the Custodian and the Directors; and
  - (ii) expenses and disbursements incurred by the Custodian in the performance of its functions as authorised by the Custodian Agreement (or any letters as aforesaid)

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

- (c) In the event of the Custodian desiring to retire the Custodian may not do so until such a time that the ICAV enters into a new Custodian Agreement to appoint any corporation which is approved by the Central Bank to be the Custodian in place of the retiring Custodian.
- (d) If for good and sufficient reasons the Directors are of the opinion and so state In writing to the Custodian that a change of Custodian is desirable, then subject to the approval of the Central Bank, the Custodian may be removed by notice given In writing by the Directors to the Custodian in accordance with the terms of the Custodian Agreement. In such circumstances, the Directors shall endeavour to find a new Custodian to act as Custodian to the ICAV and provided that such new Custodian has been approved to act as Custodian to the ICAV by the Central Bank, the Directors shall by a new Custodian Agreement appoint such new Custodian to be the Custodian in place of the removed

Custodian. The Custodian shall not cease to be Custodian of the ICAV unless it has been replaced by another Custodian with the prior approval of the Central Bank. In the event that no new Custodian is appointed within the notice period specified in the Custodian Agreement for the removal or notice of resignation of the existing Custodian, the ICAV shall: (a) apply to the Central Bank for the revocation of the ICAV's authorisation under the Act; and (b) apply to the High Court for an order to wind up the ICAV or convene in accordance with the Clauses an extraordinary general meeting of the Shareholders of the ICAV at which there shall be proposed an Ordinary Resolution to wind up the ICAV; provided that the Custodian's appointment under the Custodian Agreement shall not terminate until the revocation of the authorisation of the ICAV by the Central Bank. In the event that such resolution is passed, the ICAV shall serve notice to all Members and shall redeem all Shares issued which have not been re-purchased at the Redemption Price determined on the Dealing Day on which such notice to Members expires provided that the existing Custodian shall remain in office until the authorisation of the ICAV has been revoked by the Central Bank.

- (e) The Central Bank may require the removal of the Custodian and require the appointment of a new Custodian in the place of the removed Custodian.

#### **PART XXI - THE SECRETARY**

##### **100. Appointment of Secretary**

Subject to the provisions of the Act, the Secretary shall be appointed by the Directors for such term, at such remuneration and upon such conditions as they may think fit and any Secretary so appointed may be removed by them.

##### **101. 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 XXII - EXECUTION OF DOCUMENTS**

##### **102. Execution of Documents**

- (a) The ICAV shall not have a common seal.
- (b) Any document expressed to be executed by the ICAV and signed on behalf of the ICAV:
- (i) by two authorised signatories of the ICAV; or
  - (ii) by a Director in the presence of a witness who attests the signature;
- shall have the same effect as if executed under the common seal of the ICAV.
- (c) The term "authorised signatories" as used in this Clause shall mean:
- (i) every Director; and
  - (ii) the Secretary (or any joint secretary) of the ICAV; or
  - (iii) any person authorised by the Directors in accordance with this Instrument.
- (d) All documentation to be executed by the ICAV shall be executed in accordance with the requirements of section 32 of the Act.

## **PART XXIII - DIVIDENDS AND RESERVES**

### **103. Declaration of Dividends**

Subject to the provisions of the Act, the ICAV may by Ordinary Resolution declare such dividends on the Shares or on any Class of Shares as appear to the Directors to be justified by the profits of the ICAV or the relevant Fund and no dividend shall exceed the amount recommended by the Directors.

### **104. 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.

### **105. Source of Dividends**

No dividend shall be payable except out of such funds as may be lawfully distributed as dividends. Dividends may be paid out of a Fund's total income net of expenses and/or net income, realised and unrealised gains on the disposal/revaluation of Investments and other assets less realised and unrealised losses of the relevant Fund and / or realised gains net of realised and unrealised losses and/or capital of the relevant Fund as set out in the Prospectus relevant to the Fund.

### **106. 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 monies payable on or in respect of the Shares.

### **107. 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.

### **108. Reinvestment of Dividends**

(a)

- (i) Subject to the right of election provided for in Clause 110(b) below dividends declared in accordance with the provisions of this Instrument will be paid as provided in sub-paragraph (ii) below and used in payment for additional Shares (the "Additional Shares") upon such terms and conditions and in such manner as the Directors shall determine. Each holder of Shares who has not made such election under sub-paragraph (b) below (a "Relevant Holder") shall be entitled to receive an allotment of such number of Additional Shares credited as fully paid up, which, calculated by reference to the Net Asset Value of the Shares as at the Valuation Point immediately after said payment, is nearly as possible equal to (but not in excess of) the cash amount of the relevant dividend.
- (ii) The number of Additional Shares to which a Relevant Holder is entitled shall be such number of Additional Shares the aggregate Subscription Price of which (ruling at the Relevant Period as defined hereinafter) is equal as nearly as may be to the amount of the dividend (less any fees due to distributing agents pursuant to the relevant Prospectus) to which that holder is entitled. For the purposes of this Clause 110 "Relevant Period" means the Valuation Point preceding the date of payment of the relevant dividend.

- (iii) The cash amount of the dividend on or in respect of Shares held by the Relevant Holders shall be paid to the Custodian who shall apply the same in paying up in full the appropriate number of Additional Shares for allotment and distribution credited as fully paid to the Relevant Holders. The Directors may do all acts and things considered necessary or expedient to give effect to any such allotment.
  - (iv) The Additional Shares allotted to the Relevant Holders shall rank pari passu in all respects with the Shares of the relevant Fund then in issue save only as regards participation in the relevant dividend.
  - (v) Confirmations of ownership In writing will be issued by the ICAV in respect of Additional Shares.
- (b)
- (i) Notwithstanding the generality of the foregoing, when making an application for Shares, or otherwise on the acquisition of Shares, each Applicant or transferee shall be entitled to elect by service of notice In writing on the ICAV to receive cash in satisfaction of the whole of any dividends that may be payable on the Shares for which application is made or which are acquired.
  - (ii) Where any such election referred to in Clause 110(b)(i) above is in force a holder of Shares may, by serving notice In writing on the ICAV, revoke that election, which revocation must be received at the Office at least ten (10) Business Days before the next following Relevant Period to be effective in respect of dividends declared in respect of that date.
  - (iii) An election shall be personal to the holder of Shares concerned in his capacity as a holder and, in respect of any Shares transferred, shall automatically cease to have effect upon registration of the transfer or transmission of the relevant Shares but shall continue in effect in respect of Shares retained.
- (c) A holder of Shares who has made an election in accordance with Clause 110(b)(i) shall be deemed to have made an election in respect of any further such Shares registered in his name in the Register in relation to all dividends declared on such Shares, until he revokes such election.
- (d) Without prejudice to but notwithstanding the foregoing provisions of this Clause, the Directors may on occasion determine that such right of election to have dividends paid in cash shall be subject to such exclusions or other arrangements as the Directors may deem necessary or expedient in relation to any legal or fiscal problems under the laws of, or the requirements of, any regulatory or taxation authority in any territory.

#### 109. **Ranking of Dividends**

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

#### 110. **Payment of Dividends**

- (a) Any dividend in respect of any Share will be paid by wire transfer (less expenses) or cheque to the bank account indicated on the Shareholder's Application Form for Shares or other written instructions to the ICAV or its authorised agents. If no such instructions have been given, dividends will be sent by cheque, by post (at the Shareholder's risk) to the relevant Shareholder's address as set out in the Shareholders' Register and, in the case of joint holders, the joint holder whose name stands first in the Shareholders' Register. Every such cheque shall be made payable to the order of the person to whom it is sent and payment of the cheque shall be a good discharge to the ICAV. Any joint holder or other person jointly entitled to a Share as aforesaid may give receipts for any dividend or other moneys payable in respect of the Share.

- (b) The Directors may deduct from any dividend or other monies payable to any Shareholder all sums of money (if any) presently payable by him to the ICAV in relation to the Participating Share.
- (c) Where the ICAV is required to pay any taxation as a consequence of making any dividend payment to a Shareholder, the Directors may deduct from the payment to be made to the relevant Shareholder an amount equal to the taxation attributable to the relevant payment(s) and pay such amount to the appropriate tax authority.

**111. 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.

**112. 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.

**113. Unclaimed Dividends**

If the Directors so resolve, any dividend which has remained unclaimed for six years from the date of its declaration shall be forfeited and cease to remain owing by the ICAV and become the property of the relevant Fund. 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.

**114. 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 currency transactions may 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.

**115. Reserves**

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.

**PART XXIV - CAPITALISATION OF PROFITS OR RESERVES**

#### 116. **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 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.

#### 117. **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.

#### 118. **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 in 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 XXV - NOTICES**

#### 119. **Notices In Writing**

Any notice to be given, served or delivered pursuant to this Instrument shall be In writing.

#### 120. **Service of Notices**

- (a) A notice or document to be given, served or delivered in pursuance of this Instrument may be given to, served on or delivered to any Member:
  - (i) by handing same to him or his authorised agent;
  - (ii) by leaving the same at his registered address;
  - (iii) by sending the same by the post in a pre-paid cover addressed to him at his registered address; or
  - (iv) by sending the same by facsimile or electronic means to such facsimile number or electronic address as may have been provided by the Member to the ICAV.

- (b) Where a notice or document is given, served or delivered pursuant to Clause 120(a)(i) or (a)(ii), the giving, service or delivery thereof shall be deemed to have been effected at the time the same was handed to the Member or his authorised agent, or left at his registered address (as the case may be).
- (c) Where a notice or document is given, served or delivered pursuant to Clause 120(a)(iii), the giving, service or delivery thereof shall be deemed to have been effected at the expiration of seventy-two hours after the cover containing it was posted. In proving service or delivery it shall be sufficient to prove that such cover was properly addressed, stamped and posted.
- (d) Where a notice is given pursuant to Clause 120(a)(iv), the giving thereof shall be deemed to have been effected at the time of termination of the transmission.
- (e) Every legal personal representative, committee, receiver, curator bonis or other legal curator, assignee in bankruptcy or liquidator of a Member shall be bound by a notice given as aforesaid if sent to the last registered address of such Member, notwithstanding that the ICAV may have notice of the death, lunacy, bankruptcy, liquidation or disability of such Member.
- (f) Without prejudice to the provisions of Clauses 120(a)(i) and (a)(ii), if at any time by reason of the suspension or curtailment of postal services within the State, the ICAV is unable effectively to convene a general meeting by notices sent through the post, a general meeting may be convened by a notice advertised on the same day in at least one leading national daily newspaper published in the State and such notice shall be deemed to have been duly served on all Members entitled thereto at noon on the day on which the said advertisement or advertisements shall appear.
- (g) At the option of the ICAV, and where appropriate means are available, notice may also be served by means of telefax, electronic mail or other such means as may be available.
- (h) In any such case the ICAV shall send confirmatory copies of the notice through the post to those Members whose registered addresses are outside the State (if or to the extent that in the opinion of the Directors it is practical so to do) or are in areas of the State unaffected by such suspension or curtailment of postal services and if at least ninety-six hours prior to the time appointed for the holding of the meeting the posting of notices to Members in the State, or any part thereof which was previously affected, has become practical in the opinion of the Directors, the Directors shall send forthwith confirmatory copies of the notice by post to such Members.
- (i) Notwithstanding anything contained in this Clause the ICAV shall not be obliged to take account of or make any investigations as to the existence of any suspension or curtailment of postal services within or in relation to all or any part of any jurisdiction or other area other than the State.
- (j) The accidental omission to give any such confirmatory copy of a notice of a meeting to, or the non-receipt of any such confirmatory copy by, any person entitled to receive the same shall not invalidate the proceedings at the meeting.

#### 121. **Service on Joint Holders**

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

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

- (a) Every person who becomes entitled to a share shall be bound by any notice in respect of that share which, before his name is entered in the Register in respect of the share, has been duly given to a person from whom he derives his title.
- (b) Without prejudice to the provisions of this Instrument allowing a meeting to be convened by newspaper advertisement a notice may be given by the ICAV to the persons entitled to a share in consequence of the death or bankruptcy of a Member by sending or delivering it, in any manner authorised by this Instrument for the giving of notice to a Member, addressed to them at the address, if any, supplied by them for that purpose. Until such an address has been supplied, a notice may be given in any manner in which it might have been given if the death or bankruptcy had not occurred.

**123. Signature to Notices**

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

**124. Deemed Receipt of Notices**

A Member present, either in person or by proxy, at any meeting of the ICAV or the holders of any Class of Shares in the ICAV shall be deemed to have received notice of the meeting and, where requisite, of the purposes for which it was called.

**125. Entitlement to Notices**

Notice of every general meeting shall be given in any manner herein authorised to:

- (a) every Member;
- (b) every person upon whom the ownership of a share devolves by reason of his being a personal representative, or the Official Assignee in bankruptcy of a Member, where the Member but for his death or bankruptcy would be entitled to receive notice of the meeting;
- (c) the Directors;
- (d) the Administrator;
- (e) the Custodian;
- (f) the Investment Manager; and
- (g) the Auditors.

No other person shall be entitled to receive notices of general meetings.

**PART XXVI - WINDING UP**

**126. Winding Up**

The Directors may, by way of a resolution of all of the Directors for the time being, approve any proposal to take action to wind up the ICAV or to take action that would otherwise cause the ICAV to be wound up.

**127. Distribution on Winding Up**

- (a) If the ICAV shall be wound up, the liquidator shall, subject to the provisions of the Act, apply the assets of the ICAV on the basis that any liability incurred or attributable to a Fund shall be discharged solely out of the assets of that Fund.



- (b) 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 Participating Shares of each class of each Fund of a sum in the currency in which that Class 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 Participating Shares of such class held by such holders respectively as at the date of commencement to wind up provided that there are sufficient assets available in the relevant Fund to enable such payment to be made. In the event that, as regards any class of Participating Shares, there are insufficient assets available in the relevant Fund to enable such payment to be made, recourse shall be had:
    - A. first, to the assets of the ICAV not comprised within any of the Funds and not (save as provided in the Act) to the assets comprised within any of the Funds; and
    - B. second, to the assets remaining in the Fund for the other classes of Participating Shares (after payment to the holders of the Participating Shares of the classes to which they relate of the amounts to which they are respectively entitled under paragraph (i)) pro rata to the total value of such assets remaining within each such Fund;
  - (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 Fund remaining after any recourse thereto under sub-paragraph (i) above. In the event that there are insufficient assets as aforesaid to enable such payment in full to be made, no recourse shall be had to the assets comprised within any of the Funds;
  - (iii) thirdly, in the payment to the holders of each class of Participating Shares of any balance then remaining in the relevant Fund, such payment being made in proportion to the number of Participating Shares held; and
  - (iv) fourthly, in the payment to the holders of each class of Participating Shares of any balance then remaining and not comprised within any of the Funds, such payment being made in proportion to the Net Asset Value of each Fund and within each Fund to the Net Asset Value of each class and in proportion to the number of Participating Shares held in each class.
- (c) A Fund may be wound up in accordance with the Act and in such event the provisions of this Clause and Clause 128 will apply mutatis mutandis in respect of that Fund.

#### 128. Distribution in Specie

If the ICAV shall be wound up (whether the liquidation is voluntary, under supervision or by the court) the liquidator may, with the authority of a Special Resolution and any other sanction required by the Act, divide among the Shareholders in specie the whole or any part of the assets of the ICAV, and whether or not the assets shall consist of property of a single kind, and may for such purposes 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 Shareholders or different classes of Shareholders. The liquidator may, with the like authority, vest any part of the assets in trustees upon such trusts for the benefit of Shareholders as the liquidator, with the like authority, shall think fit, and the liquidation of the ICAV may be closed and the ICAV dissolved, but so that no Shareholder shall be compelled to accept any assets in respect of which there is liability and any Shareholder may instruct the liquidator to sell any assets, to which he is entitled, on his behalf. The liquidator may with a like authority transfer the whole or part of the assets of the ICAV to a company or ICAV (the "Transferee") on terms that members of any Class of Share in the ICAV shall receive from the Transferee shares in the

Transferee of the equivalent value to their shareholding in the ICAV and the liquidator shall be entitled with such authority to enter into an arrangement with the Transferee to give effect to any such transfer.

## **PART XXVII - MISCELLANEOUS**

### **129. Destruction of Records**

The ICAV shall be entitled to destroy all instruments of transfer of shares which have been registered at any time after the expiration of six years from the date of registration thereof and all dividend mandates and notifications of change of address at any time after the expiration of two years from the date of recording thereof. It shall conclusively be presumed in favour of the ICAV that every entry in the Register purporting to have been made on the basis of an instrument or transfer or other document so destroyed was duly and properly made and a valid and effective instrument duly and properly registered and every other document hereinbefore mentioned in accordance with the recorded particulars thereof in the books or records of the ICAV. PROVIDED ALWAYS that:

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

### **130. Accounts**

- (a) The Directors shall cause to be kept such books of account as are required by the Act, such books shall contain details of:
  - (i) all sums of money received and expended by the ICAV and the matters in respect of which such receipt and expenditure take place;
  - (ii) all sales and purchases of the ICAV; and
  - (iii) the assets and liabilities of the ICAV.
- (b) Where a decision to dispense with the holding of annual general meetings is in force, the Annual Report and the Directors', Custodian's and Auditors' reports that would otherwise be laid before an annual general meeting shall be available to Shareholders and prospective investors on request.
- (c) In accordance with Irish law and regulations the Directors may elect to prepare the annual report and accounts in accordance with generally accepted accounting principles in Ireland or in accordance with such international accounting standards as may be permitted under the Act and the Regulations from time to time or in accordance with an alternative body of accounting standards.
- (d) The Directors of the ICAV may elect to prepare separate accounts in respect of a Fund or Funds and if the Directors elect to do so, all relevant provisions of this Instrument relating to the accounts of the ICAV shall be read as referring to the Fund or Funds in respect of which the separate accounts are to be prepared.

### 131. 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.

### 132. Approval of Accounts

- (a) Where the Directors have not decided to dispense with the holding of annual general meetings, the Directors shall from time to time in accordance with the provisions of the Act, cause to be prepared and to be laid before the ICAV in general meeting such profit and loss accounts, balance sheets, group accounts (if any) and reports as are specified in the Act made up to the Accounting Date in each year or such other date as the Directors may from time to time decide.
- (b) A copy of every account, balance sheet and report which are laid before the ICAV in general meeting in accordance with this Clause 132 together with the Auditor's and Custodian's report thereon shall not less than 21 days previous to the meeting be sent, on request, to every person entitled under the provisions of the Act to receive them PROVIDED THAT this Clause shall not require a copy of these documents to be sent to more than one of the joint holders of any shares.

### 133. Reports

- (a) The ICAV may (but is not required to) prepare an unaudited half yearly report for the first six months of each financial year. The intention to produce a half yearly report or otherwise shall be disclosed in the Prospectus.
- (b) The ICAV shall provide the Central Bank with all reports and information to which it is entitled under the Act.

### 134. Auditors

Auditors shall be appointed and their duties regulated in accordance with the Act.

### 135. Dealings by Administrator, etc.

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

- (a) (provided that they are a Qualified Holder) 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 Custodian 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 in the best interests of Members and are carried out as if effected on normal commercial terms negotiated at arm's length. Such transactions are subject to:
  - (i) a certified valuation of a person approved by the Custodian (or the Directors in the case of a transaction with the Custodian) as independent and competent;
  - (ii) the transaction being executed on best terms reasonably obtainable on organised investment exchanges under their rules; or

- (iii) where (i) and (ii) are not practical, execution on terms which the Custodian is satisfied conform with the principle that such transactions are in the best interests of Members and are carried out as if effected on normal commercial terms negotiated at arm's length.

**136. Restriction on Modifications to this Instrument**

- (a) No modification shall be made to the Instrument without the prior approval of the Central Bank and in accordance with the requirements of the Act.
- (b) The ICAV, subject to the prior approval of the Central Bank, shall be entitled to modify, alter or add to the provisions of this Instrument, without the prior approval of the Shareholders where the ICAV and the Custodian believe that it is necessary to do so in order:
  - (i) to cure any ambiguity or to correct or supplement any provisions of this Instrument which may be defective or inconsistent or make any alteration which would not prejudice the interests of Shareholders; or
  - (ii) to change any provision hereof as may be required by the Central Bank or any governmental agency in Ireland with responsibility for ICAVs;

and the Custodian has certified in writing that the alteration:

- A. does not prejudice the interests of the Members; and
  - B. does not relate to any such matter as may be specified by the Central Bank as one in the case of which an alteration may be made only if approved by the Members.
- (c) The ICAV, subject to the prior approval of the Central Bank shall be entitled to modify, alter or add to the provisions of this Instrument, with the sanction of an ordinary resolution of a meeting of Shareholders duly convened and held in accordance with the provisions contained in this Instrument, provided that no such modification, alteration or addition shall be made which shall reduce the interest in any Fund of any Shareholder (without similarly reducing the interests of all Shareholders in such Fund) or reduce the percentage of Shares required to consent to any modification, alteration or addition without the consent of all Shareholders.

**137. Indemnity**

- (a) Subject to the provisions of and insofar as may be permitted by the Act, every Director, Secretary and other officer or servant of the ICAV shall be indemnified by the ICAV against, and it shall be the duty of the Directors out of the funds of the ICAV to pay all costs, losses and expenses which any such officer or servant may incur or become liable to by reason of any contract entered into, or act or thing done by him as such officer or servant or in any way in discharge of his duties (otherwise than in the case of fraud, negligence, wilful default, bad faith, recklessness or breach of contract), including travelling expenses, and the amount for which such indemnity is provided shall immediately attach as a lien on the property of the ICAV and have priority as between the Members over all other claims.
- (b) Subject to the provisions of and insofar as may be permitted by the Act, the Administrator, the Investment Manager and the Custodian 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 Administration Agreement, the AIFM Agreement and the Custodian Agreement respectively.

**138. Overriding Provisions**

In the event of there being any conflict between the provisions of this Instrument and the Act, the Act shall prevail. Any amendment to this Instrument shall be made in accordance with the Central Bank Requirements.

**139. Disclaimer of Liability**

Subject to the Act no Director or other officer of the ICAV shall be liable for the acts, receipts, neglects or defaults of any other Director or officer or for joining in any receipt or other act for conformity or for any loss or expense happening to the ICAV through the insufficiency or deficiency of title to any property acquired for or on behalf of the ICAV or for the insufficiency or deficiency of any security in or upon which any of the 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.

**140. 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.

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Names, Addresses and  
Description of Subscribers

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For and on behalf of  
Lower Mount Limited  
6th Floor  
2 Grand Canal Square  
Dublin 2  
Ireland  
Limited Company

For and on behalf of  
Wilton Secretarial Limited  
6th Floor  
2 Grand Canal Square  
Dublin 2  
Ireland  
Limited Company

Dated 13 August, 2015

Witness to the above signatures:

6th Floor  
2 Grand Canal Square  
Dublin 2  
Ireland

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