

**INSTRUMENT OF INCORPORATION**

**Brilliance Asset Management ICAV**

**An Irish Collective Asset-Management Vehicle  
with variable capital registered under the Irish Collective Asset-management  
Vehicles Act 2015 with the Central Bank of Ireland on 6 November 2017  
and authorised pursuant to the Regulations**

**An umbrella fund with segregated liability between sub-funds**

**Registration Number: C174278**

**As altered and adopted by an Ordinary Resolution  
in accordance with section 31 of the Act  
on 8 February 2018**

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## **1 Definitions & Interpretations**

- 1.1 The provisions of this Instrument of Incorporation are subject to the overall provisions of the Act and the Regulations and to the degree that any provision of this Instrument of Incorporation conflicts with the provisions of the Act and/or the Regulations, the Act, and/or the Regulations as appropriate, shall prevail.
- 1.2 Unless specifically defined herein or unless the context otherwise requires, words or expressions contained in this Instrument of Incorporation shall bear the same meaning as in the Act.
- 1.3 The table of contents, headings and captions included in this Instrument of Incorporation are inserted for convenience of reference only and shall not be considered a part of or affect the construction or interpretation of this Instrument of Incorporation.
- 1.4 References in this Instrument of Incorporation to any statute or any section or provision thereof shall mean such statute, section or provision as the same may be amended and may be from time to time and for the time being in force.
- 1.5 In this Instrument of Incorporation, the masculine gender shall include the feminine and neuter, and vice versa, and the singular number shall include the plural, and vice versa, and words importing persons shall include firms or companies.
- 1.6 References in this Instrument of Incorporation to "€", "EUR" are to the currency for the time being of the European Monetary Union member states. References to the foregoing currency shall include any successor currency.
- 1.7 In this Instrument of Incorporation the following expressions shall have the following meanings:
- |                           |  |
|---------------------------|--|
| <b>Act</b>                | the Irish Collective Asset-management Vehicles Act 2015, as may be modified, amended, supplemented, consolidated or re-enacted from time to time together with any regulations issued pursuant thereto from time to time;  |
| <b>Administrator</b>      | the person appointed and for the time being acting as administrator of the ICAV;   |
| <b>Anti-Dilution Levy</b> | a provision for market spreads (the difference between the prices at which assets are valued and/or bought or sold), duties and charges and other dealing costs relating to the acquisition or disposal of the ICAV's assets in the event of receipt for processing of net subscriptions or net repurchases, as determined at the discretion of the Directors; |
| <b>Auditor</b>            | the auditor for the time being of the ICAV;  |
| <b>Base Currency</b>      | in relation to each Fund, such currency as is specified as such in the Prospectus;   |
| <b>Business Day</b>       | any day, as disclosed in the Prospectus, on which banks are generally open for business in such jurisdictions or such other days as the Directors may determine in relation to each Fund;  |

<b>Central Bank</b>	the Central Bank of Ireland or such other authority designated as such pursuant to the Act with responsibility for authorising and supervising the ICAV;
<b>Central Bank Regulations</b>	the Central Bank (Supervision and Enforcement) Act 2013 (Section 48(1)) (Undertakings For Collective Investment in Transferable Securities) Regulations 2015 as may be amended, supplemented, consolidated, substituted in any form or otherwise modified from time to time;
<b>Class</b>	any class of Shares issued by the ICAV in respect of a Fund, details of which are set out in the Prospectus;
<b>Clear Days</b>	in relation to the period of a notice, that period excluding the day when the notice is given or deemed to be given and the day for which it is given or on which it is to take effect;
<b>CRS</b>	means the Standard for Automatic Exchange of Financial Account Information approved on 15 July 2014 by the Council of the Organisation for Economic Cooperation and Development, also known as the Common Reporting Standard, and any bilateral or multilateral competent authority agreements, intergovernmental agreements and treaties, laws, regulations, official guidance or other instrument facilitating the implementation thereof and any law implementing the Common Reporting Standard;
<b>Dealing Day</b>	such Business Day or Business Days, disclosed in the Prospectus and/or Supplement for the relevant Fund and/or such other Dealing Days as the Directors shall determine and notify to Shareholders in advance, provided that there shall be at least two Dealing Days in each month occurring at regular intervals;
<b>Depository</b>	a person, firm or corporation appointed and for the time being acting as depository of the ICAV, in accordance with UCITS Requirements;
<b>Depository Agreement</b>	any agreement for the time being existing between the ICAV and the Depository and relating to the appointment and duties of the Depository as may be amended or supplemented from time to time in accordance with the requirements of the Central Bank;
<b>Directors</b>	the directors for the time being of the ICAV or any of them acting as the board of Directors of the ICAV;
<b>EU</b>	the European Union;
<b>FATCA</b>	means: <ul style="list-style-type: none"> <li>(a) sections 1471 to 1474 of the U.S. Internal Revenue Code of 1986 or any associated regulations or other official guidance;</li> <li>(b) any intergovernmental agreement, treaty, regulation,</li> </ul>

guidance or other agreement between the Government of Ireland (or any Irish government body) and the US, UK or any other jurisdiction (including any government bodies in such jurisdiction), entered into in order to comply with, facilitate, supplement, implement or give effect to the legislation, regulations or guidance described in paragraph (a) above; and

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

<b>Fund</b>	a sub-fund of the ICAV the proceeds of issue of which are maintained separately and which is established by the ICAV from time to time with the prior approval of the Central Bank;
<b>ICAV</b>	Brilliance Asset Management ICAV;
<b>Ineligible Applicant</b>	persons who are excluded from purchasing or holding Shares as prescribed in the Prospectus (section on " <i>Ownership Restrictions</i> ") or clause 40;
<b>Initial Issue Price</b>	the fixed price at which Shares in a Fund are offered during the Initial Offer Period, as specified in the Prospectus;
<b>Initial Offer Period</b>	any period determined by the Directors during which any Class of Shares of a Fund may be offered for subscription at a fixed price, as specified in the Prospectus;
<b>Instrument of Incorporation</b>	this instrument of incorporation as amended from time to time;
<b>Investment or Investments</b>	any of the assets or property of the ICAV or the relevant Fund, as appropriate, invested in accordance with the investment objective, policies and restrictions of the ICAV or the relevant Fund;
<b>Investment Manager</b>	one or more persons, firms or corporations for the time being providing investment management and/or advisory services directly or indirectly to the ICAV;
<b>MiFID II Delegated Directive</b>	Commission Delegated Directive (EU) of 7 April 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to safeguarding of financial instruments and funds belonging to clients, product governance obligations and the rules applicable to the provision or reception of fees, commissions or any monetary or non-monetary benefits;
<b>Minimum Fund Size</b>	the value of a Fund , if any, as the Directors may from time to time prescribe as the minimum fund size, as may be disclosed in the Prospectus;
<b>Minimum Initial Investment Amount</b>	such minimum initial cash amount or number of Shares as the case may be (if any) as the Directors may from time to time require to be invested by each Shareholder as its initial investment for Shares of

each Class in a Fund either during the Initial Offer Period or on any subsequent Dealing Day and as such is specified in the Supplement for the relevant Fund;

<b>Minimum Repurchase Amount</b>	such minimum number or minimum value of Shares of any Class or Fund as the case may be (if any) that may be repurchased at any time by a Shareholder;
<b>Minimum Shareholding</b>	such minimum number or minimum value of Shares of any Class (if any) as the Directors may, from time to time, prescribe, as the minimum permitted holding of Shares of that Class;
<b>Net Asset Value</b>	the net asset value of the ICAV, a Fund or attributable to any Class or any Share, that shall be calculated as at each Valuation Point in accordance with the provisions of clause 21;
<b>Non-Participating Share</b>	a redeemable non-participating share in the capital of the ICAV issued in accordance with and having the rights provided for in this Instrument of Incorporation.
<b>OECD</b>	the Organisation for Economic Co-Operation and Development;
<b>Office</b>	the registered office for the time being of the ICAV;
<b>Ordinary Resolution</b>	a resolution of the Shareholders in general meeting passed by a simple majority of the votes cast;
<b>Organisational Expenses</b>	the preliminary expenses incurred by the ICAV in the formation and establishment of the ICAV or a Fund or Class;
<b>Prospectus</b>	the prospectus issued from time to time by the ICAV as same may be amended, supplemented, consolidated, substituted or otherwise modified from time to time together with any supplement published thereto;
<b>Register</b>	the register of Shareholders to be kept as required by the Act;
<b>Regulations</b>	means the European Communities (Undertakings for Collective Investment in Transferable Securities) Regulations, 2011 as amended and as may be further amended, supplemented or replaced from time to time and any statutory instrument or administrative rules issued by the Central Bank pursuant to them.
<b>Repurchase Charge</b>	a repurchase charge payable to the ICAV or any delegate thereof, as may be specified in the Prospectus, subject to a maximum amount as shall be disclosed in the Prospectus, not exceeding 3% of the Net Asset Value per Share;
<b>Repurchase Price</b>	the repurchase price of Shares being the prevailing Net Asset Value per Share calculated and determined in accordance with clause 21;

<b>Revenue Commissioners</b>	the Revenue Commissioners of Ireland;
<b>Seal</b>	the common seal of the ICAV or (where relevant) the official securities seal kept by the ICAV pursuant to the Act;
<b>Secretary</b>	any person or persons appointed to perform the duties of the secretary of the ICAV;
<b>Share or Shares</b>	a participating share in the capital of the ICAV, designated in one or more Funds or Classes, issued in accordance with this Instrument of Incorporation and with the rights provided for hereunder;
<b>Shareholder</b>	a person who is registered as the holder of one or more Shares the prescribed particulars of which have been recorded in the Register;
<b>Special Resolution</b>	a resolution passed by not less than seventy-five per cent (75%) of the votes cast by the Shareholders entitled to vote thereon in general meeting or a resolution in writing signed by the Shareholders entitled to vote thereon
<b>State</b>	Ireland;
<b>Subscriber(s)</b>	any two or more persons, associated for any lawful purpose, who have initially prepared or caused to be prepared this Instrument of Incorporation in order to constitute the ICAV as a body corporate;
<b>Subscription Price</b>	the issue price of Shares being the prevailing Net Asset Value per Share calculated and determined in accordance with clause 21;
<b>UCITS</b>	an undertaking for collective investment in transferable securities which is authorised under the Regulations or authorised by a competent authority in another member state of the EU;
<b>UCITS Requirements</b>	the legislative and regulatory framework for the authorisation and supervision of UCITS, pursuant to the Regulations and the Central Bank Regulations, in place in Ireland from time to time;
<b>UCITS V</b>	Directive 2014/91/EU of the European Parliament and of the Council of 23 July 2014 amending Directive 2009/65/EC on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities as regards depositary functions, remuneration and sanctions as amended from time to time and including any supplementing European Commission delegated regulations in force from time to time;
<b>United States or US</b>	the United States of America;
<b>United States Person</b>	has the meaning ascribed to it in the Prospectus; and



**or U.S. Person**

**Valuation Point** the time or times by reference to which the Net Asset Value of the relevant Fund or Net Asset Value per Share shall be calculated on or with respect to each Dealing Day as determined by the Directors and as specified in the Prospectus.

**2 Name**

- 2.1 The name of the Irish Collective Asset-management Vehicle is Brilliance Asset Management ICAV.
- 2.2 Any change in name of the ICAV shall be made in accordance with section 30 of the Act.
- 2.3 For the purposes of clause 44, a change in name of the ICAV shall not constitute an alteration to the Instrument of Incorporation.

**3 Object**

The ICAV is an Irish collective asset-management vehicle and an umbrella fund with segregated liability between sub-funds having as its sole object the collective investment of its funds in property and giving members the benefit of the results of the management of its funds, consistent with the requirements of Regulation 4(3) of the Regulations.

**4 Capacity**

- 4.1 The ICAV shall, subject to applicable law, have the full and unlimited ability, authority, capacity and power to carry on business as an Irish collective asset management vehicle and for that purpose to take any and all actions in furtherance of its sole object referred to in clause 3.
- 4.2 Without prejudice to clause 4.1, the ICAV or a Fund may:
  - (a) subject to the Regulations and any limits or conditions imposed by the Central Bank, borrow money or securities and to transfer, mortgage, pledge or charge its undertaking, property and assets or any part thereof and to issue bonds, notes, debentures or other securities whether outright or as security for any debts or obligations of the ICAV;
  - (b) instruct the Depositary to charge assets of the relevant Fund in favour of a clearing broker or trading counterparty in order to secure the relevant Fund's obligations towards such party or pass assets of the relevant Fund outside of the depositary network to such party, which such party may pledge, lend, rehypothecate or otherwise use for its own purposes;
  - (c) enter into hedging transactions in respect of any Class of Shares;
  - (d) own all the issued share capital of any private company (i.e. a subsidiary), which in the interests of Shareholders the Directors consider it necessary or desirable for the ICAV to incorporate or acquire or utilise in connection with the ICAV or a Fund. Any such company may only be established in the cases and under the conditions identified in the Regulations. All assets and shares of such a company will be held by the Depositary or its sub-custodian or nominee.

## **5 Investment Objectives**

- 5.1 The specific investment objectives and policies of each Fund will be set out in the Prospectus and will be formulated by the Directors, at the time of the creation of the relevant Funds.
- 5.2 With the exception of permitted investments in unlisted securities and over-the-counter derivatives, the ICAV will only invest in those securities and derivative instruments listed or traded on a stock exchange or market (including derivative markets) which meets with the regulatory criteria (regulated, operate regularly, be recognised and open to the public) and which is listed in the Prospectus.
- 5.3 Subject to authorisation by the Central Bank and to the conditions and limitations outlined in the Regulations, the ICAV may invest up to 100 per cent of its assets in transferable securities and money market instruments issued by or guaranteed by a member state of the European Union or issued by or guaranteed by the government or local authorities of any such member state, or issued or guaranteed by the government of the U.S. (including its agencies and instrumentalities) Switzerland, Norway, Canada, Japan, Australia and New Zealand or issued or guaranteed by any one or more of the following: 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, OECD governments (provided the relevant issues are investment grade), the European Union, the Council of Europe, Eurofima, the European Investment Bank, Euratom, the Inter-American Development Bank, the Asian Development Bank, the International Bank for Reconstruction and Development (The World Bank), the African Development Bank, Export-Import Bank, the European Central Bank, the European Bank for Reconstruction and Development, the International Monetary Fund, the International Finance Corporation, the Federal National Mortgage Association (Fannie Mae), the Federal Home Loan Mortgage Corporation (Freddie Mac), the Government National Mortgage Association (Ginnie Mae), the Student Loan Marketing Association (Sallie Mae), the Federal Home Loan Bank, the Federal Farm Credit Bank, the Tennessee Valley Authority and issues backed by the full faith and credit of the U.S. government.
- 5.4 Subject to the Regulations, a Fund may be established with the objective of being an index-tracking fund (where the aim of the Fund's investment policy is to replicate the composition of a stock or debt securities index that is recognised by the Central Bank).

## **6 Umbrella Fund**

The ICAV is established as an umbrella fund with segregated liability between its sub-funds in accordance with Part 2, Chapter 5 of the Act. The relevant provisions of the Act shall apply to the ICAV as an umbrella fund accordingly.

## **7 Funds and Classes**

- 7.1 The ICAV comprises one or more Funds each of which may comprise one or more Classes. The Directors may from time to time establish with the prior approval of the Central Bank, additional Funds and/or in accordance with the requirements of the Central Bank, create additional Classes and issue Shares in such Funds or Classes.
- 7.2 Subject to the requirements of the Central Bank, the Directors may in their absolute discretion differentiate between the Shares in any Class or Fund and such Shares may have preferred, deferred or other special rights, privileges or restrictions attached thereto.

- 7.3 Whenever the share capital is divided into different Classes, the class specific characteristics of a Class may be varied or abrogated by the ICAV, subject to the requirements of the Central Bank.
- 7.4 Subject to the requirements of the Central Bank, the Directors may from time to time re-designate any existing Class of Shares and merge such Class with any other Class and 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.
- 7.5 The assets and liabilities of the ICAV shall be allocated to each Fund in the following manner:
- (a) for each Fund, the ICAV shall keep separate books and records in which all transactions relating to the relevant Fund shall be recorded and to which the proceeds from the issue of Shares in each Fund and the assets and liabilities and income and expenditure attributable to each Fund shall be applied subject to the provisions of this clause;
  - (b) the ICAV may establish, maintain and operate one or more cash accounts in respect of each Sub-Fund and/or umbrella cash accounts and/or cash accounts in which more than one Sub-Fund participates, through which subscriptions, redemptions and other cash flows to and from investors can be managed or facilitated, in accordance with the requirements of the Central Bank;
  - (c) any asset derived from another asset of a Fund shall be applied in the records of the relevant Fund as the asset from which it was derived and on each valuation of an asset, the increase or diminution in value thereof shall be applied to the relevant Fund;
  - (d) where the ICAV incurs a liability which relates to any asset of a particular Fund or to any action taken in connection with an asset of a particular Fund, such liability shall be allocated to that Fund;
  - (e) in circumstances in which an asset or liability is not clearly attributable to a particular Fund or Funds, the Directors shall have the discretion to determine the basis upon which assets and liabilities shall be allocated between Funds;
  - (f) where hedging strategies are used in relation to a Class pursuant to clause 4, the financial instruments used to implement such strategies shall be deemed to be assets or liabilities (as the case may be) of the relevant Fund as a whole but the profits and losses (realised and unrealised) on and the costs of the currency hedging transactions (including any administrative costs arising from additional risk management) will accrue solely to the relevant Class.
- 7.6 The assets of each Fund shall belong exclusively to that Fund and shall not be used to discharge directly or indirectly the liabilities of or claims against any other Fund and shall not be available for that purpose. Any liability incurred on behalf of or attributable to any Fund shall be discharged solely out of the assets of that Fund.

## **8 Share Capital**

- 8.1 The authorised share capital of the ICAV is 300,000 redeemable Non-Participating Shares of no par value and 500,000,000 participating Shares of no par value. The share capital may be divided into different Classes of Shares with any preferential, deferred or special

rights or privileges attached thereto, and from time to time may be varied so far as may be necessary to give effect to any such preference restriction or other term.

8.2 Non-Participating Shares shall not participate in the dividends or assets attributable to Shares by the ICAV and the dividends, if any, and net assets attributable to the Non-Participating Shares shall be segregated from and shall not form part of the other assets of the ICAV and Non-Participating Shares may at the request of any of the holders thereof be purchased by the ICAV directly or indirectly out of the ICAV's assets.

8.3 The share capital of the ICAV shall be equal to the value for the time being of the share capital issued by the ICAV. The value of the paid up share capital of the ICAV shall at all times be equal to the value of the assets of the ICAV after the deduction of its liabilities.

## **9 Liability of Shareholders**

9.1 The assets of the ICAV belong exclusively to the ICAV and no Shareholder has any interests in the assets of the ICAV.

9.2 The liability of the Shareholders shall be limited to the amount, if any, unpaid on the Shares respectively held by the Shareholders. This is without prejudice to any other liability to which a Shareholder may be subject as provided by under the Act.

## **10 Fees and Expenses**

10.1 The ICAV and/or each Fund and, where expenses or liabilities are attributable specifically to a Class, the relevant Class shall bear all fees and expenses incurred in connection with the ICAV's operation and management or, where appropriate, its pro rata share thereof, including but not limited to the following:

- (a) all fees and expenses (including out-of-pocket expenses) payable to or incurred by the Administrator, the Depositary, the Investment Manager, the Secretary, any sub-investment manager, sub-custodian, money laundering reporting officer; adviser, distributor, dealer, paying agent, correspondent bank, fiscal representative, Auditor, legal adviser or other supplier of services to the ICAV appointed by or on behalf of the ICAV or with respect to any Fund or Class and their respective delegates;
- (b) all Directors' fees and expenses and all insurance premiums including any policy in respect of directors' and officers' liability insurance cover and all non-recurring and extraordinary items of expenditure as may arise;
- (c) all brokerage fees (including any payments to a research payment account in accordance with Article 13 of the MiFID II Delegated Directive), bank fees, charges and commissions incurred by or on behalf of the ICAV in the course of its business;
- (d) all regulatory and compliance consultancy fees, fiduciary services fees and any other professional advisory fees incurred by the ICAV or by or on behalf of its delegates;
- (e) all taxes, duties or similar fees associated with expenses of the ICAV save in respect of any taxation or duties payable in respect of the assets of the Fund or the issue or repurchase of Shares;
- (f) the remuneration, commissions and expenses incurred or payable in the marketing, promotion and distribution of Shares including without limitation commissions payable to any person in consideration of his subscribing or agreeing to subscribe or procuring

or agreeing to procure subscriptions for any Shares in the ICAV and the costs and expenses of preparation and distribution of all marketing material and advertisements;

- (g) to the extent permitted by applicable law, all fees and expenses connected with the preparation, publication and supply of information to Shareholders and the public including, without limitation, the cost of preparing, translating, printing, distributing the Prospectus and any addenda or Supplements and any periodic updates thereof, marketing literature, any report to the Central Bank or any other regulatory authority, the semi-annual and annual audited report and any other periodic reports and the calculation, publication and circulation of the Net Asset Value per Share, certificates, confirmations of ownership and of any notices given to Shareholders in whatever manner;
- (h) all fees and expenses incurred in connection with the convening and holding of Shareholders' meetings;
- (i) all fees and expenses incurred or payable in registering and maintaining a Fund or Class registered with any and all government agencies and/or regulatory authority and/or rating agencies, clearance and/or settlement systems and/or any exchanges in any various countries and jurisdictions including, but not limited to, filing and translation expenses;
- (j) all fees and expenses incurred or payable in listing and in maintaining or complying with the requirements for the listing of the Shares on the Irish Stock Exchange (or other exchange to which Shares may be admitted);
- (k) all legal and other professional fees and expenses incurred by the ICAV or by or on behalf of its delegates in any actions taken or proceedings instituted or defended to enforce, protect, safeguard, defend or recover the rights or property of the ICAV;
- (l) all fees and expenses incurred in connection with the tax compliance obligations of the ICAV including expenses incurred in connection with the preparation and / or filing of tax returns and / or reports including expenses incurred in connection with FATCA and CRS compliance, due diligence and reporting;
- (m) the Organisational Expenses;
- (n) all regulatory fees and expenses incurred or payable in maintaining the authorisation of the ICAV by the Central Bank;
- (o) the costs of any amalgamation or restructuring of the ICAV or any Fund;
- (p) the costs of carrying out any risk analysis associated with the ICAV or any Fund;
- (q) the costs of liquidation or winding up the ICAV or terminating any Fund.

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

10.3 Fees and expenses may, in accordance with the requirements of the Central Bank, be paid out of the capital of the relevant Fund.

## **11 Appointment of Depositary**

11.1 The ICAV shall appoint or shall have appointed a person, firm or corporation to act as Depositary who shall be responsible for the safe custody of all the Investments; shall perform for the ICAV the duties required of a depositary as prescribed by UCITS V; and shall perform such other duties on such terms as the Directors may from time to time (with the agreement of the Depositary) determine.

11.2 The ICAV shall entrust its assets to the Depositary for safe-keeping. The Depositary appointed shall be approved by the Central Bank to act as depositary of a UCITS pursuant to the UCITS Requirements.

11.3 The appointment of the Depositary shall be subject to the approval of the Central Bank and the agreement appointing the Depositary shall be in accordance with the requirements of the Central Bank and shall be submitted to the Central Bank for prior approval of the Central Bank. Pursuant to the Depositary Agreement, the Depositary will be liable to the ICAV and the Shareholders for any loss arising from the Depositary's negligence or its intentional failure to properly fulfil its obligations pursuant to UCITS V. The Depositary shall also be liable to the ICAV and to the Shareholders, for the loss by the Depositary or a duly appointed third party of any financial instruments held in custody (determined in accordance with UCITS V) and shall be responsible for the return of financial instruments or corresponding amount to the ICAV without undue delay.

11.4 The terms of appointment of any Depositary may authorise such Depositary to delegate, subject to the requirements of the Central Bank and the UCITS Requirements, any of its safekeeping functions and duties pursuant to Regulation 34(4) of the Regulations) to any person or persons so appointed, provided that such appointment is in accordance with the depositary delegation requirements contained in the Regulations. The liability of the Depositary to the ICAV shall not be affected by any such delegation.

11.5 In the event of the Depositary desiring to retire or the ICAV desiring to remove the Depositary from office the Directors shall use their reasonable endeavours to find an entity (being a depositary approved for the purpose by the Central Bank) willing to act as depositary and subject to the prior approval of the Central Bank, the Directors shall appoint such entity to be Depositary in place of the former Depositary. The Depositary may not retire or be removed from office until the Directors shall have found a corporation willing to act as depositary and such corporation shall have been appointed Depositary in place of the former Depositary.

11.6 If within such period as may be agreed between the ICAV and the Depositary, (a) the Depositary notifies the ICAV of its desire to retire in accordance with the terms of the Depositary Agreement and has not withdrawn notice of its intention to so retire; (b) the appointment of the Depositary is terminated by the ICAV in accordance with the terms of the Depositary Agreement, or (c) the Depositary ceases to be qualified as a depositary approved by the Central Bank, and no new depositary approved for the purpose by the Central Bank has been appointed, the Directors shall instruct the Secretary to forthwith convene an extraordinary general meeting of the ICAV at which there shall be proposed to consider an Ordinary Resolution to wind up the ICAV in accordance with this Instrument of Incorporation. Notwithstanding anything set out in this Instrument of Incorporation, the Depositary will remain in office until the appointment of a successor depositary or authorisation of the ICAV has been revoked by the Central Bank.

- 11.7 Notwithstanding the above, the Central Bank may at any time replace the Depositary with another depositary in accordance with the provisions of the UCITS Requirements.

## **12 Appointment of a Manager**

- 12.1 The Directors, on behalf of the ICAV, may appoint any person, firm or corporation which is qualified to act as manager of a UCITS pursuant to the Regulations and which has been approved in advance by the Central Bank to act as manager of the ICAV, and may entrust to and confer on the manager so appointed any of the powers exercisable by them as Directors, on such terms and conditions including the right to remuneration payable by the ICAV and with such restrictions as they think fit and either collaterally with or to the exclusion of their own powers.
- 12.2 If the appointment of a manager is terminated, the Directors shall use their reasonable endeavours to find a corporation willing to act as manager and having the qualifications mentioned herein to act as manager and, upon so doing, the Directors may appoint such corporation to be manager in place of the former manager. The appointment of a new or replacement manager shall be subject to the prior approval by the Central Bank and any such new or replacement manager must be authorised to act as manager of a UCITS pursuant to the Regulations.

## **13 Appointment of Service Providers**

- 13.1 The ICAV may appoint, and pay out of the assets of the relevant Fund, one or more persons, firms or corporations to act as Investment Manager for the purpose of managing or advising on (as the case may be) the investment and reinvestment of the assets of the ICAV attributable to one or more Funds and to perform such other duties upon such terms and conditions as the Directors may from time to time (with the agreement of the Investment Manager) determine. The terms of any investment management agreement and the appointment of an Investment Manager shall be in accordance with the requirements of the Central Bank.
- 13.2 The ICAV may appoint, and pay out of the assets of the relevant Fund, a person, firm or corporation to act as Administrator of the ICAV for the purpose of administering the affairs of the ICAV and, if appropriate, to provide external valuations in respect of the ICAV and, in each case, to perform such other duties upon such terms and conditions as the Directors may from time to time (with the agreement of the Administrator) determine.
- 13.3 In addition to the foregoing, the ICAV may appoint one or more persons, firms or corporations to act as service provider to the ICAV, for such purposes and to perform such other duties as the Directors in their discretion consider necessary or beneficial, upon such terms and conditions including the right to remuneration payable by the ICAV as the Directors may from time to time determine.

## **14 Register of Shareholders**

- 14.1 The ICAV shall maintain the Register in accordance with the Act. The Register shall be kept available for inspection by a person entitled to inspect it in accordance with the Act. The Register shall be kept at the Office or at such other place within the State, as the Directors may determine, subject to the requirements of the Act.
- 14.2 Share certificates will not be issued by, or on behalf of, the ICAV. Every Shareholder shall receive written confirmation of entry on the Register (which may be sent to Shareholders by ordinary post, facsimile, electronic or such other means, as may be determined by the

Directors, in accordance with the requirements of the Central Bank) in respect of his holding of Shares within such period as the Directors may determine from time to time (as disclosed in the Prospectus) after receipt of payment for the Shares and the necessary accompanying documentation. The ICAV shall not be bound to register more than four persons as joint Shareholders of any Share (except in the case of executors or trustees of a deceased Shareholder).

- 14.3 Nothing in this Instrument of Incorporation shall preclude title to any Shares of the ICAV being recorded other than in writing in accordance with such arrangements as may from time to time be permitted by the Act and approved by the Directors.
- 14.4 Pursuant to section 53 of the Act, no notice of any trust, express, implied or constructive, shall be entered on the Register. This shall not preclude the ICAV from requiring the Shareholders 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.

## **15 Issue of Shares**

- 15.1 Shares may be issued as fully paid up, or subscribed and partly paid up, in accordance with the Prospectus and conditions imposed by the Central Bank, and shall have no par value.
- 15.2 Subject as hereinafter provided and except as otherwise agreed by the Directors, the ICAV may on receipt by it (or its authorised agent) from an applicant for Shares in a Fund or Class up to such time as may from time to time be specified by the Directors of: (i) an application for Shares in the relevant Fund or Class in such form as the Directors may from time to time determine; (ii) such information or documentation as to the applicant's status, identity, residence, source of funds and otherwise as the Directors may from time to time require; and (iii) payment for Shares in such manner and within such reasonable time as shall be specified in the Prospectus from time to time; issue Shares in any Fund or Class either (a) during the Initial Offer Period at the Initial Offer Price; or (b) on any Dealing Day at the Subscription Price. Share Classes may only be launched at a fixed price after the Initial Offer Period where it has been confirmed to the Central Bank that existing Shareholders in the Fund are not prejudiced.
- 15.3 The Directors may from time to time issue fractions of Shares. Notwithstanding anything contained in this Instrument of Incorporation, the holder of a fraction of a Share may not exercise any voting rights in respect of such Share.
- 15.4 The Directors may issue Shares in the ICAV with such rights or restrictions as the Directors may determine. The Directors may issue more than one Class of Shares that participate in a Fund.
- 15.5 Payment for Shares shall be made by such time (the "Settlement Date") and in such currency and at such time, place and manner and to such person, on behalf of the ICAV, as may be disclosed in the Prospectus or otherwise determined by the Directors and notified to investors. If payment in full in respect of the issue of Shares has not been received by the relevant time on the relevant Settlement Date, or in the event of non-clearance of funds, the allotment of Shares made in respect of such application may, at the discretion of the Directors, be cancelled, or, alternatively, the applicant may be charged interest together with an administration fee. In addition the Directors 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. In advance of Shares being allotted and deemed to be in issue, the ICAV shall account to the subscriber for any subscription monies held by the ICAV in respect thereof as a



permanent debt of the ICAV and the ICAV shall be deemed to be a debtor and not a trustee in respect thereof for such subscriber or other person.

- 15.6 The Directors may in their absolute discretion refuse to accept any application for Shares in the ICAV in whole or in part.
- 15.7 The Directors may issue voting Shares and non-voting Shares. The non-voting Shares carry no right to notice of, attend or vote at general meetings of the ICAV. The Directors will give any Shareholders holding non-voting Shares sufficient notice in writing in advance of any matter which holders of voting Shares would be competent to vote upon, enabling such Shareholders to request repurchase of their Shares prior to the implementation of any matter which requires a Shareholder vote.
- 15.8 If the Directors determine that it would be detrimental for existing Shareholders to accept an application for Shares, representing more than 5% of the Net Asset Value of the relevant Fund, the Directors may decide to defer all or part of the application for Shares in excess of 5% until the next Dealing Day or postpone the application and, in consultation with the relevant investor, either require such investor to stagger the proposed application over an agreed period of time, or establish an investment account outside the structure of the ICAV in which to invest the investor's subscription money. Such investment account will be used to acquire the Shares over a pre-agreed time schedule. If the Directors decide to defer or postpone all or part of the application for Shares in excess of 5%, the applicants shall be informed prior to the deferral taking place.
- 15.9 Applications for the issue of Shares will be irrevocable unless the Directors otherwise agree.
- 15.10 Shares that have been allotted shall be deemed to be in issue from the close of the Dealing Day (in Ireland) on which they are allotted.
- 15.11 The Directors may on any Dealing Day where there are net subscriptions adjust the Subscription Price by adding an Anti-Dilution Levy to cover dealing costs and to preserve the value of the underlying assets of the ICAV.
- 15.12 The Directors may, subject to the provisions of the Act, in their absolute discretion allot Shares against the vesting in the Depositary on behalf of the ICAV of assets (provided that such assets qualify as Investments of the ICAV) and in connection therewith the following provisions shall apply:
  - (a) no Shares shall be issued until the assets have been vested or arrangements are made to vest the Investments with the Depositary or its sub-custodian to the Depositary's satisfaction;
  - (b) any such in specie subscription shall be effected on terms that the number of Shares to be issued shall be the number (including, at the Directors' discretion, fractions of Shares) which would have been issued if the cash equivalent of the relevant assets had been invested;
  - (c) the assets to be transferred to the ICAV shall be valued by applying the rules relating to valuation of Investments contained in clause 22;
  - (d) there may be paid to the incoming Shareholder out of the Investments of the ICAV a sum in cash equal to the value at the current price of any fraction of a Share excluded from the calculation aforesaid; and

- (e) the Depository shall be satisfied that the terms of such in specie subscription shall not be such as are likely to result in any material prejudice to the existing Shareholders in the relevant Fund.

15.13 No Shares of any Class shall be allotted or issued on any Dealing Day on which the determination of Net Asset Value of the relevant Class is suspended pursuant to clause 21. Any application for Shares that is not withdrawn shall, subject to the provisions of this Instrument of Incorporation, be dealt with on the first Dealing Day after the suspension is lifted.

15.14 The Directors may require any person to whom Shares of any Class in any Fund are to be allotted to pay to the ICAV or any of its appointees or as any of them may direct, for its or their absolute use and benefit, a preliminary/subscription charge in respect of each Share to be allotted of such amount, as may be determined by the Directors, subject to a maximum amount as disclosed in the Prospectus of the Subscription Price per Share of the relevant Class being allotted. The Directors may on any Dealing Day differentiate between applicants as to the amount of the preliminary/subscription charge required to be paid to the ICAV, or its appointees or as they may direct and as to the amount of preliminary/subscription charge to be levied on each Class of Share (subject to the maximum aforesaid).

## **16 Ineligible Applicants**

16.1 The Directors may impose such restrictions as they may think necessary for the purpose of ensuring that no Shares are acquired or held directly or beneficially by an Ineligible Applicant.

16.2 The Directors may reject in their discretion any application for Shares by or any transfer of Shares to an Ineligible Applicant and at any time repurchase or require the transfer of Shares held by Shareholders who are or have become Ineligible Applicants.

16.3 If a person becomes aware that he is an Ineligible Applicant he shall forthwith in writing request the ICAV to repurchase such Shares in accordance with clause 17 or transfer such Shares to a person who is not an Ineligible Applicant.

16.4 If it shall come to the notice of the Directors or if the Directors shall have reason to believe that any Shares are owned directly or beneficially by an Ineligible Applicant the Directors shall be entitled to give notice (in such form as the Directors deem appropriate) to such person requiring him to (a) transfer such Shares to a person who is not an Ineligible Applicant, or (b) request in writing the repurchase of such Shares in accordance with clause 17.

16.5 If any person upon whom such a notice is served as aforesaid does not within 30 days after such notice has been served transfer the Shares the subject matter of the notice or request in writing the ICAV to repurchase the Shares he shall be deemed forthwith upon the expiration of the said 30 days to have requested the repurchase of all his Shares the subject of such notice and the ICAV shall be deemed to be appointed his attorney with authority to appoint any person to sign on his behalf such documents as may be required for the purposes of the repurchase.

16.6 Settlement of any repurchase or transfer effected pursuant to this clause shall be effected by depositing the repurchase monies or proceeds of sale in a bank for payment to the person entitled subject to such consents as may be necessary being obtained. Upon deposit of the repurchase monies as aforesaid such person shall have no further interest in such Shares or any of them or any claim in respect thereof except the right to claim without recourse to the ICAV the repurchase monies so deposited without interest.

16.7 Any person who by virtue of his holding, in the opinion of the ICAV, is an Ineligible Applicant will indemnify the ICAV, the Depositary, the Administrator, the Investment Manager and the Shareholders for any actions, proceedings, claims, costs, demands, charges, losses, damages or expenses and tax arising as a result of their acquiring or holding Shares in the relevant Fund.

## **17 Purchase of issued Shares by the ICAV**

17.1 Shareholders who subscribe for Shares in the ICAV shall have the right to request the ICAV to repurchase their Shares which are fully paid on any Dealing Day and the ICAV has the power to effect such repurchase requests subject to and in accordance with the provisions of this Instrument of Incorporation, the Act, the Regulations and the provisions set out in the Prospectus. Notwithstanding this right, certain classes of Shares may be established with no right of repurchase or restricted rights of repurchase, as set out in the Prospectus, subject to any conditions set down by the Central Bank.

17.2 Any repurchase request shall be irrevocable save with the consent in writing of the ICAV.

17.3 The Directors may at their discretion impose a Minimum Repurchase Amount in relation to any particular Fund or Class.

17.4 The Directors may at their discretion repurchase any Shares held by any person who holds less than the Minimum Shareholding or if the ICAV has not received all supporting anti-money laundering or related documentation and such other information as the ICAV may reasonably require by such time as may from time to time be specified in the Prospectus or otherwise.

17.5 Notwithstanding anything in this Instrument of Incorporation to the contrary, the ICAV may at its absolute discretion refuse to satisfy a repurchase request or make any other payment to a Shareholder or at the direction of a Shareholder if the ICAV has not received all supporting anti-money laundering or related documentation and such other information as the ICAV may reasonably require by such time as may from time to time be specified in the Prospectus or otherwise and such payment would result in a breach of the guidelines in operation from time to time in relation to the detection and prevention of money laundering.

17.6 In the event of receipt of a valid repurchase request by the relevant dealing deadline, the ICAV shall repurchase the relevant Shares, provided that the Directors, may in their discretion, accept a repurchase request for processing on a Dealing Day notwithstanding that such request may have been received after the dealing deadline so long as such repurchase request is received prior to the relevant Valuation Point.

17.7 Shares which are repurchased by the ICAV shall be cancelled and the amount of the issued share capital of the ICAV shall be reduced by the amount of the consideration paid by the ICAV for the repurchase of the Shares.

17.8 Shareholders will be removed from the Register upon the repurchase proceeds being paid. Insofar as investors remain as Shareholders until such time as the relevant Net Asset Value has been calculated and the Register updated, investors will be treated as creditors for the repurchase proceeds, rather than Shareholders from the relevant Dealing Day, and will rank accordingly in the priority of the relevant Fund's creditors. Furthermore, during this period, investors will have no rights as Shareholders under the Instrument of Incorporation, except the right to receive their repurchase proceeds and any dividend which has been declared in respect of their Shares prior to the relevant Dealing Day, and in particular, will not have the right to receive notice of, attend or vote at any class or general meetings.

- 17.9 Shares will be repurchased by the ICAV on the relevant Dealing Day at the Repurchase Price per Share of the relevant Class. Repurchase proceeds will be remitted within a prescribed period of time from the dealing deadline for the relevant Dealing Day as determined by the Directors and set out in the Prospectus in accordance with the requirements of the Central Bank.
- 17.10 The ICAV may in respect of a Fund constituted as a fund of funds or a feeder fund or hybrid thereof, retain up to one tenth of redemption proceeds where this reflects the redemption policy of the underlying funds in which the relevant Fund invests, until such time as full redemption proceeds from the underlying funds are received.
- 17.11 The Directors may on any Dealing Day where there are net repurchases adjust the Repurchase Price by deducting an Anti-Dilution Levy to cover dealing costs and to preserve the value of the underlying assets of the relevant Fund.
- 17.12 In the event that the ICAV is required to deduct, withhold, pay or account for tax including any penalties and interest thereon upon the occurrence of certain events such as the encashment, repurchase, disposal or deemed disposal of Shares by or payment of distribution to a Shareholder (whether upon a repurchase or transfer of Shares or payment of a dividend or deemed disposal of Shares or otherwise) the Directors may deduct or arrange for the deduction from the proceeds due to be paid to a Shareholder of a cash amount equal to the liability or may arrange for the compulsory repurchase and cancellation of such number of Shares of such Shareholder as is sufficient after the deduction of any repurchase charges to discharge any such liability and the relevant Shareholder shall indemnify and keep indemnified the ICAV against any loss suffered by it in connection with any obligation or liability to so deduct, withhold, pay or account.
- 17.13 The Directors may on any Dealing Day require a Shareholder to pay to the ICAV (or any of its appointees or as any of them may direct), for its or their absolute use and benefit, a Repurchase Charge. The amount of any such charge may be deducted from the Repurchase Price. The Directors may on any Dealing Day differentiate between Shareholders as to the amount of the Repurchase Charge required to be paid to the ICAV (or its appointees or as they may direct) and as to the amount of Repurchase Charge to be levied on each Class.
- 17.14 If the number of Shares to be repurchased on any Dealing Day equals one tenth or more of the total number of Shares of any Fund in issue on that Dealing Day the Directors or their delegate may at their discretion refuse to repurchase any Shares in excess of one tenth of the total number of Shares in issue in any Fund and, if they so refuse, the requests for repurchase on such Dealing Day shall be reduced pro rata and Shares which are not repurchased by reason of such refusal shall be treated as if a request for repurchase had been made in respect of each subsequent Dealing Day until all Shares to which the original request related have been repurchased. Repurchase requests which have been carried forward from an earlier Dealing Day shall (subject always to the foregoing limits) be complied with pro rata to later requests.
- 17.15 The ICAV may, at the discretion of the Directors, satisfy any request for repurchase of Shares by the transfer in specie to a Shareholder requesting repurchase of assets of the relevant Fund having a value equal to the Repurchase Price for the Shares repurchased as if the repurchase proceeds were paid in cash less any repurchase charge and other expenses of the transfer as the Directors may determine provided that the Shareholder requesting repurchase consents to such transfer in specie. A determination to provide repurchase in specie may be solely at the discretion of the ICAV where the redeeming Shareholder requests repurchase of a number of Shares that represents five per cent (5%) or more of the Net Asset Value of the relevant Fund. In this event, the ICAV will, if requested sell any asset or assets

proposed to be distributed in specie and distribute to such Shareholder the cash proceeds less the costs of such sale which shall be borne by the relevant Shareholder. The nature and type of assets to be transferred in specie to each Shareholder shall be determined by the Directors and shall be subject to the approval of the Depositary. In specie repurchases may only be effected if the Depositary is satisfied that the terms will not be such as are likely to result in any material prejudice to the interests of the remaining Shareholders in the relevant Fund or Class.

- 17.16 If at any time after a repurchase of Shares (including in connection with any complete repurchase of Shares by a Shareholder) the Directors determine, in their sole discretion, that the amount paid to such Shareholder or former Shareholder pursuant to such repurchase was incorrect (including because the Net Asset Value at which the Shareholder or former Shareholder subscribed for or repurchased such Shares was incorrect), the ICAV will pay to such Shareholder or former Shareholder any additional amount that the Directors determine such Shareholder or former Shareholder would have been entitled to receive had the repurchase been effected at the correct Net Asset Value, or, in the Directors' sole discretion, seek payment from such Shareholder or former Shareholder of (and such Shareholder or former Shareholder shall be required to pay) the amount of any excess payment that the Directors determine such Shareholder or former Shareholder received, in each case without interest.
- 17.17 The ICAV shall be entitled to repurchase any Share of a Shareholder or any Share to which a person is entitled by transmission provided that:- (i) for a period of six years no cheque or confirmation of ownership of Shares sent by the ICAV through the post in a pre-paid letter addressed to the Shareholder or to the person entitled by transmission to the Share at his address on the Register or the last known address given by the Shareholder or the person entitled by transmission to which cheques and confirmations of the ownership of Shares are to be sent has been cashed or acknowledged and no communication has been received by the ICAV from the Shareholder or the persons entitled by transmission; (ii) at the expiration of the said period of six years the ICAV has given notice of its intention to repurchase such Share or Shares by notice sent by pre-paid letter addressed to the Shareholder or to the person entitled by transmission to the Share at his address on the Register or to the last known address given by the Shareholder or the person entitled by transmission or by advertisement in a national daily newspaper published in Ireland or in a newspaper circulating in the area in which the address of the Shareholder is located; (iii) during the period of three months after the date of the giving of such notice and prior to the exercise of the power of repurchase the ICAV has not received any communication from the Shareholder or person entitled by transmission; and (iv) if the Shares are quoted on a stock exchange the ICAV has first given notice in writing to the appropriate section of such stock exchange of its intention to repurchase such Shares, if it is required to do so under the rules of such stock exchange.
- 17.18 No Shares of any Class shall be repurchased on any Dealing Day on which the determination of Net Asset Value of the relevant Class is suspended pursuant to clause 21. If the determination of the Net Asset Value of the relevant Fund is suspended on any Dealing Day, a Shareholder may withdraw his request to have his Shares repurchased pursuant to this clause. If the request is not so withdrawn the ICAV shall be at liberty to repurchase the Shares on the Dealing Day next following the end of the suspension.
- 17.19 The ICAV shall account to the Shareholder or to the person entitled to such Shares for the net proceeds of such repurchase by carrying all moneys in respect thereof as a permanent debt of the ICAV and the ICAV shall be deemed to be a debtor and not a trustee in respect thereof for such Shareholder or other person.

17.20 The Non-Participating Shares (or any of them) may be repurchased by the ICAV at any time after the first issue of Shares is effected after the Initial Offer Period. The price at which each Non-Participating Share may be repurchased shall be €1.

## **18 Total Repurchase**

18.1 The ICAV may on any Dealing Day on giving reasonable notice to affected Shareholders repurchase all of the Shares in any Fund or Class not previously repurchased at the Repurchase Price, if the Net Asset Value of such Fund or Class on such Dealing Day is less than the minimum viable size as may be determined by the Directors from time to time.

18.2 The ICAV may by giving not less than twenty-one Clear Days' notice to the Shareholders of the relevant Fund or Class expiring on a Dealing Day of its intention to repurchase such Shares, repurchase at the Repurchase Price on such Dealing Day, all of the Shares in any Fund or Class or all Funds or Classes not previously repurchased.

18.3 The ICAV may, on a Dealing Day, repurchase at the Repurchase Price all of the Shares in any Fund or Class not previously repurchased with the sanction of a Special Resolution of the Shareholders of such Fund or Class.

18.4 If all of the Shares of the ICAV or of any Fund or Class are to be repurchased as aforesaid the ICAV, with the approval of the Shareholders of the ICAV or the relevant Fund or Class by Ordinary Resolution, may divide amongst the Shareholders in specie all or part of the assets of the ICAV or the relevant Fund or Class according to the Net Asset Value of the Shares provided that if any Shareholder requests, at the expense of such Shareholder, the ICAV shall sell any asset or assets proposed to be so distributed and the distribution to such Shareholder of the cash proceeds of such sale.

18.5 If all the Shares in the ICAV or a Fund or Class are to be repurchased as aforesaid and the whole or any part of the business or property of the relevant Fund or any of the assets of the ICAV are proposed to be transferred or sold to another company (hereinafter called the "Transferee") the Directors may, with the sanction of a Special Resolution of the ICAV or the relevant Fund or Class conferring either a general authority on the Directors or an authority in respect of any particular arrangement, receive in compensation or part compensation for such transfer or sale shares, units, policies or other like interests or property in or of the Transferee for distribution among the said Shareholders, or may enter into any other arrangement whereby the said Shareholders may instead of or in addition to receiving cash or property participate in the profits of or receive any other benefit from the Transferee.

## **19 Exchange of Shares**

19.1 Shareholders who subscribe for Shares in the ICAV shall have the right to request the ICAV to exchange all or any of their Shares in a Fund or Class into Shares of another Fund or Class thereof or another Class in the same Fund on any Dealing Day and the ICAV has the power to effect such exchange requests subject to and in accordance with the provisions of this Instrument of Incorporation, the Act and the provisions set out in the Prospectus.

19.2 The Directors may charge a fee on the exchange of Shares in any Fund or Class thereof into Shares in another Fund or Class or another Class thereof in the same Fund, subject to a maximum amount as shall be disclosed in the Prospectus of the Net Asset Value per Share.

19.3 The ICAV may, without prejudice to any rights previously conferred on the holders of any existing Class of Shares, on any Dealing Day compulsorily exchange all or any Shares of one Class in a Fund for Shares of any other Class of the same Fund by such reasonable notice as

the Directors may determine, provided this does not materially prejudice the interests of holders of the relevant Class.

## **20 Transfer and Transmission of Shares**

- 20.1 Subject to any restrictions in this Instrument of Incorporation and to the conditions of issue as may be applicable, the Shares of any Shareholder may be transferred in writing in a form approved by the Directors and signed by (or, in the case of a transfer by a body corporate, signed on behalf of or sealed by) the transferee and the transferor.
- 20.2 A transfer of Shares will not be processed until the ICAV has received the transferee's application for Shares, in such form as the Directors may from time to time determine, and all supporting anti-money laundering or related documentation and such other information as the ICAV may reasonably require by such time as may from time to time be specified in the Prospectus.
- 20.3 The transferor shall be deemed to remain the Shareholder of the Share until the name of the transferee is entered in the Register in respect thereof.
- 20.4 The Directors may repurchase and cancel a sufficient portion of the transferor's Shares to discharge any taxation payable to any tax authority in respect of a transfer of Shares by a Shareholder. If the ICAV is required to deduct, withhold or account for any tax in any jurisdiction, including any penalties and interest thereon the Directors may deduct or arrange for the deduction from any payment due to be paid to a Shareholder an amount equal to the taxation attributable to that payment and pay such amount to the relevant tax authorities in that jurisdiction.
- 20.5 The Directors may, in their absolute opinion, decline to register any transfer of a Share:
- (a) which is not in the best interests of the ICAV;
  - (b) to a person who is an Ineligible Applicant;
  - (c) in regard to which any payment of taxation remains outstanding;
  - (d) where the transfer would result in a contravention of any provision of this Instrument of Incorporation or would produce a result inconsistent with any provision of the Prospectus (including, without limitation, the failure to provide such documentation as may be required by the ICAV to satisfy the ICAV as to the identity and verification of beneficial ownership of any proposed transferee in accordance with anti-money laundering and prevention of terrorism law applicable in the State and the failure to provide any declarations including declarations as to appropriate tax status of the transferee); and
  - (e) where the transfer would result in a contravention of any provision of any law (including any law that is for the time being in force in a country or territory other than the State).
- 20.6 The Directors may decline to recognise any instrument of transfer unless:
- (a) the instrument of transfer is accompanied by such evidence as the Directors may reasonably require to show the right of the transferor to make the transfer;
  - (b) the instrument of transfer is in respect of one Class of Shares only;

- (c) the instrument of transfer is in favour of not more than four transferees; and
  - (d) the instrument of transfer is lodged at the Office or at such other place as the Directors may appoint.
- 20.7 The Directors shall within two months, commencing with the date on which the transfer was received by the ICAV, send written notice of the refusal to register a transfer of Shares to the transferee in accordance with section 43 of the Act. The Directors shall not be obliged to give notice to any person of a refusal to register a transfer where the giving of notice would be in contravention of any provision of any law (including any law that is for the time being in force in a country or territory other than the State).
- 20.8 Notwithstanding clause 20.2, the registration of transfers of Shares may be deferred at such times and for such periods as the Directors may determine including pursuant to section 43(3) of the Act.
- 20.9 A fee may be charged for the registration of any instrument of transfer or other document relating to or affecting the title to any Share, further details of which shall be set out in the Prospectus.
- 20.10 The ICAV shall be entitled to retain any instrument of transfer that is registered, but any instrument of transfer that the Directors refuse to register shall be returned to the person lodging it when notice of the refusal is given.
- 20.11 The Directors shall have power in their absolute discretion (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 an Ineligible Applicant.
- 20.12 If a Shareholder dies, the survivor or survivors where he was a joint Shareholder, or his personal representatives where he was a sole Shareholder or the only survivor of joint Shareholders, shall be the only persons recognised by the ICAV as having any title to his interest in the Shares; but nothing herein contained shall release the estate of a deceased Shareholder from any liability in respect of any Share that had been jointly held by him.

## **21 Determination of Net Asset Value**

- 21.1 The Net Asset Value of a Fund shall be expressed in the Base Currency or in such other currency as the Directors may determine either generally or in relation to a particular Class or in a specific case, and shall be calculated by ascertaining the value of the assets of the Fund and deducting from such value the liabilities of the Fund as at the Valuation Point for such Dealing Day.
- 21.2 In the event that the Shares of any Fund are further divided into Classes, the Net Asset Value per Class shall be determined by notionally allocating the Net Asset Value of the Fund amongst the Classes making such adjustments for subscriptions, redemptions, fees, dividend accumulation or distribution of income and the expenses, liabilities or assets attributable to each such Class (including the profit and loss (realised and unrealised) on and the costs of the currency hedging transactions (including any administrative costs arising from additional risk management) will accrue solely to that Class) and any other factor differentiating the Classes determined by the Directors. The Net Asset Value of the Fund, as allocated between each Class, shall be divided by the number of Shares of the relevant Class which are in issue or deemed to be in issue and rounding the result mathematically to four decimal places as determined by the Directors or such other number of decimal places as may be determined by the Directors from time to time.



- 21.3 The Net Asset Value per Share of a Fund or Class will be calculated by dividing the Net Asset Value of the Fund or Class as appropriate by the number of Shares in the Fund then in issue or deemed to be in issue as at the Valuation Point for such Dealing Day and rounding the result mathematically to four decimal places or such other number of decimal places as may be determined by the Directors from time to time.
- 21.4 The ICAV at any time may, but shall not be obliged to, temporarily suspend the determination of the Net Asset Value and the sale, repurchase and/or exchange of such Shares in a Fund, in the following instances:
- (a) during any period when any of the markets or stock exchanges on which a substantial portion of the assets of the relevant Fund are quoted, listed or dealt in is closed, otherwise than for ordinary holidays, or during which dealings therein are restricted or suspended; or
  - (b) during any period when, as a result of political, economic, military or monetary events or any circumstances outside the control, responsibility and power of the Directors, disposal or valuation of a substantial portion of the assets of the relevant Fund is not reasonably practicable without this being seriously detrimental to the interests of Shareholders of the relevant Fund or if, in the opinion of the Directors, the Net Asset Value of the Fund cannot be fairly calculated; or
  - (c) during any breakdown in the means of communication normally employed in determining the price of a substantial portion of the assets of the relevant Fund, or when, for any other reason the current prices on any market or stock exchanges of any of the assets of the relevant Fund cannot be promptly and accurately ascertained; or
  - (d) during any period when, as a result of adverse market conditions, the payment of repurchase proceeds may, in the opinion of the Directors, have an adverse impact on the relevant Fund or the remaining Shareholders in the relevant Fund; or
  - (e) during any period (other than ordinary holiday or customary weekend closings) when any market or exchange which is the main market or exchange for a significant part of the instruments or positions is closed, or in which trading thereon is restricted or suspended; or
  - (f) during any period when proceeds of any sale or repurchase of the Shares cannot be transmitted to or from the account of the relevant Fund; or
  - (g) during any period in which the repurchase of the Shares would, in the opinion of the Directors, result in a violation of applicable laws; or
  - (h) during any period during which any transfer of funds involved in the realisation or acquisition of assets or payments due on the repurchase of Shares of the relevant Fund cannot, in the opinion of the Directors, be effected at normal prices or rates of exchange; or
  - (i) during any period when the Directors are unable to repatriate funds required for the purpose of making payments due on the repurchase of Shares in the relevant Fund; or
  - (j) during any period when in the opinion of the Directors such suspension is justified having regards to the best interests of the ICAV and/or the relevant Fund; or

- (k) following the circulation to Shareholders of a notice of a general meeting at which a resolution proposing to wind up the ICAV or terminate the relevant Fund is to be considered.
- 21.5 The ICAV may elect to treat the first Business Day on which the conditions giving rise to the suspension have ceased as a substitute Dealing Day in which case the Net Asset Value calculations and all sales and repurchases of Shares shall be effected on the substitute Dealing Day.
- 21.6 Any such suspension shall be published by the ICAV in such manner as it may deem appropriate to the persons likely to be affected thereby if, in the opinion of the ICAV or the Manager, such suspension is likely to continue for a period exceeding fourteen days. Any suspension shall be notified immediately and in any event within the same Business Day to the Central Bank. Where possible, all reasonable steps will be taken to bring the period of suspension to an end as soon as possible.
- 21.7 A suspension of repurchases may be made at any time prior to the payment of the repurchase monies and the removal of the Shareholder's name from the Register. A suspension of subscriptions may be made at any time prior to the entry of a Shareholder name on the Register.

## **22 Valuation of Investments**

- 22.1 The assets and liabilities of a Fund will be valued as at the Valuation Point as follows:-
  - (a) Assets listed or traded on a recognised exchange (other than those referred to at (e) below) for which market quotations are readily available shall be valued at the last traded price. Where a security is listed or dealt in on more than one recognised exchange, the relevant exchange or market shall be the principal stock exchange or market on which the security is listed or dealt on or the exchange or market which the Directors determine provides the fairest criteria in determining a value for the relevant investment. Assets listed or traded on a recognised exchange, but acquired or traded at a premium or at a discount outside or off the relevant exchange or market may be valued taking into account the level of premium or discount at the Valuation Point provided that the Depositary shall be satisfied that the adoption of such a procedure is justifiable in the context of establishing the probable realisation value of the security.
  - (b) The value of any security which is not quoted, listed or dealt in on a recognised exchange, or which is so quoted, listed or dealt but for which no such quotation or value is available, or the available quotation or value is not representative of the fair market value, shall be the probable realisation value as estimated with care and good faith by (i) the Directors or (ii) a competent person, firm or corporation (including the Investment Manager) selected by the Directors and approved for the purpose by the Depositary or (iii) any other means provided that the value is approved by the Depositary. Where reliable market quotations are not available for fixed income securities, the value of such securities may be determined using matrix methodology compiled by the Directors or competent person whereby such securities are valued by reference to the valuation of other securities which are comparable in rating, yield, due date and other characteristics.
  - (c) Cash in hand or on deposit will be valued at its nominal/face value plus accrued interest or less debit interest, where applicable, to the end of the relevant day on which the Valuation Point occurs.

- (d) Notwithstanding paragraph (a) above, units in collective investment schemes shall be valued at the latest available net asset value per unit or bid price as published by the relevant collective investment scheme or, if listed or traded on a recognised exchange, in accordance with (a) above.
- (e) Exchange-traded derivative instruments will be valued based on the settlement price as determined by the market where the instrument is traded. If such settlement price is not available, such value shall be calculated in accordance with (b) above.
- (f) Notwithstanding the provisions of paragraphs (a) to (e) above:-
  - (i) The Directors or their delegate may, at its discretion in relation to any particular Fund which is a short-term money market fund, value any investment using the amortised cost method of valuation where such Fund complies with the Central Bank's requirements for short-term money market funds and where a review of the amortised cost valuation vis-à-vis market valuation will be carried out in accordance with the Central Bank's guidelines.
  - (ii) Where it is not the intention or objective of the Directors to apply amortised cost valuation to the portfolio of the Fund as a whole, a money market instrument within such a portfolio shall only be valued on an amortised basis if the money market instrument has a residual maturity of less than 3 months and does not have any specific sensitivity to market parameters, including credit risk.
- (g) Notwithstanding the generality of the foregoing, the Directors may with the approval of the Depositary adjust the value of any investment if, taking into account currency, marketability and/or such other considerations as they may deem relevant, such as applicable rate of interest, anticipated rate of dividend, maturity or liquidity, they consider that such adjustment is required to reflect the fair value thereof. The rationale for adjusting the value must be clearly documented.
- (h) Any value expressed otherwise than in the Base Currency of the relevant Fund shall be converted into the Base Currency of the relevant Fund at the prevailing exchange rate which the Directors or their delegate shall determine to be appropriate.
- (i) If the Directors deem it necessary, a specific investment may be valued under an alternative method of valuation approved by the Depositary and the rationale/methodologies used must be clearly documented.

22.2 In calculating the value of assets of the ICAV and each Fund the following principles will apply:

- (a) every Share agreed to be issued by the Directors with respect to each Dealing Day shall be deemed to be in issue at the Valuation Point for the relevant Dealing Day and the assets of the relevant Fund shall be deemed to include not only cash and property in the hands of the Depositary but also the amount of any cash or other property to be received in respect of Shares agreed to be issued after deducting therefrom (in the case of Shares agreed to be issued for cash) or providing for preliminary charges;
- (b) where Investments have been agreed to be purchased or sold but such purchase or sale has not been completed, such Investments shall be included or excluded and the gross purchase or net sale consideration excluded or included as the case may

require as if such purchase or sale had been duly completed unless the Directors have reason to believe such purchase or sale will not be completed;

- (c) there shall be added to the assets of the relevant Fund any actual or estimated amount of any taxation of a capital nature which may be recoverable by the ICAV which is attributable to that Fund;
- (d) there shall be added to the assets of each relevant Fund a sum representing unamortised expenses and a sum representing any interest, dividends or other income accrued but not received unless the Directors are of the opinion that such interest, dividends or other income are unlikely to be paid or received in full in which case the value thereof shall be arrived at after making such discount as the Directors or their delegate (with the approval of the Depositary) may consider appropriate in such case to reflect the true value thereof;
- (e) there shall be added to the assets of each relevant Fund the total amount (whether actual or estimated by the Directors or their delegate) of any claims for repayment of any taxation levied on income or capital gains including claims in respect of double taxation relief; and
- (f) there shall be deducted from the assets of the relevant Fund:
  - (i) the total amount of any actual or estimated liabilities properly payable out of the assets of the relevant Fund including any and all outstanding borrowings of the ICAV in respect of the relevant Fund, interest, fees and expenses payable on such borrowings and any estimated liability for tax and such amount in respect of contingent or projected expenses as the Directors consider fair and reasonable as of the relevant Valuation Point;
  - (ii) such sum in respect of tax (if any) on income or capital gains realised on the Investments of the relevant Fund as in the estimate of the Directors will become payable;
  - (iii) the amount (if any) of any distribution declared by the Shareholders of the relevant Fund or the Directors but not distributed in respect thereof;
  - (iv) the remuneration of the Administrator, the Depositary, the Investment Manager, any sub-investment manager, any distributor and any other providers of services to the ICAV accrued but remaining unpaid together with a sum equal to the value added tax chargeable thereon (if any);
  - (v) the total amount (whether actual or estimated by the Directors) of any other liabilities properly payable out of the assets of the relevant Fund (including all establishment, operational and ongoing administrative fees, costs and expenses) as of the relevant Valuation Point;
  - (vi) an amount as of the relevant Valuation Point representing the projected liability of the relevant Fund in respect of costs and expenses to be incurred by the relevant Fund in the event of a subsequent liquidation;
  - (vii) an amount as of the relevant Valuation Point representing the projected liability of the relevant calls on Shares in respect of any warrants issued and/or options written by the relevant Fund; and

(viii) any other liability of the ICAV.

22.3 The Directors may delegate any of their powers, authorities and discretions in relation to the determination of the value of any Investment and calculate the Net Asset Value to a committee of the Directors or to any other duly authorised person. In the absence of negligence, fraud or wilful default every decision taken by the Directors or any committee of the Directors or any duly authorised person on behalf of the ICAV in determining the value of any Investment or calculating the Net Asset Value shall be final and binding on the ICAV and on present, past or future Shareholders.

## **23 General meetings**

23.1 The ICAV shall hold in each year a general meeting as its annual general meeting in addition to any other meeting in that year and shall specify the meeting as such in the notice calling it. Not more than 15 months shall elapse between the date of one annual general meeting and that of the next PROVIDED THAT so long as the ICAV holds its first annual general meeting within 18 months after the date on which the registration order made by the Central Bank in respect of the ICAV comes into operation, it need not hold it in the year of its incorporation or in the following year. Subsequent annual general meetings shall be held once in each year.

23.2 The Directors may elect to dispense with the holding of an annual general meeting by giving 60 days' written notice to all of the Shareholders, which notice has effect for the year in which it is made and subsequent years. Where an election to dispense with the holding of an annual general meeting has effect for a year, one or more Shareholder(s) holding not less than 10% of the voting rights in the ICAV may require the ICAV to hold an annual general meeting in that year by giving notice in writing to the ICAV in the previous year or at least one month before the end of that year and the ICAV shall hold the required meeting.

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

23.4 The Directors may convene general meetings whenever they consider appropriate in their discretion. Extraordinary general meetings may also be convened by such other parties and in such manner as may be provided by the Act.

23.5 If at any time there are not within the State sufficient Directors capable of acting to form a quorum, any Director or Shareholder 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.

23.6 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.

23.7 Any notice convening a general meeting shall specify the time and place of the meeting and, in the case of special business, the general nature of that business and, in reasonable prominence, that a Shareholder 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 Shareholder. Subject to any restrictions imposed on any Shares, the notice shall be given to all the Shareholders and to the Directors and the Auditors.

23.8 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.

- 23.9 Where, by any provision contained in the Act, extended notice is required of a resolution, the resolution shall not be effective (except in the case of a resolution to remove a Director where the Directors have resolved to submit it) unless notice of the intention to move it has been given to the ICAV not less than twenty-eight days (or such shorter period as the Act permits) before the meeting at which it is moved, and the ICAV shall give to the Shareholders notice of any such resolution as required by and in accordance with the provisions of the Act.
- 23.10 A meeting shall, notwithstanding that it is called by shorter notice than that specified in clause 23.9, be deemed to have been duly called if it is so agreed by all the Shareholders entitled to attend and vote thereon.
- 23.11 No business other than the appointment of a chairman shall be transacted at any general meeting unless a quorum of Shareholders or holders of Non-Participating Shares is present at the time when the meeting proceeds to business. The quorum necessary for the transaction of business may be determined by the Directors and, except as provided in relation to an adjourned meeting, until otherwise determined shall be two persons entitled to vote on the business to be transacted, each being a Shareholder or a holder of Non-Participating Shares or a proxy for such holders or a duly authorised representative of a corporate Shareholder, shall be a quorum.
- 23.12 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 time and place as the Directors may determine. If at the adjourned meeting such a quorum is not present within half an hour from the time appointed for the meeting, the meeting, if convened otherwise than by resolution of the Directors, shall be dissolved, but if the meeting shall have been convened by resolution of the Directors, one person entitled to be counted in a quorum present in person or by proxy at the meeting shall be a quorum.
- 23.13 All business shall be deemed special that is transacted at an extraordinary general meeting. All business that is transacted at an annual general meeting shall also be deemed special, with the exception of declaring a dividend, the consideration of the accounts, balance sheets and reports of the Directors and Auditors, the re-appointment of the retiring Auditors and the fixing of the remuneration of the Auditors.
- 23.14 The chairman of the board of Directors or, in his absence, the deputy chairman (if any) or, in his absence, some other Director or person 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 15 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. If at any meeting no Director is willing to act as chairman or if no Director is present within 15 minutes after the time appointed for holding the meeting, the Shareholders present (in person or by proxy) and entitled to vote shall choose one of the Shareholders (including his proxy) personally present to be chairman of the meeting.
- 23.15 The chairman, with the consent of a meeting at which a quorum is present, may (and if so directed by the meeting, shall) adjourn the meeting from time to time (or sine die) and from place to place, but no business shall be transacted at any adjourned meeting other than business that 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 14 days or more or sine die, at least seven Clear Days' notice shall be given specifying the time and meeting and

the general nature of the business to be transacted. Except as aforesaid it shall not be necessary to give any notice of an adjourned meeting.

- 23.16 At any general meeting, a resolution put to the vote of the meeting shall be decided on a show of hands unless before, or on the declaration of the result of, the show of hands, a poll is duly demanded. Unless a poll is so demanded, a declaration by the chairman that a resolution has been carried or carried unanimously, or by a particular majority, or lost, or not carried by a particular majority, and an entry to that effect in the minutes of the meeting shall be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution. The demand for a poll may be withdrawn before the poll is taken but only with the consent of the chairman, and a demand so withdrawn shall not be taken to have invalidated the result of a show of hands declared before the demand was made.
- 23.17 A poll may be demanded:
- (a) by the chairman of the meeting;
  - (b) by at least two Shareholders present (in person or by proxy) having the right to vote at the meeting; or
  - (c) by any Shareholder or Shareholders present (in person or by proxy) representing not less than one-tenth of the total voting rights of all the Shareholders having the right to vote at the meeting.
- 23.18 Except as provided in clause 23.22, a poll shall be taken in such manner as the chairman directs and he may appoint scrutineers (who need not be Shareholders) 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.
- 23.19 A poll demanded on the election of a chairman or on a question of adjournment shall be taken immediately. A poll demanded on any other question shall be taken either immediately or at such time (not being more than 30 days after the poll is demanded) and place as the chairman of the meeting may direct. The demand for a poll shall not prevent the continuance of a meeting for the transaction of any business other than the question on which the poll was demanded. If a poll is demanded before the declaration of the result of a show of hands and the demand is duly withdrawn, the meeting shall continue as if the demand had not been made.
- 23.20 No notice need be given of a poll not taken immediately 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.
- 23.21 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:
- (a) on a show of hands, every Shareholder, who is present in person or by proxy, shall have one vote and the holder(s) of Non-Participating Shares present in person or by proxy shall have one vote in respect of all of the Non-Participating Shares in issue;
  - (b) on a poll, every Shareholder present in person or by proxy shall have one vote for every Share of which he is the Shareholder and every holder of a Non-Participating Share present in person or by proxy shall have one vote in respect of his holding of Non-Participating Shares;

- (c) on a poll of all the Shareholders of Shares in the ICAV, where there is more than one Class of Shares in existence in the ICAV, the voting rights of such Shareholders may at the discretion of the Directors be adjusted in such manner, determined by the Directors, so as to reflect the most recently calculated price at which the Shares of each of the classes in question may be repurchased by the ICAV;
- (d) a Shareholder or Shareholders who hold a fraction of a Share may not exercise any voting rights, whether on a show of hands or on a poll, in respect of such fraction of a Share.

- 23.22 A resolution in writing executed, whether in manuscript or electronically, in accordance with applicable law by or on behalf of each Shareholder who would have been entitled to vote on it if it had been proposed at a meeting at which he was present shall be as effectual as if it had been passed at a general meeting duly convened and held and, in the case of a resolution in writing, may consist of several instruments in the like form, each executed by or on behalf of one or more Shareholders. In the case of a corporation, a resolution in writing may be signed or executed electronically in accordance with applicable law on its behalf by a director or the secretary thereof or by its duly appointed attorney or duly authorised representative.
- 23.23 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.
- 23.24 Where there are joint Shareholders 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 Shareholders and for this purpose seniority shall be determined by the order in which the names of the Shareholders stand in the Register in respect of the Share.
- 23.25 A Shareholder of unsound mind, or in respect of whom an order has been made by any court having jurisdiction (whether in the State or elsewhere) in matters concerning mental disorder, may vote, whether on a show of hands or on a poll, by his committee, receiver, guardian or other person appointed by that court and any such committee, receiver, guardian or other person may vote by proxy on a show of hands or on a poll. Evidence to the satisfaction of the Directors of the authority of the person claiming to exercise the right to vote shall be deposited at the Office or at such other place as is specified in accordance with this Instrument of Incorporation for the deposit of instruments of proxy by such time as the Directors may determine before the time appointed for holding the meeting or adjourned meeting at which the right to vote is to be exercised and in default the right to vote shall not be exercisable.
- 23.26 Every Shareholder entitled to attend and vote at a general meeting may appoint a proxy to attend, speak and vote on his behalf. The instrument appointing a proxy shall be in writing in any usual form or in any other form that the Directors may approve and shall be executed by or on behalf of the Shareholder. The signature on such instrument need not be witnessed. A body corporate may execute a form of proxy under its common seal or under the hand of a duly authorised officer thereof. A proxy need not be a Shareholder.
- 23.27 Any body corporate that is a Shareholder may by resolution of its directors or other governing body authorise such person as it thinks fit to act as its representative at any meeting of the ICAV or of any Class of Shareholders of the ICAV and the person so authorised shall be entitled to exercise the same powers on behalf of the body corporate that he represents as that body corporate could exercise if it were an individual Shareholder.



- 23.28 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 Shareholder) at such other place or places (if any) as may be specified for that purpose in or by way of note to the notice convening the meeting or adjourned meeting at such time as may be determined by the Directors before the time appointed for the holding of the meeting or adjourned meeting or (in the case of a poll taken otherwise than at or on the same day as the meeting or adjourned meeting) for the taking of the poll at which it is to be used, and in default shall not be treated as valid. Provided that an instrument of proxy relating to more than one meeting (including any adjournment thereof) having once been so delivered for the purposes of any meeting shall not require to be delivered again for the purposes of any subsequent meeting to which it relates.
- 23.29 Deposit of an instrument of proxy in respect of a meeting or adjourned meeting shall not preclude a Shareholder 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.
- 23.30 A vote given or poll demanded in accordance with the terms of an instrument of proxy or a resolution authorising a representative to act on behalf of a body corporate shall be valid notwithstanding the death or insanity of the principal, or the revocation of the instrument of proxy or of the authority under which the instrument of proxy was executed or of the resolution authorising the representative to act or transfer of the Share in respect of which the instrument of proxy or the authorisation of the representative to act was given, provided that no intimation in writing of such death, insanity, revocation or transfer shall have been received by the ICAV at the Office at least one hour before the commencement of the meeting or adjourned meeting at which the instrument of proxy is used or at which the representative acts.
- 23.31 The Directors may send, at the expense of the ICAV, by post or otherwise, to the Shareholders instruments of proxy (with or without stamped envelopes for their return) for use at any general meeting or at any Class meeting, either in blank or nominating any one or more of the Directors or any other persons in the alternative. If for the purpose of any meeting invitations to appoint as proxy a person or one of a number of persons specified in the invitations are issued at the expense of the ICAV, such invitations shall be issued to all (and not to some only) of the Shareholders entitled to be sent a notice of the meeting and to vote thereat by proxy.

## **24 Directors**

- 24.1 The ICAV shall have at least two Directors. The first Directors shall be appointed by the Subscribers to this Instrument of Incorporation.
- 24.2 A Director shall not be required to hold any Shares in the ICAV. No Director shall be required to retire on account of age. Any purported appointment of a minor (being a person that has not attained the age of 18 years) will be void. Any appointment of a Director, including an alternate Director, is subject to the requirements of the Central Bank.
- 24.3 Each Director shall at all times fulfil the fiduciary duties required to be fulfilled by the director of an ICAV pursuant to sections 78 & 79 of the Act.
- 24.4 Unless otherwise determined from time to time by the ICAV in general meeting, the ordinary remuneration of each Director shall be determined from time to time by resolution of the Directors. The Directors may be paid all travelling, hotel and other out-of-pocket expenses properly incurred by them in connection with their attendance at meetings of the Directors or

committees established by the Directors or general meetings or separate meetings of the Shareholders of any Class of Shares of the ICAV or otherwise in connection with the discharge of their duties. In addition the Directors may grant special remuneration to any Director who, being called upon, shall perform any special or extra services to or at the request of the ICAV.

- 24.5 Any Director may appoint by writing under his hand any person (including another Director) to be his alternate, provided always that no such appointment of a person other than a Director as an alternate shall be operative unless and until such appointment shall have been approved by the Central Bank. Any such authority may be sent by 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.
- 24.6 An alternate Director shall be entitled to receive notices of all meetings of the Directors and of all meetings of committees established by the Directors of which his appointor is a member, to attend and vote at any such meeting at which the Director appointing him is not personally present and in the absence of his appointor to exercise all the powers, rights, duties and authorities of his appointor as a Director (other than the right to appoint an alternate hereunder).
- 24.7 Except as otherwise provided in this Instrument of Incorporation, an alternate Director shall be deemed for all purposes to be a Director and shall alone be responsible for his own acts and defaults and he shall not be deemed to be the agent of the Director appointing him. The remuneration of any such alternate Director shall be payable out of the remuneration paid to the Director appointing him and shall consist of such portion of the remuneration of the Director as shall be agreed between the alternate and the Director appointing him.
- 24.8 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 thereon cease and determine, but if a Director otherwise retires but is reappointed or deemed to have been reappointed at the meeting at which he retires, any appointment of an alternate Director made by him that was in force immediately prior to his retirement shall continue after his reappointment.
- 24.9 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.

## **25 Register of Director and Secretary shareholdings**

The ICAV shall keep a register showing, in relation to each Director and Secretary, the number, description and amount of any Shares in or debentures of the ICAV, or any other body corporate which is the ICAV's subsidiary or holding company, or a subsidiary of the ICAV's holding company, which are held by, or in trust for, him or her, his or her spouse or any child of his or hers of which he or she has any right to become the holder (whether on payment or not), in accordance with the requirements of the Act.

## **26 Directors' powers**

- 26.1 The business of the ICAV shall be managed by the Directors and the Directors have authority to exercise all the powers, authorities and discretions expressed in the Act or by this Instrument of Incorporation to be vested in an Irish Collective Asset-management Vehicle, whether relating to the management of the business or not, as are not, by the Act, the Regulations, or by this Instrument of Incorporation, required to be exercised by the ICAV in

general meeting but subject to any directions (not being inconsistent with the Act, the Regulations or this Instrument of Incorporation) as the Shareholders of the ICAV in a general meeting may by special resolution give.

- 26.2 No alteration of this Instrument of Incorporation shall invalidate any prior act of the Directors that would have been valid if that alteration had not been made. No resolution made by the ICAV in general meeting or by a Shareholder shall invalidate any prior act of the Directors that would have been valid if such resolution had not been made. The powers given by this clause shall not be limited by any special power given to the Directors by this Instrument of Incorporation and a meeting of Directors at which a quorum is present may exercise all powers exercisable by the Director.
- 26.3 Without prejudice to the generality of the last preceding sub-clause, the Directors may delegate any of their powers to such person or persons as they think fit, including committees. Any such delegation may be made subject to any conditions that 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 Shareholders shall be governed by the provisions of this Instrument of Incorporation regulating the proceedings of Directors so far as they are capable of applying.
- 26.4 The Directors, on behalf of the ICAV, from time to time and at any time by power of attorney under seal or otherwise, may appoint any company, firm or person or fluctuating body of persons, whether nominated directly or indirectly by the Directors, to be the attorney or agent or delegate of the ICAV for such purposes and with such powers, authorities and discretions (not exceeding those vested in or exercisable by the Directors under this Instrument of Incorporation) and for such period and subject to such conditions as they may think fit. Any such power of attorney may contain such provisions for the protection of persons dealing with any such appointee as the Directors may think fit, may contain indemnities in favour of any attorney and may authorise any such attorney to sub-delegate all or any of the powers, authorities and discretions vested in him.

## **27 Appointment of additional Directors**

- 27.1 The Directors shall have power at any time and from time to time to appoint any person in accordance with the requirements of the Central Bank to be a Director, either to fill a vacancy or as an additional Director, provided that the appointment does not cause the number of Directors to exceed any number as fixed by or in accordance with this Instrument of Incorporation as the maximum number of Directors. Any Director so appointed shall not be required to retire at any subsequent annual general meeting of the ICAV.
- 27.2 The continuing Directors may act notwithstanding any vacancy in their body, provided that if the number of the Directors is reduced below two, the remaining Director shall appoint immediately an additional Director or additional Directors to make up a quorum or shall convene a general meeting of the ICAV for the purpose of making such appointment or appointments. If, in such circumstances, there be no Director or Directors able or willing to act then any two Shareholders may summon a general meeting for the purpose of appointing Directors. Any additional Director so appointed shall not be required to retire at any subsequent annual general meeting of the ICAV.

## **28 Disqualification and removal of Directors**

- 28.1 The office of a Director shall be automatically vacated and the person shall no longer be a Director if:

- (a) he becomes prohibited or disqualified by the Act or otherwise as a matter of law from being a Director;
- (b) a majority of his co-Directors resolve to terminate his appointment; or
- (c) the Central Bank requires him to resign.

28.2 The ICAV may remove any Director in accordance with the provisions of section 62 of the Act.

## **29 Directors' interests**

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

29.2 A Director notwithstanding his office:

- (a) may be a party to, or otherwise interested in, any transaction or arrangement with the ICAV or any subsidiary or associated company thereof or in which the ICAV or any subsidiary or associated company thereof is otherwise interested;
- (b) may be a director or other officer of, or employed by, or a party to any transaction or arrangement with, or otherwise interested in, any body corporate promoted by the ICAV or in which the ICAV or any subsidiary or associated company thereof is otherwise interested; and
- (c) shall not be accountable, by reason of his office, to the ICAV for any benefit that 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.

29.3 No 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.

29.4 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 Office and shall be produced at every general meeting of the ICAV and at any meeting of the Directors if any Director so requests in sufficient time to enable the book to be available at the meeting.

29.5 Except as otherwise provided by this Instrument of Incorporation, a Director shall not vote at a meeting of the Directors or any committee established by the Directors on any resolution concerning a matter in which he has, directly or indirectly, an interest that is material (other than an interest arising by virtue of his interest in Shares or debentures or other securities or otherwise in or through the ICAV) or a duty that conflicts or may conflict with the interests of the ICAV. Such a Director may be counted in the quorum present at a meeting in relation to any such resolution, but shall not be entitled to vote in respect of such resolution.

- 29.6 If a question arises at a meeting of Directors or of any committee established by the Directors as to the materiality of a Director's interest or as to the right of any Director to vote and such question is not resolved by his voluntarily agreeing to abstain from voting, such question may be referred, before the conclusion of the meeting, to the chairman of the meeting and his ruling in relation to any Director other than himself shall be final and conclusive. If the matter relates to the chairman, it will be decided on the basis of a majority decision of the other Directors present at the meeting.
- 29.7 The Directors 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.

### **30 Directors' meetings**

- 30.1 Subject to the provisions of this Instrument of Incorporation, the Directors may regulate their proceedings as they think fit. A Director may, and the Secretary at the request of a Director shall, call a meeting of the Directors. Any Director may waive notice of any meeting and any such waiver may be retrospective.
- 30.2 Notice of a meeting of the Directors shall be deemed to be duly given to a Director if it is given to him personally or sent in writing by post to him at his last known address or any other address given by him to the ICAV for this purpose, or by facsimile, or electronic mail or any other means of communication approved by the Directors.
- 30.3 Meetings of the Directors shall be generally held in Ireland.
- 30.4 The quorum for the transaction of the business of the Directors may be fixed by the Directors and, unless so fixed at any other number, shall be two. A meeting of the Directors for the time being at which a quorum is present shall be competent to exercise all powers, authorities and discretions for the time being exercisable by the Directors. A person who holds office only as an alternate Director shall, if his appointer is not present, be counted in the quorum but notwithstanding that such person may act as alternate Director for more than one Director, he shall not count as more than one for the purposes of determining whether a quorum is present.
- 30.5 The continuing Directors or a sole Director may act notwithstanding any vacancies in their number but if the number of Directors is less than the number fixed as the quorum, they may act only for the purpose of filling vacancies or for calling a general meeting.
- 30.6 Questions arising at any meeting of Directors shall be decided by a majority of votes. Where there is an equality of votes, the chairman of the meeting shall have a casting vote.
- 30.7 Any Director or alternate Director may participate in a meeting of the Directors or any committee established by the Directors by means of conference telephone or other telecommunications equipment (whether in use when this Instrument of Incorporation is adopted or developed subsequently) by means of which all persons participating in the meeting can hear each other speak. Any such meeting shall be deemed to have been convened in the place from which the conference telephone call or similar telecommunication is initiated. A person so participating by telephone or other communication shall be counted in a quorum and entitled to vote.
- 30.8 The Directors may elect a chairman of their meetings and determine the period for which he is to hold office, but if no such chairman is elected or if at any meeting the chairman is unwilling to act or is not present within five minutes after the time appointed for holding the same the Directors present may choose one of their number to be chairman of the meeting.

- 30.9 The Directors shall cause minutes to be made of the following matters, namely:
- (a) of all appointments of officers and committees made by the Directors;
  - (b) of the names of Directors present at every meeting of the Directors and of the names of any Directors and of the names of all other Shareholders present at every meeting of any committee established by the Directors; and
  - (c) of all resolutions and proceedings of all meetings of the ICAV and of the Shareholders of any Class or classes of Shares in the ICAV and of the Directors and of committees established by the Directors.

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

### **31 Directors' resolutions in writing**

A resolution in writing (in electronic form or otherwise) signed (whether by electronic signature, advanced electronic signature or otherwise approved by the Directors) by all the Directors for the time being entitled to receive notice of a meeting of the Directors and to vote thereat shall be as valid and effectual as a resolution passed at a meeting of the Directors duly convened and may consist of several documents in the like form each signed by one or more of the Directors, and for the purposes of the foregoing, signature by any alternative Director shall be as effective as the signature of the Director by whom he is appointed.

### **32 Appointment of Secretary**

The Secretary shall be appointed by the Directors for such term, at such remuneration and on such conditions as they may think fit and any Secretary so appointed may be removed by them.

### **33 Appointment of Auditors**

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

### **34 Seal**

34.1 The Directors may provide the ICAV with a Seal. If so provided, the Directors shall provide for the safe custody of the Seal. The Seal shall be used only by the authority of the Directors or of a committee of Directors authorised by the Directors in that behalf. The Directors may from time to time as they see fit determine the persons and the number of such persons who shall authenticate the affixing of the Seal, and until otherwise so determined shall be authenticated by two Directors or by one Director and the Secretary, or some other person duly authorised by the Directors, and the Directors may authorise different persons for different purposes.

34.2 The Directors may by resolution determine whether generally or in any particular case or cases that the signature of any such person authenticating the affixing of the Seal may be affixed by some mechanical means to be specified in such resolution.

## **35 Declaration of dividends**

- 35.1 The Directors may if they think fit declare and pay such dividends (including interim dividends) in respect of any Shares in the ICAV.
- 35.2 The Directors may in their absolute discretion differentiate between the Shares in any Fund and Shares in different Classes within the same Fund as to the dividends declared on such Shares.
- 35.3 The Directors at such times as they think fit may declare and pay such dividends as appear to the Directors to be justified by the assets of the relevant Fund out of:
- (a) the net income (being the accumulated net revenue (consisting of all revenue accrued including interest and distributions)) and/or
  - (b) realised and unrealised capital gains on the disposal/valuation of Investments and other funds less realised and unrealised accumulated capital losses; and/or
  - (c) capital.

The Directors may with the sanction of an Ordinary Resolution distribute in kind among the Shareholders by way of dividend or otherwise any of the assets of the ICAV provided that the ICAV shall if any Shareholder so requests sell any asset or assets proposed to be so distributed and distribute to such Shareholder the cash proceeds of such sale less the costs of any such sale which shall be borne by the relevant Shareholder.

- 35.4 Shares of any Class may at the discretion of the Directors be issued on the basis that any dividends declared in respect of those Shares shall be paid by the ICAV into an account in the name of the Depositary for the account of the Shareholders of that Class of Shares. The amount standing to the credit of this account shall not be an asset of the ICAV and will be immediately transferred from the aforementioned account to the account of the Depositary.
- 35.5 Shares of any Class may at the discretion of the Directors be issued on the basis that any dividends declared in respect of those Shares will be reinvested and will form part of the assets of the relevant Fund. Shares of any Class may also at the discretion of the Directors be issued on the basis that no dividends will be declared in respect of those Shares and that any profits available for distribution will form part of the assets of the relevant Fund. In each case the relevant amount will be applied when calculating the Net Asset Value per Share as part of the proportion of the relevant Fund that is attributable to the Shareholders of that Class.
- 35.6 No dividends shall be payable to the holder(s) of Non-Participating Shares.
- 35.7 The Directors may deduct from any dividend or other money payable to any Shareholder on or in respect of a Share all sums of money (if any) presently payable by him to the ICAV in relation to the Shares of the ICAV.
- 35.8 Where the ICAV is required to deduct, withhold, pay or account for any taxation as a consequence of making any payment to a Shareholder the Directors may deduct from the payment to be made to the relevant Shareholder(s), an amount equal to the taxation attributable to the relevant payment(s) and pay such amount to the relevant taxation authority. If the ICAV is required to deduct, withhold, pay or account for any tax in any jurisdiction, including any penalties and interest thereon the Directors may deduct, withhold, pay or arrange for the deduction from any dividend payment due to be paid to a Shareholder an

amount equal to the taxation attributable to that payment and pay such amount to the relevant tax authorities in that jurisdiction and the relevant Shareholder shall indemnify and keep indemnified the ICAV against any loss suffered by it in connection with any obligation or liability to so deduct, withhold or account.

- 35.9 All unclaimed dividends on Shares may be invested or otherwise made use of by the Directors for the benefit of the ICAV until claimed. No dividend shall bear interest against the ICAV. The payment by the Directors of any unclaimed dividend or other money payable on or in respect of a Share into a separate account shall not constitute the ICAV a trustee in respect thereof and any dividend unclaimed after a period of six years from the date of declaration of such dividend shall be forfeited and shall revert to the ICAV. Dividends not claimed within six years from their due date will lapse and revert to the relevant class or designation, as the case may be.
- 35.10 Any dividend or other money payable on or in respect of a Share may be paid by electronic or telegraphic transfer to the account nominated by the Shareholder or person entitled thereto, and in the case of joint Shareholders to that one whose name stands first on the Register in respect of their joint holding or may if required be paid by cheque sent through the post to the registered address of the Shareholder or the person entitled thereto.
- 35.11 Where the amount of any distribution payable to an individual Shareholder would be less than €10 (or its foreign currency equivalent), the Directors in their sole discretion may determine that such amount shall not be distributed but shall be retained and reinvested within and for the benefit of the relevant Fund or Class.
- 35.12 Where the amount of any dividend payable to an individual Shareholder would be less than €50 (or its foreign equivalent), the Directors in their sole discretion may determine not to pay any such dividend and instead issue and credit to the account of the relevant Shareholder such number of Shares in the relevant Fund or Class as are as nearly as possible equal in value to but not in excess of the amount of such dividends.

## **36 Accounts**

- 36.1 The Directors shall keep or cause adequate accounting records, within the meaning of section 110 of the Act, to be kept that are sufficient to:
- (a) correctly record and explain the transactions of the ICAV or the relevant Fund;
  - (b) enable at any time the assets, liabilities, financial position and profit or loss of the ICAV or the relevant Fund to be determined with reasonable accuracy;
  - (c) enable the Directors to ensure that any balance sheet, profit and loss account or income and expenditure account of the ICAV or the relevant Fund complies with the requirements of the Act; and
  - (d) enable the accounts of the ICAV or the relevant Fund to be readily and properly audited.
- 36.2 The accounting records shall be kept at the Office or, subject to the provisions of the Act, at such other place as the Directors think fit. The accounting records shall be available at all reasonable times to the inspection by persons entitled pursuant to the Act.
- 36.3 The Directors shall prepare accounts for each financial year in respect of the ICAV or the relevant Fund in accordance with the requirements of the Act. The Directors shall also



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

36.4 Copies of the annual accounts and reports shall be made available and/or sent to all Shareholders by the ICAV in accordance with the requirements of the Central Bank.

36.5 The ICAV shall provide the Central Bank with all reports and information to which it is entitled under the Act and Regulations.

### **37 Notices**

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

37.2 A notice or document to be given, served or delivered in pursuance of this Instrument of Incorporation may be given to, served on or delivered to any Shareholder by the ICAV:

(a) by handing same to him or his authorised agent;

(b) by leaving the same at his registered address;

(c) by sending the same by post in a pre-paid cover addressed to him at his registered address; or

(d) where permitted by law, by transmitting the same by facsimile or otherwise electronically.

37.3 Where a notice or document is given, served or delivered pursuant to the foregoing, the giving, service or delivery thereof shall be deemed to have been effected at the time the same was handed to the Shareholder or his authorised agent, or left at his registered address (as the case may be).

37.4 Where a notice or document is given, served or delivered by post pursuant to the foregoing, the giving, service or delivery thereof shall be deemed to have been effected at the expiration of forty-eight hours after the cover containing it was posted. In proving service or delivery it shall be sufficient to prove that such cover was properly addressed, stamped and posted.

37.5 Where a notice or document is given, served or delivered by facsimile or electronically pursuant to the foregoing, the giving, service or delivery thereof shall be deemed to have been effected at the time of transmission provided in the case of notice sent by facsimile the correct number is received on the transmission report and if sent electronically when it has been transmitted to the e-mail address designated by the Shareholder for the purpose of receiving such communications.

37.6 Every legal personal representative, committee, receiver, assignee in bankruptcy or liquidator of a Shareholder shall be bound by a notice given as aforesaid if sent to the last registered address of such Shareholder, notwithstanding that the ICAV may have notice of the death, lunacy, bankruptcy, liquidation or disability of such Shareholder.

37.7 A notice may be given by the ICAV to the joint Shareholders of a Share by giving the notice to the joint Shareholder whose name stands first in the Register in respect of the Share and notice so given shall be sufficient notice to all the joint Shareholders.

## **38 Winding Up of the ICAV**

- 38.1 The ICAV may be dissolved and proceed to be wound up as a members' voluntary winding if and when determined by the Directors, in their sole and absolute discretion in any of the following events:
- (a) the ICAV shall cease to be authorised by the Central Bank; or
  - (b) the Directors have resolved that dissolving the ICAV is in the best interests of the Shareholders.
- 38.2 In such circumstances as aforesaid, the ICAV shall be wound up in accordance with the provisions of Part 11 of the Companies Act, 2014 relating to the winding up of companies subject to any necessary modifications and the specific modifications contained in the Act which apply as if the ICAV were an investment company.
- 38.3 In the event of a termination of the ICAV, the Directors shall give notice of the termination to the Shareholders in the ICAV and by such notice fix the date at which such termination is to take effect, which date shall be for such period after the service of such notice as the Directors shall in their sole and absolute discretion determine. In such circumstances all of the Shareholders of the ICAV will be deemed to have had requested that their Shares in the ICAV be repurchased by the Directors on the termination date selected by the Directors and otherwise in accordance with the repurchase procedure set out in the Prospectus.
- 38.4 With effect from the date as at which the ICAV is to terminate the Investment Manager shall, on the instructions of the Directors, realise all the Investments then comprised in the ICAV (which realisation shall be carried out and completed in such manner and within such period after the termination of the ICAV as the Directors think advisable). The Directors may delay the payment of final proceeds to Shareholders until all assets and receivables are liquidated and may make adjustments to the amount of repurchase proceeds payable to Shareholders of the ICAV in order to reflect the final value of such assets and receivables upon termination.
- 38.5 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 of Shares of any Class or classes within the ICAV (pro rata to the value of their respective shareholdings in the ICAV) in specie the whole or any part of the Investments relating to the ICAV, and whether or not the Investments shall consist of property of a single kind provided that if any Shareholder so requests the liquidator shall sell any asset or assets proposed to be so distributed and distribute to such Shareholder the cash proceeds of such sale less the costs of any such sale which shall be borne by the relevant Shareholder. The liquidator may, with the like authority, vest any part of the Investments in trustees on 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, provided that no Shareholder shall be compelled to accept any Investments in respect of which there is a liability. Further the liquidator may with like authority transfer the whole or part of the assets of the ICAV to a company or collective investment scheme (the "Transferee Company") on terms that Shareholders shall receive from the Transferee Company shares or units in the Transferee Company of equivalent value to their shareholdings in the ICAV.

## **39 Termination of Funds**

- 39.1 A Fund may be wound up pursuant to section 37 of the Act and in such event the provisions of clause 38 shall apply mutatis mutandis in respect of the Fund.

- 39.2 Any Fund may be terminated by the Directors, in their sole and absolute discretion, in any of the following events:-
- a) if at any time the Net Asset Value of the relevant Fund shall be less than the Minimum Fund Size (if any) determined by the Directors at their discretion in respect of that Fund;
  - b) the Shareholders resolve by Special Resolution that the relevant Fund be wound up;
  - c) if any Fund shall cease to be authorised or otherwise officially approved;
  - d) if any law shall be passed or regulatory requirement introduced which renders it illegal or in the opinion of the Directors impracticable or inadvisable or not commercially viable or excessively onerous from a compliance perspective to continue the relevant Fund;
  - e) if there is a change in material aspects of business or in the economic or political situation relating to a Fund which the Directors consider would have material adverse consequences on the investments of the Fund; or
  - f) if the Directors shall have resolved that it is impracticable or inadvisable for a Fund to continue to operate having regard to prevailing market conditions and the best interests of the Shareholders.
- 39.3 The decision of the Directors in any of the events specified herein shall be final and binding on all the parties concerned but the Directors shall be under no liability on account of any failure to terminate the relevant Fund pursuant to points (a) to (e) above or otherwise.
- 39.4 The Directors shall give notice of termination of a Fund to the Shareholders in the relevant Fund and by such notice fix the date at which such termination is to take effect, which date shall be for such period after the service of such notice as the Directors shall in their sole and absolute discretion determine.

#### **40 Information Exchange**

- 40.1 Each Shareholder will be required to provide any information or certifications (including without limitation information about such Shareholder's direct and indirect owners) that may reasonably be requested by the ICAV to allow the ICAV or any related or affiliated entity to (a) satisfy any information reporting requirements imposed by any reporting regime including (but not limited to) FATCA and / or CRS; and (b) satisfy any requirements necessary to avoid withholding taxes under any reporting regime including (but not limited to) FATCA and / or CRS with respect to any payments to be received or made by the ICAV.
- 40.2 The Directors may share the information referred to in clause 40.1 with the U.S Internal Revenue Service, the Revenue Commissioners or any other relevant tax or other governmental authority and may take any reasonable additional or ancillary actions as they deem necessary in their absolute discretion to comply with FATCA, CRS or any other applicable law.
- 40.3 If a Shareholder fails to comply with any of the above requirements in a timely manner or is in any other respect deemed to be a recalcitrant account holder for the purposes of FATCA, CRS or any other applicable law or is for any other reason deemed not to be compliant with FATCA, CRS or any other applicable law or would prejudice the ICAV's ability to comply with FATCA, CRS or any other applicable law, the ICAV may deem such Shareholder to be an

Ineligible Applicant and proceed to (i) repurchase and cancel the Shareholder's Shares (in accordance with the provisions of clause 17) and / or (ii) compel or effect the transfer of the Shareholder's Shares to a third party (including without limitation an existing Shareholder) (in accordance with the provisions of clause 20) and / or (iii) take any other such actions as the Directors may reasonably be deemed necessary to enable the ICAV to comply with FATCA, CRS or any other applicable law and to mitigate any adverse effect of a Shareholder's failure to comply on the ICAV or any other Shareholder.

- 40.4 A Shareholder who fails to comply with any of the above requirements in a timely manner shall (i) agree to take any steps the Directors reasonably deem to be necessary to effectuate the foregoing; and (ii) indemnify the ICAV for all losses, cost, expenses, damages, claims and demands (including, but not limited to, any withholding tax, penalties or interest suffered by the ICAV) arising as a result of such Shareholder's failure to comply with the above requirements in a timely manner.

#### **41 Unclaimed Assets**

In some circumstances (for example on a Fund termination, a winding up or a compulsory repurchase) the ICAV may be unable in practice to make a disbursement of assets due to one or more Shareholders. Notwithstanding anything herein to the contrary, once all reasonable measures to make the disbursement have been taken, the Directors may in their discretion consider that any claims of the Shareholders in respect of any such assets whether in the form of unclaimed dividends, unpaid repurchase proceeds or otherwise and any obligations of the ICAV in connection therewith shall be extinguished and any such amounts may be retained by the relevant Fund for the benefit of the other Shareholders or paid to a charitable foundation to be determined by the Directors. The foregoing may apply subject to a de minimus level to be reasonably determined by the Directors in their discretion or without qualification on the basis of the ICAV seeking to meet its anti-money laundering obligations under Irish law.

#### **42 Reconstruction and Amalgamation**

The Directors shall have the power to propose and implement a reconstruction and/or amalgamation of the ICAV or a Fund on such terms and conditions as are approved by the Directors and in accordance with the requirements of the Central Bank.

#### **43 Indemnity and Insurance**

- 43.1 Subject to clause 43.2, the Directors shall be entitled to indemnify each Director (which for the purposes of this clause shall include each former Director), Secretary, all other officers of the ICAV, the Auditor and any other person, firm or corporation out of the assets of the ICAV.
- 43.2 In accordance with the Act, any indemnity granted by the ICAV to any officer of the ICAV or the Auditor indemnifying him or her against, any liability which by virtue of any rule of law would otherwise attach to him or her in respect of any negligence, default, breach of duty or breach of trust of which he or she may be guilty in relation to the ICAV will be void.
- 43.3 The Directors shall have the power to purchase and maintain for the benefit of any persons who are or were at any time Directors or officers of the ICAV insurance against any liability incurred by such persons in respect of any act or omission in the actual or purported execution and/or discharge of their duties and/or in the exercise or purported exercise of their powers and/or otherwise in relation to their duties, powers or offices in relation to the ICAV, and the Directors shall be entitled to vote and be counted in the quorum in respect of any resolution concerning the purchase of such insurance.

**44 Alterations to the Instrument of Incorporation**

- 44.1 No alteration shall be made to this Instrument of Incorporation without the prior approval of the Central Bank.
- 44.2 No alteration may be made to this Instrument of Incorporation save in accordance with the requirements of section 31 of the Act.