

## **CONFIDENTIAL OFFERING MEMORANDUM**

[DATE] 2011

### **BHV OPPORTUNITES FUND SCA, SICAV-FIS** Société d'investissement à capital variable – fonds d'investissement spécialisé

NO APPLICATION FOR THE ADMISSION OF BHV OPPORTUNITIES FUND SCA, SICAV-FIS (THE "COMPANY") TO THE OFFICIAL LIST OF SPECIALISED INVESTMENT FUND (SIF) HAS YET BEEN FILED WITH THE LUXEMBOURG REGULATORY AUTHORITY FOR THE FINANCIAL SECTOR, THE *COMMISSION DE SURVEILLANCE DU SECTEUR FINANCIER* (THE "CSSF"). THIS CONFIDENTIAL OFFERING MEMORANDUM IS A DRAFT FOR DISCUSSION PURPOSE ONLY AND MAY BE SUBJECT TO SIGNIFICANT AMENDMENTS.

APPLICATIONS FOR SUBSCRIPTION WILL BE RESERVED TO WELL-INFORMED INVESTORS WHO/WHICH WILL HAVE TO MAKE THEIR OWN ASSESSMENT OF THE CONDITIONS OF THEIR PARTICIPATION IN THE COMPANY. HENCE, IT IS THE RESPONSIBILITY OF THE INVESTORS TO DETERMINE WHETHER A PARTICIPATION IN THE COMPANY IS SUITABLE FOR THEM OR NOT.

By accepting this Confidential Offering Memorandum (the "Memorandum") the recipient agrees to be bound by the following:

This Memorandum is submitted on a confidential private placement basis to a number of Investors who/which have expressed an interest in making a Commitment to subscribe for Shares in BHV Opportunities Fund SCA, SICAV-FIS a Luxembourg *société d'investissement en capital variable – fonds d'investissement spécialisé* (investment company with variable capital – specialised investment fund) established in the form of a *société en commandite par actions* (corporate limited partnership by shares) in accordance with the 2007 Act (the **Company**). Unless otherwise defined, capitalised terms used throughout this Memorandum shall have the meanings ascribed to such terms in the Section "Definitions" of the General Section.

This Memorandum has been prepared solely for the consideration of Well-Informed Investors. This Memorandum supersedes and replaces any other information provided by the initiators and its representatives and agents in respect of the Company. However, the Memorandum is provided for information only, and is not intended to be and must not alone be taken as the basis for an investment decision. By accepting this Memorandum and any other information supplied to Investors by the initiators the recipient agrees that such information is confidential. Neither it nor any of its employees or advisers will use the information for any purpose other than for evaluating an investment in the Company or divulge such information to any other party and acknowledges that this Memorandum may not be photocopied, reproduced or distributed to others without the prior written consent of the initiators. Each recipient hereof by accepting delivery of this Memorandum agrees to keep confidential the information contained herein and to return it and all related materials to the Company if such recipient does not undertake to purchase any of the Shares. The information contained in the Memorandum and any other documents relating to the Company may not be provided to persons (other than professional advisors) who are not directly concerned with any Investor's decision regarding the investment offered hereby.

By accepting this Memorandum, Investors in the Company are not to construe the contents of this Memorandum or any prior or subsequent communications from the Company, the General Partner, the Service Providers, the initiators or any of their respective officers, members, employees, representatives or agents as investment, legal, accounting, regulatory or tax advice. Prior to investing in the Shares, Investors should conduct their own investigation and analysis of an investment in the Company and consult with their legal advisors and their investment, accounting, regulatory and tax advisors to determine the consequences of an investment in the Shares and arrive at an independent evaluation of such investment, including the applicability of any legal sales or investment restrictions without reliance on the Company, the General Partner, the Service Providers, the initiators or any of their respective officers, members, employees, representatives or agents. Neither the Company, the General Partner, the Service Providers, the initiators nor any of their respective officers, members, employees, representatives or agents accepts any responsibility or liability whatsoever for the appropriateness of any potential Investors investing in the Company. Prospective Investors are urged to request any additional information they may consider necessary or desirable in making an informed investment decision. Each prospective Investor is encouraged, prior to the consummation of their investment, to ask questions of, and receive answers from, the initiators concerning the Company and this offering and to request any additional information in order to verify the accuracy of the information contained in this Memorandum or otherwise.

**The Shares have not been registered under the US Securities Act of 1933, as amended (the "US Securities Act") or the securities laws of any state or political subdivision of the United States, and may not be offered, sold, transferred or delivered, directly or indirectly, in the United States or to, or for the account or benefit of, any US person, except pursuant to an exemption from, or in a transaction not subject to the registration requirements of the Securities Act and any applicable US state securities laws. The Company is not registered nor does it intend to register (i) under the US Investment Company Act of 1940, as amended (the "US Investment Company Act") as an investment company in reliance on the exemption from such registration pursuant to Section 3(c)(7) thereunder. Accordingly, the Shares are being offered and sold only (i) outside the United States to persons that are (a) other than US persons as defined in Regulation S under the US Securities Act and (b) not US residents (within the meaning of the Investment Company Act) in offshore transactions that meet the requirements of Regulation S under the US Securities Act or (ii) to US persons who are (a) "accredited investors" (as defined in Rule 501 of Regulation D promulgated under the Securities Act) and (b) either (I) "qualified purchasers"**

(within the meaning of Section 2(a)(51) of the Investment Company Act) or (II) "knowledgeable employees" as such term is defined in Rule 3c-5 of the Investment Company Act.

**The text of the Articles is integral to the understanding of this Memorandum. Potential Investors should review the Articles carefully. In the event of any inconsistency between this Memorandum and the Articles, the Articles shall prevail.**

Prior to making any Commitment to subscribe for Shares, Investors should obtain a copy of the Subscription Agreement which contains, inter alia, representations on which the Company may accept an Investor's Commitment. The Articles, the Service Agreements, the Subscription Agreement and related documentation are described in summary form herein; these descriptions do not purport to be complete and each such summary description is subject to, and qualified in its entirety by reference to, the actual text of the Articles, the Service Agreements, the Subscription Agreement and related documentation, including any amendment thereto.

No action has been taken which would permit a public offering of the Shares in any jurisdiction where action for that purpose would be required. The Memorandum and any other documents relating to the Company do not constitute an offer or solicitation in any jurisdiction in which an offer or solicitation is not authorised, or in which the person making the offer or solicitation is not qualified to do so, or to any person to whom it is unlawful to make such an offer or solicitation. Any representation to the contrary is unlawful. No action has been taken by the initiators or the Company that would permit a public offering of Shares or possession or distribution of information in any jurisdiction where action for that purpose is required.

Investors should be aware that they may be required to bear the financial risk of their investment for a significant period of time as Investors may not request redemption of their Shares. Additionally, there will be no public market for the Shares. Accordingly, Investors should have the financial ability and willingness to accept the risks of investing in the Company (including, without limitation, the risk of loss of their entire investment) and accept that they will have recourse only to the assets of the Compartment in which they invest as these will exist at any time.

Certain statements contained in this Memorandum are forward-looking statements. These forward-looking statements are based on current expectations, estimates and projections about the markets in which the Company will operate, and the beliefs and assumptions of the Company. Words such as "expects", "anticipates", "should", "intends", "plans", "believes", "seeks", "estimates", "forecasts", "projects", variations of such words and similar expressions are intended to identify such forward-looking statements. These statements are not guarantees of future performance and involve certain risks, uncertainties and assumptions which are difficult to predict. Therefore, actual outcomes and results may differ materially from what is expressed or forecasted in such forward-looking statements. Among the factors that could cause actual results to differ materially are the general economic climate, inflationary trends, interest rate levels, the availability of financing, changes in tax and corporate regulations and other risks associated with the ownership and acquisition of Investments and changes in the legal or regulatory environment or that operation costs may be greater than anticipated.

An investment in the Shares involves significant risks and there can be no assurance or guarantee as to positive return on any of the Company's Investments or that there will be any return on invested capital. Potential Investors should in particular refer in this Memorandum to Section 25 of the General Section. The investment objectives are based on a number of assumptions which the Company believes reasonable, but there is no assurance that the investment objectives will be realised.

The General Partner has taken all reasonable care to ensure that the information contained in this Memorandum is accurate as of the date of this Memorandum (or such other date as stated herein). Other than as described below, neither the General Partner, the Company, nor the initiators has any obligation to update this Memorandum.

Under no circumstances should the delivery of this Memorandum, irrespective of when it is made, create an implication that there has been no change in the affairs of the Company since such date. The General Partner reserves the right to modify any of the terms of the offering and the Shares described herein. This Memorandum may be updated and amended by a supplement and where such supplement is prepared this Memorandum will be read and construed with such supplement.

This Memorandum will be updated in accordance with Luxembourg Law.

No person has been authorised to give any information or to make any representation concerning the Company or the offer of the Shares other than the information contained in this Memorandum and any other documents relating to the Company, and, if given or made, such information or representation must not be relied upon as having been authorised by the Company, any Service Provider or the initiators.

**Any translation of this Memorandum or of any other transaction document into any other language will only be for convenience of the relevant Investors having requested such translation. In the case of any discrepancy due to translation, the English version of the Memorandum and of any other transaction document will prevail.**

#### **Data protection**

Certain personal data of Investors (including, but not limited to, the name, address and invested amount of each Investor) may be collected, recorded, stored, adapted, transferred or otherwise processed and used by the Company, the General Partner, the Services Providers and the financial intermediaries of such Investors. In particular, such data may be processed for the purposes of account and distribution fee administration, anti-money laundering and terrorism financing identification, maintaining the register of Investors, processing subscription, redemption and conversion orders (if any) and payments of dividends to Investors and to provide client-related services. Such information shall not be passed on to any unauthorised third persons.

The Company may sub-contract to another entity (the **Processor**) (such as the Administrator) the processing of personal data. The Company undertakes not to transfer personal data to any third parties other than the Processor except if required by law or on the basis of a prior consent of the Investors.

Each Investor has a right of access to his/her/its personal data and may ask for a rectification thereof in case where such data is inaccurate or incomplete.

By subscribing to the Shares, each Investor consents to such processing of its personal data. This consent is formalised in writing in the Subscription Agreement used by the relevant intermediary.

## GENERAL INFORMATION

### Registered office of the Company

35a, avenue J. F. Kennedy  
L-1855 Luxembourg  
Grand Duchy of Luxembourg

### General Partner

BHV Opportunities Fund Partners Sàrl  
[Address]  
Grand Duchy of Luxembourg

### Managers of the General Partner

- [Title], [Name], [City of residence]
- [Title], [Name], [City of residence]
- [Title], [Name], [City of residence]

### Custodian

Banque Havilland SA  
35a, avenue J. F. Kennedy  
L-1855 Luxembourg  
Grand Duchy of Luxembourg

### Administrator and Domiciliary Agent

[Name]  
[Address]  
Grand Duchy of Luxembourg

### Auditor

[Name]  
[Address]  
Grand Duchy of Luxembourg

### Legal adviser as to Luxembourg Law

Allen & Overy Luxembourg  
33, avenue J. F. Kennedy  
L-1855 Luxembourg  
Grand Duchy of Luxembourg

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## DEFINITIONS

In this Memorandum, the following terms have the following meanings:

**1915 Act** means the Luxembourg act of 10 August 1915 on commercial companies, as amended;

**2002 Act** means the Luxembourg act of 20 December 2002 relating to undertakings for collective investments, as may be amended from time to time;

**2007 Act** means the Luxembourg act of 13 February 2007 relating to SIFs, as may be amended from time to time;

**2010 Act** means the Luxembourg act of 17 December 2010 relating to undertakings for collective investments, as may be amended from time to time;

**Accounting Year** means a twelve (12) months period ending on 31 December;

**Additional Report** has the meaning set out in Section 16.5 of the General Section;

**Administrator** means [Name] in its capacity as administrative agent and registrar and transfer agent of the Company;

**Affiliate** means

(a) in the case of a company:

- (i) any company which is its direct or indirect holding company or subsidiary or a direct or indirect subsidiary of that holding company; or
- (ii) a company (or a direct or indirect subsidiary of a company) or other legal entity which controls or is controlled by the person concerned;

(b) in the case of an individual, the spouse or direct descendant and ascendants of any kind, and any company directly or indirectly controlled by such person and his associates within the meaning of paragraph (a) of this definition; or

(c) in the case of an entity other than a company, the members and any company directly or indirectly controlled by such person and his associates within the meaning of paragraph (a) of this definition; or

except in, all cases, any company in which the Company holds an Investment.

**Annual Valuation** has the meaning set out in Section 13.3 of the General Section;

**Articles** means the articles of association of the Company, as amended from time to time;

**Auditor** means the auditor (*réviseur d'entreprises agréé*) of the Company which is [Name];

**Bridging Investments** means investments made with a view to selling them (or a portion thereof) to a third party within twelve (12) months of their acquisition;

**Business Day** means a full day on which banks are generally open for business in Luxembourg (excluding Saturdays and Sundays and public holidays);

**Capital Contribution** means the cash contributed by an Investor to the relevant Compartment to the exclusion of any Subsequent Closing Actualisation Interest or Equalisation Fee Payment due to the Company;

**Claims and Expenses** means, with respect to the relevant person, any and all liabilities, obligations, losses, damages, fines, taxes and interest and penalties thereon, claims, demands, actions, suits, proceedings (whether civil, criminal, administrative, investigative or otherwise), costs, expenses and disbursements (including legal and accounting fees and expenses, costs of investigation and sums paid in settlement) of any kind or nature whatsoever, which may be imposed on, incurred by, or asserted at any time against that person in any way related to or arising out of this Memorandum, the Articles, the Subscription Agreement, the Company, the Investments or the management, administration, or activities of any Indemnified Person on behalf of the Company or Investments;

**Class** means a class of Shares within a relevant Compartment of the Company (*catégorie d'actions*) as such term is understood under the 1915 Act;

**Closing** means, in relation to any Compartment, any date on which Investors may commit to subscribe for Shares in the Company, as determined by the General Partner and stipulated in the relevant Special Section;

**Commitment** means, in relation to an Investor, the amount committed by it to the Company (and whether or not such amount has been advanced in whole or in part and whether or not it has been repaid to the Investor in whole or in part);

**Commitment Period** means, in relation to each Compartment and unless otherwise stated in a Special Section, the period beginning on the First Closing Date of that Compartment and ending on the date as determined in the relevant Special Section of the Compartment.

**Company** means BHV Opportunities Fund SCA, SICAV-FIS;

**Company's Consent** means the written consent (which shall include electronic mail or other electronic communication and may consist of one or more documents (including "pdf" type electronic mail attachments) in similar form each signed by one or more of the Investors) of the Investors who together exceed 50% of the voting rights of the Company at the relevant time, provided that in calculating the percentage vote, Section 6 of the General Section, shall be taken into account in the numerator and denominator;

**Compartment** means a separate portfolio of assets established for one or more Classes of the Company which is invested in accordance with a specific investment objective. The features of each Compartment will be described in their relevant Special Section;

**Compartment's Consent** means, in relation to each Compartment and unless otherwise provided for in a Special Section, the written consent (which shall include electronic mail or other electronic communication and may consist of one or more documents (including "pdf" type electronic mail attachments) in similar form each signed by one or more of the Investors) of the Investors who together exceed 50% of the Total Capital Contributions to the relevant Compartment at the relevant time, provided that in calculating the percentage vote, Section 6 of the General Section, shall be taken into account in the numerator and denominator;

**Control** means, in relation to a company or entity: (a) the holding, directly or indirectly, of the majority votes which may be cast at a company's ordinary Investors' meetings or the votes necessary to direct or cause the direction of a company's ordinary Investors' meetings; and (b) any contractual relationship by virtue of which a person can direct the business activities of a company or other entity and "**to control**" or "**controlled**" shall be construed accordingly;

**CIS** means the Commonwealth of Independent States which is the international organisation, or alliance, consisting of the following former Soviet Republics: Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Russia, Tajikistan, Ukraine and Uzbekistan; Turkmenistan discontinued permanent membership as of 26 August 2005 and is now an associate member;

**CSSF** means the *Commission de surveillance du secteur financier*, the Luxembourg regulator for the financial sector;

**Custodian** means Banque Havilland SA in its capacity as custodian of the Company;

**Default** means the failure by an Investor described in Section 6 of the General Section which would entitle a declaration of a Default Date;

**Default Date** has the meaning set out in Section 6 of the General Section;

**Default Expenses** means, with respect to any Investor, the amount of (a) any expenses incurred by the Company (and/or any Intermediary Vehicle) in respect of the relevant Compartment, the General Partner or any of the Service Providers arising from, or in connection with, a Default (including lawyers' fees, collection costs and interest, lender costs and borrowing expenses incurred by the Company in respect of the relevant Compartment resulting from any borrowings by the Company or any Intermediary Vehicle to cover any shortfall caused by that Default); and (b) any other fee, charge or payment due to relevant Compartment (and/or any Intermediary Vehicle), the General Partner or any of the Service Providers in relation to which that Defaulting Investor is in default. Default Expenses include, for the avoidance of doubt, any fees, interest, charges and costs associated with the use of any financing to cover any shortfall caused by that Default;

**Defaulting Investor** has the meaning set out in Section 6 of the General Section;

**Default Notice** means a written notice from the General Partner to an Investor notifying it of its failure to contribute to the relevant Compartment amounts which are the subject of a Drawdown Notice on or before the Drawdown Date;

**Domiciliary Agent** means [Name] in its capacity as domiciliary agent of the Company;

**Drawdown Date** means, in relation to each Compartment, the date, as determined by the General Partner specified in a Drawdown Notice given by the General Partner, as the date on which an Investor is to make a Capital Contribution to that Compartment;

**Drawdown Notice** means, in relation to each Compartment and unless otherwise provided for in a Compartment's Special Section, the written notice advising Investors of the Capital Contribution (i.e., the portion of their Commitment required to be contributed to the Company) to be made on a Drawdown Date that is issued prior to that Drawdown Date and the corresponding number of Ordinary Shares that will be issued;

**Equalisation Fee Payment** means any payment required by the General Partner to a Subsequent Investor in order to equalise the contribution to aggregate costs and fees between Previous Investors and Subsequent Investors;

**EUR** means the single currency of the member states of the Economic and Monetary Union;

**Expenses** has the meaning set out in Section 23 of the General Section;

**Experienced Investor** means any investor who (i) adheres in writing to the status of experienced investor and (ii) either (a) commits to invest a minimum of EUR125,000 in the Company or (b) has obtained an assessment by a credit institution within the meaning of Directive 2006/48/EC, by an investment firm within the meaning of Directive 2004/39/EC, or by a management company within the meaning of Directive 2001/107/EC certifying his expertise, his/her/its expertise, experience and knowledge in adequately appraising an investment in the Company;

**Final Closing Date** means, in respect of each Compartment and unless otherwise stated in a Special Section, the date determined by the General Partner to be the date after which no additional Investors shall be admitted to the relevant Compartment provided that this date shall not be later than twenty four (24) months after the First Closing Date without an Investor Consent;

**First Closing Date** means, in respect of each Compartment and unless otherwise provided for in a Special Section, the date upon which the first Investors are admitted to the relevant Compartment;

**Follow-on Investments** means Investments made by the Company which are intended to preserve, protect or enhance the value of existing Investments;

**General Partner** means BHV Opportunities Fund Partners Sàrl, the unlimited partner (*actionnaire gérant commandité*) of the Company and references to the exercise of any determinations, discretions and the making of decisions shall be references to the General Partner acting on behalf of the Company;

**General Meeting** means the general meeting of the Shareholders of the Company or, as the case may be, of relevant Compartment or of a relevant Class;

**General Section** means the general section of the Memorandum that sets out the general terms and conditions applicable to all Compartments of the Company, unless otherwise provided in any of the Special Sections;

**Indemnified Person** has the meaning given in Section 20.1 of the General Section;

**Independent Valuer** means any of the independent valuers of a relevant Compartment appointed by the Company from time to time to determine the Market Value of an Investment held by a Compartment (including any third-party firm retained to oversee and review the work of other independent valuers);

**Institutional Investors** means investors who qualify as institutional investors according to Luxembourg Law;

**Invested Capital** means any amounts drawn and any amounts committed to Investments by the relevant Compartment, plus amounts reserved for Follow-on Investments and shall be reduced by (i) the acquisition cost of realised Investments (excluding underwritings and Bridging Investments) and (ii) any permanent write off;

**Investment** means any investment of a relevant Compartment (whether directly or through an Intermediary Vehicle), including participations in or commitments to Portfolio Companies or Intermediary Vehicles, Liquid Assets, shares, bonds, convertible loan stock, options, warrants or other securities of, and loans (whether secured or unsecured) made to any person, rights and interests;

**Investment Adviser** means the investment adviser appointed by the General Partner in relation to the management of a relevant Compartment as determined in the relevant Special Section;

**Investment Committee** means a committee established by the General Partner at the level of a relevant Compartment as described in Section 2.6 of the General Section and in the Special Section of the relevant Compartment;

**Investor** means any person who is or becomes an investor in the Company by assuming a Commitment and, where the context requires, shall include that person as a Shareholder of the Company;

**Intermediary Vehicle** means any subsidiary or other company, entity or arrangement (such as a limited partnership, unit trust or trust) in which one or more Compartment(s) holds any direct or indirect interest (whether characterised as equity, debt or otherwise, including a co-investment or fractional interest), specifically established for the purpose of structuring the holding of one or more Investment(s), or other analogous entity controlled, directly or indirectly, by the Company or its Affiliates;

**Kick-off Period** means the transitional period set out for each Compartment in its Special Section which is used for the building-up of the Compartment's portfolio and during which risk spreading requirements are not yet fulfilled;

**Liquid Assets** means cash or cash equivalents, including, *inter alia* and without limitation, investments in units of money market funds, time deposits and regularly negotiated money market instruments the remaining maturity of which is less than twelve (12) months, treasury bills and bonds issued by OECD member countries or their local authorities or by supranational institutions and organisations with European Union, regional or worldwide scope as well as bonds admitted to official listing on a stock exchange or dealt on a regulated market, issued by first-class issuers and highly liquid;

**Luxembourg** means the Grand Duchy of Luxembourg;

**Luxembourg Law** means the applicable laws and regulations of the Grand Duchy of Luxembourg;

**Manager** means each manager of the General Partner;

**Management Fee** means the management fee to which the General Partner may be entitled, in accordance with Section 23 of the General Section and the terms of the relevant Special Section;

**Management Share** means the management share held by the General Partner in the Company or the Compartment in its capacity as unlimited Shareholder;

**Manager** means a member of the General Partner's board of managers;

**Market Value** means, (a) in relation to Investments of a relevant Compartment, the Market Value of such Investments as determined by an Independent Valuer in accordance with appropriate valuation standard, subject in each case to possible adjustment by the General Partner or the Administrator acting on their behalf to take account of discrepancies including those resulting from the legal holding structure of Investments or variations in local market practice; and (b) in relation to the Investments which are not valued by an Independent Valuer the market value determined as detailed in the Articles. For the avoidance of doubt Market Value does not take into account any leverage or other liabilities incurred by the relevant Compartment in relation to the relevant asset;

**Memorandum** means this confidential offering memorandum, as amended or supplemented from time to time;

**Mémorial** means the *Mémorial C, Recueil des Sociétés et Associations*, the Luxembourg official gazette;

**NAV** means the net asset value of the Company, each Class and each Share as determined in accordance with Section 12 of the General Section;

**Net Distributable Cash** means, with respect to any period and each Compartment, all cash receipts by the relevant Compartment arising during that period from the Compartment's Investments and other assets (including amounts released from Reserves and all cash proceeds received by the Compartment during that period from capital events, including (a) the sale, transfer, exchange or other disposal of all or any portion of any Investment; (b) the incurrence of any indebtedness by the Compartment; (c) the refinancing of any indebtedness of the Compartment; and (d) any similar transaction), reduced by the portion thereof used during that period to pay or establish Reserves, service the requirements of any credit facility or other third party debt, and pay the Expenses (excluding the Management Fee) For the avoidance of doubt, any Subsequent Closing Actualisation Interest or Equalisation Fee Payment paid by Investors, as the case may be, will not be taken into account for the purpose of calculating Net Distributable Cash;

**Open-ended Compartment** means a Compartment where any Shareholder may request redemption of all or part of its Shares from the Company, in accordance with the terms of the relevant Special Section;

**Ordinary Shares** means Shares which may be subscribed by Investors who/which are not Restricted Persons;

**Participating Shares** means Shares which are (i) reserved for subscription by the initiators, the General Partner and the Investment Adviser(s) or their directors, managers, officers, employees or non-staff advisers and which (ii) grant their holder the right to receive the Carried Interest and the Preferred Return as described in the relevant Special Section;

**Portfolio Company** means the target company the General Partner takes directly or indirectly (i.e. through one or more Intermediary Vehicles) for the account of a relevant Compartment a participation in accordance with the investment policy as determined in the relevant Special Section;

**Processor** means an entity (such as the Administrator) to which the processing of personal data may be sub-contracted by the Company;

**Professional Investors** means Investors who qualify as professional investors within the meaning of Annex III to the law of 5 April 1993 on the financial sector, as amended;

**Reference Currency** means, in relation to each Compartment and Class, the currency in which the NAV of such Compartment or Class is calculated, as stipulated in the relevant Special Section;

**Re-investment Cash** has the meaning set out in Section 18 of the General Section;

**Restricted Person** has the meaning set out in Section 10 of the General Section;

**Service Agreements** means the custodian agreement, the administrative agent and registrar and transfer agent agreement, the domiciliary agency agreement and any other agreement between the Company on account of one or more Compartments and any other Service Provider;

**Service Providers** means the Custodian, the Administrator, the Domiciliary Agent and any other person who provides services to the Company from time to time;

**Set-Up Costs** has the meaning set out in Section 23 of the General Section;

**SIF** means the specialised investment fund under the 2007 Act;

**Special Section** means each and every supplement to this Memorandum describing the specific features of a Compartment. Each such supplement is to be regarded as an integral part of the Memorandum;

**Shareholder** means an owner of Shares;

**Shares** means all shares issued by the Company from time to time, representing the total outstanding share capital;

**Subscription Agreement** means, in relation to each Compartment, the subscription agreement entered into by each Investor and the Company for the account of such Compartment, as the case may be, as it may be further amended from time to time;

**Subscription Fee** means a fee charged either on the Commitment or on the Contributed Capital to the benefit of the General Partner (or an agent or third party if so instructed by the General Partner) and which is determined (if any) in the relevant Special Section;

**Total Commitments** means, in relation to each Compartment, the total Commitments of Investors to such Compartment;

**Total Capital Contributions** means, in relation to each Compartment and unless otherwise stated in a Special Section, the total of all Capital Contributions made by the Investors to the relevant Compartment;

**Total Undrawn Commitments** means, in relation to each Compartment and unless otherwise stated in a Special Section, the total of all Undrawn Commitments at the relevant time that are available to be drawn down into the Compartment pursuant to Section 18 of the General Section and the terms of the relevant Special Section;

**Transfer** has the meaning set out in Section 9 of the General Section;

**Underlying Claim** has the meaning set out in Section 18.8 of the General Section;

**Undrawn Commitment** means with regard to an Investor, the amount of its Commitment which at the relevant time is available to be drawn down and includes, for the avoidance of doubt, those amounts repaid and available for further drawdown pursuant to Section 18 of the General Section and the terms of the relevant Special Section, but not exceeding a Investor's Commitment;

**Unconsummated Transaction** means a proposed Investment, or a proposed liquidation of an asset that is considered by the Company but no consummated;

**USD** means the United State Dollar, the currency of the United States of America;

**Valuation Date** has the meaning set out in Section 12 of the General Section;

**Well-Informed Investors** means any well-informed investors within the meaning of article 2 of the 2007 Act. There exist three categories of well-informed investors, Institutional Investors, Professional Investors and Experienced Investors. For the avoidance of doubt, the managers of the General Partner and the other persons involved in the management of the Company such as the members of the Investment Committee, as the case may be, are regarded as Well-Informed Investors for the purpose of article 2 of the 2007 Act.

## GENERAL SECTION

The General Section applies to all Compartments of the Company. The specific features of each Compartment and Class are set forth in the Special Sections.

### 1. THE COMPANY

#### Corporate form - Legal regime

- 1.1 The Company is a Luxembourg *société d'investissement à capital variable - fonds d'investissement spécialisé* (investment company with variable capital - specialised investment fund), governed by the 2007 Act, the 1915 Act and the Articles.
- 1.2 The Company has adopted the form of a corporate partnership limited by shares (*société en commandite par actions*). The Company is registered with the Luxembourg trade and companies register under the number B [number]. Its Articles will be published in the *Mémorial* on [date].
- 1.3 A Luxembourg corporate partnership limited by shares (*société en commandite par actions*) is a company established by contract between one or more shareholders who are indefinitely, jointly and severally liable for the obligations of the company and one or more shareholders who only contribute a specific share of capital. Therefore, it is comprised of:
  - (a) the *actionnaire gérant commandité* or the general partner who is responsible for the management of the company and is jointly and severally liable for all liabilities which cannot be met with the assets of the company; and
  - (b) the *actionnaires commanditaires* or limited shareholders whose liability is limited to the amount of their investment in the company.
- 1.4 No measure affecting the interests of the Company vis-à-vis third parties and no decision with a view to amend the Articles may be taken without the affirmative vote of the *actionnaire gérant commandité* (i.e., the General Partner).
- 1.5 The capital of the Company is at all times equal to the value of its net assets. The Company was incorporated with an initial capital of EUR31,000. The share capital increased by the issue premium (if any) of the Company must reach EUR1,250,000 within a period of twelve (12) months following its authorisation by the CSSF (and may not be less than this amount thereafter). The combined accounts of the Company are held in EUR.
- 1.6 The registration of the Company pursuant to the 2007 Act does not constitute a positive assessment by any Luxembourg authority as to the adequacy or accuracy of this Memorandum or as to the assets held in the various Compartments. Any representations to the contrary are unauthorised and unlawful.

#### Umbrella structure - Compartments and Classes

- 1.7 The Company has an umbrella structure consisting of one or several Compartments. A separate portfolio of assets is maintained for each Compartment and is invested in accordance with the investment objective and policy applicable to that Compartment. The investment objective, policy, as well as the other specific features of each Compartment are set forth in the relevant Special Section.
- 1.8 The Company is one single legal entity. However, in accordance with 71(5) of the 2007 Act, the rights of the Investors and creditors relating to a Compartment or arising from the setting-up, operation and liquidation of a Compartment are limited to the assets of that Compartment. The assets of a Compartment are exclusively dedicated to the satisfaction of the rights of the Investors relating to that Compartment and the rights of those

creditors whose claims have arisen in connection with the setting-up, operation and liquidation of that Compartment.

- 1.9 Each Compartment is treated as a separate entity and operates independently, each portfolio of assets being invested for the exclusive benefit of this Compartment. A purchase of Shares relating to one particular Compartment does not give the holder of such Shares any rights with respect to any other Compartment.
- 1.10 Within a Compartment, the General Partner may decide to issue one or more Classes the assets of which will be commonly invested but subject to different fee structures, distribution, marketing targets, currency or other specific features. A separate NAV per Share, which may differ as a consequence of these variable factors, will be calculated for each Class.
- 1.11 The Company may, at any time, create additional Classes whose features may differ from the existing Classes and additional Compartments whose investment objectives may differ from those of the Compartments then existing. Upon creation of new Compartments or Classes, the Memorandum will be updated, if necessary, or supplemented by a new Special Section.
- 1.12 Each Compartment is described in more detail in the relevant Special Section.
- 1.13 Shares are exclusively reserved for subscription by Well-Informed Investors. In addition, Investors should note that some Compartments or Classes may not be available to all Well-Informed Investors.

#### **Term of the Company - Term of the Compartments**

- 1.14 The Company has been incorporated with an unlimited period of time provided that the Company will however be automatically put into liquidation upon the termination of a Compartment if no further Compartment is active at that time.
- 1.15 The Compartments may be created for a limited period of time in which case they will be automatically liquidated at the relevant termination date (as further described in the relevant Special Section) or for an unlimited period of time.

#### **Listing**

- 1.16 No application has been made to any stock exchange or regulated market for the listing of the Shares. However, the General Partner reserves the right to make such an application in the future, provided that the decision of the General Partner to list the Shares on a stock exchange or regulated market will require the amendment of this Memorandum accordingly.

## **2. MANAGEMENT AND ADMINISTRATION**

### **2.1 General Partner**

- 2.2 The General Partner, BHV Opportunities Fund Partners Sàrl, a private limited liability company incorporated under the laws of Luxembourg on [date] with a share capital of EUR12,500. The articles of incorporation of the General Partner will be published in the *Mémorial* on [date]. The General Partner is registered with the Luxembourg trade and companies register under number B [number].
- 2.3 The General Partner is responsible for the performance of the overall investment policy and objectives, management and administration of each Compartment.
- 2.4 The General Partner will manage the Company in accordance with the Articles and the provisions of this Memorandum for the sole benefit, and in the best interest, of the Shareholders.

2.5 As of the date of this Memorandum, the following persons have been nominated as Managers of the General Partner:

(i) *[Title, name and short description of the manager's biography]*

*[Title, name and short description of the manager's biography]* *[Title, name and short description of the manager's biography]* The board of managers of the General Partner is entitled to establish for each Compartment an Investment Committee to be entrusted with one or more specific tasks as determined in the relevant Special Section.

#### **Investment Adviser**

2.7 The General Partner may appoint one or more Investment Advisers to act in a purely advisory capacity to the Company in respect of one or more Compartment(s) as it deems necessary in relation to the management of the assets of a Compartment, as is stipulated in the relevant Special Section.

2.8 The remuneration to which the relevant Investment Adviser is entitled will be as set out in the relevant Special Section. Unless otherwise provided for a particular Compartment in the relevant Special Section, the fees payable to any Investment Adviser will be borne by the relevant Compartment.

#### **Custodian**

2.9 Banque Havilland SA has been appointed as the custodian (the **Custodian**) of all the assets, including the securities and cash, of the Company which will be held either directly or indirectly, under its responsibility, through nominees, agents or delegates of the Custodian. The Custodian is a credit institution in the meaning of the act of 5 April 1993 relating to the financial sector, as amended.

2.10 The relationship between the Company and the Custodian shall be subject to the terms of *[the custody and paying agency agreement]*. The Company and the Custodian may terminate this agreement upon *[ninety (90) days]* prior written notice given by one party to the other. The Company shall, in the event of such termination, see to the replacement of the Custodian at the date on which the custodian agreement will be terminated. Pending such replacement which shall by the latest take place within a two (2) months' period, the Custodian shall take all necessary steps for the good preservation of the interests of the Shareholders. In accordance with the 2007 Act, the custodian agreement shall be terminated forthwith:

- if either the Company or the Custodian is declared bankrupt, enters into a composition with creditors, obtains a suspension of payment, is put under court-controlled management or is subject of similar proceedings or is put into liquidation; or
- if the Company's authorisation under the 2007 Act or the Custodian's license is withheld by the CSSF; or
- in any other case provided for in the Articles.

2.11 The Custodian will use the services of correspondents which are selected in good faith and duly authorised to provide the required services.

2.12 As principal paying agent, the Custodian will have as its principal function the operation of procedures in connection with the payment of distributions and, as the case may be, redemption proceeds on the Shares.

2.13 The fees and costs of the Custodian for the above functions are met by the Company and are conform to common practice in Luxembourg.

### **Administrator and Domiciliary Agent**

2.14 [Name] is the administrative agent and registrar and transfer agent (the **Administrator**) and domiciliary agent (the **Domiciliary Agent**) of the Company and shall be responsible for the performance of the central administrative functions required by Luxembourg Law, the calculation of the NAV, the safe keeping of the register of Shareholders of the Company and the maintenance of the Company's accounting records.

2.15 In its capacity as:

- (a) domiciliary agent, the Administrator shall be responsible for the domiciliation of the Company and will, in particular, allow the Company to establish its registered office at the registered office of the Administrator and provide facilities necessary for the meetings of the Managers and General Meetings;
- (b) administrative agent, the Administrator will have as its principal function among other things the calculation of the NAV of the Shares, the maintenance of the Company's accounting records and the preparation of the financial reports required by this Memorandum and Luxembourg Law; and
- (c) registrar and transfer agent, the Administrator will be responsible for the safe keeping of the register of Shareholders.

2.16 The relationship between the Company and the Administrator and between the Company and the Domiciliary Agent shall be subject to the terms of the administration agreement and the domiciliation agreement. The Company, the Administrator and the Domiciliary Agent may terminate the relevant agreement upon [ninety (90) days] prior written notice given by one party to the other.

2.17 The fees and costs of the Administrator for the above functions are met by the Company and are conform to common practice in Luxembourg.

*[To be reviewed by the Administrative Agent and the Domiciliary Agent.]*

### **Auditor**

2.18 [Name] is the Auditor and shall fulfil all duties prescribed by the 2007 Act.

## **3. INVESTMENT OBJECTIVE, STRATEGY AND RESTRICTIONS**

### **Investment objective and strategy**

3.1 The investment objective and strategy of each Compartment is as set out in respect of that Compartment in the relevant Special Section.

3.2 There can be no guarantee that the investment objectives of any Compartment will be met.

3.3 In principle, any Compartment may invest (directly or indirectly) in any kind of assets (including derivatives), which are eligible under the 2007 Act.

### **Investment Restrictions**

3.4 Unless otherwise provided for in the relevant Special Section in relation to a particular Compartment:

#### **General**

- (i) any Compartment shall not invest more than 30% of its NAV in any Investment.
- (ii) the restriction set out under Section 3.4(i) above is not applicable to the acquisition of:

- (A) units or shares of funds if such funds are subject to risk diversification requirements comparable to those set out in the CSSF circular 07/309;
- (B) securities issued or guaranteed by a Member State of the OECD or by its local authority or by supranational institutions and organisations with European, regional or worldwide scope;
- (iii) Each compartment of a target fund with multiple compartments is considered as a distinct target fund for the purpose of the Investment Restrictions and limits set out under Sections 3.4(i) and (ii) above provided that the principle of segregation of the assets and liabilities of the different compartments is ensured;

***Borrowing***

- (iv) each Compartment may borrow permanently (through loans, repurchase obligations or otherwise either directly or at the level of any Intermediary Vehicle) and for investment purposes, to meet funding Commitments in underlying Investments or for working capital purposes, and secure those borrowings with liens or other security interests in, or mortgages on, its assets (or the assets of any of its Intermediary Vehicles). The borrowing limit applicable to each Compartment will be as set out in the relevant Special Section;
- (v) for the avoidance of doubt, the leverage limitation applies set out in each Special Section in accordance with Section 3.4(iv) above only on the date the debt is incurred. It shall not be an on-going obligation of the Compartment to meet this constraint by reducing its existing indebtedness as a result of a decline in the value of any of its existing Investments;

***Investment through Intermediary Vehicles***

- (vi) Investments may be made by the Compartments through Intermediary Vehicles. The Company will seek to fully control any such Intermediary Vehicles, but may also hold Investments through joint ventures where the Company will seek to retain control over the management, sale, and financing of the venture's assets or alternatively will have a viable mechanism for exiting the venture, within a reasonable period of time.
- (vii) an Investment into an Intermediary Vehicle should be ignored for the purpose of the above Investment Restrictions and the underlying investments of the Intermediary Vehicle should be treated as if they were direct investments made by the Company.

***Kick-off Period***

- (viii) The Investment restrictions of this Section 3 may not be complied with during the Kick-off Period, i.e. during a transitional period as will be set out in respect of each Compartment in that Compartment's Special Section, provided that the General Partner will endeavour to ensure, at all times, an appropriate level of diversification of risk within the portfolio of the Compartments.

**4. SHARE CAPITAL AND SHARES**

***Investment by Well-Informed Investors***

- 4.1 Shares, to the exclusion of the Management Share, are exclusively reserved for Well-Informed Investors. The Company will not issue, or give effect to any Transfer of, Shares to any Investor who is not a Well-Informed Investor.
- 4.2 The Company (and the Administrator - as registrar and transfer agent - acting on behalf of the Company) reserves the right to request such information as is necessary to verify the identity of an Investor and its status in

regard to the qualification as a Well-Informed Investor. In the event of delay or failure by the investor to produce any information required for verification purposes, the Company (and the Administrator - as registrar and transfer agent - acting on behalf of the Company) may refuse to accept the Subscription Agreement.

### **Description of the Shares**

#### *Classes of Shares*

- 4.3 The capital of the Company is represented by fully paid Shares with no par value and will be represented by different Classes within each Compartment, the features of which will be as set out in respect of each Compartment in the relevant Special Section.
- 4.4 The General Partner may decide to issue, within each Compartment, additional Classes or sub-classes having e.g. a specific fees and expenses structure; different distribution rights, and the General Partner may in particular decide that Shares pertaining to one or more Class(es) be entitled to receive incentive remuneration in the form of carried interest, higher preferred returns, performance fee or through fee sharing arrangements; different shareholders servicing or other fees; different types of targeted Investors; different transfer or ownership restrictions; different Reference Currencies; and/or such other features as may be determined by the General Partner from time to time and described for each Compartment in the relevant Special Section.
- 4.5 Investors should note that some Compartments or Classes may not be available to all type of investors, the General Partner reserving the right to offer only one or more Classes for subscription to a certain type of investors, for instance investors resident or domiciled in a specific jurisdiction in order to conform to local law, customs or business practice or for fiscal or any other reason.

#### *Form of the Shares*

- 4.6 The Shares are issued and will remain in registered form (*actions nominatives*) only. The Shares are not represented by certificates.
- 4.7 The register of the Shareholders will be kept by the Administrator on behalf of the Company, and the register (and the Shareholders' personal data contained therein) will be available for inspection by any Shareholder. The register will contain the name of each owner of registered Shares, his residence or elected domicile as indicated to the Company and the number and Class of Shares held by it and the Transfer of Shares and the dates of such Transfers. The ownership of the Shares will be established by the entry in this register.
- 4.8 Each Investor shall provide the Company with an address, fax number and email address to which all notices and announcements may be sent. Such address shall also be entered into the register of Investors. Investors may, at any time, change their address as entered into the register of Investors by way of a written notification sent to the Company.
- 4.9 The Company will recognise only one holder per Share. In case a Share is held by more than one person, the Company has the right to suspend the exercise of all rights attached to that Share until one person has been appointed as sole owner in relation to the Company. The same rule shall apply in the case of conflict between a usufruct holder (*usufruitier*) and a bare owner (*nu-propriétaire*) or between a pledgor and a pledgee.
- 4.10 Without prejudice to Section 9 of this General Section, title to Shares in registered form is transferred upon registration of the name of the transferee in the share register of the Company.
- 4.11 Each Share is entitled to one vote at the relevant General Meeting. Shares shall have no pre-emptive subscription rights. All Shareholders have the right to vote at each General Meeting. This vote can be exercised in person or by proxy. No resolution of the General Meeting with a view to take a decision affecting the interests of the Company vis-à-vis third parties, to amend the Articles or to revoke and replace the General Partner may be taken without the affirmative vote of the General Partner.

- 4.12 The Company's share capital is at all times equal to its NAV. The Company's share capital is automatically adjusted when additional Shares are issued or outstanding Shares are redeemed, and no special announcements or publicity are necessary in relation thereto.
- 4.13 The General Partner shall hold the Management Share(s) that is(are) reserved to the General Partner, in its capacity as unlimited Shareholder (*actionnaire gérant commandité*) of the Company. The Company intends to issue at least one Management Share in each Compartment.
- 4.14 With the exception of the Management Share, fractional Shares will be issued to the nearest thousandth of a Share, and such fractional Shares will not be entitled to vote (except where their number is so that they represent a whole Share, in which case they confer a voting right) but will be entitled to a participation in the net results and in the proceeds of liquidation attributable to the relevant Class on a pro rata basis.
- 4.15 Unless otherwise provided for in the relevant Special Section, the Company may agree to issue Shares as consideration for a contribution in kind of securities or other assets, provided that such securities or other assets comply with its investment objectives and strategy of the relevant Compartment and are in compliance with Luxembourg Law. Any costs incurred in connection with a contribution in kind will be borne by the relevant Investor.

## **5. SUBSCRIPTION OF SHARES**

- 5.1 The Company may issue fully paid Shares at any time as stated in this Section 5. Each Investor subscribing for Shares must execute the Subscription Agreement, unless otherwise stated in the relevant Special Section. The Subscription Agreement includes *inter alia* the Commitment of each Investor and contains certain representations and warranties to be made to and by the Company.
- 5.2 Unless otherwise provided for in the relevant Special Section, Investors may commit to subscribe for Shares on one or more dates or periods as determined by the Company and taking place between the First Closing Date and the Final Closing Date (each such date or period a *Closing*) and which shall be indicated and more fully described in the Special Section. Investors the Commitment of which will have been accepted by the General Partner during this period shall be required to make Capital Contributions with respect to their Commitments in consideration for the issuance of fully paid Shares by the Company in accordance with the terms of this Memorandum (and, in particular, the terms and provisions of the relevant Special Section), the Articles and each Investor's Subscription Agreement.
- 5.3 Unless otherwise provided for in the relevant Special Section, payments for subscriptions to Shares or otherwise shall be made in whole on a closing or on any other date and under the terms and conditions as determined by the Company and as indicated and more fully described in the Special Section. The modes of payment in relation to such subscriptions shall be determined by the Company and more fully described in the Special Section.
- 5.4 The Company may determine any other subscription conditions such as minimum commitments on closings, minimum subsequent commitments, default interests or restrictions on ownership. Such other conditions shall be disclosed and more fully described in the Special Section. The Company may also impose restrictions on the frequency at which Shares shall be issued. The Company may, in particular, decide that Shares shall only be issued during one or more offering periods or at such other frequency as provided for in the Special Section.
- 5.5 The Company may, in its absolute discretion, accept or reject (in whole or in part) any request for subscription for Shares.

## **6. FAILURE TO COMPLY WITH A DRAWDOWN NOTICE**

*[There are no specific guidelines for default provisions. The following text is to be understood as a proposal for discussion purpose only.]*

## General

6.1 Unless otherwise provided for in respect of a Compartment in that Compartment's Special Section, this Section is applicable to an Investor who fails to:

- (a) advance to the relevant Compartment the amount which is the subject of a Drawdown Notice on or before the relevant Drawdown Date; or
- (b) perform or observe any other term, covenant or condition in his/her/its Subscription Agreement, the Articles or this Memorandum.

## Default provisions

6.2 Investors must be aware that the timely compliance with Drawdown Notices is essential to the ability of the relevant Compartment to conduct its business successfully. Notwithstanding any provision of this Memorandum to the contrary, if any Investor fails for whatever reason (including where such failure is due to such Investor's bankruptcy, insolvency, dissolution, liquidation or other similar event) to:

- (a) advance to the relevant Compartment the amount which is the subject of a Drawdown Notice on or before the relevant Drawdown Date; or
- (b) perform or observe any other term, covenant or condition in its Subscription Agreement, the Articles or this Memorandum,

and has not advanced such amount (together with the additional amounts specified in Section 6.3 below) or performed such term, covenant or condition within a reasonable period of time (as the General Partner may specify) of the issue of a Default Notice from the General Partner, the General Partner shall have the right (but not the obligation) to declare such Investor a Defaulting Investor with effect from the date of such declaration (the **Default Date**).

6.3 An Investor may remedy its default by paying the following amounts to the relevant Compartment on or before the Default Date:

- (a) the amount requested under the Drawdown Notice;
- (b) interest on the amount outstanding under (a) at the *[default rate]*, compounded quarterly from the payment date specified in the relevant Drawdown Notice up to the date of payment thereof;
- (c) an amount sufficient to reimburse the General Partner or, as the case may be, the relevant Compartment with respect to any other related Default Expenses.

6.4 If an Investor does not remedy its Default in accordance with Section 6.3 above by the Default Date, then it will be declared a **Defaulting Investor** and all of the Defaulting Investor's Shares have their voting rights suspended and do not carry right to dividend or distribution until payment is made and the Company shall have the right but not the obligation to exercise one or more of the following remedies:

- (a) repurchase the Defaulting Investor's Shares at the lesser of (i) *[50%]* of the latest calculated NAV of the Shares of the Defaulting Investor, at the Default Date (or for no consideration if the NAV of the Shares is equal to zero or negative) and (ii) *[50%]* of the aggregate Capital Contributions of the Defaulting Investor;
- (b) require the Investors other than the Defaulting Investor (the **Non-Defaulting Investors**) to contribute additional amounts to cover any defaulted amounts, provided that the total Commitments of the Non-Defaulting Investors shall not be increased on account of such Default;

- (c) exercise an option to buy the Shares and Undrawn Commitment of the Defaulting Investor at a price equal to the lesser of (i) [50%] of the aggregate Capital Contributions of the Defaulting Investor or (ii) [50%] of the latest calculated NAV of the Shares of the Defaulting Investor (or for no consideration if the NAV of the Shares is equal to zero or negative), in which case, the General Partner will, after having acquired the Shares and Undrawn Commitment of the Defaulting Investor pursuant to the exercise of its option, offer the Shares and Undrawn Commitment of the Defaulting Investor to a third party (or parties) identified by the General Partner (which party or parties may include another Investor or any Affiliate of the initiators) provided that before offering the Defaulting Investor's Shares and Undrawn Commitment to any third party, the General Partner shall offer them to the Non-Defaulting Investors, who shall have a period of [10 (ten) Business Days] to accept the offer. Any Non-Defaulting Investors expressing an interest in such a purchase will be offered it pro rata based on their existing Commitments. Any transfer of Shares pursuant to this Section 6.4(c) shall be subject to the terms and provision of Section 9 of this General Section;
- (d) to maintain the Defaulting Investor's obligation to pay, based on its Commitment prior to the Default, its pro rata share of Expenses (including the Management Fee) of the relevant Compartment as if the Default had not occurred;
- (e) cause the Company to pursue any available legal remedies against the Defaulting Investor to collect any and all of the Commitments due from the Defaulting Investor and any other damages (including consequential damages); and
- (f) reduce or terminate the Defaulting Investor's Undrawn Commitment.

- 6.5 In the event that the Company exercises its option to buy and the General Partner then transfers the Shares and Undrawn Commitment of a Defaulting Investor in accordance with Section 6.4(c), any amounts which would, in the absence of such Default, have been for the account of the relevant Defaulting Investor, shall be held by the Company for the benefit of any purchaser of the Shares and Undrawn Commitment of the Defaulting Investor (subject to the right of the General Partner to deduct therefrom any Default Expenses) and upon the purchaser becoming a Investor such amounts will be paid over to the purchaser. The proceeds of sale shall, following receipt by the General Partner and subject to the deduction of such costs and expenses as aforementioned, be paid to the relevant Defaulting Investor.
- 6.6 With effect from the Default Date, the Shares/Undrawn Commitment of the relevant Defaulting Investor shall be disregarded for all purposes in relation to this Memorandum, including for the purpose of calculating an Compartment's Consent or a Company's Consent or for the holding of any meeting or the exercise of any voting rights pursuant to the Articles or this Memorandum.
- 6.7 Any exercise of any or none of the remedies set out above will not prejudice the right of the Company or the General Partner to pursue any other available legal remedies against any Defaulting Investor. The Company shall have the right to set-off any of its obligation to pay any amount to the Defaulting Investor as a result of the exercise of any of its rights under Section 6.4 against any obligation of the Defaulting Investor owed to the Company (and in particular, but without limitation, its obligation to pay the amount set out under Section 6.3).

## 7. CONVERSION OF SHARES

- 7.1 Unless otherwise stated in the relevant Special Section, Investors are not allowed to convert all, or part, of the Shares of a given Class into Shares of the same Class of another Compartment. Likewise, unless otherwise stated in the relevant Special Section, conversions from Shares of one Class of a Compartment to Shares of another Class of either the same or a different Compartment are prohibited. *[Conversion of Ordinary Shares of different Classes of the same or of a different Compartment is typically excluded for Compartments invested in private equity due to the low level of liquidity of their Investments.]*

7.2 If conversion of Shares is allowed between Classes of the same Compartment or between Shares pertaining to a Class into Shares of the same Class of another Compartment, then the applicable terms and conditions to conversion of Shares shall be as set forth in the relevant Special Section(s).

## **8. REDEMPTION OF SHARES**

8.1 Unless otherwise provided in the relevant Special Section, Investors are not entitled to request the redemption of their Shares.

8.2 Shares may be redeemed at the initiative of the General Partner in accordance with, and in the circumstances set out under [●] of the Articles and this Memorandum.

8.3 Shares may be redeemed at the option of the General Partner on a pro rata basis among existing Investors of the relevant Compartment in accordance with the provisions of this Memorandum (and in particular, Section 8.4 of this General Section), the Articles and the Subscription Agreement. For the case, Shares are redeemed (including the case of compulsory redemption), payment of due amount will be done within a reasonable period of time which in principle should not exceed [*four months*].

8.4 The Company may inter alia compulsory redeem the Shares

- (a) held by a Restricted Person in accordance with Section 10.1 of the General Section;
- (b) for the purpose of equalisation between Previous Investors and Subsequent Investors (e.g., in case of admission of Subsequent Investors) if provided in respect of a specific Compartment in the relevant Special Section;
- (c) in case of liquidation or merger of Compartments or Classes;
- (d) held by a Defaulting Investor in accordance with Section 6 of the General Section;
- (e) for the purpose of the payment of fees;
- (f) in all other circumstances, in accordance with the terms and conditions set out in the Subscription Agreement, Shareholder's Commitment, the Articles and this Memorandum.

8.5 A compulsory redemption of the Shares cannot be abusive, must be justified and either be in the interest of the Company and its Shareholders or required for operational or other reasons.

## **9. TRANSFER RESTRICTIONS**

### **Transfer of the Management Share**

9.1 The General Partner shall not sell, assign, transfer, grant a participation in, pledge, hypothecate, encumber or otherwise dispose of all or any part of its Management Share or voluntarily withdraw as the general partner of the Company.

### **Transfer of Shares/Undrawn Commitments of Investors**

9.2 No sale, assignment, transfer, grant of a participation in, pledge, hypothecation, encumbrance or other disposal (each a **Transfer**) of all or any portion of any Investor's Shares or Undrawn Commitment, whether voluntary or involuntary, shall be valid or effective if:

- (a) the Transfer would result in a violation of any Luxembourg Law or the laws and regulations of US, the UK or any other jurisdiction (including, without limitation, the US Securities Act, any securities laws of

the individual states of the United States, or ERISA) or subject the Company, a Compartment or an Intermediary Vehicle to any other adverse tax, legal or regulatory consequences as determined by the Company;

- (b) the Transfer would result in a violation of any term or condition of the Articles or of this Memorandum;
- (c) the Transfer would result in the Company, a Compartment or an Intermediary Vehicle being required to register as an investment company under the United States Investment Company Act of 1940, as amended; and
- (d) it shall be a condition of any Transfer (whether permitted or required) that:
  - (i) such Transfer be approved by the General Partner, such approval not to be unreasonably withheld;
  - (ii) the transferee represents in a form acceptable to the Company that such transferee is not a Restricted Person, and that the proposed Transfer itself does not violate any laws or regulations (including, without limitation, any securities laws) applicable to it;
  - (iii) (in respect of the Transfer of Undrawn Commitment) the transferee enters into a Subscription Agreement in respect of the relevant Undrawn Commitment so transferred;
  - (iv) simultaneously as the Transfer, the transferor transfers to the transferee all or the relevant portion of its undrawn commitment or remaining commitment;
  - (v) the transferee is not a Restricted Person as defined in Section 10.1 of the General Section.

9.3 The Company, in its sole and absolute discretion, may condition such Transfer upon the receipt of an opinion of responsible counsel which opinion shall be reasonably satisfactory to the Company

9.4 The transferor shall be responsible for and pay all costs and expenses (including any taxation) arising in connection with any such permitted Transfer, including reasonable legal fees arising in relation thereto incurred by the General Partner, Investment Adviser (if any) or their Affiliates and stamp duty or stamp duty reserve tax (if any) payable. The transferor and the transferee shall indemnify the Indemnified Persons, in a manner satisfactory to the General Partner, against any Claims and Expenses to which the Indemnified Persons may become subject arising out of or based upon any false representation or warranty made by, or breach or failure to comply with any covenant or agreement of, such transferor or transferee in connection with such Transfer. In addition, each Investor agrees to indemnify the Company (or the relevant Compartment) and each Indemnified Person from any Claims and Expenses resulting from any Transfer or attempted Transfer of its Interests in violation of this Memorandum (and the terms of their Subscription Agreement).

9.5 No Transfer of all or any part of any Investor's Shares in any Compartment, whether direct or indirect, voluntary or involuntary, shall be valid or effective if in breach of the additional restrictions on Transfer set out in the relevant Special Section (if any).

## **10. OWNERSHIP RESTRICTIONS**

10.1 The General Partner may restrict or prevent the ownership of Shares by any individual or other entity:

- (a) if in the opinion of the General Partner such holding may be detrimental to the Company, a Compartment or an Intermediary Vehicle;

- (b) if it may result (either individually or in conjunction with other investors in the same circumstances) in:
  - (i) the Company, the General Partner, the Investment Adviser, a Compartment or an Intermediary Vehicle incurring any liability for any taxation whenever created or imposed and whether in Luxembourg, or elsewhere or suffering pecuniary disadvantages which the same might not otherwise incur or suffer;
  - (ii) the Company or a Compartment being subject to the U.S. Employee Retirement Income Security Act of 1974, as amended; or
  - (iii) the Company or a Compartment being required to register its Shares under the laws of any jurisdiction other than Luxembourg (including, without limitation, the US Securities Act or the US Investment Company Act);
- (c) if it may result in a breach of any law or regulation applicable to the relevant individual or legal entity itself, the Company, the General Partner or any Compartment, whether Luxembourg Law or other law; and in particular if a relevant Shareholder does not qualify as a Well-Informed Investor or has loose such qualification for whatever reason; or
- (d) if as a result thereof the Company may become exposed to tax disadvantages or other financial disadvantages that it would not have otherwise incurred;

(such individual or legal entities are to be determined by the General Partner and are defined herein as **Restricted Persons**). A person or entity that does not qualify as Well-Informed Investor shall be regarded as a Restricted Person.

10.2 For such purposes the Company may

- (a) decline to issue any Shares and decline to register any Transfer of Share/Undrawn Commitment, where such registration or Transfer would result in legal or beneficial ownership of such Shares or Undrawn Commitment by a Restricted Person; and
- (b) at any time require any person whose name is entered in the register of Shareholders or of (Undrawn) Commitments or who seeks to register a Transfer in the register of Shareholders or of (Undrawn) Commitments to deliver to the Company any information, supported by affidavit, which it may consider necessary for the purpose of determining whether or not beneficial ownership of such Shareholder's Shares/(Undrawn) Commitment rests with a Restricted Person, or whether such registration will result in beneficial ownership of such Shares/(Undrawn) Commitment by a Restricted Person.

10.3 If it appears that an Investor is a Restricted Person, the General Partner is entitled to, in its absolute discretion:

- (a) decline to accept the vote of the Restricted Person at the General Meeting and disregard its vote on any matter requiring the Compartment's Consent or the Company's Consent; and/or
- (b) retain all dividends paid or other sums distributed with regard to the Shares held by the Restricted Person; and/or
- (c) instruct the Restricted Person to sell his/her/its Shares and to demonstrate to the General Partner that this sale was made within thirty (30) calendar days of the sending of the relevant notice, subject each time to the applicable restrictions on transfer as set out in Section 9 of this General Section; and/or
- (d) reduce or terminate the Restricted Person's Undrawn Commitment; and/or

(e) compulsorily redeem all shares held by the Restricted Person at a price based on the lesser of (i) the latest available NAV of the Shares at the date on which the General Partner becomes aware that the relevant Investor is a Restricted Person (the moment of consideration being irrelevant if the NAV is equal to zero or negative) and (ii) the aggregate Capital Contribution of the Restricted Person, less a penalty fee equal to, in the absolute discretion of the General Partner, either (i) 30 % of the applicable price or (ii) the costs incurred by the Company as a result of the holding of shares by the Restricted Person (including all costs linked to the compulsory redemption).

## **11. ANTI-MONEY LAUNDERING AND TERRORIST FINANCING REQUIREMENTS**

11.1 Measures aimed towards the prevention of money laundering as provided by Luxembourg Law including CSSF circular 08/387 are the responsibility of the Company and have been delegated (under its supervision) to the Administrator.

11.2 These measures require, amongst others, that the Administrator requests the verification of the identity of any Investor. By way of example, a natural person will be required to provide a copy of his/her passport or identification card duly certified by a competent authority (e.g. embassy, consulate, notary, police officer, solicitor, financial institution domiciled in a country imposing equivalent identification requirements or any other competent authority) and a corporate applicants will be require, amongst others, production of a certified copy of the certificate of incorporation (and any change of name), the Investor's memorandum (if any) and its articles of association (or equivalent), a recent list of its shareholders showing a recent stake in its capital, printed on the letterhead of the Investor duly dated and signed, an authorised signature list and an excerpt of the trade register. It should be noted that the above list is not exhaustive and that the Investors may be required to provide further information to the Administrator in order to ensure the identification of the final beneficial owner of the Shares.

11.3 Until satisfactory proof of identity is provided by an Investors or transferees as determined by the Administrator, it reserves the right to withhold issue or approval of registration of transfers of Shares. Similarly, redemption proceeds will not be paid unless compliance with these requirements has been made in full. In any such event, the Administrator will not be liable for any interest, costs or compensation.

11.4 In case of a delay or failure to provide satisfactory proof of identity, the Administrator may take such action as it thinks fit.

11.5 Depending on the circumstances of each application for subscription or registration of a transfer of Shares, a detailed verification of the applicant's identity might not be required where the application is made through a financial institution or intermediary located in a country that is considered by the Administrator as imposing identification requirements equivalent to those in place in Luxembourg.

11.6 A list of documents to be provided by an Investor for the purpose of the prevention of money laundering as provided by Luxembourg Law can be provided by the Administrator upon request.

## **12. CALCULATION OF THE NAV**

*[To be reviewed by the Administrator and the Auditor.]*

12.1 The Company, each Compartment and each Class in a Compartment have a NAV determined in accordance with Luxembourg Law, subject to any adjustment required to ensure that Investors are treated fairly and in accordance with the Articles. The Reference Currency of the Company is the EUR.

## 12.2 Calculation of the NAV

- (a) The NAV of each Compartment and Class shall be calculated in the Reference Currency of the Compartment or Class, as it is stipulated in the relevant Special Section in good faith in Luxembourg on each valuation date as stipulated in the relevant Special Section.
- (b) The Administrator shall under the supervision of the General Partner calculate the NAV per Class in the relevant Compartment as follows: each Class participates in the Compartment according to the portfolio and distribution entitlements attributable to each such Class. The value of the total portfolio and distribution entitlements attributed to a particular Class of a particular Compartment on a given Valuation Date adjusted with the liabilities relating to that Class on that Valuation Date represents the total NAV attributable to that Class of that Compartment on that Valuation Date. The assets of each Class will be commonly invested within a Compartment but subject to different fee structures, distribution, marketing targets, currency or other specific features as it is stipulated in the relevant Special Section. A separate NAV per Share, which may differ as consequence of these variable factors, will be calculated for each Class as follows: the NAV of that Class of that Compartment on that Valuation Date divided by the total number of Shares of that Class of that Compartment then outstanding on that Valuation Date.
- (c) For the purpose of calculating the NAV per Class of a particular Compartment, the NAV of each Compartment shall be determined by calculating the aggregate of:
  - (i) the value of all assets of the Company which are allocated to the relevant Compartment in accordance with the provisions of the Articles; less
  - (ii) all the liabilities of the Company which are allocated to the relevant Compartment in accordance with the provisions of the Articles, and all fees attributable to the relevant Compartment, which fees have accrued but are unpaid on the relevant Valuation Date.
- (d) The total net assets of the Company will result from the difference between the gross assets (including the market value of Investments owned by the Company and its Intermediary Vehicles) and the liabilities of the Company based on a consolidated view, provided that
  - (i) the equity or liability interests attributable to Investors derived from these financial statements will be adjusted to take into account the fair (i.e. discounted) value of deferred tax liabilities as determined by the Company in accordance with its internal rules;
  - (ii) the acquisition costs for Investments (including the costs of establishment of Intermediary Vehicle, as the case may be) shall be amortised over the planned strategic investment period of each of such Investment, as confirmed by the Investment Adviser or General Partner, or for a maximum period of five (5) years rather than expensed in full when they are incurred; and
  - (iii) the set up costs for the Company and any Compartment shall be amortised over a maximum period of five (5) years rather than expensed in full when they are incurred.
- (e) The value of the assets of the Company will be determined as follows:
  - (i) the interests in unlisted funds registered in the name of the relevant Compartment or in the name of an Intermediary Vehicle shall be valued at their last official and available net asset value, as reported or provided by such funds or their agents, or at their last unofficial net asset values (i.e., estimates of net asset values) if more recent than their last official net asset values. The official or unofficial net asset value of a fund may be adjusted for subsequent capital calls and distributions and applicable redemption charges where appropriate. The General Partner may adjust the net asset value or other valuation so provided where the General Partner

considers such net asset valuation or other valuation information does not accurately reflect the Company's or the Compartment's interests in such fund, whether because such information has been generated after a delay from the fund's own valuation point, change in markets or otherwise. The NAV is final and binding notwithstanding that it may have been based on unofficial or estimated net asset values;

- (ii) the interests of Investments registered in the name of the relevant Compartment or in the name of an Intermediary Vehicle which are listed on a stock exchange or dealt in another regulated market will be valued on the basis of the last available published stock exchange or market value;
- (iii) the value of any cash on hand or on deposit, bills and demand notes and accounts, receivable, prepaid expenses, cash dividends and interest declared or accrued as aforesaid, and not yet received shall be deemed to be the full amount thereof, unless it is unlikely to be received in which case the value thereof shall be arrived at after making such discount as the General Partner may consider appropriate in such case to reflect the true value thereof;
- (iv) any transferable security and any money market instrument negotiated or listed on a stock exchange or any other organised market will be valued on the basis of the last known price, unless this price is not representative, in which case the value of such an asset will be determined on the basis of its fair value estimated by the General Partner with good faith;
- (v) unlisted securities or securities not traded on a stock exchange or any other regulated market as well as listed securities, or securities whose quoted price is, in the opinion of the General Partner, not representative of actual market value, will be valued at their last known price or, in the absence of such price, on the basis of their probable realisation value, as determined with prudence and in good faith by the General Partner, provided that investments in private equity securities not listed or dealt in on any stock exchange or on any other regulated market will be estimated with due care and in good faith, taking due account of the guidelines and principles for valuation of portfolio companies set out by International Private Equity and Venture Capital Valuation Guidelines, published by the European Venture Capital Association (EVCA), the British Venture Capital Association (BVCA) and the French Venture Capital Association (AFIC) in March 2005, as may be amended from time to time;
- (vi) Investments registered in the name of the relevant Compartment or in the name of an Intermediary Vehicle, other than mentioned in Sections 12.2(e)(i) to 12.2(e)(iv) will be valued as more fully described in Section 13 of the General Section, provided that the General Partner may deviate from such valuation if deemed in the interest of the Company and its Shareholders.

- (f) The General Partner, in its discretion, may permit some other method of valuation to be used if it considers that such valuation better reflects the fair value of any asset or liability of the Company in compliance with Luxembourg Law. This method will then be applied in a consistent way. The Administrator can rely on such deviations as approved by the Company for the purpose of the NAV calculation.
- (g) All assets denominated in a currency other than the Reference Currency of the respective Class shall be converted at the mid-market conversion rate between the reference currency and the currency of denomination as at the Valuation Date.

12.3 For the avoidance of doubt, these provisions are rules for determining the NAV per Share and are not intended to affect the treatment for accounting or legal purposes of the assets and liabilities of the Company or any Shares issued by the Company.

12.4 For the purpose of this Section 12,

- (a) Shares to be issued by the Company shall be treated as being in issue as from the time specified by the General Partner on the Valuation Date with respect to which such valuation is made and from such time and until received by the Company the price therefore shall be deemed to be an asset of the Company;
- (b) Shares of the Company to be redeemed (if any) shall be treated as existing and taken into account until the date fixed for redemption, and from such time and until paid by the Company the price therefore shall be deemed to be a liability of the Company;
- (c) where on any Valuation Date the Company has contracted to:
  - (i) purchase any asset, the value of the consideration to be paid for such asset shall be shown as a liability of the Company and the value of the asset to be acquired shall be shown as an asset of the Company;
  - (ii) sell any asset, the value of the consideration to be received for such asset shall be shown as an asset of the Company and the asset to be delivered by the Company shall not be included in the assets of the Company;

provided, however, that if the exact value or nature of such consideration or such asset is not known on such Valuation Date, then its value shall be estimated by the General Partner.

12.5 Allocation of assets and liabilities

The assets and liabilities of the Company shall be allocated as follows:

- (a) the proceeds to be received from the issue of Shares of any Class shall be applied in the books of the Company to the Compartment corresponding to that Class, provided that if several Classes are outstanding in such Compartment, the relevant amount shall increase the proportion of the net assets of such Compartment attributable to that Class;
- (b) the assets and liabilities and income and expenditure applied to a Compartment shall be attributable to the Class or Classes corresponding to such Compartment;
- (c) where any asset is derived from another asset, such asset shall be attributable in the books of the Company to the same Class or Classes as the assets from which it is derived and on each revaluation of such asset, the increase or decrease in value shall be applied to the relevant Class or Classes;
- (d) where the Company incurs a liability in relation to any asset of a particular Class or particular Classes within a Compartment or in relation to any action taken in connection with an asset of a particular Class or particular Classes within a Compartment, such liability shall be allocated to the relevant Class or Classes within such Compartment;
- (e) in the case where any asset or liability of the Company cannot be considered as being attributable to a particular Class, such asset or liability shall be allocated to all the Classes pro rata to their respective NAVs or in such other manner as determined by the General Partner acting in good faith, provided that (i) where assets of several Classes are held in one account and/or are co-managed as a segregated pool of assets by an agent of the General Partner, the respective right of each Class shall correspond to the prorated portion resulting from the contribution of the relevant Class to the relevant account or pool, and (ii) such right shall vary in accordance with the contributions and withdrawals made for the account of the Class, as described in the Memorandum, and finally (iii) all liabilities, whatever Class they are attributable to, shall, unless otherwise agreed upon with the creditors, be binding upon the Company as a whole;

- (f) upon the payment of distributions to the Shareholders of any Class, the NAV of such Class shall be reduced by the amount of such distributions.

## **12.6 General rules**

- (a) all valuation regulations and determinations shall be interpreted and made in accordance with Luxembourg Law;
- (b) the NAV as of any Valuation Date will be made available to investors at the registered office of the Company as soon as it is finalised. The General Partner will use its best efforts to calculate and to finalise the NAV within one hundred and twenty (120) calendar days following the relevant Valuation Date;
- (c) for the avoidance of doubt, the provisions of this Section 12 are rules for determining the NAV per Share and are not intended to affect the treatment for accounting or legal purposes of the assets and liabilities of the Company or any Shares issued by the Company;
- (d) the NAV per Share of each Class in each Compartment is made available to the Investors at the registered office of the Company and at the offices of the Administrator. The Company may arrange for the publication of this information in the Reference Currency of each Compartment/Class and any other currency at the discretion of the General Partner in leading financial newspapers. The Company cannot accept any responsibility for any error or delay in publication or for non-publication of prices;
- (e) claims of the Company against Investors in respect of Undrawn Commitments shall not be taken into account for the purpose of the calculation of the NAV;
- (f) different valuation rules may be applicable in respect of a specific Compartment as further laid down in the relevant Special Section.

## **13. VALUATION OF INVESTMENTS**

Unless otherwise provided for in respect of a particular Compartment in that Compartment's Special Section, the following rules apply in respect of the valuation process of Investments.

### **General**

- 13.1 The General Partner appraises the Market Value of the Investments. For the purposes of appraising the Market Value of Investments, the General Partner may use valuations provided by one or more Independent Valuers selected and appointed upon their expertise and knowledge on the relevant Investments.
- 13.2 The Independent Valuers will not be affiliated to the General Partner or the Investment Adviser. The name of each Independent Valuer which valuations have been used by the General Partner will be published in the Company's annual report. The Investors may furthermore inform themselves at the registered office of the Company of the names of the Independent Valuers.

### **Valuations of Investments**

- 13.3 The Market Value of Investments owned by the Company for the account of the relevant Compartment will be valued at least once a year in accordance with local laws, regulations and customary market practice depending on the location of the relevant Investment (the **Annual Valuation**).
- 13.4 The Annual Valuation will be used for valuing the relevant Investment in connection with calculating the NAV on each Valuation Date during the following twelve (12) months period unless in the General Partner's opinion

there is a material change in the general economic situation or in the condition of the relevant Investment which requires a new valuation which will be carried out in accordance with Section 13.3 above.

13.5 The Administrator is entitled to rely, without further inquiry, on the valuations provided by the General Partner or by the Independent Valuer and, for the avoidance of doubt, the Administrator will be under no obligation to value the Investments in calculating the NAV.

**14. TEMPORARY SUSPENSION OF CALCULATION OF THE NAV AND/OR OF SUBSCRIPTION, REDEMPTION AND CONVERSION**

14.1 The Company may at any time and from time to time suspend the determination of the NAV of Shares of any Compartment and/or the issue of the Shares of such Compartment to subscribers and/or the redemption of the Shares of such Compartment from its Shareholders and/or the conversions of Shares of any Class in a Compartment:

- (a) when one or more stock exchanges or markets, which provide the basis for valuing a substantial portion of the Investments, or when one or more foreign exchange markets in the currency in which a substantial portion of the Investments are denominated, are closed otherwise than for ordinary holidays or if dealings therein are restricted or suspended;
- (b) when, as a result of political, economic, military or monetary events or any circumstances outside the responsibility and the control of the General Partner, disposal of the Investments is not reasonably or normally practicable without being seriously detrimental to the interests of the Shareholders;
- (c) in the case of a breakdown in the normal means of communication used for the valuation of any investment of the Company or if, for any reason beyond the responsibility of the General Partner, the value of any Investment may not be determined as rapidly and accurately as required;
- (d) if, as a result of exchange restrictions or other restrictions affecting the transfer of funds, transactions on behalf of the Company are rendered impracticable or if purchases and sales of the Company's assets cannot be effected at normal rates of exchange;
- (e) when for any other reason, the prices of any Investments within a Compartment cannot be accurately determined;
- (f) upon the publication of a notice convening a General Meeting for the purpose of winding-up the Company or any Compartment(s);
- (g) when the suspension is required by law or legal process; and/or
- (h) when for any reason the General Partner determines that such suspension is in the best interests of Shareholders.

14.2 Any such suspension may be notified by the Company in such manner as it may deem appropriate to the persons likely to be affected thereby. The Company shall notify Shareholders requesting redemption or conversion of their Shares of such suspension.

14.3 Such suspension as to any Compartment will have no effect on the calculation of the NAV per Share, the issue, redemption and conversion of Shares of any other Compartment.

## **15. GENERAL MEETING**

15.1 The annual General Meeting will be held each year in Luxembourg on the last [day] of [month] at [time]. The General Meeting must be held within six (6) months after the end of the Accounting Year. If such day is not a Business Day, the General Meeting will be held on the following Business Day.

15.2 Other General Meetings may be held at such place and time as may be specified in the respective convening notices of that General Meeting.

15.3 Notices for each General Meeting will be sent to the Shareholders by registered mail or courier at least eight (8) calendar days prior to the relevant General Meeting at their addresses set out in the share register of the Company. Such notices will include the agenda and specify the time and place of the meeting and the conditions of admission and will refer to the requirements of Luxembourg Law with regard to the necessary quorum and majorities required for the relevant General Meeting. If all Shareholders meet and declare having had notice of the General Meeting or waiving the notice, the General Meeting may be validly held despite the accomplishment of the afore set formalities. The requirements as to attendance, quorum and majorities at all General Meetings are those set in the 1915 Act and the Articles.

15.4 Except as otherwise required by the 1915 Act or as otherwise provided in the Articles, resolutions at a duly convened General Meeting will be passed by a simple majority of those present or represented and voting provided that no resolution of the General Meeting with a view to take a decision affecting the interests of the Company vis-à-vis third parties or to amend the Articles may be taken without the affirmative vote of the General Partner.

## **16. ACCOUNTING YEAR AND REPORTING**

16.1 The Accounting Year will begin on 1 January and terminate on 31 December of each year, except for the first Accounting Year which began on the date of incorporation of the Company and will end on 31 December 2011.

16.2 The Company shall publish annually a report on its activities, on its investments and on the management of its investments. The report shall include, *inter alia*, audited financial statements, a description of the assets of the Company, a report from the Auditor and a calculation of the value of the assets of the Company as per the financial year end.

16.3 The annual report will be sent to all Investors and will be submitted to the annual General Meeting for approval within six (6) months after the end of each financial year.

16.4 At the latest 15 (fifteen) days prior to the annual General Meeting, the balance sheet, the profit and loss account, the reports of the General Partner and of the Auditor and such other documents as may be required by law shall be deposited at the registered office of the Company where they will be available for inspection by the Shareholders during regular business hours.

16.5 Additional reports may be drawn up in relation to a particular Compartment and will be exclusively available for inspection by Investors of this Compartment, as set out in the relevant Special Section (**Additional Reports**).

16.6 Documents available for inspection by Investors free of charge, during usual business hours at the registered office of the Company in Luxembourg:

- (a) the Articles and the latest available annual report.
- (b) the following agreements may also be examined at the Company's registered office:
  - (i) the [*custody and paying agent agreement*];

- (ii) the [administration agreement];
- (iii) the [domiciliation agreement]; and
- (iv) the investment advisory agreement, if any;

(c) the Additional Reports.

## 17. DISSOLUTION/LIQUIDATION

### Dissolution and liquidation of the Company

17.1 The Company may at any time be dissolved by a resolution taken by the General Meeting subject to the quorum and majority requirements set out in the Articles, and the consent of the General Partner.

17.2 In the event of a voluntary liquidation, the Company shall, upon its dissolution, be deemed to continue to exist for the purposes of the liquidation. The operations of the Company shall be conducted by one or several liquidators, who, after having been approved by the CSSF, shall be appointed by a General Meeting, which shall determine their powers and compensation.

17.3 Should the Company be voluntarily liquidated, then its liquidation will be carried out in accordance with the provisions of the 2007 Act and the 1915 Act. The liquidation report of the liquidators will be audited by the Auditor or by an ad hoc external auditor appointed by the Investors meeting.

17.4 If the Company were to be compulsorily liquidated, the provision of the 2007 Act will be exclusively applicable.

17.5 The issue of new Shares by the Company shall cease on the date of publication of the notice of the General Meeting, to which the dissolution and liquidation of the Company shall be proposed. The proceeds of the liquidation of the Company, net of all liquidation expenses, shall be distributed by the liquidators among the holders of Shares in each Class in accordance with their respective rights. The amounts not claimed by Investors at the end of the liquidation process shall be deposited, in accordance with Luxembourg Law, with the *Caisse de Consignation* in Luxembourg until the statutory limitation period has lapsed.

### Termination of a Compartment or Class

17.6 In the event that, for any reason, the value of the total net assets in any Compartment or the value of the net assets of any Class within a Compartment has decreased to, or has not reached, an amount determined by the General Partner or its delegate to be the minimum level for such Compartment, or such Class of Shares, to be operated in an economically efficient manner or in case of a substantial modification in the political, economic or monetary situation or as a matter of economic rationalisation, the General Partner may decide to offer to the Investors of such Compartment the conversion of their Shares into Shares of another Compartment under terms fixed by the General Partner or to redeem all the Shares of the relevant Class or Classes at the NAV per Share (taking into account actual realisation prices of Investments and realisation expenses) calculated on the Valuation Date at which such decision shall take effect. The Company shall serve a notice to the Investors of the relevant Class or Classes of Shares prior to the effective date for the compulsory redemption, which will indicate the reasons for, and the procedure of, the redemption operations. Registered Investors shall be notified in writing.

17.7 Notwithstanding the powers conferred to the General Partner by the preceding paragraph, the General Meeting of any Class or of any Compartment will, in any other circumstances, have the power, upon proposal from the General Partner, to redeem all the Shares of the relevant Compartment or Class and refund to the Shareholders the NAV of their Shares (taking into account actual realisation prices of Investments and realisation expenses) calculated on the Valuation Date, at which such decision will take effect. There will be no quorum requirements for such General Meeting, which will decide by resolution taken by simple majority of those present or

represented and voting at such General Meeting. Such resolution will however be subject to the General Partner's consent.

- 17.8 Any request for subscription shall be suspended as from the moment of the announcement of the termination, the merger or the transfer of the relevant Compartment.
- 17.9 Assets which may not be distributed upon the implementation of the redemption will be deposited with the *Caisse de Consignation* in Luxembourg on behalf of the persons entitled thereto within the applicable time period.
- 17.10 All redeemed Shares will be cancelled.

#### **Amalgamation, division or transfer of Compartments or Classes**

- 17.11 Under the same circumstances as provided under Section 17.6 of this General Section, the General Partner may decide to allocate the assets of any Compartment to those of another existing Compartment within the Company or to another undertaking for collective investment organised under the provisions the 2007 Act or of Part II of the 2002 Act or the 2010 Act or to another compartment within such other undertaking for collective investment (the **new Compartment**) and to redesignate the Shares of the Compartment concerned as Shares of another Compartment (following a split or consolidation, if necessary, and the payment of the amount corresponding to any fractional entitlement to the relevant Shareholders). Such decision will be notified in the same manner as described under Section 17.6 of this General Section one month before its effectiveness (and, in addition, the publication will contain information in relation to the new Compartment), in order to enable Shareholders to request redemption of their Shares, free of charge, during such period.
- 17.12 Notwithstanding the powers conferred to the General Partner by Section 17.11 of this General Section, a contribution of the assets and liabilities attributable to any Compartment to another Compartment within the Company may, in any other circumstances, be decided upon by a General Meeting of the Compartment or Class concerned for which there will be no quorum requirements and which will decide upon such an amalgamation by resolution taken by simple majority of those present or represented and voting at such meeting. Such resolution will however be subject to the General Partner's consent.
- 17.13 Furthermore, in other circumstances than those described in Section 17.6 of this General Section, a contribution of the assets and of the liabilities attributable to any Compartment to another undertaking for collective investment referred to in Section 17.11 of this General Section or to another compartment within such other undertaking for collective investment will require a resolution of the Shareholders of the Class or Compartment concerned taken with 50% quorum requirement of the Shares in issue and adopted at a 2/3 majority of the Shares present or represented and voting, except when such an amalgamation is to be implemented with a Luxembourg undertaking for collective investment of the contractual type (*fonds commun de placement*) or a foreign based undertaking for collective investment, in which case resolutions will be binding only on such Shareholders who have voted in favour of such amalgamation. Any General Meeting resolution taken in accordance with this Section 17.13 is subject to the General Partner's consent.

### **18. DISTRIBUTION – RE-INVESTMENT CASH**

#### **General**

- 18.1 Each year the General Meeting will decide, based on a proposal from the General Partner, for each Compartment, on the use of the balance of the year's net income of the Investments. A dividend may be distributed, either in cash or Shares. Distributions may take place through the redemption of Shares. Further, dividends may include a capital distribution, provided that after distribution the net assets of the Company total more than EUR1,250,000.

18.2 Over and above the distributions mentioned in the preceding paragraph, the General Partner may determine to the payment of interim dividends (including, for the avoidance of doubt, through a redemption of Shares pursuant to Section 8.4 of this General Section) in the form and under the conditions as provided by law. Any such distribution will be made in compliance with the distribution scheme applicable to the relevant Compartment.

18.3 Payments will be made in the Reference Currency of the relevant Compartment and/or Class. Dividends remaining unclaimed for five (5) years after their declaration will be forfeited and revert to the relevant Compartment.

#### **Distribution of Net Distributable Cash**

18.4 Subject to the remaining provisions of this Section 18, and unless otherwise provided for in a Special Section, all Net Distributable Cash of each Compartments shall be used first to pay the Expenses of that Compartment and shall thereafter, unless recycled in accordance with Sections 18.8 to 18.10, be distributed to Investors as soon as reasonably practicable in the reasonable discretion of the General Partner after the relevant amount becomes available for distribution, unless the General Partner considers the amount to be *de minimis*. Distributions will be made in such order and in accordance with such distribution scheme (or waterfall) as will be set forth in each Special Section. The General Partner in its absolute discretion may make more frequent distributions of Net Distributable Cash.

18.5 Section 18.4 is subject to Section 18.6 and Sections 18.8 to 18.10 and any distributions made by the General Partner pursuant to Section 18.4 and the terms of the relevant Special Section will be subject to re-advance by the Investors in the circumstances set out in Sections 18.8 to 18.10. Investors should be aware that any amount distributed may have to be returned to the Company in accordance with Sections 18.8 to 18.10 below.

#### **Limitations on Distributions**

18.6 The General Partner shall not be obliged to cause any Compartment to make any distribution pursuant to Section 18.4:

- (a) unless there is cash available therefor;
- (b) which would render the Company or the relevant Compartment insolvent;
- (c) which relates to Re-investment Cash the General Partner decides to retain within the Company pursuant to Sections 18.8 to 18.10; or
- (d) which, in the reasonable opinion of the General Partner, would or might leave the Company with a subscribed share capital (increased by the share premium, if any) of less than EUR1,250,000 or insufficient funds to meet any future contemplated obligations, expenses, liabilities or contingencies, including obligations to the General Partner, the Indemnified Persons, the relevant Investment Adviser or an Investment.

18.7 Distributions shall be made only to Shareholders who are recorded in the Company's register as at the date a distribution is made as having made a Capital Contribution and no sums shall be treated as accruing due prior to actual payment. Neither the Company, nor the General Partner or the Investment Adviser shall incur any liability for distributions made in good faith to any Investor at the last address provided by it prior to the registration of any Transfer of all or any of its Shares in the Company.

#### **Re-investment Cash**

18.8 Distributions made (in whatever form, including through redemptions of Share, as the case may be) of funds received by a Compartment attributable to:

- (a) monies comprising capital proceeds received by that Compartments from underwriting transactions and Bridging Investments (up to the amount of their acquisition cost in each case) made by that Compartments where such commitments or Investments lapse or are sold down in whole or in part within twelve (12) months of the making of the commitment or Bridging Investment;
- (b) monies comprising capital proceeds received by that Compartments on the realisation of any Investment arising within twelve (12) months of the making of the Investment (up to the amount of its acquisition cost);
- (c) a prospective investment in an Investment which does not proceed to completion;
- (d) the disposal of an Investment where either (X) a claim has been made under any indemnities, warranties or other obligations undertaken by the Company for that Compartments in relation to that Investment or (Z) distributions made, or capital returned, by that Investment to the Compartments are recalled by that Investment for whatever purposes in accordance with the governing documents of that Investment (an **Underlying Claim**); or
- (e) the repayment of sums drawn down for the purposes of meeting Expenses where such sums are not required for such purpose;

(such amounts being **Re-investment Cash**) shall, subject to Section 18.9 below, increase each Investor's Undrawn Commitments by an amount equal to the amount of Re-investment Cash returned and such amounts shall be available for further drawdown in accordance with the provisions governing drawdowns from Investors in the relevant Compartments.

18.9 In relation to the amounts of Re-investment Cash:

- (a) only amounts up to the returned Capital Contributions and no other amounts derived from the relevant Investment shall be Re-investment Cash;
- (b) in relation to Re-investment Cash to be redrawn due to an Underlying Claim, all such amounts:
  - (i) shall be re-advanced by the Investors to the relevant Compartments *pro rata* to the distributions received by each of them in relation to the relevant Investment;
  - (ii) may only be re-advanced to satisfy an Underlying Claim which relates to the Investment from which the Re-investment Cash was received; and
  - (iii) may only be re-advanced within three years after the distribution of the Re-investment Cash from that relevant Investment.

18.10 Where the General Partner is aware at the time of the distribution of Re-investment Cash that such Re-investment Cash may be subject to recall under Sections 18.8 and 18.9 of the General Section then it will use commercially reasonable efforts to notify the Investors at the time of distribution of such possibility.

**Distribution in kind**

18.11 The Company will in principle not make distributions in kind. However, the Company may distribute assets in kind to the extent a Compartments receives in kind distributions from Investment(s). To the extent practicable, however, such assets will not be distributed (other than in connection with liquidating distributions) unless they are readily marketable. Assets distributed to the Investors in kind will be valued at the time of such distribution by the General Partner in good faith, taking account of such factors as it deems relevant and in view of the fair and equal treatment of Investors. When distributions are made in kind, they will be treated as cash distributions for purposes of applying the distribution provisions.

## 19. TAXATION

### **Luxembourg**

19.1 The Company's assets are subject to tax (*taxe d'abonnement*) in Luxembourg of 0.01% p.a. on net assets, payable quarterly. In case some Compartments are invested in other Luxembourg undertakings for collective investment, which in turn are subject to the subscription tax provided for by the 2007 Act, the 2002 Act or the 2010 Act no subscription tax is due from the Company on the portion of assets invested therein.

19.2 The Company's income is not taxable in Luxembourg. Income received from the Company may be subject to withholding taxes in the country of origin of the issuer of the security, in respect of which such income is paid. No duty or tax is payable in Luxembourg in connection with the issue of Shares of the Company.

19.3 Investors should consult their professional advisors on the possible tax or other consequences of buying, holding, redeeming, converting, transferring or selling any units under the laws of their countries of citizenship, residence or domicile.

19.4 Under current legislation, Shareholders are not subject to any capital gains, income, withholding, estate, inheritance or other taxes in Luxembourg, except for (i) those Shareholders domiciled, resident or having a permanent establishment in Luxembourg, or (ii) non-residents of Luxembourg who hold 10% or more of the issued share capital of the Company and who dispose of all or part of their holdings within six months from the date of acquisition or (iii) in some limited cases some former residents of Luxembourg, who hold 10% or more of the issued share capital of the Company.

### **EU Savings Directive**

19.5 On 3 June 2003, the EU Council of Economic and Finance Ministers adopted the Directive 2003/48/EC on taxation of savings income in the form of interest payments (the EU Savings Directive). The EU Savings Directive is applied by Member States as from 1 July 2005 and has been implemented in Luxembourg by the act of 21 June 2005.

19.6 The Company is currently considered by the Luxembourg tax authorities as out of scope the EU Savings Directive. However, as the operation of the EU Savings Directive will be reviewed after three years, it cannot therefore be excluded that the scope of the EU Savings Directive and/or other articles of the EU Savings Directive would be amended at that point in time. Possible (future) EU Savings Directive implications should thus be monitored on a continuing basis.

### **Other jurisdictions**

19.7 Interest, dividend and other income realised by the Company on the sale of securities of non-Luxembourg issuers, may be subject to withholding and other taxes levied by the jurisdictions in which the income is sourced. It is impossible to predict the rate of foreign tax the Company will pay since the amount of the assets to be invested in various countries and the ability of the Company to reduce such taxes is not known.

19.8 The information set out above is a summary of those tax issues which could arise in Luxembourg and does not purport to be a comprehensive analysis of the tax issues which could affect a prospective subscriber. It is expected that Investors may be resident for tax purposes in many different countries. Consequently, no attempt is made in this Memorandum to summarise the tax consequences for each prospective Investor of subscribing, converting, holding, redeeming or otherwise acquiring or disposing of Shares in the Company. These consequences will vary in accordance with the law and practice currently in force in an Investor's country of citizenship, residence, domicile or incorporation and with his or her personal circumstances.

### **Future changes in applicable law**

19.9 The foregoing description of Luxembourg tax consequences of an investment in, and the operations of, the Company is based on laws and regulations which are subject to change through legislative, judicial or administrative action. Other legislation could be enacted that would subject the Company to income taxes or subject Investors to increased income taxes.

**19.10 THE TAX AND OTHER MATTERS DESCRIBED IN THIS ISSUING DOCUMENT DO NOT CONSTITUTE, AND SHOULD NOT BE CONSIDERED AS, LEGAL OR TAX ADVICE TO PROSPECTIVE SUBSCRIBERS. PROSPECTIVE SUBSCRIBERS SHOULD CONSULT THEIR OWN COUNSEL REGARDING TAX LAWS AND REGULATIONS OF ANY OTHER JURISDICTION WHICH MAY BE APPLICABLE TO THEM.**

**20. INDEMNITY**

**General**

20.1 The General Partner, the Managers, the initiators, the Custodian, the Domiciliary Agent, the Administrator and their Affiliates, officers, directors, direct and indirect shareholders, members, agents, partners and employees of each of the foregoing (each referred to as an **Indemnified Person**) are entitled to be indemnified, out of the relevant Compartment's assets (and, for the avoidance of doubt, which may be from the assets of all Compartments if the relevant matter applies to the Company as a whole or all Compartments), against all liabilities, costs or expenses (including reasonable legal fees), damages, losses, suits, proceedings and actions, whether judicial, administrative, investigative or otherwise, that may be incurred by such Indemnified Person, or in which such Indemnified Person may become involved or with which such Indemnified Person may become threatened, in connection with, or relating to, or arising or resulting from, the Indemnified Person being or having acted as a member of the General Partner or arising in respect of or in connection with any matter or other circumstance relating to or resulting from the exercise of its powers as a member of the General Partner or from the provision of services to or in respect of the Company or under or pursuant to any management agreement or other agreement relating to the Company or which otherwise arise in relation to or in connection with the operation, business or activities of the Company, provided that no Indemnified Person shall be entitled to such indemnification for any action or omission resulting from any behaviour by it which qualifies as fraud, wilful misconduct, reckless disregard or gross negligence.

20.2 The Investment Adviser of a relevant Compartment, and each of its/their directors, officers, agents and employees to the extent directly involved in the business of the relevant Compartment might also benefit from indemnification provisions depending on and in accordance with the terms of the agreement between the Company and the relevant entity.

20.3 The Company may, wherever deemed appropriate, provide professional, D&O or other adequate indemnity insurance coverage to one or more Indemnified Persons.

**21. ANNOUNCEMENTS AND CONFIDENTIALITY**

21.1 All public disclosure or announcement of the existence or the subject matter of this Memorandum shall be subject to the approval of the General Partner or its delegate. This shall not affect any announcement or disclosure by an Investor under Section 21.2 of the General Section but the Investor required to make an announcement or disclosure shall consult with the General Partner or its delegate insofar as is reasonably practicable before complying with such an obligation.

21.2 Each Investor shall and shall procure that its directors, managers, employees, officers, partners, Investors, agents, consultants and advisers and any Affiliate (and their directors, employees, officers, partners, Investors, agents, consultants and advisers) keep confidential and shall not disclose any information provided to it by or on behalf of the Company or otherwise obtained by or in connection with this Memorandum or which may come to its knowledge concerning the affairs of the Company or any investment made or proposed by the Company, save to the extent that:

- (a) disclosure is required by any applicable law or any court of law or any relevant regulator or tax authority;
- (b) disclosure is necessary in order for an Investor to enforce its rights under the terms of this Memorandum;
- (c) disclosure is made by the initiators to its own shareholders and to the regulatory, supervisory or other authority to which it is subject;
- (d) the information concerned is already in the public domain prior to disclosure (other than as a result of a breach of any obligation by any Investor);
- (e) disclosure is made to an Investor's bona fide legal, tax or accountancy advisers or auditors, provided that such disclosure is made on a confidential basis and such advisers or auditors undertake an equivalent duty of confidentiality to that set out in this Section; or
- (f) disclosure is required in good faith and only where reasonably necessary to any Affiliate of that Investor, provided that such disclosure is made on a confidential basis and such Affiliate undertakes an equivalent duty of confidentiality to that set out in this Section.

## 22. PAYMENTS

Unless otherwise expressly stated, all payments to be made pursuant to terms set out in this Memorandum shall be made in EUR to the Investors or the Company in immediately available funds to the accounts which will be communicated in writing by each of the Investors to the Company or by the Company to the Investors.

## 23. EXPENSES

23.1 The Company shall pay out of the assets of the relevant Compartment all expenses incurred by it (**Expenses**), which include:

- (a) fees and reasonable out-of-pocket expenses paid to the Service Providers;
- (b) any fees, costs and expenses incurred in connection with making any filings with any government body or regulatory authority as well as statutory or regulatory fees, if any, levied against or in respect of the Company or the General Partner together with the costs incurred in preparing any submission required by any tax, statutory or regulatory authority;
- (c) remuneration, reasonable out-of-pocket expenses and insurance coverage of the members of the Investment Committee, if any, including reasonable travelling costs in connection with meetings of the members of the Investment Committee, if any; *[To be discussed.]*
- (d) any costs and expenses relating to investor relationship including the drafting, printing and mailing of reports and information to Investors;
- (e) any fees, costs and expenses relating to valuations of Investments including the fees paid to Independent Valuers;
- (f) any expenses incurred in connection with legal proceedings involving the Company or the General Partner;
- (g) the fees, costs and expenses required to be paid in connection with any credit or overdraft facility or other type of borrowing arrangement, including the legal fees, costs and expenses of the lawyers for the

lender(s), the fees, costs and expenses of the Company's counsel, lender's assumption or transfer fees and required reserves;

- (h) any other third party costs and expenses disbursed in connection with the day-to-day management of each Compartment and the operations of each Compartment and its Investments;
- (i) any expenses incurred in connection with obtaining legal, tax and accounting advice and the advice of other experts and consultants;
- (j) insurance premia, litigation, arbitration and indemnification expenses (in accordance with Section 19.1 of the General Section), including any Claims and Expenses and governmental fees and charges associated therewith;
- (k) audit expenses;
- (l) bank charges and interest;
- (m) taxes (including the subscription tax) and other governmental charges;
- (n) fees, costs and expenses incurred in connection with hedging any interest rate, foreign exchange or other risks associated with the business and affairs of the Company, including any Investments;
- (o) winding-up costs;
- (p) Management Fee which is set forth in the relevant Special Section and reasonable out-of-pocket expenses and disbursements of the General Partner;
- (q) costs and expenses disbursed in connection with the day-to-day management and the operations of the Company and the General Partner; and
- (r) legal or other professional fees, costs and expenses for the negotiation, structuring, financing and documentation in relation to the acquisition, ownership, financing, refinancing, hedging and realisation of any Investment, (whether or not completed or realised), any Investment-related fees and other fees (including, for the avoidance of doubt, any out-of-pocket costs or expenses incurred by any third party advisers or accountants), unless reimbursed by another person;
- (s) all third party costs and expenses incurred in connection with the performance of all due diligence investigations in relation to the acquisition, ownership or realisation of any Investment (whether or not completed or realised), unless reimbursed by another person;
- (t) transactional fees and expenses in connection with Investments and disinvestments including, for the avoidance of doubt, expenses incurred in connection with Unconsummated Transactions (to the extent not paid for or reimbursed by another person), unless otherwise stated in the relevant Special Section for a particular Compartment.

23.2 Expenses specific to a Compartment or Class will be borne by that Compartment or Class. Charges that are not specifically attributable to a particular Compartment or Class may be allocated among the relevant Compartments or Classes based on their respective net assets or any other reasonable basis given the nature of the charges.

#### **Set-Up Costs**

23.3 Any costs and expenses incurred by the initiator, the Company, the General Partner or any Affiliate of any of the foregoing, in connection with the establishment, offering and sale of Shares including any costs and expenses

incurred in connection with the preparation of the Memorandum or supplement thereto (including fees, costs and expenses of legal and tax advisers), any subscription materials and any other agreements or documents relating to the establishment and offering of Shares of the Company including the creation of the first Compartment, namely [name of the first Sub-fund] are estimated at a maximum amount of EUR [amount] and will be amortised over a maximum period of five (5) years.

23.4 Expenses incurred in connection with the creation of any additional Compartment will be borne by the relevant Compartment and will be written off over a maximum period of five (5) years. Hence, the additional Compartments will not bear a pro rata proportion of the costs and expenses incurred in connection with the creation of the Company and the initial issue of Shares which have already been written off or amortised at the time of the creation of the new Compartments.

#### **24. RESERVE**

The Company may accrue in its accounts or, as appropriate, in each of its Compartments' accounts, from time to time Reserves.

#### **25. RISK FACTORS**

##### **General risk factors**

25.1 An investment in the Company involves a significant degree of risk. Investment in the Company is only suitable for those persons who are able to bear the economic risk of the investment, understand the high degree of risk involved, believe that the investment is suitable based upon their investment objectives and financial needs, and have no need for liquidity of investment. There can be no assurance that the Company's objectives will be achieved or that there will be any return of capital.

25.2 Before making an investment decision with respect to Shares of any Class in any Compartment, prospective investors should carefully consider all of the information set out in this Memorandum and the relevant Special Section, as well as their own personal circumstances. Investors should have particular regard to, among other matters, the considerations set out in this Section and under the heading "Specific risk factors" in the relevant Special Section. The risk factors referred to therein, and in this document, alone or collectively, may reduce the return on the Shares of any Compartment and could result in the loss of all or a proportion of an Investor's investment in the Shares of any Compartment. The price of the Shares of any Compartment can go down as well as up and their value is not guaranteed. Investors may not receive, at redemption or liquidation, the amount that they originally invested in any Class or any amount at all.

25.3 The risks may include or relate to equity markets, foreign exchange rates, interest rates, credit risk, counterparty risk, market volatility and political risks. The risk factors set out in the General Section and the relevant Special Section are not exhaustive. There may be other risks that a prospective investor should consider that are relevant to its own particular circumstances or generally.

25.4 An investment in the Shares of any Compartment is only suitable for investors who (either alone or in conjunction with an appropriate financial or other adviser) are capable of evaluating the merits and risks of such an investment and who have sufficient resources to be able to bear any losses that may result therefrom.

25.5 Before making any investment decision with respect to the Shares, prospective investors should consult their own stockbroker, bank manager, lawyer, solicitor, accountant and/or financial adviser and carefully review and consider such an investment decision in the light of the foregoing and the prospective investor's personal circumstances.

## **Conflicts of interest**

25.6 The General Partner, any Manager, the Investment Adviser or any member of an Investment Committee may be engaged in other business activities in addition to managing and providing advice to the Company (or the relevant Compartment). It is possible that companies with whom they are associated or which they manage or advise invest by way of co-investment or otherwise in the same issues, placements and investments as the Company (or the relevant Compartment), and under the same or similar conditions. It is also possible that such associated companies may have already invested in these assets or may invest into such assets at a later stage. However, the General Partner, any Manager, the Investment Adviser or any member of an Investment Committee will be obliged to devote such part of their professional time and attention to the business of the Company (or the relevant Compartment) as is reasonably required in the best interest of the Company (and the relevant Compartment) and its Investors in order to effectively manage the Company (and the relevant Compartment). Investment opportunities which are suitable for the Company (and the relevant Compartment) and other accounts managed or advised by the General Partner, a relevant Manager and the relevant Investment Adviser will be allocated as between the Company and such other accounts in the reasonable discretion of the General Partner.

25.7 Certain Investors may, directly or indirectly through an Affiliate, hold shares in the General Partner, an Investment or a participation in the Investment Adviser and therefore have an incentive to take a decision which follows other interests as those of the Company (or of a relevant Compartment).

25.8 Investors may have conflicting investment, tax, regulatory and other interests with respect to their Commitment. As a consequence, conflicts of interest may arise in connection with decisions made by the General Partner or the relevant Investment Adviser, including with respect to the nature or structuring of Investments, that may be more beneficial for one Investor than for another Investor. In selecting and structuring Investments, the General Partner or the relevant Investment Adviser will generally consider the investment and tax objectives of the Company (and the relevant Compartment) and its Investors as a whole, and not the investment, tax or other objectives of any Investor individually.

25.9 The General Partner or the relevant Investment Adviser may share with any other person (including, but not limited to, any Investor or any person introducing investors) any fees and other benefits to which it may be entitled from the Company/relevant Compartment.

25.10 Unless otherwise expressly stated in this Memorandum, the initiators of the Company, the General Partner, the relevant Investment Adviser, and their Affiliates are not restricted from forming additional investment vehicles, from entering into other investment management or advisory relationships or from engaging in other business activities, even though such activities may be in competition with the Company and/or may involve a substantial portion of their time and resources. The General Partner or Investment Adviser(s) may provide investment management and advisory services to other investment vehicles or accounts whose investment policies differ from those followed by them on behalf of the Company. They may make recommendations or effect transactions which differ from those effected with respect to the funds of the Company. They may provide advisory services to accounts in which Shareholders hold a beneficial interest and whose investment policies are substantially identical to those of the Company, on terms more favourable to such Shareholders than those of the Company.

25.11 The Investment Adviser may continue to manage or advise the accounts of clients other than the Company, employing different advisory strategies for those other accounts. There can be no assurance that these advisory services and strategies will not be different from or opposite to advice and services provided to the Company. Although the Investment Adviser will be expected to manage potential and actual conflicts of interest issues in good faith by seeking to determine the existence of conflicts, there can be no assurance that such conflicts of interest may be resolved in the best interests of the Company should they arise.

## **General Partner**

25.12 The General Partner is a newly established company with no track record upon which the Investors may base an evaluation. The General Partner may only be removed by means of a resolution of the General Meeting adopted further to fraud, gross negligence, wilful misconduct or for insolvency provided that the fraud, gross negligence, wilful misconduct or insolvency has been established by a final court decision. The success of the Company depends significantly on the efforts and abilities of its General Partner to evaluate investment opportunities and to select the right agents including the Investment Adviser. Although the General Partner will devote such time and effort as may be reasonably required to implement the objectives of the Company, there can be no guarantee that its undertaking will be successful.

25.13 Limited Shareholders will not participate in the management of the Company. Subscribers of the Ordinary Shares pursuant to the terms and conditions of this Memorandum will become Limited Shareholders and will have no impact on the management and the decision process which remains under the control of the General Partner.

#### **Key persons**

25.14 The success of the Company (and any of its Compartment) will largely depend on the experience, relationships and expertise of the key persons – in particular, the Managers, the directors, employees and agents of the Investment Adviser and the members of any Investment Committee – which have experience in the respective area of investment. The performance of the Company (and any of its Compartment) may be negatively affected if any of the key persons would for any reason cease to be involved.

25.15 Key persons might also be involved in other businesses, including a similar investments as the one undertaken for the account of a relevant Compartment, and not be able to devote all of their time to the Company (or the relevant Compartment). Such involvement may additionally be source for potential conflicts of interest.

#### **Restrictions on Transfer and redemption**

25.16 Shares are subject to restrictions on Transfer. Investors may in principle not withdraw capital from the Company other than to the extent of current income and disposal proceeds when and as required to be distributed by the Company.

#### **Distributions**

25.17 There can be no assurance that the operations of the Company (or a Compartment thereof) will be profitable, that the Company (or a Compartment thereof) will be able to avoid losses or that cash from its operations will be available for distribution to the Investors. The Company (or a Compartment thereof) will have no other source of funds from which to pay distributions to the Investors than income and gains received from Investments. In addition, Investors should be aware that any amount distributed to them may have to be returned to the Company (or the relevant Compartment) in accordance with Sections 18.8 to 18.10 of the General Section (and as may be further provided in respect of a specific Compartment in the relevant Special Section).

#### **Performance allocation and fees**

25.18 Certain Compartment may provide that the General Partner, any Manager, the Investment Adviser Company or any other party may be entitled to receive incentive compensation including carried interest, performance fee or similar remuneration schemes. The fact that these incentive compensations are based on the performance of the relevant Compartment may create an incentive for the beneficiary to cause the Compartment to make Investments that are riskier than would be the case in the absence of performance-based compensation.

#### **Lack of operating history**

25.19 The Company will be a newly formed entity, with no significant operating history upon which to evaluate the Company's likely performance.

25.20 Each Compartment has recently been created and has therefore no significant operating history.

#### **General economic and market conditions**

25.21 The success of the Company's activities may be affected by general economic and market conditions, such as interest rates, availability of credit, inflation rates, economic uncertainty, changes in laws and national and international political circumstances. These factors may affect the level and volatility of security prices and liquidity of the securities held by the Company or its Compartments.

25.22 Unexpected volatility or liquidity could impair the Company's profitability or result in its suffering losses.

#### **Unspecified Investments**

25.23 No assurance can be given that the Company (or any Compartment thereof) will be successful in obtaining suitable investments or, if such investments are made, that the objectives of the Company (or the Compartment) will be achieved. Investors will be unable to evaluate the economic merit of any future investment which may be acquired. Investors must rely entirely on the judgement of the General Partner, the Investment Committee and, as the case may be, the Investment Adviser with respect to the selection and acquisition of investments.

#### **Insufficient risk diversification**

25.24 During the Kick-off Period, a relevant Compartment may be exposed to a single investment. After the Kick-off Period, a relevant Compartment may be exposed to specific segment, asset class or geographical region and, hence, be susceptible to adverse economic or any legal or regulatory occurrence affecting that investment, segment.

#### **Foreign currencies and exchange rates**

25.25 The Company directly or indirectly may hold for the account of a relevant Compartment or Class assets in currencies different as the Reference Currency. Changes in foreign currency exchange rates may therefore affect the value of Investments and hence have a negative impact of the performance of the Company, the relevant Compartment or Class which will additionally bear the costs triggered by the conversions between various currencies.

#### **Illiquidity**

25.26 Investments made by the Company for the account of a relevant Compartment shall generally be illiquid and consequently it may not be possible to sell these Investments at prices that reflect the General Partner's assessment of their value. The nature of the Investments may also require a long holding period prior to profitability. Consequently, disposals of Investments may require a lengthy time period or may result in distributions in kind of securities in lieu of or in addition to cash. In the event the General Partner makes distributions of securities in kind upon the dissolution of a relevant Compartment or Class or upon the liquidation of the Company, these securities could be illiquid or subject to legal, contractual and other restrictions on transfers; in addition, payment in kind shall be made with the consent of the Investor receiving this in kind consideration and shall be determined on an equitable basis amongst the Investors.

#### **Valuations**

25.27 Most of the Compartment's Investments will be highly illiquid, and will most likely not be publicly-traded or readily marketable. The General Partner will therefore not have access to readily-ascertainable market prices when establishing valuations of the Investments and the General Partner and the Company can provide no assurance that any given Investment could be sold at a price equal to the market value ascribed to such Investment in connection with the General Partner's or an Independent Valuer's valuation thereof. Actual realised

returns will depend on various factors, including future operating results, the value of the assets and market conditions at the time of disposition, any related transaction costs and the timing and manner of sale.

### **Contingent liabilities on dispositions**

25.28 In connection with the disposition of an Investment, the Company (for the relevant Compartment) may be required to make warranties and/or representations about the business and financial affairs of the Investment (or Intermediary Vehicle) typical of those made in connection with the sale of any business. The Company (for a Compartment) or its Intermediary Vehicles may also be required to indemnify the purchasers of such Investment to the extent that any such representation turns out to be inaccurate, or for other matters. These arrangements may result in contingent liabilities, which might ultimately have to be funded by the Investors making contributions to the relevant Compartment out of previous distributions from the Compartment (i.e., in respect of Underlying Claims).

### **Default of a Shareholder - failure to comply with a Drawdown Notice**

25.29 If a Shareholder fails to honour a capital call, the Company, in its sole discretion, may take actions in respect of such Shareholder and may borrow to fund such defaulted capital call. If the Company fails to satisfy any capital call by an Investment as a result of any Shareholder's failure to honour a capital call by the Company, such Investment may take actions against the Company, and those actions may be more severe than those described above. Accordingly, the General Partner, the Investment Adviser, as the case may be, will seek to ensure that the Company does not default on any such capital call. There can, however, be no assurance that the Company will meet capital calls on a timely basis if one or more of the Shareholders defaults.

25.30 In addition, as a result of a Shareholder's failure to comply with a Drawdown Notice, other Shareholders may be required to pay their Commitments earlier than would otherwise have been required.

### **Distributions in kind**

25.31 It is possible that not all directly held Investments by a relevant Compartment will be realised by the end of the term or that one or more Investments may make in-kind distributions to a Compartment which that Compartment will not have liquidated prior to the end of the term. In that case, in the General Partner's discretion, there may, subject to Section 18.11, be in-kind distributions by the Company of securities, which may be illiquid. There can be no assurance that Shareholders will be able to dispose of these Investments or that the value of these Investments will ultimately be realised.

### **Legal and tax risks in general**

25.32 The Company must comply with various legal requirements, including securities laws and tax laws as imposed by the jurisdictions under which it operates. Should any of those laws change over the life of the Company, the legal requirement to which the Company and its Limited Shareholders may be subject, could differ materially from current requirements.

25.33 An investment in the Company involves complex tax considerations in Luxembourg, in the countries in which Investment assets are located, in countries in which a relevant Investor is domiciled or resident, and possibly in other countries. Some of these tax considerations will differ for particular investors. Among other things, investors may be subject to tax on income even if the Company or Compartment did not make any distribution.

Depending on individual circumstances, the taxation treatment for direct or indirect Investors may differ from the guidance of Section 19 of the General Section and Investors should obtain advice from their own tax advisers regarding the tax implications for them of holding and disposing of Shares and receiving distributions in respect of the Shares.

## **26. AMENDMENTS TO THE GENERAL SECTION**

26.1 Subject to the approval of the CSSF, the General Partner may amend the provisions of this General Section as follows:

- (a) where the change is determined by the General Partner not to be material, upon decision of the; or
- (b) where the change is determined by the General Partner to be material, only a Company's Consent.

26.2 Investors will be notified by the General Partner of all amendments that are adopted without their consent in accordance with Section 26.1(a) of the General Section. Investors will be notified in advance of any proposed material change to the Memorandum in order to ensure that they are able to make an informed judgment in respect of the expected amendments pursuant to Section 26.1(b).

26.3 No variation may be made to this Section 26 without unanimous consent of all Investors and of the initiators. Any amendment to this General Section that would result in a discrepancy between the terms and provisions of the Articles and those of this Memorandum shall be subject to the prior amendment of the Articles, in accordance with the provisions of the 1915 Act and the Articles.

## **SPECIAL SECTION I -BHV OPPORTUNITIES FUND SCA, SICAV-FIS -EMERGING MARKETS FUND 1**

This Special Section is valid only if accompanied by the General Section of the Memorandum. This Special Section refers only to BHV Opportunities Fund SCA, SICAV-FIS - Emerging Markets Fund 1 (the **Compartiment**).

### **1. INVESTMENT POLICY**

#### **Investment objective**

- 1.1 The investment objective of the Compartiment is to outperform the MSCI Emerging Markets Index over the long term. The General Partner may, in consultation with the Investment Committee, select another index to be the reference index in substitution for an existing reference index, if it considers that the MSCI Emerging Markets Index or a previously substituted index is no longer appropriate or ceases to be available as an appropriate benchmark.
- 1.2 In seeking to achieve its investment objective of the Compartiment, the General Partner intends primarily to hold investments, including equities or equity-linked securities, debt instruments, derivatives and other financial instruments which give exposure to issuers located or active in emerging markets globally including People's Republic of China and Member States of CIS.
- 1.3 The Compartiment will aim to monetise the global market turmoil and limited liquidity on such terms as the General Partner considers favourable to the Compartiment in the prevailing circumstances.
- 1.4 The Compartiment may hold both listed and unlisted securities whereby the majority of the Compartiment's portfolio will be invested into unlisted securities.
- 1.5 In particular, the Compartiment will invest in unlisted equities, equity linked instruments and/or debt instruments of issuers which directly or indirectly own, partly own or operate businesses or assets in emerging markets including People's Republic of China and Member States of CIS.
- 1.6 The Compartiment will invest in Portfolio Companies either directly or through one or more Intermediary Vehicles.
- 1.7 For hedging and positioning purposes, the Compartiment may also invest in fixed income, foreign exchange, credit and equity securities and their associated listed or OTC derivatives in global markets. The Compartiment may invest in cash bonds including, without limitation, money market instruments in local currency and hard currency. It may invest in money market instruments (including certificates of deposit, commercial paper and bankers acceptances, and deposits), standard and credit-contingent currency forwards and non-deliverable forwards, government or corporate bonds in hard and local currency and other fixed income. The Compartiment may hedge commodity risk through the use of listed and OTC commodity derivatives.
- 1.8 While the Compartiment does not intend to be net short, the Compartiment will have the right to take short positions with respect to all investments and will be permitted to purchase on margin and to borrow on a secured basis against the assets of the Compartiment. The Compartiment is permitted to invest in any specific market, industry, sector or emerging country.
- 1.9 Leverage can be employed in accordance with Section 1.13 below.
- 1.10 The investment objectives and policies of the Compartiment may be amended by the General Partner. Any such amendment will be notified to the Shareholders.

### **Investment restrictions**

1.11 The Compartment is subject to the investment restrictions laid down under Section 3.4 of the General Section, provided that these investment restrictions may not be complied with during the Kick-off Period of three (3) years as from the date of the First Closing.

1.12 If the investment restrictions are breached by reason other than an acquisition or purchase of an Investment (including, for the avoidance of doubt, if the investment restrictions are breached (a) due to an increase or decrease of the value of the assets held by the Compartment, or (b) because the Compartment has disposed of one or more of its Investments) (**Passive Breaches**), the General Partner will seek to remedy the Passive Breach, but will only do so if it reasonably considers it to be in the best interests of the Shareholders. In addition, it will not commit to any new Investments that may aggravate the Passive Breach. Likewise, the investment restrictions will not be considered as being actively breached as a result of Investments being disposed of during the liquidation phase of the Compartment before the term of the Compartment (and, Investors should note that in light of the nature of the Investments of the Compartment, the process in relation to disposal of Investments may be long).

1.13 The General Partner will monitor the applicable investment restrictions but shall not be required to take immediate remedial action to comply with any such restriction, if (i) the failure to comply with the restriction results in an event which is beyond the General Partner's control or (ii) the General Partner deems it advisable or in the best interest of the Compartment to dispose of or otherwise take action with respect to the relevant Investment.

### **Co-investments**

The Compartment may co-invest with other investors in the same Intermediary Vehicle or Portfolio Company.

### **Borrowing – Use of derivatives – Temporary Investments**

*[The following is to be understood as a proposal for discussion purpose.]*

1.14 *Borrowing*

(a) The Compartment does not have any immediate intention to borrow any funds. However, if appropriate, the Compartment will consider raising debt finance by means including, *inter alia*, bank borrowings, private debt placements or listed debt instruments to finance Investments. The level of debt raised as a percentage of the total funding requirement for any transaction will differ depending upon the perceived ability of the relevant Intermediary Vehicle or Portfolio Company to carry and service the debt as well as the conditions in the debt market at the time of the transaction.

(b) The Compartment may also borrow money (through loans, repurchase obligations or otherwise) and secure those borrowings with liens or other security interests in the assets of the Compartment (or any of its Intermediary Vehicle)

(i) by way of short term borrowings of less than twelve (12) months; and

(ii) for the purpose of (x) making deposits with regard to Investments in lieu of, or in advance of, seeking Capital Contributions with which to make the deposits, (y) for interim financing of Investments, in lieu of, or in advance of, seeking Capital Contributions with which to pay for those Investments, (z) to fulfil obligations assumed in relation to investments where there is a shortfall caused by an Investor who has become a Defaulting Investor and (zz) to pay other liabilities the Company may incur (including Expenses, etc.);

(c) The Compartment may borrow through overdraft facilities subject however to a maximum level of borrowing of [100%] of the Compartment's Total Commitments. For the purpose of the calculation of this [100%] threshold, amounts borrowed in accordance with Section 1.12(b) above will be aggregated with amounts borrowed under overdraft facilities as per this Section 1.12(c);

*Financial derivative instruments*

(d) The Compartment may use financial derivative instruments to hedge its exposure to currency exchange rate fluctuations resulting from participations or commitments in Investments not denominated in EUR between the date of the commitment and the date on which such commitment is being drawn down. The Compartment shall not seek any form of hedging for any other risk of currency fluctuations and such risk shall be borne entirely by the Investors;

*Temporary investments*

(e) The Compartment may hold Liquid Assets for cash management purposes. The Temporary Investments are to be made on a temporary basis, pending further use or redeployment of the capital from the results of the management of the Compartment's assets;

*Security interests – guarantees*

(f) in furtherance of the Compartments' investment objective and policy, the Company may, for the account of the Compartment, give guarantees and grant security in favour of third parties to secure the Compartment's obligations and the obligations of Intermediary Vehicles and it may grant any assistance to Intermediary Vehicles, including, but not limited to, assistance in the management and the development of such companies and their portfolio, financial assistance, loans, advances or guarantees. It may pledge, transfer, encumber or otherwise create security over some or all of its or its Compartments' assets.

## **2. REFERENCE CURRENCY**

The Reference Currency of the Compartment is EUR.

## **3. INVESTMENT COMMITTEE**

3.1 The General Partner has established an Investment Committee for the Compartment.

3.2 Before taking any decision to participate in a relevant Investment for the account of the Compartment, the General Partner will consult the Investment Committee without being bound by the recommendation of the Investment Committee.

3.3 Members of the Investment Committee are nominated by the General Partner for the duration of the Compartment whereby the General Partner may revoke or replace any member of the Investment Committee before the term of the Compartment without cause.

3.4 As of the date of this Memorandum, the following persons have been nominated by the General Partner as members of the Investment Committee:

- [Title, name, short biography];
- [Title, name, short biography]; and
- [Title, name, short biography].

3.5 The Investment Committee shall meet upon a call from the General Partner or from any member of the Investment Committee. It shall meet at least [*twice a year*].

Written notice of any meeting of the Investment Committee shall be given to all its members at least [*twenty-four (24) hours*] in advance of the date set for such meeting, except in circumstances of emergency, in which case the nature of such circumstances shall be set forth briefly in the agenda of the relevant meeting.

No such written notice is required if all the members of the Investment Committee are present or represented during the meeting and if they state to have been duly informed, and to have had full knowledge of the agenda and of the meeting. The written notice may be waived by the consent of the members.

3.6 Any member may participate in a meeting of the Investment Committee by conference call, video conference or similar means of communications equipment whereby (a) the members attending the meeting can be identified, (b) all persons participating in the meeting can hear and speak to each other, (c) the transmission of the meeting is performed on an on-going basis and (d) the members can properly deliberate, and participating in a meeting by such means shall constitute presence in person at such meeting.

3.7 Notwithstanding the foregoing, a resolution of the Investment Committee may also be passed in writing, provided such resolution is preceded by a deliberation between the members. Such a resolution shall consist of one or several documents containing the resolutions and signed, manually or electronically by means of an electronic signature, by the majority of the members.

3.8 In case the Investment Committee must meet in person, reasonable out-of-pocket expenses of the members of the Investment Committee attending the meetings shall be paid by out of the assets of the Compartment.

3.9 The members of the Investment Committee will appoint at each meeting a pro tempore chairman among its members.

3.10 The quorum and majority rules for a meeting of the Investment Committee shall be as follows:

- (a) The Investment Committee is subject to a quorum requirement of [*percentage*] of its appointed members in order to be enabled to take a resolution.
- (b) If the quorum is not achieved for a relevant meeting of the Investment Committee, a subsequent meeting shall be called by the General Partner or by any member of the Investment Committee within a period of [*number*] Business Days. This meeting is not subject to any quorum requirement.
- (c) Each member of the Investment Committee shall have one vote.
- (d) Resolutions will be validly taken by a simple majority.
- (e) In the case of a tied vote, the chairman of the meeting shall have a casting vote.

3.11 Members of the Investment Committee may appoint proxies to attend meetings of the Investment Committee.

#### **4. INVESTMENT ADVISER**

4.1 The Company has entered on behalf of the Compartment into an investment advisory agreement as of [*date*] with [*name*] (**the Investment Adviser**).

4.2 The Company is entitled to terminate the investment advisory agreement with the Investment Adviser upon a prior written notice of [*three (3) months*]. The Shareholders of the Compartment will be informed of the revocation of the Investment Adviser and, as the case may be, of the nomination of another investment adviser. The Company will also take the necessary steps to adapt this Memorandum, if necessary.

4.3 Under the terms of the investment advisory agreement, the Investment Adviser will provide to the Company investment advisory services, operational services and reporting services in relation to the portfolio of the Compartment:

- (a) The investment advisory services include:
  - (i) identifying, evaluating through due diligence and providing information on the portfolio management of the Compartment;
  - (ii) rendering advice and assistance to the General Partner to enable it to manage the Compartment's portfolio, follow up, monitor and analyse the progress of the Investments, assisting in the valuations of the Investments from time to time, and providing such written or other reports as the General Partner shall reasonably require;
  - (iii) analysing and providing advice to the General Partner regarding the most efficient and/or profitable means of structuring, financing and effecting the acquisition or disposal of Investments;
  - (iv) providing such advisory services in connection with the Investments as the General Partner may request from time to time; and
  - (v) holding periodic meetings with the key managers and executives of the Investments; and
  - (vi) advising the General Partner through the analysis of potential investment opportunities and of market and economic surveys.
- (b) Upon request of the General Partner, the Investment Adviser may provide *inter alia* operational and reporting services of the Investment Adviser which may include
  - (i) support in implementing investment or divestment decisions approved by the General Partner;
  - (ii) delivering financial/management reports on Investments as the General Partner may reasonably require;
  - (iii) delivering any information which the General Partner may reasonably require relating to the Compartment's Investments;
  - (iv) communicating with and reporting to Investors whenever called upon to do so; and
  - (v) do any other acts as reasonably required by the General Partner or as are necessary or desirable in the reasonable opinion of the Investment Adviser in furtherance of the foregoing services and consistent with the terms of the investment advisory agreement.

4.4 The Investment Adviser is entitled to receive an Investment Advisory Fee.

*[To be defined.]*

*If the Investment Advisory Fee is paid out of the net assets of the Compartment, it is typically based during the initial years on Total Commitments and at a later stage on the Contributed Capital or the NAV.*

*It is not necessary to disclose the Investment Advisory Fee in the Memorandum if it is paid out of the Management Fee which is collected by the General Partner.]*

## 5. TERM OF THE COMPARTMENT

### General

5.1 Subject to Sections 5.2 to 5.5 below, the Compartment has been created for a limited duration and will be automatically put into liquidation at the fifth anniversary of the First Closing, or if earlier:

- (a) the date on which all Investments have been disposed of or otherwise realised by the Compartment and the proceeds of such disposals or realisations have been distributed to the Shareholders and no Underlying Claims are still outstanding;
- (b) the date on which Shareholders' decide to terminate the Compartment by a subject to the approval of the General Partner.

### Extension of term

*[To be confirmed.]*

5.2 At any time before the fourth anniversary of the end of the First Closing, the General Partner is entitled to extend the term of the Company for up to two consecutive additional one-year periods. If the General Partner first extends the term for less than *[number of years]* year, the General Partner shall have the right, but not the obligation, to make further elections in the General Partner's absolute discretion to extend the term before the end of any previous extension on one more occasion.

5.3 Any extension of the term of the Compartment beyond the seventh anniversary of the end of the First Closing may only occur with the unanimous consent of the Shareholders of the Compartment.

5.4 Any such extension shall be without prejudice to the possibility of earlier termination of the Compartment for any reason specified in Section 5.1 above.

5.5 In the event that the General Partner elects to extend the life of the Compartment, it shall notify all Shareholders of the Compartment of that extension.

*[Please let us know if you wish to insert any key man clause which may trigger an earlier dissolution of the Compartment.]*

## 6. CLASSES OF SHARES

6.1 Beside the issuing of one (1) Management Share, the following Classes have been created upon the launch of the Compartment:

- (a) Ordinary Shares; and
- (b) Participating Shares.

6.2 Participating Shares:

- (a) are reserved, upon the decision of the General Partner for subscription by the persons directly or indirectly involved in the investment management or advisory process (which may include the Investment Adviser, its directors, officers, employees or consultants);
- (b) grant their holder the right to receive the reimbursement of Capital Contributions, the Preferred Return, the Catch-up and the Carried Interest as described in Sections 11.1(b) and 11.1(d) of this Special Section I.

6.3 Ordinary Shares:

- (a) are reserved for Investors who/which are not Restricted Investors;
- (b) are subject to a minimum Commitment of [*amount*]; the General Partner is entitled to accept a Commitment which is below this amount in accordance with Section 10 of the General Section;
- (c) grant their holders the right to receive the reimbursement of Capital Contributions, a Preferred Return and a participation to the profit as described in Section 11.1(b) of this Special Section I.

7. **OFFERING OF SHARES – CAPITAL CONTRIBUTIONS**

7.1 Each Investor subscribing for Shares will be required to enter into a Subscription Agreement irrevocably committing to make all subscriptions and payments for the entire Commitment and each Investor shall be required to make Capital Contributions equal, in total, to the Investor's Commitment in consideration for the issuance of fully paid Shares by the Company. In addition, Subsequent Investors may be required to pay a Subsequent Closing Actualisation Interest in accordance with Section 7.10(b) of this Special Section I and an Equalisation Fee Payment in accordance with Section 7.14 of this Special Section I. For the avoidance of doubt, Capital Contributions in kind are not admitted.

7.2 In addition, each Investor entering into a Commitment in respect of Ordinary Shares may be required to pay a Subscription Fee of up to [*percentage*] of its Commitment to the General Partner or an agent duly appointed by the General Partner if so instructed by the General Partner. Any such Subscription Fee shall be in addition to the Investor's Commitment.

7.3 The General Partner may, in its absolute discretion, accept or reject in whole or in part any Subscription Agreement.

**First Closing Date**

7.4 Investors may commit to subscribe for Shares from [*date*] until the First Closing Date. The First Closing Date will in principle be [*date*] (subject to the right of the General Partner to set the First Closing Date after [*date*]), provided that any decision to postpone the First Closing Date after that date will be notified to the relevant Investors). Investors that have submitted a Subscription Agreement for acceptance to the General Partner will be notified by mail or through appropriate electronic communication means by the General Partner of the First Closing Date [*forty eight (48) hours*] in advance of the First Closing Date. The First Closing Date will in no event occur after [*date*]. The initial issuing price per Share is [*amount*].

**Subsequent Closing Dates**

7.5 The General Partner is entitled to install one or further subsequent closing (each a **Subsequent Closing**) during the Commitment Period. The Commitment Period starts with the creation of the Compartment and ends at latest on the first anniversary of the First Closing Date.

7.6 Investors admitted, or who increase their Commitments, at a Subsequent Closing must, at that Closing, make the Capital Contribution and pay the Subsequent Closing Actualisation Interest and Equalisation Fee Payment as stated in Sections 7.10 to 7.14 of this Special Section.

7.7 The date of a Subsequent Closing will be communicated to the relevant Investors and the Custodian upon twenty (20) Business Days' prior notice (or such other shorter period as decided by the General Partner).

7.8 The General Partner may decide, at its discretion, to postpone the date of the Second Closing (but not beyond the end of the Commitment Period). In this event, the relevant Investors and the Custodian will be informed of the amended date of the Second Closing.

7.9 Investors who subscribe for Commitments on the Subsequent Closing Date will be treated as if they had been admitted to the Compartment as of the First Closing Date and will acquire a proportionate interest in all Investments acquired by the Company, and will bear the proportionate share of the fees and expenses incurred by the Company, prior to the date of their admission to the Company pro rata with other Investors.

7.10 In addition, if an Investor is admitted to the Company on the Subsequent Closing or has increased its Commitment on the Subsequent Closing (the **Subsequent Investor**), and if Capital Contributions have been made by existing Investors (the **Previous Investors**) on or after the First Closing Date (the **Relevant Drawdown**), then such Subsequent Investor will be required to pay an amount equal to:

- (a) the amount notified to such Subsequent Investor by the General Partner by mail or through appropriate electronic communication means as being necessary to equalise (in percentage terms) the net amount drawn down from all Investors after taking into account any amounts distributed to Previous Investors. The Subsequent Investor's Undrawn Commitment shall be reduced by the sum paid under this Section 7.10(a) in respect of its Capital Contribution. All such amounts shall thereafter be deemed to have been contributed on the First Closing Date, unless otherwise stated (the **Subsequent Closing Capital Contribution**);

plus

- (b) an additional amount calculated on the Subsequent Closing Capital Contribution during the period commencing on the date of the first Relevant Drawdown and ending on the first drawdown of Commitment from such Subsequent Investor equal to interest at the *[interest rate increased by percentage]* compounded annually on the average daily balance of such Capital Contribution, which sum shall accrue from the date or dates upon which such Capital Contribution would have been payable had it been an Investor on the First Closing Date up to the date of its admission to the Company or increase in Commitment (the **Subsequent Closing Actualisation Interest**).

7.11 The Subsequent Closing Actualisation Interest paid by a Subsequent Investor pursuant to Section 7.10(b) shall not be treated as part of its Commitment and shall not be deemed Capital Contributions. The Subsequent Closing Actualisation Interest shall be payable on top of an Investor's Commitment. The Subsequent Closing Actualisation Interest will be distributed pro-rata to Previous Investors but will not be added to the Undrawn Commitment of Previous Investors and hence not be available for drawdown again. For the avoidance of doubt, the new Investors will be entered in the register of shareholders of the Company as at the date at which they obtain their first Shares therein.

7.12 The amounts payable by a Subsequent Investor as per Section 7.10(a) and (b) of this Special Section will be:

- (a) returned to the Previous Investors pro rata to their Capital Contributions as soon as is practicable after receipt from such Subsequent Investors so that immediately thereafter the amounts of all Investors' Undrawn Commitments will bear the same proportion to their respective Commitments. The amount so distributed (to the exclusion of the Subsequent Closing Actualisation Interest) will be (i) paid under the form of a compulsory redemption of Ordinary Shares held by Previous Investors (at a price of *[amount]* per Share) and (ii) added to the Undrawn Commitment of each Previous Investor and be available for drawdown again; or
- (b) retained for investment and not treated as realisations and netted off against their future Capital Contributions.

7.13 Previous Investors should note that, in accordance with Section 7.12(a) of this Special Section, a portion of their Shares may be compulsorily redeemed at a fixed price of *[amount]* per Share in case of admission of Subsequent Investors.

7.14 Any Subsequent Investor will also pay to the Compartment an amount equal to the additional Management Fee that would have been paid if such Subsequent Investor had been admitted at the First Closing Date, plus interest on such amount at the rate of [*interest rate increased by percentage*] for the period from the First Closing Date or other Management Fee payment date, if any, to such Subsequent Closing date (the **Equalisation Fee Payment**). The Equalisation Fee Payment will be paid to the Compartment and will not be deemed Capital Contributions.

## 8. DRAWDOWN FROM INVESTORS

8.1 The Commitment of each Investor will be payable in instalments on each Drawdown Date on a pro rata basis.

### *General*

8.2 Subject to Sections 18.8 to 18.10 of the General Section, the balance of each Investor's Undrawn Commitment will be payable in instalments on each Drawdown Date on a pro rata basis by reference to the Total Undrawn Commitments at such time during the Commitment Period as the General Partner may require for such purposes as determined by the General Partner in its absolute discretion, including for the purpose of:

- (a) making Investments;
- (b) repaying any outstanding borrowings of the Company;
- (c) for working capital purposes and to cover Expenses; or
- (d) meeting other obligations or liabilities of the Company, including the Management Fee, guarantees, indemnities, covenants, Underlying Claims and undertakings given by it and including obligations of the Compartment as an investor or limited partners in Investments.

8.3 Subject to Sections 18.8 to 18.10 of the General Section, no Drawdown Notice shall be served by the General Partner on any Investor after the end of the Commitment Period other than to the extent necessary:

- (a) to complete Investments in respect of which the Company at the end of the Commitment Period has committed to the Investments;
- (b) to repay any outstanding borrowings of the Company;
- (c) for working capital purposes and to cover the Expenses; or
- (d) to meet other obligations or liabilities of the Company, including guarantees, indemnities, covenants, Underlying Claims and undertakings given by it and including obligations of the Company as an investor or limited partners in Investments;

provided that for the avoidance of doubt any contributions of each Investor's Undrawn Commitment made under this Section shall be made pro rata to Total Undrawn Commitments at such times for the purposes of this Section 8.3 as the General Partner may require.

8.4 Notwithstanding anything to the contrary in this Memorandum, in no event shall an Investor be required to make Total Contributions to the Company in excess of such Investor's Commitment (increased by the Subsequent Closing Actualisation Interests and Equalisation Fee Payment, as the case may be).

8.5 Prior to each Drawdown Date, the General Partner will issue a drawdown notice (the **Drawdown Notice**) advising Investors of the Capital Contribution to be made (i.e., the portion of their Commitment required to be contributed to the Company) and the corresponding number of Ordinary Shares that will be issued. The Capital

Contribution required to be made to the Company further to a Drawdown Notice must be paid within the period of time as indicated in the Drawdown Notice, but not less than [ten (10)] Business Days.

8.6 Notwithstanding the above, if the actual Capital Contribution to be paid by an Investor changes after delivery of a Drawdown Notice (due, for example, to a change in the amount or nature of the Investment or a default by another Investor), the General Partner shall issue a revised Drawdown Notice to the Investors. Such Investors shall pay any additional Capital Contribution thereby required no later than the Drawdown Date specified in such revised Drawdown Notice.

8.7 If, on a Drawdown Date, distributions to the Investors are outstanding (i.e., distributions have been formally decided by the General Partner or the General Meeting but not yet paid), then the General Partner may decide in good faith to set off the amounts so distributable to the relevant Investors against the Capital Contributions required from Investors. Investors will be notified thereof in the relevant Drawdown Notice. Where distributable amounts to an Investor are not sufficient to cover the Capital Contribution that is required from such Investor, the General Partner will notify the Investors thereof in the Drawdown Notice and advise Investors of the amount of Capital Contribution to be made in cash.

## 9. RE-INVESTMENT CASH

Re-investment Cash returned pursuant to Sections 18.8 to 18.10 of the General Section shall be available for further drawdown in accordance with Sections 18.8 to 18.10 of the General Section and Section 8 of this Special Section, and shall form part of the relevant Investor's Undrawn Commitment.

## 10. VALUATION DATE

10.1 The NAV will be calculated as of [31 December] of each year (the **Valuation Date**) subject to the right of the General Partner to calculate a NAV on such other date as it deems fit.

## 11. DISTRIBUTIONS AND ALLOCATION OF LIQUIDATION PROCEEDS – CARRIED INTEREST – RE-INVESTMENT

*[The following waterfall is to be understood as an example for discussion purpose.]*

11.1 Net Distributable Cash of the Compartment will be distributed in accordance with the terms and provisions of Section 18 of the General Section in the following order:

- (a) Firstly, 100% first, pro rata to all Shareholders, until each Shareholder has received an amount equal to its unreturned Capital Contributions;
- (b) Secondly, 100% pro rata to all Shareholders until each Investor has received an aggregate amount equal to [percentage] per annum, compounded annually, on all unreturned Capital Contributions of such Shareholder (the **Preferred Return**);
- (c) Thirdly (the **Catch-up**), 100% pro rata to the holders of Participating Shares until (excluding any amounts received by the holders of Participating Shares in respect of their Capital Contributions) they have in aggregate received a sum equal to [percentage] of the amounts cumulatively distributed to the Shareholders under (b) and (c) above; and
- (d) Fourthly, (i) [80%] to the holders of Ordinary Shares and (ii) [20%] to the holders of Participating Shares on a pro rata basis (excluding any amounts received by the holders of Participating Shares in respect of their Capital Contributions) (such payment being referred to as the **Carried Interest**).

11.2 For the avoidance of doubt, Defaulting Investors are excluded for the purpose of calculating the allocation of the Net Distributable Cash.

11.3 In no event, however, will the holders of Participating Shares be required to return more than the cumulative Carried Interest distributions received by them, net of amounts distributable to them in respect of income taxes thereon.

## **12. MANAGEMENT FEE**

12.1 The General Partner will be paid an annual Management Fee as follows: *[To be defined. Typically the Management Fee is a fixed amount based on Total Commitment, Contributed Capital and/or the NAV.]*

12.2 The Management Fee will accrue yearly as from the First Closing Date. The Management Fee will be paid *[monthly or quarterly]* in advance. If profits are insufficient to cover drawings on account of the Management Fee, the General Partner will not be liable to refund the shortfall to the Compartments.

## **13. AMENDMENTS TO THIS SPECIAL SECTION**

13.1 Subject to the approval of the CSSF, the General Partner may amend the provisions of this Special Section as follows:

- (a) where the change is determined by the General Partner not to be material, upon decision of the General Partner; or
- (b) where the change is determined by the General Partner to be material, only following a Compartments' Consent.

13.2 Investors will be notified by the General Partner of all amendments that are adopted without their consent in accordance with Section 13.1(a) of this Special Section I. Investors will be notified in advance of any proposed material change to the Memorandum in order to ensure that they are able to make an informed judgment in respect of the expected amendments pursuant to the Section 13.1(b) of this Special Section.

13.3 No variation may be made to this Section 13 without unanimous consent of all Investors in the Compartments and of the initiators. Any amendment to this Special Section that would result in a discrepancy between the terms and provisions of the Articles and those of this Memorandum shall be subject to the prior amendment of the Articles, in accordance with the provisions of the 1915 Act and the Articles.

## **14. SPECIFIC RISK FACTORS**

14.1 Investors are advised to carefully consider the risks of investing in this Compartments and are therefore referred to Section 25 of the General Section which provides a non exhaustive description of risks.

14.2 In particular, there are significant risks inherent in investing in emerging markets. The value of emerging markets' companies and assets may be affected by various uncertainties such as economic, political or diplomatic developments, social and religious instability, taxation and interest rates, currency repatriation restrictions, crime and corruption and developments in the emerging countries' laws and, in particular, the risks of expropriation, nationalisation and confiscation of assets and changes in legislation relating to the level, or permissibility, of foreign ownership.

14.3 Investors are therefore advised to carefully consider the following non exhaustive description of specific risks related to an investment in this Compartments.

### **Political risk**

14.4 Significant political instability or social unrest could have a material adverse effect on the value of foreign investments in emerging markets and, therefore, the value of the Investments.

### **Economic risk**

14.5 Current financial crisis based mostly on credit crunch seriously influenced many of the emerging economies and their financial sectors. Numerous emerging economies have at various times been affected by declines in gross domestic product, higher inflation, an unstable currency and high corporate indebtedness relative to the Gross Domestic Product (GDP).

14.6 The economies of the emerging markets that will be targeted by the Compartiment are heavily dependent on a few segments and markets (such as the Russian Federation and the People's Republic of China) and are therefore highly sensitive to changes in these segments and indirectly to the economical situation in the Russian Federation and the People's Republic of China.

### **Transparency**

14.7 Companies in emerging markets are not always subject to disclosure, accounting, auditing and financial standards which are equivalent to those applicable in Western European countries. Available information may also be less reliable. There may be less rigorous government supervision and regulation. Regulatory regimes relating to foreign investment are still in their infancy in certain emerging countries. This may mean that rules are being applied for the first time or are inconsistently being applied. In addition, for companies that keep accounting records in local currency, inflation accounting rules may require, for both tax and accounting purposes, that certain assets and liabilities be restated on the company's balance sheet in order to express items in terms of currency of constant purchasing power. As a result, financial data may be materially affected by restatements for inflation and may not accurately reflect the real condition of companies and securities markets. Accordingly, the Compartiment's ability to conduct due diligence in connection with a proposed investment and to monitor an Investment may be adversely affected by these factors.

### **Official data**

14.8 The quality and reliability of official data published by governments and government agencies of certain emerging countries are generally not equivalent to that of Western countries.

### **Accounting practice**

14.9 Accounting, auditing and financial reporting standards in emerging markets do not always match International Financial Reporting Standards and are not always equivalent to those applicable in Western European economies. The obligation on the Portfolio Companies to publish financial information is relatively limited, thus making satisfactory due diligence prior to any acquisition harder to achieve.

### **Foreign currency and exchange rates**

14.10 The Compartiment's assets mostly will be invested in assets denominated in other currency than the EUR, some of which are not externally convertible into other currencies. The value of the Compartiment's assets, as measured in EUR, may be affected, both positively and negatively, by fluctuations in currency rates and exchange control regulations.

### **Foreign investment restrictions**

14.11 The laws of emerging countries, including taxation on foreign investment, trade of securities and transfer of title that are applicable to the Compartiment's activities can change in a manner far more volatile than in Western countries. The laws of emerging countries may be unclear or contradictory and subject to varying interpretations and may at any time be amended, modified, repealed or replaced in a manner materially adverse to the interests of the Compartiment.

### **Repatriation restrictions**

14.12 The right of foreign investors to transfer abroad income received from investments such as profits, dividends and interest payments from the emerging markets in which the Compartment intends to invest may be restricted in some emerging countries [*to be confirmed*]. In addition, where the right of repatriation of capital is recognised, it may be subject to settlement of all applicable taxes and duties, and it may not be excluded that changes in the relevant laws involve that amounts representing realisation of capital or income will become subject to currency control and that the repatriation of income from Portfolio Companies will be restricted.

### **Taxation**

14.13 Emerging countries' tax laws and practices are not always as clearly established as that of the European Union.

Differing interpretations of tax regulations may exist both among and within government ministries and organizations at the federal, regional and local levels, creating uncertainties and inconsistent enforcement. Furthermore, in the absence of binding precedent or consistent court practice, rulings on tax or other related matters by different courts relating to the same and similar circumstances may also be inconsistent or contradictory.

Taxpayers often have to resort to court proceedings to defend their position against the tax authorities. Certain events suggest that the tax authorities may be taking a more assertive position in their interpretation of the legislation and assessments.

The abovementioned conditions create tax risks in emerging markets that are more significant than typically found in countries with more developed tax systems, imposing additional burdens and costs on operations, including management resources. There can be no assurance that current taxes will not be increased, that additional tax charges will not be imposed on us or that additional sources of revenue or income, or other activities, will not be subject to new taxes, charges or similar fees in the future. In addition to substantial tax burden, these risks and uncertainties complicate tax planning and related business decisions, potentially exposing to significant fines and penalties and enforcement measures despite the best efforts at compliance. [*To be confirmed*.]

### **Legal system in emerging countries**

14.14 The volume of new legislation which has appeared in some emerging countries, as well as the magnitude of the changes taking place, has resulted in a lack of confidence in the courts to give clear and consistent judgements. Legal acts are published by a variety of state bodies and complete compliance with legal rules and standards, including in relation to privatisation, has often been difficult to achieve even for those attempting to do so. There is also a lack of precedent in relation to market-oriented legal relations. Due to the inconsistency of some of the legislation, the same provisions of the law may be applied differently by different local authorities and state bodies. The uncertainty as to how the law will be applied by different local authorities and state bodies may have adverse consequences for the Compartment. Judges and courts are generally inexperienced in the area of business and corporate law. Judicial precedents have no binding effect on subsequent decisions in emerging countries being civil law jurisdictions. In addition, most court decisions are not readily available to the public. Enforcement of court judgements can in practice be very difficult in many emerging countries. All of these factors make judicial decisions in emerging countries difficult to predict and effective redress uncertain. Additionally, court judgements are not always enforced or followed by law enforcement agencies.

### **Governmental authorities' powers**

14.15 Government authorities have a high degree of discretion in many emerging countries and at times exercise their discretion arbitrarily, without hearing or prior notice, and sometimes in a manner that is contrary to law. Moreover, governments may also have the power under certain circumstances, by regulation or a government act, to interfere with the performance of, nullify or terminate contracts. Governmental actions have included

withdrawal of licences, sudden and unexpected tax audits, criminal prosecutions and civil actions. Governmental entities have also used common defects in matters surrounding share issuances and registration as pretexts for court claims and other demands to invalidate such issuances and registrations and/or to void transactions.

*[To be discussed and, where necessary, completed.]*