

# Articles of Incorporation

June 2011

The Multi Service Group.  **BILFINGER** | **BERGER**

## **Part I**

### **General Provisions**

#### **§ 1 Name and Registered Office of the Company**

- (1) The Company is a European Company (Societas Europaea) and does business under the name of Bilfinger Berger SE.
- (2) Its registered office is in Mannheim, Germany.

#### **§ 2 Duration and Fiscal Year**

- (1) The Company is established for an unlimited period of time.
- (2) Its fiscal year is the calendar year.

#### **§ 3 Purpose of the Company**

(1) The purpose of the Company is to act as a managing holding company, i.e. to unite companies under common management, to provide advice to and to assume other administrative tasks for companies that operate the following areas:

- design, management and execution of construction services for the respective company's own account and for the account of others;
- development and production of plant and systems in particular in the fields of power, process, environmental and mechanical engineering;
- provision of commercial, technical and infrastructure-related facility management services as well as other real-estate services of all kinds;
- provision of repair and maintenance services, as well as maintenance management and other related services for production plants, power plants, public utilities and other plants;
- realization of privately financed concession models for buildings, infrastructure facilities and plants of all kinds, including the construction, financing and managing thereof, as well as the provision of related services;
- construction and operation of plant and facilities and provision of related services and services related to the other purposes of the respective company;
- acquisition, sale, renting, leasing and management of real property and buildings;
- extraction, manufacturing and sale of building materials.

(2) The Company may also operate in the areas of activity set forth in paragraph 1 itself and may, in particular, carry out individual transactions.

(3) In the context of the areas of activity set forth in paragraph 1, the Company may establish subsidiaries and set up branches in Germany and abroad; it may acquire equity interests in other companies or acquire such companies and transfer their business to the Company or any of its affiliated enterprises, wholly or in part. The Company may conclude inter company agreements and perform any business transactions and take any measures that are deemed to serve the purposes of the Company.

## **Part II**

### **Capital Stock and Shares**

#### **§ 4 Capital Stock**

(1) The Company has a capital stock of EUR 138,072,381.00 which is divided into 46,024,127 no-par value shares. The capital stock was paid up by way of converting Bilfinger Berger AG into a European Company (SE).

(2) The shares bear the signature of the Chairman of the Supervisory Board and two members of the Executive Board. These signatures may be printed. Global share certificates may be issued. Shareholders are not entitled to receive a certificate for their respective shares.

(3) The Executive Board is authorized for a period ending on April 14, 2015 to increase the Company's capital stock, subject to the consent of the Supervisory Board, by up to EUR 69,000,000.00 by issuing new no-par value bearer shares on one or more occasions (Authorized Capital 2010). Such issue of new shares may be effected against contributions in cash and/or in kind. The new shares are to be offered to the shareholders for subscription. An indirect subscription right within the meaning of Section 186 (5) of the German Stock Corporation Act (Aktiengesetz, AktG) shall suffice in this context. Only with regard to new shares representing a pro rata amount of capital stock of up to EUR 27,600,000.00 in total and subject to the consent of the Supervisory Board, the Executive Board is authorized to exclude the shareholders' corresponding statutory subscription rights upon the issue of new shares in the following circumstances:

- in respect of fractional shares;
- insofar as required in order to grant subscription rights to new shares to holders and/or beneficiaries of conversion and/or option rights or obligors under conversion and/or option obligations under bonds issued by the Company or a group company in the same volume they would be entitled to if they exercised their conversion and/or option rights or fulfilled their conversion and/or option obligations;
- if the capital is increased against contributions in cash and the total pro rata amount of capital stock represented by the new shares in respect of which subscription rights are excluded does not exceed ten percent of the capital stock and the issue price of the new shares is not substantially (within the meaning of Section 203 (1) and (2) and Section 186 (3) sentence 4 AktG) below the trading price of shares of the same class, which must be already listed and carry the same rights, at the time the Executive Board finally determines the issue price; this determination shall be made on the basis of the amount of capital stock existing on April 15, 2010, at the time of registration of the authorization or at the time of issuance of the new shares, whichever is lowest; the volume, which is limited to ten percent of the capital stock, shall be reduced by the pro rata amount of capital stock which is attri-

butable to shares or to which conversion and/or option rights or obligations under bonds relate which were issued or sold on or after April 15, 2010 subject to an exclusion of subscription rights by applying Section 186 (3) sentence 4 AktG directly, analogously or *mutatis mutandis*;

- if the capital is increased against contributions in kind for the purpose of granting new shares as consideration in connection with mergers with other companies or acquisitions of companies or parts of or equity interests in companies.

The aggregate pro rata amount of capital stock represented by new shares in respect of which the shareholders' subscription rights are excluded under these authorizations, together with the pro rata amount of capital stock attributable to treasury shares or to which conversion and/or option rights or obligations relate under bonds which were sold or issued, subject to an exclusion of subscription rights, on or after April 15, 2010 must not, however, exceed 20 percent of the capital stock; this calculation shall be made on the basis of the amount of capital stock existing on April 15, 2010, at the time of registration of the authorization or at the time the new shares are issued, whichever is lowest. The shareholders' subscription rights are also deemed to have been excluded if the relevant shares are sold or issued by applying Section 186 (3) sentence 4 AktG analogously or *mutatis mutandis*. The Executive Board is authorized, subject to the consent of the Supervisory Board, to determine the further details of the implementation of capital increases from the Authorized Capital 2010.

(4) The capital stock is conditionally increased by up to EUR 13,807,236.00 by issuing up to 4,602,412 no-par value bearer shares (Conditional Capital 2010). This conditional capital increase will only be implemented to the extent that any holders or creditors of convertible bonds or bonds with warrants (the bonds) issued or guaranteed by the Company or a group company on or before April 14, 2015 on the basis of the authorization granted to the Executive Board by resolution of the General Meeting of April 15, 2010 exercise their conversion or option rights, or fulfill their conversion or option obligations, and the conditional capital is required in accordance with the terms and conditions of the bonds. The new shares will be entitled to a dividend from the beginning of the fiscal year in which they are created by means of the exercise of any conversion or option rights or the fulfillment of any conversion or option obligations. The Executive Board is authorized, subject to the consent of the Supervisory Board, to determine the further details of the implementation of the conditional capital increase.

## **§ 5 Shares**

(1) The shares are no-par value bearer shares.

(2) The General Meeting may resolve that capital paid in during the course of the fiscal year be taken into account in the distribution of profits, in deviation from the provisions of Section 60 AktG.

## **§ 6 Redemption**

The shares may be redeemed by the Company.

## **Part III**

### **Executive Board**

#### **§ 7 Tasks, Number of Members**

- (1) The Executive Board (the management organ) runs the business of the Company in accordance with the provisions of law, the Statutes and its own rules of procedure.
- (2) The Executive Board shall comprise two or more persons. The Supervisory Board may specify a higher number of Executive Board members.

#### **§ 8 Composition, Appointment, Term of Office**

- (1) The members of the Executive Board are appointed by the Supervisory Board for a period not exceeding five years. Members may be reappointed.
- (2) The Supervisory Board may appoint a member of the Executive Board to the position of Chairman of the Executive Board and another to the position of Deputy Chairman.

#### **§ 9 Quorum, Passing Resolutions**

- (1) The Executive Board shall be quorate if at least half of its members participate in passing the resolution, unless a different threshold is prescribed specified by law.
- (2) The Executive Board's resolutions shall be passed by a majority of votes cast, unless otherwise prescribed by law. In case of a tie, the Chairman of the Executive Board has the casting vote.

#### **§ 10 Representation**

- (1) The Company may be legally represented by two members of the Executive Board jointly or by one member of the Executive Board acting jointly with a *Prokurist* (an executive vested with general power of attorney).
- (2) Furthermore, the Supervisory Board is empowered to authorize individual members of the Executive Board to represent the Company alone.

## **Part IV**

### **Supervisory Board**

#### **§ 11 Composition, Appointment**

The Supervisory Board (the supervisory organ) shall comprise twelve members who are elected by the General Meeting. Of the twelve members, six are to be appointed on the basis of employee nominations. The General Meeting is obligated to observe the nominations when appointing employee representatives. The General Meeting is not obligated to observe any other nominations. If an agreement governing employee participation concluded in accordance with the German Act on Employee Involvement in European Companies (*SE-Beteiligungsgesetz*, SEBG) stipulates a different procedure for appointing

employee representatives to the Supervisory Board, employee representatives will not be appointed by the General Meeting but rather in accordance with the agreed procedure.

## **§ 12 Term of Office**

(1) The members of the Supervisory Board are appointed for a period ending at the close of the General Meeting that passes a resolution on the formal approval of the acts of the members of the Supervisory Board in the fourth fiscal year after their term of office commenced; the fiscal year in which the term of office commences shall not count towards this period. The term of office shall end in any event after six years at the latest. Members may be reappointed.

(2) If a member elected as a shareholder representative by the General Meeting steps down from the Supervisory Board before his or her term of office ends, a new election shall take place at the next General Meeting. The newly elected member's term of office is the remaining term of office of the member who is being replaced. The same applies in respect of the term of office for employee representatives appointed as substitutes for the employee representatives who stepped down before their term of office ended.

(3) The General Meeting may appoint substitute members for the members to be elected as shareholder representatives by the General Meeting, who shall become members of the Supervisory Board in the order laid down when the election takes place in the event that shareholder representatives step down before their term of office ends. The same applies for the appointment of substitute members for employee representatives. The General Meeting is obligated to observe the employee nominations in this context. Sentence 5 of Article 11 (precedence of agreement governing employee participation) shall also apply in this context.

(4) The term of office of substitute members is limited in the case of shareholder representatives to the time remaining until the close of the General Meeting at which an election takes place pursuant to paragraph 2 above; in the case of employee representatives it is limited to the time remaining until the beginning of the term of office of the new employee representative appointed as a substitute for the employee representative who stepped down before his or her term of office ended. In both cases, the term of office shall not exceed the remaining term of office of the member being replaced.

(5) A member of the Supervisory Board may resign from the Supervisory Board by offering one month's notice to the Chairman of the Supervisory Board or to the Executive Board. Resignation with immediate effect is possible with the consent of the Supervisory Board. A substitute member may resign his or her office at any time, but only with the consent of the Supervisory Board. This does not affect the right to resign from office for good cause.

## **§ 13 Chairman**

(1) Following the General Meeting at which all new Supervisory Board members to be appointed by the General Meeting have been elected, a meeting of the Supervisory Board takes place for which no special invitation is required. This meeting (constituent meeting of the Supervisory Board) shall elect a Chairman and a Deputy Chairman from among its members whose term of office will correspond to that of the Supervisory Board. Thereafter, the Supervisory Board shall elect the Supervisory Board member who is to chair the General Meeting pursuant to Article 18 sentence 2 in the absence of the Chairman of the Supervisory Board. The election of the Chairman will be chaired by the eldest shareholder representative.

(2) Should the Chairman, Deputy Chairman, or the Supervisory Board member appointed to chair the General Meeting in the absence of the Chairman pursuant to Article 18 sentence 2, step down from the Supervisory Board before the end of his or her term, the Supervisory Board shall immediately elect a successor.

#### **§ 14 Quorum, Passing Resolutions, Committees**

(1) The Supervisory Board shall be quorate if at least half of the total number of members participate in the passing of resolutions, unless a different threshold is prescribed by law.

(2) The Supervisory Board's resolutions shall be passed by a majority of votes cast, unless otherwise prescribed by law. In case of a tie, the Chairman of the Supervisory Board has the casting vote; if he or she is absent, his or her deputy has the casting vote, provided such deputy is a shareholder representative.

(3) The Supervisory Board may build a Presiding Committee (*Präsidium*) and other committees, in particular an Audit Committee and a Nomination Committee, from among its own ranks, setting out their duties and powers in a rules of procedure document. To the extent permitted by law, these committees may also be authorized to make decisions that fall within the competence of the Supervisory Board. A committee passing resolutions within the meaning of sentence 2 above shall be quorate if the majority of its total members, but no less than three members, participate in the passing of resolutions; paragraph 2 applies *mutatis mutandis*.

#### **§ 15 Transactions Requiring Approval**

(1) The Executive Board must obtain the approval of the Supervisory Board before performing any of the following transactions:

- tapping new areas of business or relinquishing existing ones;
- accepting liability for third-party obligations and assuming surety for sums in excess of EUR 25 million in each case, except where such obligations/surety relate to an affiliate of the Company;
- issuing bonds or similar financial instruments,
- acquiring or disposing of equity investments, founding a new company or performing a capital increase for an existing company if the costs of acquisition, or the proceeds in the case of a disposal, (enterprise value) exceed EUR 45 million in the individual case.

(2) The Supervisory Board may specify additional types of transaction which the Executive Board may only perform with the Supervisory Board's approval.

#### **§ 16 Compensation**

(1) In addition to the reimbursement of expenses, the members of the Supervisory Board are to be paid a fixed annual compensation of EUR 70,000.00. The Chairman of the Supervisory Board is to be paid two-and-a-half times this amount, the Deputy Chairman of the Supervisory Board and the Chairmen of the committees, with the exception of the Nomination Committee, are to be paid twice this amount, the

members of the committees, with the exception of the Nomination Committee, are to be paid one-and-a-half times this amount. If a member of the Supervisory Board exercises several of the aforementioned functions, he or she will be entitled to only one of these compensation amounts, i.e. whichever is highest.

(2) In addition, the members of the Supervisory Board also receive an attendance fee of EUR 500.00 for every meeting of the Supervisory Board or its committees which they attend.

(3) Compensation is to be paid after the General Meeting at which the financial statements for the respective fiscal year are presented. Any value-added tax due on the compensation paid to the members of the Supervisory Board will be refunded by the Company.

## **Part V**

### **Advisory Board**

#### **§ 17 Advisory Board**

(1) The Company may constitute an Advisory Board comprising not more than twelve members, who are to be leading business figures from Germany and other countries. Its function is to advise the Executive Board on economic and business issues that arise during the performance of its duties. This shall not affect the legal rights and obligations of the Executive and Supervisory Boards and the General Meeting.

(2) The members of the Advisory Board are to be appointed by the Chairman of the Supervisory Board following consultation with the Executive Board. The Chairman of the Supervisory Board is also a member of the Advisory Board. The term of office of the Advisory Board is the same as that of the Supervisory Board.

(3) The Advisory Board shall have a chair and one or more deputy chairs. Its chair shall be the Chairman of the Supervisory Board, while the deputy chairs are to be elected by the Advisory Board.

(4) The Advisory Board will lay down its own rules of procedure.

(5) The compensation of the Advisory Board is to be laid down by the Executive Board following consultation with the Supervisory Board.

## **Part VI**

### **General Meeting**

#### **§ 18 Place, Chair**

(1) The General Meeting shall take place in Mannheim or any other city in the Federal Republic of Germany with at least 100,000 inhabitants.

(2) The Chairman of the Supervisory Board shall chair the General Meeting. In his/her absence, another shareholder representative member of the Supervisory Board shall be appointed by the Supervisory Board to take the chair.

(3) The chairperson shall chair the proceedings and determine the order in which the agenda items are addressed as well as the order and method of voting. The chairperson may also impose a reasonable time limit on the shareholders' right to ask questions and to speak; the chairperson may, in particular, determine a reasonable timeframe for the meeting, the discussions regarding the individual agenda items, the individual questions and spoken contributions.

## **§ 19 Attendance, Voting by Proxy, Audio and Visual Broadcasts**

(1) Shareholders are entitled to attend the General Meeting and to exercise their voting rights only if they have registered prior to the General Meeting and furnished evidence of their shareholding to the Company.

(2) The application for registration must be submitted in German or English and must be received by the Company, at the address specified for this purpose in the calling notice, at least six days prior to the date of the General Meeting.

(3) Evidence of shareholdings must be furnished by way of a confirmation issued by a depository bank in text form in German or English. The confirmation issued by the depository bank must relate to the beginning of the twenty-first day prior to the date of the General Meeting. With respect to the furnishing of such evidence, paragraph 2 above shall apply *mutatis mutandis*.

(4) Voting rights may be exercised by proxy. Such proxy authorization must be granted or revoked and evidence of the proxy authorization to be provided to the Company must be provided in the form prescribed by law. The calling notice may specify less strict requirements in this context.

(5) The Executive Board is authorized to provide for audio and visual broadcasting of the General Meeting to be permitted.

## **§ 20 Voting rights**

Each share entitles its holder to one vote at the General Meeting.

## **§ 21 Resolutions**

(1) Unless the Statutes or Council Regulation (EC) No. 2157/2001 dated 8 October 2001 or the stock corporation law prevailing in the country in which the Company has its registered office prescribes a greater majority, the resolutions of the General Meeting require a simple majority of the valid votes cast. This also applies in cases where a greater majority of capital stock is stipulated, but not mandatorily prescribed, by law.

(2) A majority of two thirds of the valid votes cast is required in order to pass a resolution on an amendment to the Statutes or, provided at least half of the capital stock is represented, a simple majority of the valid votes cast shall suffice. This does not apply in the case of an amendment of the purpose of the Company, a resolution pursuant to Article 8 (6) of Council Regulation (EC) No. 2157/2001 of 8 October 2001 or for cases in which a greater majority of votes or capital stock is mandatorily prescribed by law.

## **Part VII**

### **Annual Financial Statements, Appropriation of Profits**

#### **§ 22 Annual Financial Statements**

In the first three months of the fiscal year, the Executive Board shall prepare the annual financial statements and management report for the previous fiscal year, as well as the group financial statements and the group management report (insofar as the Company is required to do so by law), and promptly submit them to the Supervisory Board, together with a proposal for the appropriation of profits.

#### **§ 23 Appropriation of Profits**

The profit reported in the balance sheet (unappropriated retained earnings) shall be distributed amongst the shareholders unless the General Meeting resolves to appropriate it in some other manner.

## **Part VIII**

### **Miscellaneous**

#### **§ 24 Notices**

(1) Company notices shall be published in the electronic version of the German Federal Gazette.

(2) The Company shall be entitled to provide information to its shareholders via remote data transmission insofar as this is legally permissible.

#### **§ 25 Amendments to the Wording**

The Supervisory Board is authorized to make amendments and supplements to the Statutes insofar as they affect only their wording.

#### **§ 26 Costs of Incorporation**

The costs of incorporation incurred in connection with the conversion of Bilfinger Berger AG into Bilfinger Berger SE, up to a maximum of EUR 3 million, will be borne by the Company.