

**BHV Opportunites Fund SCA, SICAV-FIS**

*Société d'investissement à capital variable – fonds d'investissement spécialisé  
organisée sous la forme d'une  
société en commandite par actions*

Siège social: [address]

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**CONSTITUTION DE SOCIETE DU [DATE] 2011**

N°

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In the year two thousand and eleven on the [●] of [●].

Before us, **Maître [name]**, notary residing in Luxembourg, Grand Duchy of Luxembourg.

THERE APPEARED:

1. **BHV Opportunities Fund Partners S.à r.l.**, a private limited liability company (*société à responsabilité limitée*) with registered office at [address] and incorporated under the laws of the Grand Duchy of Luxembourg pursuant to a deed of the Luxembourg notary Maître [name] residing in [city], Grand Duchy of Luxembourg dated [date], [not yet registered with the Luxembourg *Registre de Commerce et des Sociétés* and whose articles of association have not yet been published in the *Mémorial C, Recueil Spécial des Sociétés et Associations*];  
here represented by Maître [●], lawyer, residing in Luxembourg, by virtue of a proxy given by private seal;
2. **[Banque Havilland SA]**, a public limited liability company (*société anonyme*) with registered office at [address] and incorporated under the laws of the Grand Duchy of Luxembourg pursuant to a deed of the Luxembourg notary Maître [name] residing in [city], Grand Duchy of Luxembourg dated [date], registered with the Luxembourg *Registre de Commerce et des Sociétés* under number B [number] and whose articles of association have been published in the *Mémorial C, Recueil Spécial des Sociétés et Associations* on [date].

Such proxies, after signature *ne varietur* by the proxy holder of the appearing parties and the undersigned notary, shall remain attached to the present deed to be filed with it.

Such appearing parties, in the capacity in which they act, have requested the notary to record as follows the articles of association of a *société d'investissement à capital variable – fonds d'investissement spécialisé* under the form of a partnership limited by shares (*société en commandite par actions*) which they form between themselves.

**1. ARTICLE 1. - FORM AND NAME**

- 1.1 There exists a *société d'investissement à capital variable – fonds d'investissement spécialisé* under the form of a partnership limited by shares (*société en commandite par actions*) under the name of "**BHV Opportunites Fund SCA, SICAV-FIS**" (the **Company**).
- 1.2 The Company shall be governed by the law of 13 February 2007 relating to specialised investment funds, as amended (the **2007 Act**), the law of 10 August 1915 on commercial companies, as amended (the **Companies Act**) (provided that in case of conflicts between the Companies Act and the 2007 Act, the 2007 Act shall prevail) as well as by these article of incorporation (the **Articles**).

## **2. ARTICLE 2. - REGISTERED OFFICE**

- 2.1 The registered office of the Company is established in Luxembourg, Grand Duchy of Luxembourg. It may be transferred within the boundaries of the municipality of Luxembourg (or elsewhere in the Grand Duchy of Luxembourg if and to the extent permitted under the Companies Act) by a resolution of the General Partner (as defined in article 15 below).
- 2.2 The General Partner shall further have the right to set up branches, offices, administrative centres and agencies wherever it shall deem fit, either within or outside of the Grand Duchy of Luxembourg.
- 2.3 Where the General Partner determines that extraordinary political or military developments or events have occurred or are imminent and that these developments or events would interfere with the normal activities of the Company at its registered office, or with the ease of communication between such office and persons abroad, the registered office may be temporarily transferred abroad until the complete cessation of these extraordinary circumstances. Such temporary measures shall have no effect on the nationality of the Company which, notwithstanding the temporary transfer of its registered office, will remain a partnership limited by shares incorporated in the Grand Duchy of Luxembourg.

## **3. ARTICLE 3. - DURATION**

- 3.1 The Company is formed for an unlimited duration, provided that the Company will however be automatically put into liquidation upon the termination of a Compartment (as defined in article 5.4) if no further Compartment is active at that time.
- 3.2 The Company may be dissolved with the consent of the General Partner by a resolution of the shareholders adopted in the manner required for the amendment of these Articles, as prescribed in article 21 hereto as well as by the Companies Act.

## **4. ARTICLE 4. - CORPORATE OBJECTS**

- 4.1 The exclusive purpose of the Company is to invest the funds available to it with the purpose of spreading investment risks and affording its shareholders the results of its management.
- 4.2 The Company may take any measures and carry out any transaction, which it may deem useful for the fulfilment and development of its purpose and may, in particular and without limitation:
- (a) make investments whether directly or through direct or indirect participations in subsidiaries of the Company or other intermediary vehicles;
  - (b) borrow money in any form or obtain any form of credit facility and raise funds through, including, but not limited to, the issue of equity, bonds, notes, promissory notes, and other debt or equity instruments;
  - (c) advance, lend or deposit money or give credit to companies and undertakings;
  - (d) enter into any guarantee, pledge or any other form of security, whether by personal covenant or by mortgage or charge upon all or part of the assets (present or future) of the Company or by all or any of such methods, for the performance of any contracts or obligations of the Company, or any director, manager or other agent of the Company, or any company in which the Company or its parent company has a direct or indirect interest, or any company being a direct or indirect shareholder of the Company or any company belonging to the same group as the Company;

to the fullest extent permitted under the 2007 Act but in any case subject to the terms and limits set out in the Memorandum (as defined in article 5.4 below).

## 5. ARTICLE 5. - SHARE CAPITAL

- 5.1 The capital of the Company shall be represented by fully paid up shares of no par value and shall at any time be equal to the value of the net assets of the Company pursuant to article 12.
- 5.2 The capital must reach one million two hundred and fifty thousand euro (EUR1,250,000) within twelve months of the date on which the Company has been registered as a specialised investment fund (**SIF**) under the 2007 Act on the official list of Luxembourg SIFs, and thereafter may not be less than this amount.
- 5.3 The initial capital of the Company was of [*thirty one thousand euro (EUR31,000.-)*] represented by [**•**] fully paid up shares with no par value and [**•**] Management Share(s) (as defined in article 5.5 below).
- 5.4 The Company has an umbrella structure and the General Partner will set up separate portfolios of assets that represent Compartments as defined in article 71 of the 2007 Act (the **Compartments**, each a **Compartment**), and that are formed for one or more Classes (as defined under article 5.5). Each Compartment will be invested in accordance with the investment objective and policy applicable to that Compartment. The investment objective, policy and other specific features of each Compartment are set forth in the general section and the relevant special section of the confidential offering memorandum of the Company drawn up in accordance with article 52 of the 2007 Act (the **Memorandum**). Each Compartment may have its own funding, Classes, investment policy, capital gains, expenses and losses, distribution policy or other specific features.
- 5.5 Within a Compartment, the General Partner may, at any time, decide to issue one or more classes of shares (the **Classes**, each class of shares being a **Class**) the assets of which will be commonly invested but subject to different rights as described in the Memorandum, to the extent authorised under the 2007 Act and the Companies Act, including, without limitation, different:
- (a) type of target investors;
  - (b) fees and expenses structures;
  - (c) sales and redemption charge structures;
  - (d) subscription and/or redemption procedures;
  - (e) minimum investment and/or subsequent holding requirements;
  - (f) shareholders servicing or other fees;
  - (g) distribution rights and policy, and the General Partner may in particular, decide that shares pertaining to one or more Class(es) be entitled to receive incentive remuneration scheme in the form of carried interest, higher performance returns, lower performance or other fees or to receive preferred returns;
  - (h) marketing targets;
  - (i) transfer or ownership restrictions;
  - (j) reference currencies;
- provided that, at all times, the General Partner shall hold at least one share that is reserved to the General Partner, in its capacity as unlimited shareholder (*actionnaire gérant commandité*) of the Company (the **Management Share**) and that a maximum of [*one single*] Management Share shall be issued by the Company per Compartment.
- 5.6 A separate net asset value per share, which may differ as a consequence of these variable factors, will be calculated for each Class in the manner described in article 12.

- 5.7 The Company may 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.
- 5.8 Shares pertaining to a Class of shares may be further sub-divided in series of shares that will be considered for the purposes of the Companies Act as distinct categories of shares and any reference to a Class of shares in these Articles shall mean, where appropriate, a reference to a particular series of such Class of shares. The specific features of any such series will be as described in the Memorandum.
- 5.9 The Company is one single legal entity. However, in accordance with article 71(5) of the 2007 Act, the rights of the shareholder 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 shareholders 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, and there shall be no cross liability between Compartments, in derogation of article 2093 of the Luxembourg Civil Code.
- 5.10 The General Partner may create each Compartment for an unlimited or limited period of time; in the latter case, the General Partner may, at the expiration of the initial period of time, extend the duration of that Compartment one or more times, subject to the relevant provisions of the Memorandum. At the expiration of the duration of a Compartment, the Company shall redeem all the shares in the Class(es) of shares of that Compartment, in accordance with article 8. At each extension of the duration of a Compartment, the registered shareholders will be duly notified in writing by a notice sent to their address as recorded in the Company's register of shareholders. The Memorandum shall indicate whether a Compartment is incorporated for an unlimited period of time or, alternatively, its duration and, if applicable, any extension of its duration and the terms and conditions for such extension.
- 5.11 For the purpose of determining the capital of the Company, the net assets attributable to each Class will, if not already denominated in euro, be converted into euro. The capital of the Company equals the total of the net assets of all the Classes of all Compartments.

## **6. ARTICLE 6. - FORM OF SHARES**

- 6.1 The Company only issues shares in registered form (*actions nominatives*) and shares will remain in registered form.
- 6.2 All issued registered shares of the Company shall be registered in the register of shareholders which shall be kept at the registered office by the Company or by one or more persons designated for this purpose by the Company, where it will be available for inspection by any shareholder. Such register shall contain the name of each owner of registered shares, his residence or elected domicile as indicated to the Company, the number and Class of registered shares held by him, the amount paid up on each share, 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.
- 6.3 The Company shall not issue certificates for such inscription, but each shareholder shall receive a written confirmation of his shareholding.
- 6.4 Shareholders shall provide the Company with an address to which all notices and announcements may be sent. Such address will also be entered into the register of shareholders.
- 6.5 In the event that a shareholder does not provide an address, the Company may permit a notice to this effect to be entered into the register of shareholders and the shareholder's address will be deemed to be at the registered office of the Company, or such other address as may be so entered into the register of shareholders by the Company from time to time, until another address shall be provided to the Company by such shareholder. A shareholder may, at any time,

change his address as entered into the register of shareholders by means of a written notification to the Company at its registered office, or at such other address as may be set by the Company from time to time.

- 6.6 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 an usufruct holder (*usufruitier*) and a bare owner (*nu-propriétaire*) or between a pledgor and a pledgee. Moreover, in the case of joint shareholders, the Company reserves the right to pay any redemption proceeds, distributions or other payments to the first registered holder only, whom the Company may consider to be the representative of all joint holders, or to all joint shareholders together, at its absolute discretion.
- 6.7 With the exception of the Management Share, the Company may decide to issue fractional shares. Such fractional shares do not carry voting rights, except where their number is such that they represent a whole share, but are entitled to participate in the net assets attributable to the relevant Class on a pro rata basis.
- 6.8 All shares issued by the Company may be redeemed by the Company at the request of the shareholders or at the initiative of the Company in accordance with, and subject to, article 8 of these Articles and the provisions of the Memorandum.
- 6.9 Subject to the provisions of article 10, the transfer of shares may be effected by a written declaration of transfer entered in the register of the shareholder(s) of the Company, such declaration of transfer to be executed by the transferor and the transferee or by persons holding suitable powers of attorney or in accordance with the provisions applying to the transfer of claims provided for in article 1690 of the Luxembourg civil code. The Company may also accept as evidence of transfer other instruments of transfer evidencing the consent of the transferor and the transferee satisfactory to the Company.

## 7. ARTICLE 7. - ISSUE OF SHARES

- 7.1 The General Partner is authorised, without limitation, to issue an unlimited number of fully paid up shares at any time without reserving a preferential right to subscribe for the shares to be issued for the existing shareholders.
- 7.2 With the exclusion of the Management Shares, shares are exclusively reserved for subscription by well-informed investors within the meaning of article 2 of the 2007 Act (**Well-Informed Investors**).
- 7.3 The General Partner may impose conditions on the issue of share, any such condition to which the issue of shares may be submitted will be detailed in the Memorandum provided that the General Partner may, without limitation:
- (a) decide to set minimum commitments, minimum subsequent commitments, minimum subscription amounts, minimum subsequent subscription amounts and minimum holding amounts for a particular Class or Compartment;
  - (b) impose restrictions on the frequency at which shares are issued (and, in particular, decide that shares will only be issued during one or more offering periods or at such other intervals as provided for in the Memorandum);
  - (c) reserve shares of a Compartment or Class exclusively to persons or entities that have entered into, or have executed, a subscription document under which the subscriber undertakes *inter alia* to subscribe for shares, during a specific period, up to a certain amount and makes certain representations and warranties to the Company. As far as permitted under Luxembourg law, any such subscription document may contain specific provisions not contained in the other subscription documents;
  - (d) determine any default provisions applicable to non or late payment for shares or restrictions on ownership of the shares;

- (e) in respect of any one given Compartment and/or Class, levy a subscription fee and/or waive partly or entirely this subscription fee;
- (f) decide that payments for subscriptions to shares shall be made in whole or in part on one or more dealing dates, closings or draw down dates at which such date(s) the commitment of the investor will be called against issue of shares of the relevant Compartment and Class;
- (g) set the initial offering period or initial offering date and the initial subscription price in relation to each Class in each Compartment and the cut-off time for acceptance of the subscription document in relation to a particular Compartment or Class.

7.4 Shares in Compartments will be issued at the subscription price calculated in the manner and at such frequency as determined for each Compartment (and, as the case may be, each Class) in the Memorandum.

7.5 A process determined by the General Partner and described in the Memorandum shall govern the chronology of the issue of shares in a Compartment.

7.6 The General Partner may, in its absolute discretion, accept or reject (partially or totally) any request for subscription for shares, and the General Partner may, at any time and from time to time and in its absolute discretion without liability and without notice, unless otherwise provided for in the Memorandum, discontinue the issue and sale of shares of any Class of shares in any one or more Compartments.

7.7 The Company may agree to issue shares as consideration for a contribution in kind of securities or assets, in accordance with Luxembourg law, in particular in accordance with the obligation to deliver a valuation report from an auditor (*réviseur d'entreprises agréé*), and provided that such assets are in accordance with the investment objectives and policies of the relevant Compartment. All costs related to the contribution in kind are borne by the shareholder acquiring shares in this manner.

#### **Investor or shareholder's default**

7.8 The failure of an investor or shareholder to make, within a specified period of time determined by the General Partner, any required contributions or certain other payments to the Company, in accordance with the terms of its application form, subscription document or agreement or commitment to the Company, entitles the Company to impose on the relevant investor or shareholder the penalties determined by the General Partner and detailed in the Memorandum which may include without limitation:

- (a) the right of the Company to compulsorily redeem all or part of the shares of the defaulting shareholder in accordance with the provisions of the Memorandum;
- (b) the right to require the defaulting shareholder to pay damages to the benefit of the Company;
- (c) the right for the Company to retain all dividends paid (or to be paid) or other sums distributed (or to be distributed) with regard to the shares held by the defaulting shareholder;
- (d) the right of the Company to require the defaulting shareholder to pay interest at such rate as set out in the Memorandum on all outstanding amounts to be advanced and costs and expenses in relation to the default;
- (e) the loss of the defaulting shareholder's right to be, or to propose, members of such consultative body, investment committee or other committee set up in accordance with the provisions of the Memorandum, as the case may be;
- (f) the loss of the defaulting shareholder's right to vote with regard to any matter that must be approved by all or a specified portion of the shareholders;

- (g) the right of the Company to commence legal proceedings;
- (h) the right of the Company to reduce or terminate the defaulting shareholder's commitment;
- (i) the right of the other shareholders to purchase all or part of the shares of the defaulting shareholder at a price determined in accordance with the provisions of the Memorandum;

unless such penalties are waived by the General Partner in its discretion.

- 7.9 The penalties or remedies set forth above and in the Memorandum will not be exclusive of any other remedy which the Company or the shareholders may have at law or under the subscription agreement, Memorandum or the relevant shareholder's commitment.

## 8. ARTICLE 8. - REDEMPTIONS OF SHARES

### General

- 8.1 The General Partner may create each Compartment as

- a closed-ended Compartment, the shares of which are in principle not redeemable at the request of a shareholder; or
- [an open-ended Compartment where any shareholder may request a redemption of all or part of its shares from the Company in accordance with the conditions and procedures set forth by the General Partner in the Memorandum and within the limits provided by law and these Articles.

- 8.2 Subject to the provisions of article 12, the redemption price per share will be paid within a period determined by the General Partner and disclosed in the Memorandum, as determined in accordance with the current policy of the General Partner, provided that any required transfer documents have been received by the Company. Redemptions may take place over one or more redemption dates, as specified in the Memorandum, and shareholders may be paid out at different redemption prices, calculated in accordance with the Memorandum.

- 8.3 Unless otherwise provided for in the Memorandum, the redemption price per share for shares of a particular Class of a Compartment corresponds to the net asset value per share of the respective Class less any redemption fee, if applicable. Additional fees may be incurred if distributors and paying agents are involved in a transaction. The relevant redemption price may be rounded up or down to the nearest unit of the currency in which it is to be paid, as determined by the General Partner.

- 8.4 A process determined by the General Partner and described in the Memorandum shall govern the chronology of the redemption of shares in a Compartment. The General Partner may impose conditions on the redemption of shares. Any such condition to which the redemption of shares may be submitted will be detailed in the Memorandum. The General Partner may impose restrictions on the frequency at which shares may be redeemed in any Class of shares and may, in particular, decide that shares of any Class shall only be redeemed on such valuation date as provided for in the Memorandum (the **Redemption Date**).

- 8.5 If, as a result of a redemption application, the number or the value of the shares held by any shareholder in any Class falls or shall fall below the minimum number or value specified at such time in the Memorandum, the Company may decide to treat such application as an application for redemption of all of that shareholder's shares in the given Class.

- 8.6 If, in addition, on a Redemption Date or at some time during a Redemption Date, redemption applications as defined in this article and conversion applications as defined in article 9 exceed a certain level set by the General Partner in relation to a given Class or Compartment, the General Partner may reduce proportionally part or all of the redemption and conversion applications in the manner deemed necessary by the General Partner, in the best

interest of the Company and in accordance with the terms of the Memorandum. Such non-processed redemptions will then be given priority and dealt with ahead of other applications on the Redemption Date(s) following this period (but subject always to the foregoing limit and unless otherwise specified in the Memorandum).

- 8.7 The Company may satisfy payment of the redemption price owed to any shareholder, subject to such shareholder's agreement, in specie by allocating assets to the shareholder from the portfolio set up in connection with the Class(es) equal in value to the value of the shares to be redeemed (calculated in the manner described in article 12) as of the Valuation Date or the time of valuation when the redemption price is calculated if the Company determines that such a transaction would not be detrimental to the best interests of the remaining shareholders of the relevant Compartment. The nature and type of assets to be transferred in such case will be determined on a fair and reasonable basis and without prejudicing the interests of the other shareholders in the given Class or Classes, as the case may be. The valuation used will be confirmed by a special report of the auditor of the Company. The costs of any such transfers are borne by the transferee, unless otherwise provided for in the Memorandum.
- 8.8 All redeemed shares will be cancelled.
- 8.9 All applications for redemption of shares are irrevocable, except - in each case for the duration of the suspension - in accordance with article 13 of these Articles, when the calculation of the net asset value has been suspended or when redemption has been suspended as provided for in this article.
- 8.10 [In respect of open-ended Compartments, the Company will use all reasonable commercial efforts to satisfy redemption requests, recognising its obligation to balance such efforts with the interests of the relevant Compartment and the other Compartments as a whole and the interests of those shareholders who remain in the relevant Compartment and the other Compartments, but nothing will oblige the Company to meet any redemption request.]

#### **Redemption of shares at the initiative of the Company - Compulsory redemption of shares**

- 8.11 The Company may redeem shares of any Class and Compartment, on a pro rata basis among shareholders, in order to distribute proceeds generated by an investment through returns or its disposal, subject to compliance with the relevant distribution scheme (and as the case may be, subject to compliance with the relevant re-investment rights) as provided for each Compartment and/or Class in the Memorandum (if any). The right of the Company to redeem shares of a Compartment/a Class under this article 8 may be subject to the prior approval or advice of such consultative body as set out for a particular Compartment in the Memorandum.
- 8.12 The Company will announce in due time the redemption by way of mail addressed to the shareholders by the General Partner.
- 8.13 The Company may compulsorily redeem the shares:
- (a) held by a Restricted Person as defined in article 11, in accordance with the provisions of article 11;
  - (b) for the purpose of equalisation of existing investors and late investors (e.g., in case of admission of subsequent investors) if provided in respect of a specific Compartment in the Memorandum;
  - (c) in case of liquidation or merger of Compartments or Classes, in accordance with the provisions of article 28;
  - (d) held by a shareholder who fails to make, within a specified period of time determined by the General Partner, any required contributions or certain other payments to the Company (including the payment of any interest amount or charge due in case of default), in accordance with the terms of its subscription document in accordance with the provisions of the Memorandum;

- (e) in all other circumstances, in accordance with the terms and conditions set out in the subscription document, these Articles and the Memorandum.

## **9. ARTICLE 9. - CONVERSION OF SHARES**

- 9.1 Subject each time to the approval of the General Partner (which may be withheld at the General Partner's absolute discretion) and such terms and conditions as set out in the Memorandum, a shareholder may, if so provided in the Memorandum, convert all or part of its shares of a particular Class of shares of a Compartment into another Class of shares within the same Compartment or another Compartment.
- 9.2 If conversions are authorised in the Memorandum, a process determined by the General Partner and described in the Memorandum shall govern the chronology of the conversion of shares in a Compartment or from one Compartment to another Compartment. The General Partner may impose conditions on the conversion of shares which will be detailed in the Memorandum. A conversion application will be considered as an application to redeem the shares held by the shareholder and as an application for the simultaneous acquisition (issue) of the shares to be acquired. A conversion fee may be incurred. Additional fees may be incurred if distributors and paying agents are involved in a transaction. The prices of the conversion may be rounded up or down to the nearest unit of the currency in which they are to be paid, as determined by the General Partner. The General Partner may determine that balances of less than a reasonable amount to be set by the General Partner, resulting from conversions, will not be paid out to shareholders.
- 9.3 As a rule, unless otherwise provided for in the Memorandum, both the redemption and the acquisition parts of the conversion application should be calculated on the basis of the net asset value per share prevailing on the dealing date in respect of which the redemption part of the relevant conversion request is undertaken by the relevant Compartment.
- 9.4 Conversions may only be effected if, at the time, both the redemption of the shares to be converted and the issue of the shares to be acquired are simultaneously possible; there will be no partial execution of the application unless the possibility of issuing the shares to be acquired ceases after the shares to be converted have been redeemed.
- 9.5 All applications for the conversion of shares are irrevocable, unless otherwise provided for in the Memorandum.
- 9.6 If as a result of a conversion application, the number or the value of the shares held by any shareholder in any Class of shares falls below the minimum number or value that is then - if the rights provided for in this sentence are applicable - specified by the General Partner in the Memorandum, the Company may decide to treat the purchase part of the conversion application as a request for redemption for all of the shareholder's shares in the given Class of shares; the acquisition part of the conversion application will remain unaffected by any additional redemption of shares.
- 9.7 Shares that are converted to shares of another Class of shares will be cancelled.

## **10. ARTICLE 10. - TRANSFER OF SHARES – TRANSFER OF COMMITMENTS**

- 10.1 The General Partner shall not sale, assign, transfer, exchange, pledge, grant a participation in, hypothecate, encumber or otherwise dispose of (each a **Transfer**) all or any part of its Management Shares or voluntarily withdraw as the general partner of the Company.
- 10.2 The Transfer of all or any part of any investor's shares or undrawn commitment (to the exclusion of the Management Shares) in any Compartment is subject to the provisions of this article and of the Memorandum.
- 10.3 No Transfer of all or any part of any investor's shares or undrawn commitment in any Compartment, whether direct or indirect, voluntary or involuntary:

- (a) shall be valid or effective if:
- (i) the Transfer would result in a violation of any law or regulation of Luxembourg, the U.S., the UK or any other jurisdiction (including, without limitation, the U.S. 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 of the Company to any other adverse tax, legal or regulatory consequences as determined by the Company;
  - (ii) the Transfer would result in a violation of any term or condition of these Articles or of the Memorandum;
  - (iii) the Transfer would result in the Company, a Compartment or an intermediary vehicle of the Company being required to register as an investment company under the United States Investment Company Act of 1940, as amended;
- (b) and it shall be a condition of any Transfer (whether permitted or required) that:
- (i) such Transfer be approved by the General Partner (who may only refuse for a reasonable ground);
  - (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; and
  - (iii) the transferee is not a Restricted Person (as defined in article 11.1 below);
  - (iv) (in respect of the Transfer of undrawn commitments) the transferee enters into a subscription agreement in respect of the relevant undrawn commitment so transferred;
  - (v) simultaneously as the Transfer, the transferor transfers to the transferee all or the relevant portion of its undrawn commitment or remaining commitment;
  - (vi) (unless otherwise agreed with the Company) the transferee undertakes to fully and completely assume all outstanding obligations of the transferor towards the Company under the transferor's subscription document, commitment or any other agreement setting out the terms of the participation of the transferor in the Company (including, for the avoidance of doubt, the provisions of the Memorandum) and that, in respect of Transfers of undrawn commitments, the General Partner be satisfied that the transferee has sufficient assets to comply with drawdown notices in respect of such undrawn commitment.

10.4 The transferor shall be responsible for and pay all costs and expenses (including any taxation) arising in connection with any 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 Indemnified Persons (as defined below), 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 shareholder 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).

## 11. ARTICLE 11. - OWNERSHIP RESTRICTIONS.

11.1 Without prejudice to the right of the General Partner to reject subscriptions by any investor in its entire discretion, the Company acting through its General Partner may in particular restrict or prevent the ownership of shares by any person if:

- (a) in the opinion of the Company such holding may be detrimental to the Company, any of its Compartments or intermediary vehicles;
- (b) 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 (if any), a Compartment or its intermediary vehicles incurring any liability for any taxation whenever created or imposed and whether in the Grand Duchy of 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 the Grand Duchy of Luxembourg;
- (c) 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 (including anti-money laundering and terrorism financing laws and regulations);
- (d) such person is not a Well-Informed Investor;
- (e) 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**).

11.2 For such purposes the Company may:

- (a) decline to issue any shares and decline to register any Transfer of shares or of corresponding 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 the Company 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.

11.3 If it appears that a shareholder of the Company is a Restricted Person, the Company shall be entitled to, in its absolute discretion:

- (a) decline to accept the vote of the Restricted Person at the general meeting of shareholders (the **General Meeting**) and disregard its vote on any matter requiring the consent of shareholders who together exceed 50% of the voting rights of the Company or exceed 50% of the total capital contributions to the relevant Compartment, as appropriate; 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 Company that this sale was made within thirty (30) days of the sending of the relevant notice, subject each time to the applicable restrictions on Transfer as set out in article 10; 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 net asset value of the shares at the date on which the General Partner becomes aware that the shareholder is a Restricted Person (the moment of consideration being irrelevant if the net asset value is equal to zero or negative), and (ii) the aggregate Capital contribution of the Restricted Person, less a penalty fee calculated in accordance with the terms of the Memorandum or at such price as is set out in the Memorandum.

11.4 The exercise of the powers by the Company in accordance with this article may in no way be called into question or declared invalid on the grounds that the ownership of shares was not sufficiently proven or that the actual ownership of shares did not correspond to the assumptions made by the Company on the date of the purchase notification, provided that the Company exercised the abovenamed powers in good faith.

## **12. ARTICLE 12. - CALCULATION OF NET ASSET VALUE**

- 12.1 The net asset value of each Class in each Compartment shall be expressed in the Reference Currency in accordance with Luxembourg law as of each valuation date, as stipulated in the Memorandum (each a **Valuation Date**).
- 12.2 The net assets of the Company are at any time equal to the total of the net assets of the various Compartments.
- 12.3 The administrative agent of the Company shall under the supervision of the Company compute the net asset value 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 net asset value 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 Memorandum. A separate net asset value per share, which may differ as a consequence of these variable factors, will be calculated for each Class as follows: the net asset value 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.
- 12.4 The value of all assets and liabilities not expressed in the Reference Currency of a Compartment or Class will be converted into the Reference Currency of such Compartment or Class at the relevant rates of exchange prevailing on the relevant Valuation Date. If such quotations are not available, the rate of exchange will be determined with prudence and in good faith by or under procedures established by the General Partner.
- 12.5 For the purpose of calculating the net asset value per Class of a particular Compartment, the net asset value of each Compartment shall be calculated by calculating the aggregate of:
  - (a) the value of all assets of the Company which are allocated to the relevant Compartment in accordance with the provisions of these Articles; less

- (b) all the liabilities of the Company which are allocated to the relevant Compartment in accordance with the provisions of these Articles, and all fees attributable to the relevant Compartment, which fees have accrued but are unpaid on the relevant Valuation Date.

12.6 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

- (a) the equity or liability interests attributable to shareholders 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;
- (b) 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 (if any) or General Partner, or for a maximum period of five (5) years rather than expensed in full when they are incurred; and
- (c) 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.

12.7 The assets of a Compartment shall include:

- (a) all investments registered in the name of the Company for the account of the relevant Compartment or any intermediary vehicles;
- (b) all cash in hand or on deposit, including any interest accrued thereon, owned by such Compartment;
- (c) all bills and demand notes payable and accounts receivable (including proceeds of properties, property rights, securities or any other assets sold but not delivered) owned by such Compartment;
- (d) all financial instruments and securities including but not limited to bonds, time notes, certificates of deposit, shares, stocks, debentures, debenture stocks, subscription rights, warrants, options and similar assets owned or contracted for by the Compartment;
- (e) all stock dividends, cash dividends and cash payments receivable by the Compartment to the extent information thereon is reasonably available to the Compartment;
- (f) all rentals accrued on any real estate properties or interest accrued on any interest-bearing assets owned by the Compartment except to the extent that the same is included or reflected in the value attributed to such asset;
- (g) the formation expenses of the Compartment, including the cost of issuing and distributing shares of the Compartment, insofar as the same have not been written off; and
- (h) all other assets of any kind and nature including expenses paid in advance.

12.8 The value of the assets of the Company will be determined as follows:

- (a) 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 net asset value is final and binding notwithstanding that it may have been based on unofficial or estimated net asset values;

- (b) 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;
- (c) 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;
- (d) 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 in good faith by the General Partner;
- (e) 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;
- (f) investments registered in the name of the relevant Compartment or in the name of an intermediary vehicle, other than mentioned in article 12.8 (a) to (d) will be valued as more fully described in the Memorandum, provided that the General Partner may deviate from such valuation if deemed in the interest of the Company and its Shareholders.

12.9 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 administrative agent of the Company can rely on such deviations as approved by the Company for the purpose of the net asset value calculation.

12.10 All assets denominated in a currency other than the relevant Compartment's Reference Currency will be converted at the mid-market conversion rate between the Reference Currency and the currency of denomination as at the Valuation Date.

12.11 The liabilities of the Company shall include:

- (a) all loans and other indebtedness for borrowed money (including convertible debt), bills and accounts payable;
- (b) all accrued interest on such loans and other indebtedness for borrowed money (including accrued fees for commitment for such loans and other indebtedness);

- (c) all accrued or payable expenses (including administrative expenses, management and advisory fees, including incentive fees (if any), custody fees, paying agency, registrar and transfer agency fees and domiciliary and corporate agency fees as well as reasonable disbursements incurred by the service providers);
- (d) all known liabilities, present and future, including all matured contractual obligations for payments of money or property, including the amount of any unpaid distributions declared by the Company;
- (e) an appropriate provision for future taxes based on capital and income to the calculation day, as determined from time to time by the Company, and other reserves (if any) authorised and approved by the General Partner, as well as such amount (if any) as the General Partner may consider to be an appropriate allowance in respect of any contingent liabilities of the Company;
- (f) all other liabilities of the Company of whatsoever kind and nature reflected in accordance with Luxembourg law. In determining the amount of such liabilities the Company shall take into account all expenses payable by the Company and may accrue administrative and other expenses of a regular or recurring nature based on an estimated amount rateably for yearly or other periods.

12.12 For the purpose of this article 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..

12.13 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 net asset values 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 net asset value of such Class shall be reduced by the amount of such distributions.

#### 12.14 General rules

- (a) all valuation regulations and determinations shall be interpreted and made in accordance with Luxembourg law;
- (b) the net asset value 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 net asset value within a reasonable period of time following the relevant Valuation Date, as indicated in the Memorandum;
- (c) for the avoidance of doubt, the provisions of this article 12.16 are rules for determining the net asset value 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 net asset value per share of each Class in each Compartment is made available to the shareholders at the registered office of the Company and at the offices of the administrative agent of the Company. 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 shareholders in respect of undrawn commitments shall not be taken into account for the purpose of the calculation of the net asset value;
- (f) different valuation rules may be applicable in respect of a specific Compartment as further laid down in the Memorandum.

### 13. ARTICLE 13. - TEMPORARY SUSPENSION OF CALCULATION OF THE NET ASSET VALUE

- 13.1 The Company may at any time and from time to time suspend the determination of the net asset value 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.
- 13.2 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.
- 13.3 Such suspension as to any Compartment will have no effect on the calculation of the net asset value per share, the issue, redemption and conversion of shares of any other Compartment.
- 14. ARTICLE 14. - LIABILITY OF SHAREHOLDERS**
- 14.1 The owners of limited shares (i.e., shares of whatever Class to the exclusion of the Management Shares) are only liable up to the amount of their capital contribution made to the Company.
- 14.2 The General Partner's liability shall be unlimited.
- 15. ARTICLE 15. - MANAGEMENT**
- 15.1 The Company shall be managed by BHV Opportunities Fund Partners S.à r.l. (the **General Partner**). The General Partner who shall be the liable partner (*actionnaire gérant commandité*) and who shall be personally, jointly and severally liable with the Company for all liabilities which cannot be met out of the assets of the Company.
- 15.2 The General Partner is vested with the broadest powers to perform all acts of administration and disposition in the Company's interest which are not expressly reserved by law or by these Articles to the meeting of shareholders.

15.3 The General Partner shall namely have the power on behalf and in the name of the Company to carry out any and all of the purposes of the Company and to perform all acts and enter into and perform all contracts and other undertakings that it may deem necessary or advisable or incidental thereto. Except as otherwise expressly provided, the General Partner shall have, and shall have full authority in its discretion to exercise, on behalf of and in the name of the Company, all rights and powers necessary or convenient to carry out the purposes of the Company.

15.4 The General Meeting may at any time dismiss and replace the General Partner if any insolvency proceeding has been opened against the General Partner, in which case the resolution is passed by a simple majority of those present or represented and voting at the General Meeting by derogation to article 20.5 below.

## **16. ARTICLE 16 - AUTHORISED SIGNATURE**

16.1 The Company shall be bound towards third parties in all matters by the corporate signature of the General Partner or by the individual or joint signatures of any other persons to whom authority shall have been delegated by the General Partner as the General Partner shall determine in his discretion, except that such authority may not be conferred to a limited partner (*associé commanditaire*) of the Company.

## **17. ARTICLE 17 – INVESTMENT POLICY AND RESTRICTIONS**

17.1 The General Partner, based upon the principle of risk spreading, has the power to determine (i) the investment policies to be applied in respect of each Compartment, (ii) the hedging strategy to be applied to specific Classes of shares within particular Compartments and (iii) the course of conduct of the management and business affairs of the Company, all within the investment powers and restrictions as shall be set forth by the General Partner in the Memorandum, in compliance with applicable laws and regulations.

17.2 The General Partner shall also have power to determine any restrictions which shall from time to time be applicable to the investment of the Company's assets, in accordance with the 2007 Act including, without limitation, restrictions in respect of:

- (a) the borrowings of the Company or any Compartment thereof and the pledging of its assets; and
- (b) the maximum percentage of the Company or a Compartment's assets which it may invest in any single underlying asset and the maximum percentage of any type of investment which it (or a Compartment) may acquire.

17.3 The General Partner, acting in the best interests of the Company, may decide, in accordance with the terms of the Memorandum, that (i) all or part of the assets of the Company or of any Compartment be co-managed on a segregated basis with other assets held by other investors, including other undertakings for collective investment and/or their Compartments, or that (ii) all or part of the assets of two or more Compartments be co-managed on a segregated or on a pooled basis.

## **18. ARTICLE 18 – CONFLICT OF INTERESTS**

18.1 No contract or other transaction between the Company and any other company or firm shall be affected or invalidated by the fact that any one or more of the directors, managers or officers of the General Partner or the Company is interested in, or is a director, associate, officer or employee of such other company or firm.

18.2 Any director, manager or officer of the General Partner or of the Company who serves as director, officer or employee of any company or firm with which the Company shall contract or otherwise engage in business shall not, solely by reason of such affiliation with such other company or firm, be prevented from considering and voting or acting upon any matters with respect to such contract or other business

## 19. **ARTICLE 19. - INDEMNIFICATION**

- 19.1 the General Partner and the members of its board of managers, the initiators, the Custodian, the domiciliary agent of the Company, the administrative agent of the Company and their affiliates, officers, directors, direct and indirect shareholders, members, agents, partners and employees of each of the foregoing indemnified persons (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.
- 19.2 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.
- 19.3 The Company may, wherever deemed appropriate, provide professional, D&O or other adequate indemnity insurance coverage to one or more Indemnified Persons.

## 20. **ARTICLE 20 - MEETINGS OF SHAREHOLDERS**

- 20.1 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.
- 20.2 All General Meetings shall be chaired by the General Partner.
- 20.3 Any regularly constituted General Meeting shall represent the entire body of shareholders of the Company. No resolution of the shareholders shall be effective without the consent of the General Partner.
- 20.4 Other General Meetings may be held at such place and time as may be specified in the respective convening notices of that General Meeting.
- 20.5 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 Companies Act and the Articles.
- 20.6 Except as otherwise required by the Companies 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.

**21. ARTICLE 21 - NOTICE, QUORUM, CONVENING NOTICES, POWERS OF ATTORNEY AND VOTE**

- 21.1 The notice periods and *quorum* provided for by law shall govern the notice for, and the conduct of, the General Meetings, unless otherwise provided herein.
- 21.2 The General Partner may convene a General Meeting at any time. It shall be obliged to convene it so that it is held within a period of one month, if shareholders representing one-tenth of the capital require it in writing, with an indication of the agenda. One or more shareholders representing at least one tenth of the subscribed capital may require the entry of one or more items on the agenda of any General Meeting. This request must be addressed to the Company at least 5 (five) business days before the relevant General Meeting.
- 21.3 All the shares of the Company being in registered form, the convening notices shall be made by registered letters only.
- 21.4 Each share is entitled to one vote, subject to the provisions of articles 7 and 11.
- 21.5 Except as otherwise required by law or by these Articles, resolutions at a duly convened General Meeting will be passed by a simple majority of those present or represented and voting subject to the express consent of the General Partner.
- 21.6 However, resolutions to alter the Articles of the Company may only be adopted in a General Meeting properly convened and constituted in accordance with the Companies Act (i.e., 50% quorum requirement of the shares in issue and adopted at a 2/3 majority of the votes cast) and any other relevant Luxembourg law and with the consent of the General Partner.
- 21.7 The nationality of the Company may be changed and the commitments of its shareholders may be increased only with the unanimous consent of the shareholders and bondholders (if any).
- 21.8 Any amendment affecting the rights of the holders of shares of any Class of shares vis-à-vis those of any other Class of shares shall only be valid if passed in accordance with article 68 of the Companies Act.
- 21.9 A shareholder may act at any General Meeting by appointing another person (who need not be a shareholder) as its proxy in writing whether in original, by telefax, or e-mail to which an electronic signature (which is valid under Luxembourg law) is affixed.
- 21.10 If all the shareholders of the Company are present or represented at a General Meeting, and consider themselves as being duly convened and informed of the agenda of the meeting, the meeting may be held without prior notice.
- 21.11 The shareholders may vote in writing (by way of a voting bulletins) on resolutions submitted to the General Meeting provided that the written voting bulletins include (i) the name, first name, address and the signature of the relevant shareholder, (ii) the agenda as set forth in the convening notice and (iii) the voting instructions (approval, refusal, abstention) for each point of the agenda. In order to be taken into account, the original voting bulletins must be received by the Company forty-eight (48) hours before the relevant General Meeting.
- 21.12 The General Partner may determine any other conditions that must be fulfilled by shareholders for them to take part in any meeting of shareholders.

**22. ARTICLE 22 - GENERAL MEETINGS OF SHAREHOLDERS IN A COMPARTMENT OR IN A CLASS OF SHARES**

- 22.1 The shareholders of the Classes of shares issued in a Compartment may hold, at any time, General Meetings to decide on any matters which relate exclusively to that Compartment.
- 22.2 In addition, the shareholders of any Class of shares may hold, at any time, General Meetings for any matters which are specific to that Class of shares.
- 22.3 The provisions of article 21 apply to such General Meetings, unless the context otherwise requires.

**23. ARTICLE 23 – AUDITORS**

- 23.1 The accounting information contained in the annual report of the Company shall be examined by an auditor (*réviseur d'entreprises agréé*) appointed by the General Meeting and remunerated by the Company.
- 23.2 The auditor shall fulfil all duties prescribed by the 2007 Act.

**24. ARTICLE 24. - LIQUIDATION OR MERGER OF COMPARTMENTS OR CLASSES OF SHARES**

- 24.1 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, 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 net asset value 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 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.
- 24.2 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 net asset value 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.
- 24.3 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.
- 24.4 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.
- 24.5 All redeemed shares will be cancelled.
- 24.6 Under the same circumstances as provided under article 23.1, 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 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 article 23.1 above, one (1) 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.

- 24.7 Notwithstanding the powers conferred to the General Partner by article 23.6 above, 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.
- 24.8 Furthermore, in other circumstances than those described in article 23.1 above, a contribution of the assets and of the liabilities attributable to any Compartment to another undertaking for collective investment referred to in article 23.6 above 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 two-thirds (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 article 23.8 is subject to the General Partner's consent.

## **25. ARTICLE 25 – ACCOUNTING YEAR**

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

## **26. ARTICLE 26 - APPLICATION OF INCOME**

- 26.1 The General Meeting determines, upon proposal from the General Partner and within the limits provided by law, how the income from the Compartment will be applied with regard to each existing Class of shares, and may declare, or authorise the General Partner to declare, distributions.
- 26.2 For any Class of shares entitled to distributions, the General Partner may decide to pay interim dividends in accordance with legal provisions.
- 26.3 Payments of distributions to owners of registered shares will be made to such shareholders at their addresses in the register of shareholders.
- 26.4 Distribution will be made in the Reference Currency of the relevant Compartment and/or Class and at such a time and place as the General Partner determines from time to time.
- 26.5 Any distribution that has not been claimed within five years of its declaration will be forfeit and revert to the relevant Compartment.
- 26.6 No interest will be paid on a dividend declared by the Company and kept by it at the disposal of its beneficiary.

## **27. ARTICLE 27. - CUSTODIAN**

- 27.1 The Company shall enter into a custodian bank agreement with a bank or savings institution which shall satisfy the requirements of the 2007 Act (the **Custodian**) who shall assume towards the Company and its shareholders the responsibilities provided by the 2007 Act. The fees payable to the Custodian will be determined in the custodian bank agreement.
- 27.2 In the event of the Custodian desiring to retire, the General Partner shall within two months appoint another financial institution to act as custodian and upon doing so the General Partner shall appoint such institution to be custodian in place of the retiring Custodian. The General Partner shall have power to terminate the appointment of the Custodian but shall not remove the Custodian unless and until a successor custodian shall have been appointed in accordance with this provision to act in place thereof.

## **28. ARTICLE 28. - WINDING UP**

### **Dissolution and liquidation of the Company**

- 28.1 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 these Articles, and the consent of the General Partner.
- 28.2 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.
- 28.3 Should the Company be voluntarily liquidated, then its liquidation will be carried out in accordance with the provisions of the 2007 Act and the Companies Act.
- 28.4 The liquidation report of the liquidators will be audited by the auditor of the Company or by an ad hoc external auditor appointed by the meeting of shareholders. The liquidator(s) will realise each Compartment's assets in the best interests of the shareholders and apportion the proceeds of the liquidation of each Compartment, net of all liquidation expenses, among each Class of shareholders in accordance with their respective rights.
- 28.5 If the Company were to be compulsorily liquidated, the provision of the 2007 Act will be exclusively applicable.
- 28.6 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.
- 28.7 Any amounts unclaimed by the shareholders at the closing of the liquidation of the Company will be deposited with the *Caisse de Consignation* in Luxembourg for a duration of thirty (30) years. If amounts deposited remain unclaimed beyond the prescribed time limit, they shall be forfeit.
- 28.8 The decision to dissolve the Company will be published in the *Mémorial C, Recueil des Sociétés et Associations* and two newspapers with adequate circulation, one of which must be a Luxembourg newspaper.
- 28.9 If the assets of the Company fall below two-thirds of the minimum capital indicated in article 5, the question of the dissolution of the Company will be referred to the General Meeting by the General Partner. The General Meeting, for which no quorum will be required, will decide by simple majority of the votes of the shares represented at the General Meeting.
- 28.10 The question of the dissolution of the Company will further be referred to the General Meeting whenever the share capital falls below one-fourth of the minimum capital set by article 5; in such event, the General Meeting

will be held without any voting quorum requirements and the dissolution may be decided by shareholders holding one-quarter of the votes of the shares represented at the meeting.

28.11 The meeting must be convened so that it is held within a period of forty days from the determination that the net assets of the Company have fallen below two-thirds or one-quarter of the legal minimum, as the case may be.

## **29. ARTICLE 29. - APPLICABLE LAW**

29.1 All matters not governed by these Articles shall be determined in accordance with the 2007 Act and the Companies Act in accordance with article 1.2.

### **Transitory Provisions**

The first financial year shall begin today and it shall end on 31 December 2011.

The first annual General Meeting will be held in 2012.

### **Subscription and Payment**

The Articles having thus been established, the above-named parties have subscribed the shares as follows:

**BHV Opportunities Fund Partners S.à r.l.**, prenamed:  Management Shares; and

**[Banque Havilland SA]**, prenamed:  shares

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Total:  shares

All these shares have been fully paid-up in cash, therefore the amount of [*thirty one thousand*] EUR [*(EUR31,000)*] is now at the disposal of the Company, proof of which has been duly given to the notary.

The valuation certificate and the confirmation by the shareholder(s), after having been initialled *ne varietur* by the proxyholder of the appearing party, and the undersigned notary, will remain attached to the present deed in order to be registered with it.

### **Statement and Estimate of Costs**

The notary executing this deed declares that the conditions prescribed by article 26 of the Companies Act have been fulfilled and expressly bears witness to their fulfilment. Further, the notary executing this deed confirms that these Articles comply with the provisions of article 27 of the Companies Act.

The expenses, costs, remunerations and charges in any form whatsoever, which shall be borne by the Company as a result of the present deed are estimated to be approximately [].

### **Extraordinary General Meeting**

The appearing parties, representing the entire subscribed share capital and considering themselves as having been duly convened, immediately proceeded to the holding of a general meeting.

Having first verified that the meeting was regularly constituted, the shareholders passed with the consent of the General Partner, the following resolutions by unanimous vote:

1. that the purpose of the Company has been determined and that the Articles have been set;
2. that [name], with registered office at [address] has been appointed as the external auditor of the Company for a period ending on the date of the annual general meeting to be held in 2012;
3. that the registered office of the Company is established at 35a, avenue J. F. Kennedy, L-1855 Luxembourg Grand Duchy of Luxembourg.

The undersigned notary who understands and speaks English, states herewith that on request of the above appearing party, the present deed is worded in English, followed by a French version. At the request of the same appearing party, in case of discrepancies between the English and the French texts, **the English version will prevail**.

Whereof the present notary deed is drawn in Luxembourg, on the date stated above.

In witness whereof We, the undersigned notary, have set our hand and seal on the date and year first hereabove mentioned.

The document having been read to the proxyholder of the appearing party, the proxyholder of the appearing party signed together with Us, the notary, the present original deed.

