

# Report of the Supervisory Board



**Bernhard Walter**  
Chairman of the Supervisory Board

During the year under review, the Supervisory Board performed the duties incumbent upon it in accordance with the law and the Articles of Association and continually advised and monitored the Executive Board. The Supervisory Board was regularly kept informed about business developments and the situation of the Company. It supervised the management of the Company by the Executive Board in particular on the basis of written and verbal reports. The benchmarks for the supervision were the legality, correctness, suitability and profitability of the Group-wide management of the business by the Executive Board. The reports of the Executive Board fulfilled the requirements set by the law, by good corporate governance and the Supervisory Board in terms of both their subject matter and their scope. As well as the reports, the Supervisory Board also received additional information from the Executive Board. The reports and information issued by the Executive Board was examined in terms of its plausibility and was critically acknowledged and questioned by the Supervisory Board. A catalogue created by the Supervisory Board and constantly checked for necessary adjustments lists the kinds of business transactions for which the Executive Board requires the approval of the Supervisory Board. Business transactions requiring Supervisory Board approval were examined and discussed with the Executive Board. The Supervisory Board gave its approval for, among other things, the acquisition of shareholdings and for the submission of bids for major projects.

In face-to-face discussions outside the Supervisory Board meetings and its committees, the Chairman of the Supervisory Board and the Chairman of the Executive Board examined the situation of the Company, its further development and issues above and beyond that.

### **Supervisory Board meetings**

There were four regular meetings of the Supervisory Board in financial year 2007.

In addition to matters relating to current business and major projects, issues of economic development, corporate strategy and the position of Bilfinger Berger in relation to its competitors were discussed in detail with the Executive Board. The Supervisory Board also dealt intensively with the acquisition of O'Hare Engineering and approved the takeover. Before issuing approval of the acquisition, all major aspects were examined, such as the results of the due diligence, the earnings situation, business plan, quality of management, effects on the consolidated financial statements and integration concept. The Supervisory Board received regular reports on the actual development of new subsidiaries compared with the assumptions made at the time of acquisition.

A further focus of consultations in the plenary sessions of the Supervisory Board was the Group's earnings development. The Supervisory Board also received reports on the progress of all

concession projects. Detailed examinations were also carried out of general issues of Group structure and the management of subsidiaries and associated companies, corporate planning, return-on-capital-employed controlling, and the comparison of the course of business with the expected figures. The Supervisory Board dealt extensively and on several separate occasions with the spin-off of the Building and Civil divisions, currently being run as Bilfinger Berger AG's operative business, into legally independent entities. It will propose, together with the Executive Board, to the Annual General Meeting on May 21, 2008, that this measure be approved so that a homogeneous Group structure can be created. The shareholder structure and changes in it were discussed with the Executive Board twice in the past financial year. Upon the proposal of the Audit Committee, the Supervisory Board decided on the main areas for the audit of the individual and consolidated financial statements for the 2007 financial year.

The Supervisory Board has dealt extensively with the issue of compliance and, through its Audit Committee, has accompanied the form and application of the Bilfinger Berger Compliance System which was implemented in its current structure in 2006.

The Supervisory Board again dealt in detail with the German Corporate Governance Code; among other things, it evaluated the efficiency of its own activities. The Declaration of Compliance that was jointly issued by the Supervisory Board and the Executive Board on December 6, 2007

pursuant to Section 161 of the German Stock Corporation Act states that Bilfinger Berger AG complies with all of the recommendations of the Code as amended on June 14, 2007. The sole exception is the recommendation of Clause 5.4.3, Sentence 3 (announcement to the shareholders of proposed candidates for the Chair of the Supervisory Board), because this recommendation is not compatible with the distribution of competencies laid down in the German Stock Corporation Act. The election of the Supervisory Board Chairman is the responsibility of the Supervisory Board alone. The Declaration of Compliance has been posted on the Company's website, where it is permanently available to the shareholders. No conflicts of interest arose in the Supervisory Board during the year under review (see page 37 of this Annual Report for further details).

#### **Committees**

In order to enhance the efficiency of its activities, the Supervisory Board formed a Presiding Committee, an Audit Committee and – in accordance with section 5.3.3 of the German Corporate Governance Codex in its newest version – a Nomination Committee. In addition, in accordance with Article 11, Paragraph 2 of the Articles of Incorporation, a committee of the Supervisory Board has been formed to perform the duties described in Article 31, Paragraph 3 of the German Industrial Codetermination Act (Mediation Committee). The current composition of the Supervisory Board and its committees can be seen in the section of the Annual Report entitled "Boards of the Company" (see page 172 of the Annual Report).

The Chairmen of the Committees reported to the plenary session of the Supervisory Board in its meetings concerned with the work of their respective committees.

#### **Presiding Committee of the Supervisory Board**

The main tasks of the Presiding Committee include, in particular, regulating the personnel issues of the Executive Board, unless the provisions of the German Stock Corporation Act stipulate that they are to be regulated by the plenum of the Supervisory Board, and the decision on certain business dealings and transactions. The Presiding Committee also prepares the plenary meetings and makes recommendations on important resolutions. In financial year 2007, three meetings of the Presiding Committee took place. The Committee, within the scope of its competence, primarily dealt with and approved major projects as well as the acquisitions of PSP Management, Peters Engineering, FSMA and DIASA, the privately financed concessions business as well as the sale of office properties. The focus of the personnel issues in the Executive Board were the appointment of a new member of the Executive Board and the compensation and service contracts of the Executive Board.

### **Audit Committee**

The Audit Committee deals, among other things, with questions of accounting, risk management, compliance and auditing. In the five meetings held over the course of 2007, the main issues that were dealt with included the consolidated financial statements 2006 and the quarterly reports 2007, including the corresponding interim financial statements. The Committee, after examination of their independence, recommended the external auditors to the Supervisory Board for election through the Annual General Meeting and prepared the audit assignment and the fee agreement. Furthermore, the Audit Committee dealt extensively with the deployment of Project Controlling and the activities of Internal Auditing. For the audit of risk management, the two corporate departments submitted annual reports to the Committee. The Audit Committee also received information on the results of a peer review conducted by Internal Auditing. The Audit Committee is of the opinion that the risk-management system in its current form is fully appropriate to meet the demands made of it.

The Chairman of the Audit Committee met with the Chief Financial Officer, also outside of Committee meetings, and in face-to-face discussions reviewed the interim financial statements and the consolidated financial statements.

In addition, the Audit Committee also dealt extensively with compliance questions and promoted the further development of the compliance system. External consultants called in by

the Committee confirmed that the Bilfinger Berger Compliance System (see page 37 of the Annual Report) in its current form with internal and external ombudsmen, fulfills without restriction all of the requirements placed on such a function. The Chief Compliance Officer reports regularly to the Executive Board and the Audit Committee on his activities.

### **Nomination Committee**

In accordance with the recommendation in Section 5.3.3 of the new version of the German Corporate Governance Code, the Supervisory Board formed a Nomination Committee made up exclusively of shareholder representatives whose purpose it is to recommend suitable candidates to the Supervisory Board for its own recommendations to the Annual General Meeting. the Nominating Committee, in preparation for the Supervisory Board election 2008, has compiled recommendations.

### **Mediation Committee**

It was not necessary to convene the Mediation Committee in the 2007 financial year.

#### **Audit of the individual and consolidated financial statements**

The annual financial statements, prepared in accordance with the German Commercial Code (HGB) and the consolidated financial statements, prepared in accordance with the International Financial Reporting Standards as well as the applicable trade regulations in accordance with HGB Paragraph 315a along with the management reports of Bilfinger Berger AG and the Group for the 2007 financial year have been audited and each has been issued with an unqualified audit opinion by Pricewaterhouse Coopers Aktiengesellschaft Wirtschaftsprüfungsgesellschaft, of Karlsruhe, and Ernst & Young AG Wirtschaftsprüfungsgesellschaft Steuerberatungsgesellschaft, of Mannheim. The aforementioned financial statements and related documents, the audit reports of the external auditors and the proposal of the Executive Board on the appropriation of profits were provided to the members of the Supervisory Board in good time. The Audit Committee of the Supervisory Board discussed the financial statements and the audit reports as well as the appropriation of profits in the presence of the auditors.

The Supervisory Board undertook a detailed examination of the individual financial statements, the consolidated financial statements and management reports of Bilfinger Berger AG and

the Group for the 2007 financial year, as well as the proposal of the Executive Board on the appropriation of profits – following an explanation of these documents from the Executive Board – and dealt with these matters in its meeting on March 10, 2008. This meeting was also attended by the external auditors in the persons of two of the signing auditors, who explained their audit and its results and answered questions from the Supervisory Committee on the results of the audit as well as its form and scope. The Supervisory Board was convinced that the audit by the external auditors was conducted in a proper manner. In concurrence with the recommendation of the Audit Committee, the Supervisory Board took note of and approved the results of the audit conducted by the external auditors. Following the final results of the Supervisory Board's own examination carried out on this basis, no objections were to be made. At its meeting held on March 10, 2008, the Supervisory Board approved the financial statements of the Company and the Group and the management reports for the 2007 financial year as submitted by the Executive Board. The Company's financial statements have thus been adopted. The Supervisory Board, in its estimation of the situation of

the Company, agrees with the estimation of the Executive Board in its management report. The Supervisory Board consents to the proposal of the Executive Board on the appropriation of profits particularly with regard to the compelling nature of balance sheet and dividend distribution policy, the effect on liquidity, creditworthiness and future financing needs as well as under consideration of shareholder interest. In accordance with the recommendation of the Audit Committee, it agrees with the Executive Board's proposal for the use of unappropriated retained earnings.

In its meeting on May 23, 2007, the Supervisory Board appointed Mr. Klaus Raps as a member of the Executive Board with effect as of October 1, 2007. He has been with Bilfinger Berger since 1986 and was most recently Head of Executive Management at the German Building division. In his role as member of the Executive Board, Mr. Raps is responsible for Bilfinger Berger Australia, Bilfinger Berger Power Services and Bilfinger Berger Nigeria.

The Supervisory Board sitting until the Annual General Meeting on May 21, 2008 has 16 members. Because there are now regularly more than 20,000 employees working in Germany, the number of Supervisory Board members, in accordance with Paragraph 1 Section 3 of the German Codetermination Act, increases to 20. Accordingly, ten shareholder representatives will be elected by the Annual General Meeting in May 2008. In accordance with the Codetermination Act, the members representing the employees are elected by the workforce.

The increase in the dividend for financial year 2007 to €1.80 per share as proposed to the Annual General Meeting on May 21, 2008 would have resulted in a rise in Supervisory Board compensation that does not seem appropriate to the Supervisory Board. To make allowances for this development, the Supervisory Board believes it is necessary to change the way its compensation is calculated by increasing the fixed amount and reducing the dividend related portion. A relevant change in the Articles of Incorporation will be proposed to the Annual General Meeting on May 21, 2008. For financial year 2007, the Supervisory Board will apply the proposed regulation voluntarily. All members of the Supervisory Board have renounced that part of their compensation that they would have been entitled to in accordance with the previous regulation (for further details, see page 42 of this Annual Report).

The Supervisory Board hereby expresses its sincere thanks to the Executive Board and all of the Company's employees for their individual efforts in the past financial year.

Mannheim, March 10, 2008



Bernhard Walter  
Chairman of the Supervisory Board