

# 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 Incorporation 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. Executive Board reporting 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 were 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 and sale of shareholdings, for the submission of bids for major projects and for the investment budget.

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.

With the conclusion of the Annual General Meeting on May 21, 2008, the period in office of all sitting members of the Supervisory Board ended. Because more than 20,000 people are regularly employed in Germany and in accordance with Article 7, Paragraph 1, No. 3 of the German Co-determination act, the number of Supervisory Board members increased to 20, of which 10 are shareholder representatives and 10 employee representatives. Following the new election, Dr. John Feldmann, Rudolf Rupprecht and Bernhard Schreier joined the Supervisory Board for the first time as representatives of the shareholders elected by the Annual General Meeting. From the employees, Britta Ehrbrecht, Stephan Brückner, Volker Böhme, Andreas Harnack, Reinhard Heller, Dietmar Schäfers and Rainer Schilling were newly elected to the Supervisory Board. Those leaving the Supervisory Board were, as shareholder representative, Dr. Jürgen Hambrecht and as employee representative Maria Schmitt, Wolfgang Erdner, Reiner Jäger, Friedrich Rosner and Rolf Steinmann. The Supervisory Board would like to thank those members who left for their commitment and cooperation.

### **Supervisory Board meetings**

In financial year 2008, in addition to the constituent meeting, seven meetings of the Plenum of the Supervisory Board were held.

At the Supervisory Board meetings, in addition to matters relating to current business and major projects, issues including the economic developments and the potential impact of the worldwide crisis in the financial markets, corporate strategy, risk management, company financing, the Group's IT structures, development of junior managers as well as 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 acquisitions of Hydro Production Partner Holding / Produktionsjonstjenester, iPower Solutions and M+W Zander D.I.B. FM and approved each of them. 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. Following a thorough examination, the sale of Razel as well as the BAB A1, Northwest Anthony Henday Drive, Motorway M80 and Autobahn M6 concession projects were also approved. The Supervisory Board received regular reports on the actual development of new subsidiaries compared with the assumptions made at the time of acquisition and discussed the implementation of corporate strategy in detail.

A further focus of consultations in the plenary sessions of the Supervisory Board was the Group's earnings development. The causes of the charge against earnings from a Norwegian transport infrastructure project were discussed in detail with the Executive Board on the basis of previous examination in the Audit Committee, whereby there is agreement with the Executive Board with regard to the consequences that are to be taken. The Supervisory Board was informed, on an ongoing basis, on the development of all concession projects and the findings of Risk Management. The conclusion of the spin-off of the former Building and Civil divisions of Bilfinger Berger AG as well as corporate planning, investments, return-on-capital-employed controlling and the comparison of business development with the expected figures were also dealt with in detail. 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 2008 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 3, 2008 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 6, 2008. The sole excep-

tion 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 35 of the 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 178 of the Annual Report). The Audit Committee includes independent members who have expertise in the areas of accounting and auditing.

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 and the German Corporate Governance Codex 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 2008, three meetings of the Presiding Committee took place. In addition, a number of resolutions were made in writing. The Committee, within the scope of its competence, primarily dealt with and approved major projects as well as the acquisition of Clough Engineering & Maintenance, the sale or acquisition of further smaller subsidiaries, the privately financed concessions business and the buy-back of the company's own shares. 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 six meetings held over the course of the past financial year, the main issues that were dealt with included the consolidated financial statements 2007 and the quarterly reports 2008, 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. The Audit Committee received information on the development of the risk situation from the quarterly risk reports

of the Executive Board, which were also submitted to the Presiding Committee of the Supervisory Board. 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 is of the opinion that the risk-management system in its current form is fully appropriate to meet the demands made of it. The Audit Committee dealt intensively with the risk structure of major projects on the basis of an investigation commissioned by it and carried out by internal and external experts; the conclusions to be drawn from this investigation were discussed with the Executive Board. The Committee evaluated the efficiency of its work.

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 35 of the Annual Report) in its current form with internal and external ombudsmen, fulfills all of the requirements placed on such a function. The Chief Compliance Officer submits quarterly and annual reports on his activities to the Executive Board and the Audit Committee; in urgent cases, immediate reports are submitted.

### **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 compiled recommendations in preparation for the Supervisory Board elections in 2008.

### **Mediation Committee**

It was not necessary to convene the Mediation Committee in the 2008 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 2008 financial year have been audited and each has been issued with an unqualified audit opinion by Ernst & Young AG Wirtschaftsprüfungsgesellschaft Steuerberatungsgesellschaft,

of Mannheim. The aforementioned financial statements, 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, in preparation for the audit and treatment of these documents in the Presiding Committee of the Supervisory Board, discussed the financial statements and the audit reports as well as the proposal on 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 2008 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, 2009. 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. Here they also reported on the internal control and risk management system as it relates to the accounting process. There were no reasons to doubt the external auditor's impartiality. The Audit Committee of the Supervisory Board was informed of any additional services performed by the auditor beyond the auditing services. 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 con-

ducted 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, 2009, the Supervisory Board approved the financial statements of the Company and the Group and the management reports for the 2008 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.

**Auditor's review of  
interim consolidated financial statements and  
interim group management report**

The auditor was also commissioned with the task of reviewing the interim financial statements and the interim group management report from June 30, 2008. The auditor participated in the treatment of the half-year financial statements and report by the Audit Committee and explained the auditor's review that was carried out with a positive result.

In its meeting on September 30, 2008, the Supervisory Board appointed Mr. Joachim Müller as a member of the Executive Board with effect as of November 1, 2008. He was previously Senior Vice President Corporate Finance at the SAP Group and, following the Annual General Meeting on May 7, 2009, will succeed Dr. Jürgen M. Schneider as Executive Board member responsible for accounting, finance, controlling and investor relations; Dr. Schneider will leave the Board after 19 years of successful membership upon reaching the relevant age limit.

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, 2009



Bernhard Walter  
Chairman of the Supervisory Board