

# Report of the Supervisory Board



**Dr. h. c. 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 their plausibility and were critically assessed 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 meetings of the Supervisory Board 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 other issues.

### **Supervisory Board meetings**

In financial year 2009, six meetings of the Presiding Committee of the Supervisory Board were held.

At the Supervisory Board meetings, in addition to matters relating to current business and major projects, economic developments, particularly with regard to global economic and financial crisis, corporate strategy, risk management, corporate financing, the consolidated financial statements 2008 and 2009 as well as the planned transformation of Bilfinger Berger AG into a Societas Europaea (SE) were discussed in detail with the Executive Board. The Executive Board's plan to shift the focus of the Company's activities through further expansion of the Services business segment and a significant reduction in the construction business was approved and supported by the Supervisory Board. The Supervisory Board dealt intensively with the acquisition, in line with this strategic shift, of MCE AG and the corresponding capital increase and approved both measures. Before issuing an approval of the acquisition of MCE, all major considerations 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 plan. 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 Supervisory Board was informed, on an ongoing basis, on the development of concession projects and critical major projects, particularly the accident at an excavation pit for the North-South urban rail line in Cologne and associated events. Detailed examinations were also carried out on general issues of risk management, corporate planning, capital expenditure, return-on-capital-employed controlling, and comparison of the course of business with the expected figures. 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 in plenary session decided on the main areas for the audit of the individual and consolidated financial statements for the 2009 financial year.

The Supervisory Board also dealt intensively with compliance issues. Through its Audit Committee, the Supervisory Board follows and monitors the framework and further development of the Bilfinger Berger compliance system.

The Supervisory Board dealt in detail with the German Corporate Governance Code. It had external experts evaluate the efficiency of its activities, and the high level and quality of the Supervisory Board's activities were confirmed. On December 8, 2009 the Executive Board and the Supervisory Board issued a declaration of compliance pursuant to Section 161 of the German Stock Corporation Act. Due to recent changes, the Executive Board and Supervisory Board issued a new statement in accordance with Section 161 of the German Stock Corporation Act on March 4, 2010. Both this and the previous statement are permanently available to shareholders on the Company's web site and are components of the corporate governance report (see page 38 of the Annual Report). No conflicts of interest arose in the Supervisory Board during the year under review.

### Committees

In order to enhance the efficiency of its activities, the Supervisory Board has formed a Presiding Committee, an Audit Committee and 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 Section 31, Subsection 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 208 of the Annual Report). The Audit Committee includes independent members who have expertise in the areas of accounting, auditing and the application of internal control procedures.

The chairmen of the committees reported on the work of their respective committees to the entire Supervisory Board.

#### 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 entire Supervisory Board, and decisions on certain business dealings and transactions. The Presiding Committee also prepares the plenary meetings and makes recommendations on important resolutions. In financial year 2009, four 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, the acquisition of LTM, Rohrbau Gruppe

and Westfonds Fund Management, the sale of Passavant-Roediger as well as the privately financed concessions business. The focus of the personnel issues for the Executive Board were the changes in the Executive Board and the remuneration 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 for 2008 and the quarterly reports for 2009, 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 2009 and prepared the audit assignment and the fee agreement. It also dealt with the services provided by the independent auditors in addition to auditing services. 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 Plenum 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 once again dealt with the risk structure of major construction projects and commissioned internal and external experts to investigate the causes of the negative development of an overseas project. The Audit Committee was satisfied that the measures necessary to limit risk in major construction projects were taken by the Executive Board. The Audit Committee dealt with the internal control and risk-management system, particularly with regard to the accounting process and is of the opinion that the internal control system currently in place, including the internal auditing system and the risk management system are appropriate to fulfill the demands that are placed on them. The auditors and internal auditing confirmed this in their review. The Committee had external experts evaluate the efficiency of its activities. Overall, the Audit Committee's high degree of competence in the fulfillment of its duties was certified.

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 (see page 40 of the Annual Report). External consultants commissioned by the Committee analyzed the framework of the compliance system and confirmed its functionality. The Chief Compliance Officer submitted quarterly reports to the Audit Committee on his activities.

#### **Nomination Committee**

In accordance with the recommendation in Clause 5.3.3 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. With regard to the reduction in the size of the Supervisory Board as part of the planned transformation into an SE, the Nomination Committee met once in 2009 and submitted its recommendation to the plenary session of the Supervisory Board.

#### **Mediation Committee**

It was not necessary to convene the Mediation Committee in the 2009 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 and the supplementary requirements of Section 315a of the German Commercial Code (HGB) along with the management reports of Bilfinger Berger AG and the Bilfinger Berger Group for the 2009 financial year have been audited and each has been issued with an unqualified audit opinion by Ernst & Young GmbH Wirtschaftsprüfungsgesellschaft, 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 submitted 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 Plenum of the Super-

visory 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. In addition, the Audit Committee had the auditor report on the collaboration with internal auditing and others in positions relating to risk management and on the effectiveness of the internal control and risk management system, in particular with regard to accounting whereby the auditor stated that no significant weaknesses were found. The Audit Committee is of the opinion that the internal control system currently in place, including the internal auditing system and the risk management system are appropriate to fulfill the demands that are made of them.

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 2009 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 4, 2010. 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 Board on the results of the audit as well as its form and scope. They also discussed in detail with the Supervisory Board the internal control and risk management system, in particular as it relates to the accounting process. The Supervisory Board shares the opinion of the Audit Committee on the effectiveness of these systems. The Audit Committee of the Supervisory Board dealt with additional services provided by the independent auditors beyond auditing services. There were no reasons to doubt the independent auditor's impartiality.

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; this applies also to the corporate governance statement insofar as the components of which are to be analyzed by the Supervisory Board alone. At its meeting held on March 4, 2010, the Supervisory Board approved the financial statements of the Company and the Group and the management reports for the 2009 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 stringency of accounting 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 consents to and adopts the Executive Board's proposal for the utilization 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 as of June 30, 2009. The auditor participated in the Audit Committee's discussion of the half-year financial statements and report and described their own auditors' review which was carried out with a positive result.

### **Personnel issues**

In its meeting on March 10, 2009, the Supervisory Board appointed Mr. Thomas Töpfer as a member of the Executive Board with effect as of April 1, 2009. He was previously Chairman of the Executive Board at Bilfinger Berger Industrial Services AG in Munich. Dr. Ott stepped down from the Executive Board by mutual agreement with effect as of March 31, 2009 and since then has been active exclusively as Head of Executive Management of Bilfinger Berger Facility Services GmbH. Dr. Jürgen M. Schneider stepped down from the Executive Board with effect as of July 31, 2009 after reaching retirement age.

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 4, 2010



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