

# Invitation to the Annual General Meeting 2008

The Multi Service Group.

 **BILFINGER** | **BERGER**

# Annual General Meeting

The shareholders in our Company are hereby invited to attend the

## **Annual General Meeting**

to be held at Congress Center Rosengarten,  
Musensaal, Rosengartenplatz 2, Mannheim, on

**Wednesday, May 21, 2008, 10:00 a.m.**

# Agenda

- 1. Presentation of the adopted annual financial statements, the approved group financial statements, the Management Report of Bilfinger Berger AG and of the group, the report of the Supervisory Board for the 2007 fiscal year and the explanatory notes of the Executive Board relating to the information provided pursuant to Sections 289 (4) and 315 (4) of the German Commercial Code (*Handelsgesetzbuch*, HGB)**
- 2. Resolution on the use of the unappropriated retained earnings**

The Executive Board and the Supervisory Board propose to resolve as follows:

The unappropriated retained earnings reported in the annual financial statements for the 2007 fiscal year, amounting to € 66,952,983.60, will be used as follows:

Distribution of a dividend in the amount of € 1.80 per no-par value share carrying dividend rights  
= € 66,952,983.60.

The proposal concerning the use of unappropriated retained earnings is based on the capital stock carrying dividend rights which as at February 19, 2008 (the date of preparation of the annual financial statements) amounted to € 111,588,306, divided into 37,196,102 no-par value shares. Until such time as the resolution concerning the use of unappropriated retained earnings is adopted, the number of shares carrying dividend rights may decrease as a result of a purchase of treasury shares. In such event, the Executive Board and the Supervisory Board shall in the General Meeting submit an adjusted resolution proposal concerning the use of unappropriated retained earnings which will, however, also provide for a distribution of € 1.80 per no-par value share carrying dividend rights. The adjustment will be performed by carrying forward to the next fiscal year such portion of the unappropriated retained earnings as will reflect the ratio by which the number of shares carrying dividend rights, and thus the total dividends, are reduced.

### **3. Resolution on the formal approval of the acts of the Executive Board with respect to the 2007 fiscal year**

The Supervisory Board and the Executive Board propose that formal approval of their acts be granted to the members of the Executive Board who were in office during the 2007 fiscal year with respect to that period.

### **4. Resolution on the formal approval of the acts of the Supervisory Board with respect to the 2007 fiscal year**

The Executive Board and the Supervisory Board propose that formal approval of their acts be granted to the members of the Supervisory Board who were in office during the 2007 fiscal year with respect to that period.

**5. Appointment of the auditors of the financial statements and group financial statements for the 2008 fiscal year as well as of the auditors to be commissioned to review the abridged financial statements and the interim management report prepared in accordance with Sections 37w (5) and 37y no. 2 of the German Securities Trading Act (*Wertpapierhandelsgesetz, WpHG*)**

The Supervisory Board proposes to resolve as follows:

- a) Ernst & Young AG Wirtschaftsprüfungsgesellschaft Steuerberatungsgesellschaft, Mannheim, are appointed auditors of the financial statements and group financial statements for the 2008 fiscal year.
- b) Ernst & Young AG Wirtschaftsprüfungsgesellschaft Steuerberatungsgesellschaft, Mannheim, are also appointed to review the abridged financial statements and interim management report prepared in accordance with Sections 37w (5) and 37y no. 2 WpHG in the 2008 fiscal year.

**6. Resolutions on the amendment of provisions of the Articles of Incorporation relating to the Supervisory Board**

**a) Resolution on the change in the number of Supervisory Board members set out in Article 9 of the Articles of Incorporation**

In line with the announcement published by the Executive Board of the Company in the German electronic Federal Gazette (*elektronischer Bundesanzeiger*) of November 20, 2007, and in accordance with Sections 96 (1) and 101 (1) of the German Stock Corporation Act (*Aktiengesetz; AktG*) in conjunction with Section 7 (1) sentence 1 no. 3 of the German Industrial Codetermination Act of 1976 (*Mitbestim-*

*nungsgesetz 1976*) (MitbestG 1976), the Supervisory Board shall in future comprise ten shareholder representatives and ten employee representatives. Upon the close of the General Meeting of May 21, 2008, the current wording of Article 9 of the Articles of Incorporation concerning the number of Supervisory Board members shall cease to be effective in accordance with Section 97 (2) sentence 2 AktG as it does not comply with current legislation. Article 9 of the Articles of Incorporation is therefore to be adjusted to reflect the applicable provisions.

Accordingly, the Executive Board and the Supervisory Board propose to resolve as follows:

Article 9 of the Articles of Incorporation is amended to read as follows:

“The Supervisory Board shall comprise twenty members.”

**b) Resolution on the amendment of the provision relating to the compensation paid to Supervisory Board members set out in Article 14 of the Articles of Incorporation**

The compensation paid to Supervisory Board members pursuant to Article 14 of the Articles of Incorporation is to be adjusted to reflect the marked increase in dividends experienced in recent years. To this end, both the fixed compensation and the minimum dividend per share which must be exceeded in order for a variable compensation to be paid in addition to the fixed element are to be increased, while at the same time the amount payable as variable compensation for each cent by which the dividend exceeds the relevant minimum level is to be reduced. Furthermore, the increase in the compensation paid to Supervisory

Board members who perform certain functions in the Supervisory Board is to be staggered differently. In addition, an amendment is to be incorporated to reflect the new recommendation contained in Section 5.3.3 of the German Corporate Governance Code (as amended on June 14, 2007): So far, the Articles of Incorporation provided that members of Supervisory Board committees, with the exception of the committee pursuant to Section 27 (3) of the German Industrial Codetermination Act, were to be paid an increased compensation (Article 14, 1st paragraph, sentence 2 of the Articles of Incorporation). In line with the new recommendation contained in Section 5.3.3 of the German Corporate Governance Code, the Supervisory Board has formed a nomination committee composed exclusively of shareholder representatives which proposes suitable candidates to the Supervisory Board for recommendation to the General Meeting. In this context, Article 14 of the Articles of Incorporation is to be amended to the effect that the members of the nomination committee will not receive an increased compensation. The amended provision concerning the compensation paid to Supervisory Board members is to take effect for the first time for the 2008 fiscal year.

Accordingly, the Executive Board and the Supervisory Board propose to resolve as follows:

Article 14 of the Articles of Incorporation is amended to read as follows:

“In addition to the reimbursement of expenses, members of the Supervisory Board are to be paid a fixed annual compensation of € 40,000, effective from the 2008 fiscal year, and a variable compensation of € 300 for each cent by which the dividend paid to

shareholders exceeds € 0.80 per share. The Chairman of the Supervisory Board is to be paid double these amounts, the Chairmen of the committees, with the exception of the committee pursuant to Section 27 (3) of the German Industrial Codetermination Act and the nomination committee, are to be paid one and three quarters of these amounts, and the Deputy Chairman of the Supervisory Board and the members of the committees, with the exception of the committee pursuant to Section 27 (3) of the German Industrial Codetermination Act and the nomination committee, are to be paid one and a half times these amounts. If a member of the Supervisory Board exercises several of the aforementioned functions, he or she will be entitled to only one of these compensation amounts, i. e. whichever is highest.

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

## **7. Supervisory Board Elections**

In line with the announcement published by the Executive Board of the Company in the German electronic Federal Gazette of November 20, 2007, and in accordance with Sections 96 (1) and 101 (1) AktG in conjunction with Section 7 (1) sentence 1 no. 3 MitbestG 1976, the Supervisory Board shall in future comprise ten shareholder representatives and ten employee representatives. In accordance with Section 97 (2) sentence 3 AktG, the term of office of all current members of the Supervisory Board will expire at the close of the General Meeting of May 21, 2008. New shareholder representatives are therefore to be elected at the General Meeting of May 21, 2008.



When electing the shareholder representatives, the General Meeting is not bound to the recommendations submitted.

The Supervisory Board recommends to elect the following individuals to the Supervisory Board as shareholder representatives (with individual votes to be held for each candidate):

- a) Hans Bauer,  
resident at Nuremberg,  
former chairman of the Executive Board of HeidelbergCement AG, Heidelberg (building supplies),
- b) Dr. Horst Dietz,  
resident at Berlin,  
managing director of DIETZ Unternehmensberatungsgesellschaft mbH, Berlin  
(business consulting),

in each case subject to the proviso that they will not be elected for the maximum term stipulated in Article 10, 1st paragraph of the Articles of Incorporation but (in order to comply with the recommendation set out in Section 5.4.6 of the German Corporate Governance Code) for a term ending at the close of the General Meeting granting formal approval of the acts of the Supervisory Board for the first fiscal year after the commencement of their term of office, with the fiscal year during which the term of office commences not being taken into account (i. e. the term of office of these Supervisory Board members will accordingly end at the close of the 2010 Annual General Meeting), as well as:

- c) Dr. rer. nat. John Feldmann,  
resident at Ludwigshafen,  
member of the Executive Board of BASF SE,  
Ludwigshafen (chemical industry),

- d) Professor Dr. Hermut Kormann,  
resident at Heidenheim,  
former chairman of the Executive Board of Voith AG,  
Heidenheim (mechanical engineering),
- e) Thomas Pleines,  
resident at Munich,  
member of the Executive Board of  
Allianz Deutschland AG, Munich (insurance)  
and chairman of the Executive Board of  
Allianz Versicherungs AG, Munich (insurance),
- f) Dr.-Ing. E.h. Rudolf Rupprecht,  
resident at Augsburg,  
former chairman of the Executive Board  
of MAN Aktiengesellschaft, Munich  
(vehicle construction and mechanical engineering),
- g) Bernhard Schreier,  
resident at Bruchsal,  
chairman of the Executive Board of Heidelberger  
Druckmaschinen AG, Heidelberg (printing presses),
- h) Udo Stark,  
resident at Munich,  
former chairman of the Executive Board  
of MTU Aero Engines Holding AG, Munich  
(engine manufacturing),
- i) Professor Dr. Klaus Trützscher,  
resident at Gelsenkirchen,  
member of the Executive Board of Franz Haniel &  
Cie. GmbH, Duisburg (trade and services),
- j) Bernhard Walter,  
resident at Bad Homburg,  
former spokesman of the Executive Board  
of Dresdner Bank AG, Frankfurt/Main  
(banking),

in each case subject to the proviso that they will be elected, in accordance with Article 10, 1st paragraph of the Articles of Incorporation, for a term ending at the close of the General Meeting granting formal approval of the acts of the Supervisory Board for the fourth fiscal year after the commencement of their term of office, with the fiscal year during which the term of office commences not being taken into account (i. e. the term of office of these Supervisory Board members will accordingly end at the close of the 2013 Annual General Meeting).

The Supervisory Board further recommends that

- k) Dr. jur. Peter Thomsen,  
resident at Weinheim,  
self-employed attorney at law  
(*selbständiger Rechtsanwalt*) in Heidelberg,

be elected as substitute member for all elected members listed in lits a) to j) above, subject to the proviso that (1) he will join the Supervisory Board if any of the members listed in lits a) to j) above ceases to be a member of the Supervisory Board prior to the expiry of his term of office, (2) he will return to his position as substitute member for the remaining members listed in lits a) to j) above once the General Meeting has elected a new member to replace the original member for whom he acted as a substitute but, in the event he joined the Supervisory Board as substitute for either of the members listed in lits a) or b) above, no later than upon the expiry of the remaining term of office of such member, (3) if several members listed in lits a) to j) above simultaneously cease to be members of the Supervisory Board prior to the expiry of their term of office, such members will be replaced in the order in which they are listed in lits a) to

j) above, (4) his term of office as a substitute member will correspond to the term of office of the members elected in accordance with lits c) to j) above, and (5) if he joins the Supervisory Board, his term of office will end at the close of the General Meeting in which new elections are held but, in the event he joined the Supervisory Board as substitute for either of the members listed in lits a) or b) above, no later than upon the expiry of the remaining term of office of such member.

**Information required under Section 125 (1) sentence 3 AktG on the individuals recommended by the Supervisory Board:**

a) Hans Bauer

Memberships in other supervisory boards  
required by law:  
none

Memberships in comparable domestic and foreign  
supervisory bodies:  
none

b) Dr. Horst Dietz

Memberships in other supervisory boards  
required by law:  
ABB AG, Mannheim

Memberships in comparable domestic and foreign  
supervisory bodies:  
E&Z Industrie-Lösungen GmbH, Duisburg  
(chairman of the shareholders' committee  
(*Gesellschafterausschuss*))

c) Dr. rer. nat. John Feldmann

Memberships in other supervisory boards  
required by law:

BASF Coatings AG, Münster\*,  
Wintershall AG, Kassel (chairman)\*,  
Wintershall Holding AG, Kassel (chairman)\*

Memberships in comparable domestic and foreign  
supervisory bodies:

COFACE Holding AG, Mainz  
(member of the Advisory Board (*Beirat*))

d) Professor Dr. Hermut Kormann

Memberships in other supervisory boards  
required by law:

Berthold Leibinger GmbH, Ditzingen  
(general partner (*persönlich haftende Gesell-  
schafterin*) of Trumpf GmbH & Co. KG, Ditzingen)),  
SMS Demag AG, Düsseldorf,  
Universitätsklinikum Ulm, public-law corporation  
(*Anstalt des öffentlichen Rechts*), Ulm\*\*

Memberships in comparable domestic and foreign  
supervisory bodies:

Trumpf GmbH & Co. KG, Ditzingen (member of  
the Administrative Board (*Verwaltungsrat*))

e) Thomas Pleines

Memberships in other supervisory boards  
required by law:

DEKRA AG, Stuttgart,  
DEKRA Automobil GmbH, Stuttgart,  
Vereinte Spezial Versicherung Aktiengesellschaft,  
Munich (chairman)\*

Memberships in comparable domestic and foreign  
supervisory bodies:

none

f) Dr.-Ing. E.h. Rudolf Rupprecht

Memberships in other supervisory boards  
required by law:

Bayerische Staatsforsten, public-law corporation,  
Regensburg\*\*,  
MAN Aktiengesellschaft, Munich,  
Salzgitter AG, Salzgitter,  
SMS GmbH, Düsseldorf (chairman)

Memberships in comparable domestic and foreign  
supervisory bodies:  
none

g) Bernhard Schreier

Memberships in other supervisory boards  
required by law:

ABB AG, Mannheim,  
Heidelberg Druckmaschinen Vertrieb Deutschland  
GmbH, Heidelberg (chairman)\*

Memberships in comparable domestic and foreign  
supervisory bodies:

Heidelberg Americas, Inc., Kennesaw/USA  
(chairman of the Board of Directors)\*,  
Heidelberger Druckmaschinen  
Austria Vertriebs-GmbH, Vienna, Austria  
(member of the Advisory Board)\*,  
Heidelberger Druckmaschinen  
Osteuropa Vertriebs-GmbH, Vienna, Austria  
(member of the Advisory Board)\*,  
Heidelberg Graphic Equipment Ltd., Brentford/UK  
(chairman of the Board of Directors)\*,  
Heidelberg Japan K.K., Tokyo/Japan  
(member of the Board of Directors)\*,  
Heidelberg USA, Inc., Kennesaw/USA  
(chairman of the Board of Directors)\*

h) Udo Stark

Memberships in other supervisory boards  
required by law:

Cognis GmbH, Monheim,  
MTU Aero Engines Holding AG, Munich,  
Oystar Holding GmbH, Karlsruhe/Stutensee  
(deputy chairman)

Memberships in comparable domestic and foreign  
supervisory bodies:

Prysmian S.p.A., Milan, Italy  
(member of the Supervisory Board)

i) Professor Dr. Klaus Trützscher

Memberships in other supervisory boards  
required by law:

Allianz Versicherungs AG, Munich,  
Celesio AG, Stuttgart\*,  
TAKKT AG, Stuttgart (deputy chairman)\*

Memberships in comparable domestic and foreign  
supervisory bodies:

Wilh. Wehrhahn KG, Neuss  
(member of the Administrative Board)

j) Bernhard Walter

Memberships in other supervisory boards  
required by law:

Daimler AG, Stuttgart,  
Deutsche Telekom AG, Bonn,  
Henkel KGaA, Düsseldorf,  
Staatliche Porzellan-Manufaktur Meissen GmbH,  
Meissen (deputy chairman),  
Wintershall AG, Kassel (deputy chairman),  
Wintershall Holding AG, Kassel (deputy chairman)

Memberships in comparable domestic and foreign supervisory bodies:

none

Individual recommended by the Supervisory Board to be elected as substitute member:

k) Dr. jur. Peter Thomsen

Memberships in other supervisory boards required by law:

none

Memberships in comparable domestic and foreign supervisory bodies:

none

Offices marked by \* are offices held in enterprises belonging to the same group (*Konzernmandate*) within the meaning of Section 100 (2) sentence 2 AktG or offices held in comparable domestic and foreign supervisory bodies of enterprises belonging to the same group. Offices marked by \*\* are offices held in domestic supervisory bodies provided for by law which are not supervisory bodies of commercial companies (*Handels-gesellschaften*) within the meaning of Section 100 (2) sentence 1 no. 1 AktG.

## **8. Resolutions on the spin-off of the Building and Civil divisions**

The Building and Civil divisions of Bilfinger Berger AG are to be transferred by way of spin-off to two legally independent, wholly owned subsidiaries – namely, the Building division to Bilfinger Berger Hochbau GmbH with its registered office in Frankfurt am Main and the Civil division to Bilfinger Berger Ingenieurbau GmbH with its registered office in Wiesbaden. This will create a



consistent and uniform group structure, and the legal organization of the group will be aligned to the organizational group structure which already exists in practice. In this context, the General Meeting is to adopt resolutions on the adjustment of the corporate purpose of Bilfinger Berger AG as set out in its Articles of Incorporation to the planned new group structure and on approving the Spin-Off and Transfer Agreement which Bilfinger Berger AG concluded with Bilfinger Berger Hochbau GmbH and Bilfinger Berger Ingenieurbau GmbH to implement the new legal organizational structure. In addition, the general meeting shall in this context also vote on approving two domination and profit-transfer agreements concluded by Bilfinger Berger AG with Bilfinger Berger Hochbau GmbH and Bilfinger Berger Ingenieurbau GmbH.

**a) Resolution on the adjustment of the corporate purpose in Article 3 of the Articles of Incorporation**

The Executive Board and the Supervisory Board propose to resolve as follows:

Article 3 of the Articles of Incorporation should be amended to read as follows:

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

- design, management and execution of construction services for the respective company's own account and for the account of others,

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

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

In the context of the areas of activity set forth in paragraph 1, the Company may establish subsidiaries and set up branches in Germany and abroad; it may acquire equity interests in other companies or

acquire such companies and transfer their business to the Company or any of its affiliated enterprises, wholly or in part. The Company may conclude inter-company agreements and make any business transactions and take any measures that are deemed to serve the purposes of the Company.”

**b) Resolution on approving the Spin-Off and Transfer Agreement to spin-off the Building division and transfer it to Bilfinger Berger Hochbau GmbH with its registered office in Frankfurt am Main and to spin-off the Civil division and transfer it to Bilfinger Berger Ingenieurbau GmbH with its registered office in Wiesbaden**

On March 18, 2008, Bilfinger Berger AG concluded a Spin-Off and Transfer Agreement with Bilfinger Berger Hochbau GmbH and Bilfinger Berger Ingenieurbau GmbH. The shareholders' meetings of both subsidiaries have already approved the Spin-Off and Transfer Agreement. The Spin-Off and Transfer Agreement will only take effect subject to approval by the General Meeting of Bilfinger Berger AG, and the spin-off will only take effect upon entry in the commercial register for Bilfinger Berger AG (which entry may only be effected after the spin-off has been entered in the commercial register for Bilfinger Berger Hochbau GmbH and Bilfinger Berger Ingenieurbau GmbH).

The Executive Board and the Supervisory Board propose to resolve as follows:

The Spin-Off and Transfer Agreement concluded on March 18, 2008 by notarial deed of Dr Manfred Westpfahl, notary public in Frankfurt am Main, between Bilfinger Berger AG, Bilfinger Berger Hochbau GmbH and Bilfinger Berger Ingenieurbau GmbH is hereby approved.

The Spin-Off and Transfer Agreement between Bilfinger Berger AG, Bilfinger Berger Hochbau GmbH and Bilfinger Berger Ingenieurbau GmbH (hereinafter referred to as the 'Spin-Off and Transfer Agreement') has the following key provisions:

*Spin-off for the purpose of affiliation, closing balance sheet, spin-off date*

- Bilfinger Berger AG, as transferor company, shall transfer, by way of spin-off for the purpose of affiliation (*Ausgliederung zur Aufnahme*), the portion of its assets specified in the Spin-Off and Transfer Agreement pertaining to the Building division as a unit (*als Gesamtheit*) to Bilfinger Berger Hochbau GmbH, as transferee company, in return for a new share in Bilfinger Berger Hochbau GmbH amounting to € 9,975,000, and the portion of its assets specified in the Spin-Off and Transfer Agreement pertaining to the Civil division as a unit to Bilfinger Berger Ingenieurbau GmbH, as transferee company, in return for a new share in Bilfinger Berger Ingenieurbau GmbH amounting to € 9,975,000 (Section 123 (3) no. 1 in conjunction with Sections 124 *et seq.*, 138 and 141 *et seq.* of the German Corporate Transformation Act (*Umwandlungsgesetz*; UmwG)).
- The spin-off shall be based on the balance sheet of Bilfinger Berger AG as at December 31, 2007 which has been audited and bears an unqualified audit opinion as closing balance sheet (hereinafter referred to as the 'Closing Balance Sheet'). Bilfinger Berger Hochbau GmbH and Bilfinger Berger Ingenieurbau GmbH shall take over the assets and liabilities transferred to them at the book values reported in the Closing Balance Sheet and carry them in their commercial and tax balance sheets at the book values reported by Bilfinger Berger AG.

- The transfer shall take place between Bilfinger Berger AG and Bilfinger Berger Hochbau GmbH and between Bilfinger Berger AG and Bilfinger Berger Ingenieurbau GmbH with effect as of the spin-off date, i.e. January 1, 2008. From the spin-off date, all acts and transactions performed by Bilfinger Berger AG regarding the assets of the Building division to be spun off shall be deemed to be performed for the account of Bilfinger Berger Hochbau GmbH, and all acts and transactions performed by Bilfinger Berger AG regarding the assets of the Civil division to be spun off shall be deemed to be performed for the account of Bilfinger Berger Ingenieurbau GmbH. Bilfinger Berger AG and Bilfinger Berger Hochbau GmbH shall put each other in the position they would be in if the Building division had already been transferred to Bilfinger Berger Hochbau GmbH on the spin-off date, and Bilfinger Berger AG and Bilfinger Berger Ingenieurbau GmbH shall put each other in the position they would be in if the Civil division had already been transferred to Bilfinger Berger Ingenieurbau GmbH on the spin-off date. Once the Spin-Off and Transfer Agreement has been validly concluded, Bilfinger Berger AG undertakes to dispose of the assets to be spun off only in the ordinary course of business, or, concerning the Building division, only with the consent of Bilfinger Berger Hochbau GmbH, or, concerning the Civil division, only with the consent of Bilfinger Berger Ingenieurbau GmbH.
- The effective date of transfer for tax purposes (*steuerlicher Übertragungstichtag*) shall be December 31, 2007.

*Assets to be spun off (Building division)*

- Unless expressly agreed otherwise in the Spin-Off and Transfer Agreement, Bilfinger Berger AG shall transfer to Bilfinger Berger Hochbau GmbH its entire Building division as a unit along with all related assets and liabilities, including all related intangible and tangible assets, contractual and other legal relationships of any kind, receivables and liabilities, uncertain liabilities, contingent liabilities and future and contingent receivables and liabilities the legal basis of which has already been constituted, irrespective of whether or not they must or can be reported in the balance sheet or have been reported in the balance sheet. The assets and liabilities to be allocated to the Building division shall in particular include all assets and liabilities shown in the spin-off balance sheet of the Building division as at January 1, 2008 prepared on the basis of the Closing Balance Sheet and attached as Annex 3.1 (a) to the Spin-Off and Transfer Agreement.
- Unless expressly agreed otherwise in the Spin-Off and Transfer Agreement, the Building division to be spun off in particular includes (i) all assets and liabilities of the Building division included in those cost units and cost centers of Bilfinger Berger Commercial System ('BCS') which are for BCS purposes allocated to the BCS organizational elements listed in Annex 3.1 (b) (i) to the Spin-Off and Transfer Agreement together with their ID numbers in each case and (ii) all rights and obligations under building projects of Bilfinger Berger AG included in the BCS cost units and cost centers which are for BCS purposes allocated to the BCS organizational elements listed in Annex 3.1 (b) (i) to the Spin-Off and Transfer Agreement, in particular all rights and obligations under the building,

supply and service contracts concluded in this context, including all security provided by third parties for any claims thereunder.

- Unless expressly agreed otherwise in the Spin-Off and Transfer Agreement, Bilfinger Berger AG shall also transfer to Bilfinger Berger Hochbau GmbH in particular all fixed and current assets included in the cost units and cost centers allocated to the BCS organizational elements of the Building division listed in Annex 3.1 (b) (i) to the Spin-Off and Transfer Agreement, in each case including all rights and obligations under the contractual and other legal relationships underlying or relating to these assets.
- On the closing date, Bilfinger Berger Hochbau GmbH shall assume all rights and obligations under the liabilities of Bilfinger Berger AG, in particular pension liabilities (pension claims and expectancies) of Bilfinger Berger AG, towards employees of the Building division (former employees with company pension claims and employees with pension expectancies) who left the company between the spin-off date and the closing date. Rights and obligations under Bilfinger Berger AG's pension liabilities towards employees of the Building division (former employees with company pension claims and employees with pension expectancies) who left the company before the spin-off date shall remain with Bilfinger Berger AG and shall not be transferred to Bilfinger Berger Hochbau GmbH.
- Unless expressly agreed otherwise in the Spin-Off and Transfer Agreement, Bilfinger Berger AG shall also transfer to Bilfinger Berger Hochbau GmbH the rights and obligations under all contractual and other legal relationships, whether under public or

private law, relating to the Building division, in particular all rights and obligations under any type of domestic and foreign concessions, permits and other authorizations under public law.

- Bilfinger Berger AG shall transfer to Bilfinger Berger Hochbau GmbH all intangible assets relating to the Building division. Bilfinger Berger Hochbau GmbH shall grant Bilfinger Berger AG a non-exclusive, perpetual and irrevocable right to use the intangible assets transferred to Bilfinger Berger Hochbau GmbH to the extent that such right is necessary or expedient for or in connection with performing the tasks incumbent on Bilfinger Berger AG after the spin-off.
- Bilfinger Berger AG shall also transfer to Bilfinger Berger Hochbau GmbH its rights and obligations under the trust agreement dated December 17, 2003 concluded with CTA Verwaltungs GmbH & Co. KG, Mannheim, under which a contractual trust arrangement has been set up to secure the pension expectancies and claims of the employees of Bilfinger Berger AG; the transfer is to take place to the extent to which pension expectancies and claims of current and former Bilfinger Berger AG employees are transferred to Bilfinger Berger Hochbau GmbH as a result of the spin-off.
- However, the following shall not form part of the assets of the Building division to be transferred and are thus to be excluded from the transfer: (i) the Vicenza branch (*‘sede secondaria’*) of Bilfinger Berger AG, together with all the related assets and liabilities, rights and obligations and other legal relationships of any kind, (ii) the share held by Bilfinger Berger AG in Bilfinger Berger Hochbau GmbH and the shares in all associated companies (*Beteiligungsgesell-*



*schaften*) of the Building division which are not listed in Annex 3.3 (a) to the Spin-Off and Transfer Agreement, (iii) the domination and profit-transfer agreement concluded with Bilfinger Berger Hochbau GmbH on March 18, 2008, (iv) real property and rights relating to immovables (*Immobiliarsachenrechte*), (v) the ownership of the construction machinery and equipment used in the Building division, (vi) rights and obligations under the leasing agreements for construction machinery and equipment and cars used in the Building division, (vii) rights and obligations under leasing agreements for IT software and IT hardware used in the Building division, (viii) the rights and obligations under letters of comfort, sureties and guarantees provided or assumed by Bilfinger Berger AG in connection with or for building projects of direct or indirect subsidiaries of Bilfinger Berger AG, (ix) the rights and obligations vis-à-vis credit institutions under credit and guarantee facilities provided for Bilfinger Berger AG, also to the extent that any letters of guarantee for building projects of direct or indirect subsidiaries of Bilfinger Berger AG have been issued thereunder by credit institutions at the request of Bilfinger Berger AG or of subsidiaries, excepting the obligations transferred to Bilfinger Berger Hochbau GmbH to reimburse expenses to credit institutions and to indemnify credit institutions in the event that a claim is filed under letters of guarantee issued by these credit institutions to third parties for building projects of Bilfinger Berger AG excepting the liabilities of the Leipzig branch under the loan agreement concluded with Bayerische Landesbank dated October 19/24, 2006 regarding the Chemnitz justice center which are transferred to Bilfinger Berger Hochbau GmbH, and (x) rights and obligations under tender procedures governed by public procurement law (e.g. pre-

qualifications, submission of requests to participate and submissions of bids) which have not been concluded on the closing date with the acceptance of a bid.

*Assets to be spun off (Civil division)*

- Unless expressly agreed otherwise in the Spin-Off and Transfer Agreement, Bilfinger Berger AG shall transfer to Bilfinger Berger Ingenieurbau GmbH its entire Civil division as a unit along with all related assets and liabilities, including all related intangible and tangible assets, contractual and other legal relationships of any kind, receivables and liabilities, uncertain liabilities, contingent liabilities and future and contingent receivables and liabilities the legal basis of which has already been constituted, irrespective of whether or not they must or can be reported in the balance sheet or have been reported in the balance sheet. The assets and liabilities to be allocated to the Civil division shall in particular include all assets and liabilities shown in the spin-off balance sheet of the Civil division as at January 1, 2008 prepared on the basis of the Closing Balance Sheet and attached as Annex 3.8 (a) to the Spin-Off and Transfer Agreement.
- Unless expressly agreed otherwise in the Spin-Off and Transfer Agreement, the Civil division to be spun off in particular includes (i) all assets and liabilities of the Civil division included in those BCS cost units and cost centers which are for BCS purposes allocated to the BCS organizational elements and (ii) all rights and obligations under civil projects of Bilfinger Berger AG included in those BCS cost units and cost centers which are for BCS purposes allocated to the BCS organizational elements listed in Annex 3.8 (b) (i) to

the Spin-Off and Transfer Agreement, in particular all rights and obligations under the building, supply and service contracts concluded in this context, including all security provided by third parties for any claims thereunder.

- Unless expressly agreed otherwise in the Spin-Off and Transfer Agreement, Bilfinger Berger AG shall also transfer to Bilfinger Berger Ingenieurbau GmbH in particular all fixed and current assets included in the cost units and cost centers allocated to the BCS organizational elements of the Civil division listed in Annex 3.8 (b) (i) to the Spin-Off and Transfer Agreement, in each case including all rights and obligations under the contractual and other legal relationships underlying or relating to these assets.
- On the closing date, Bilfinger Berger Ingenieurbau GmbH shall assume all rights and obligations under the liabilities of Bilfinger Berger AG, in particular pension liabilities (pension claims and expectancies) of Bilfinger Berger AG, towards employees of the Civil division (former employees with company pension claims and employees with pension expectancies) who left the company between the spin-off date and the closing date. Rights and obligations under Bilfinger Berger AG's pension liabilities towards employees of the Civil division (former employees with company pension claims and employees with pension expectancies) who left the company before the spin-off date shall remain with Bilfinger Berger AG and shall not be transferred to Bilfinger Berger Ingenieurbau GmbH.
- Unless expressly agreed otherwise in the Spin-Off and Transfer Agreement, Bilfinger Berger AG shall also transfer to Bilfinger Berger Ingenieurbau GmbH

the rights and obligations under all contractual and other legal relationships, whether under public or private law, relating to the Civil division, in particular all rights and obligations under any type of domestic and foreign concessions, permits and other authorizations under public law.

- Bilfinger Berger AG shall transfer to Bilfinger Berger Ingenieurbau GmbH all intangible assets relating to the Civil division. Bilfinger Berger Ingenieurbau GmbH shall grant Bilfinger Berger AG a non-exclusive, perpetual and irrevocable right to use the intangible assets transferred to Bilfinger Berger Ingenieurbau GmbH to the extent that such right is necessary or expedient for or in connection with performing the tasks incumbent on Bilfinger Berger AG after the spin-off.
- Bilfinger Berger AG shall also transfer to Bilfinger Berger Ingenieurbau GmbH its rights and obligations under the trust agreement dated December 17, 2003 concluded with CTA Verwaltungs GmbH & Co. KG, Mannheim, under which a contractual trust arrangement has been set up to secure the pension expectancies and claims of the employees of Bilfinger Berger AG; the transfer is to take place to the extent to which pension expectancies and claims of current and former Bilfinger Berger AG employees are transferred to Bilfinger Berger Ingenieurbau GmbH as a result of the spin-off.
- However, the following shall not form part of the assets of the Civil division to be transferred and are thus to be excluded from the transfer: (i) the civil projects of Bilfinger Berger AG and consortia that were or are still to be completed in the countries listed in Annex 3.8 (c) (i) to the Spin-Off and Transfer

Agreement as well as foreign branches and permanent establishments located in these countries, in each case together with all the related assets and liabilities, rights and obligations and other legal relationships of any kind, (ii) the share held by Bilfinger Berger AG in Bilfinger Berger Ingenieurbau GmbH and the shares in all associated companies of the Civil division which are not listed in Annex 3.10 (a) to the Spin-Off and Transfer Agreement, (iii) the domination and profit-transfer agreement concluded with Bilfinger Berger Ingenieurbau GmbH on March 18, 2008, (iv) real property and rights relating to immovables, (v) rights and obligations under the leasing agreements for construction machinery and equipment and cars used in the Civil division, (vi) rights and obligations under leasing agreements for IT software and IT hardware used in the Civil division, (vii) the rights and obligations under letters of comfort, sureties and guarantees provided or assumed by Bilfinger Berger AG in connection with or for civil projects of direct or indirect subsidiaries of Bilfinger Berger AG, (viii) the rights and obligations vis-à-vis credit institutions under credit and guarantee facilities provided for Bilfinger Berger AG, also to the extent that any letters of guarantee for civil projects of direct or indirect subsidiaries of Bilfinger Berger AG have been issued thereunder by credit institutions at the request of Bilfinger Berger AG, excepting the obligations transferred to Bilfinger Berger Ingenieurbau GmbH to reimburse expenses to credit institutions and to indemnify credit institutions in the event that a claim is filed under letters of guarantee issued by these credit institutions to third parties for civil projects of Bilfinger Berger AG, and (ix) rights and obligations under tender procedures governed by public procurement law (e.g. pre-qualifications, submission of requests to participate and submis-

sions of bids) which have not been concluded on the closing date with the acceptance of a bid.

*Execution of the spin-off, obstacles to transfer*

- The transfer of the assets and liabilities included in the spin-off and of the other rights and obligations and legal positions of Bilfinger Berger AG shall in each case be effected in rem (*mit dinglicher Wirkung*) upon entry of the spin-off in the commercial register for Bilfinger Berger AG, i.e. on the closing date. Any assets or liabilities, or other rights and obligations, that are added or removed between the spin-off date and the closing date will be taken into account upon transfer.
- To the extent that certain assets and liabilities, rights and obligations or legal positions, in particular under contracts, equity interests, memberships or administrative acts, which are to be transferred to Bilfinger Berger Hochbau GmbH and Bilfinger Berger Ingenieurbau GmbH under the Spin-Off and Transfer Agreement do not pass to Bilfinger Berger Hochbau GmbH and Bilfinger Berger Ingenieurbau GmbH upon entry of the spin-off in the commercial register, Bilfinger Berger AG shall transfer such assets and liabilities, rights and obligations or legal positions to Bilfinger Berger Hochbau GmbH or Bilfinger Berger Ingenieurbau GmbH, as the case may be, in a separate transaction, in each case in accordance with the relevant applicable provisions. Bilfinger Berger Hochbau GmbH and Bilfinger Berger Ingenieurbau GmbH are obliged to accept such transfer.
- If, in terms of relations with third parties, such transfer to Bilfinger Berger Hochbau GmbH and Bilfinger Berger Ingenieurbau GmbH is not possible, involves

unreasonably high outlay or would not be expedient, Bilfinger Berger AG and Bilfinger Berger Hochbau GmbH or Bilfinger Berger AG and Bilfinger Berger Ingenieurbau GmbH respectively shall, in terms of their relations with one another, also put each other, in terms of relations with third parties, in the position they would have been in had the transfer taken place on the spin-off date.

- Bilfinger Berger AG and Bilfinger Berger Hochbau GmbH as well as Bilfinger Berger AG and Bilfinger Berger Ingenieurbau GmbH shall make all declarations, issue all deeds, take all other measures and perform all other legal acts necessary or expedient in connection with the transfer of the assets to be spun off.

*Indemnity, exclusion of claims*

- If and to the extent that any creditors assert claims against Bilfinger Berger AG, Bilfinger Berger Hochbau GmbH or Bilfinger Berger Ingenieurbau GmbH based on the provisions of Section 133 UmwG or based on any other statutory or contractual provisions for liabilities or obligations as well as under contingencies which, pursuant to the terms of the Spin-Off and Transfer Agreement, have been allocated to a different legal entity, the other legal entity shall, on first demand, indemnify the legal entity against which claims have been asserted against such liabilities, obligations and contingencies, insofar as the creditors' claims are enforceable or undisputed.
- Any and all claims and rights of Bilfinger Berger Hochbau GmbH and Bilfinger Berger Ingenieurbau GmbH respectively against Bilfinger Berger AG due to

the nature or the existence of Bilfinger Berger AG's assets or parts thereof to be spun off that were transferred under the terms of the Spin-Off and Transfer Agreement are hereby excluded.

- Bilfinger Berger AG is prepared to continue rendering the supplies and services it has so far been rendering within the Bilfinger Berger Group for the Building and Civil divisions in future for Bilfinger Berger Hochbau GmbH and Bilfinger Berger Ingenieurbau GmbH with economic effect as of the spin-off date on reasonable terms. The supplies and services may also be rendered by subsidiaries of Bilfinger Berger AG.
- Bilfinger Berger Hochbau GmbH and Bilfinger Berger Ingenieurbau GmbH are prepared to continue rendering the supplies and services that have so far been rendered within the Bilfinger Berger Group by the Building division and the Civil division for Bilfinger Berger AG or its subsidiaries in future with economic effect as of the spin-off date on reasonable terms.

#### *Consideration*

- Bilfinger Berger Hochbau GmbH shall grant Bilfinger Berger AG a new share with a nominal value of € 9,975,000 as consideration for the transfer of the assets relating to the Building division. Bilfinger Berger Ingenieurbau GmbH shall grant Bilfinger Berger AG a new share with a nominal value of € 9,975,000 as consideration for the transfer of the assets relating to the Civil division. The shares shall be granted free of charge and carry dividend rights as of January 1, 2008. In the event that the spin-off date is postponed, the commencement of the new share's dividend rights shall be postponed accordingly. To the extent that the net assets stated in the respective



spin-off balance sheets for the Building and Civil divisions exceed the computed portion of the share capital represented by the share granted in return, the difference shall be transferred to the capital reserves of Bilfinger Berger Hochbau GmbH or Bilfinger Berger Ingenieurbau GmbH, respectively, pursuant to Section 272 (2) no. 1 of the German Commercial Code (*Handelsgesetzbuch*; HGB).

*No rights and privileges within the meaning of Section 126 (1) no. 7 and no. 8 UmwG*

- Bilfinger Berger Hochbau GmbH and Bilfinger Berger Ingenieurbau GmbH shall not grant any rights within the meaning of Section 126 (1) no. 7 UmwG; neither are any measures within the meaning of this provision planned. None of the members of representative or supervisory bodies of the legal entities involved in the spin-off shall be granted any special privileges within the meaning of Section 126 (1) no. 8 UmwG. The same shall apply for the auditors of the financial statements and of the value of the contribution in kind involved.

*Consequences for employees and their representations*

- On the closing date, all employment contracts concluded by Bilfinger Berger AG in relation to the Building division and the Civil division shall pass to Bilfinger Berger Hochbau GmbH and Bilfinger Berger Ingenieurbau GmbH, respectively, by law pursuant to Sections 613a (1) sentence 1 of the German Civil Code (*Bürgerliches Gesetzbuch*; BGB) and Section 324 UmwG. Pursuant to Section 613a (1) sentence 1 BGB and Section 324 UmwG, Bilfinger Berger Hochbau GmbH and Bilfinger Berger Ingenieurbau GmbH,

respectively, shall enter into the employment contracts of the transferred employees with all rights and obligations.

- As security for the pension claims and expectancies to be fulfilled by Bilfinger Berger Hochbau GmbH and Bilfinger Berger Ingenieurbau GmbH, Bilfinger Berger AG transfers its rights and obligations under the trust agreement concluded with CTA Verwaltungs GmbH & Co. KG, Mannheim, to the extent to which pension expectancies and claims of current and former employees of Bilfinger Berger AG are transferred to Bilfinger Berger Hochbau GmbH and Bilfinger Berger Ingenieurbau GmbH as a result of the spin-off. Such security will also include any expectancies accrued in the past for which Bilfinger Berger Hochbau GmbH and Bilfinger Berger Ingenieurbau GmbH are liable.
- Where pension claims and expectancies are secured by reinsurance policies, equivalent security shall exist at Bilfinger Berger Hochbau GmbH and Bilfinger Berger Ingenieurbau GmbH.
- The employees shall be notified of the transfer of their employment contracts prior to the closing date as stipulated in Section 613a (5) BGB. The employees may object to the transfer of their employment contracts in writing within one month of receipt of such notification. In the event of an objection, the employment contract with Bilfinger Berger AG shall remain in place. However, employees objecting to the transfer of their employment contracts will have to expect to be dismissed on the grounds of redundancy due to the lack of possibilities for continued employment.

- The operations relating to the Building division shall be transferred to Bilfinger Berger Hochbau GmbH and the operations relating to the Civil division to Bilfinger Berger Ingenieurbau GmbH; they shall continue to exist unchanged. The local works councils shall remain in office. Local works agreements, as agreements subject to collective bargaining law, shall continue to apply unchanged.
- Following completion of the spin-off, the office of the general works council of Bilfinger Berger AG shall terminate. For the employees of Bilfinger Berger AG, any existing general works agreements shall continue to apply as works agreements under collective bargaining law. The employees whose employment contracts have been transferred to Bilfinger Berger Hochbau GmbH and Bilfinger Berger Ingenieurbau GmbH, respectively, shall, from the closing date, no longer be represented by the general works council of Bilfinger Berger AG. However, Bilfinger Berger Hochbau GmbH and Bilfinger Berger Ingenieurbau GmbH shall each set up their own general works council to which the local works councils of Bilfinger Berger Hochbau GmbH and Bilfinger Berger Ingenieurbau GmbH send their representatives. For the employees of Bilfinger Berger Hochbau GmbH and Bilfinger Berger Ingenieurbau GmbH, any existing general works agreements shall continue to apply unchanged as general works agreements under collective bargaining law.
- The divisional works councils 'Civil' and 'Building' set up on the basis of the collective agreement dated January 28, 2004, amended by the collective agreement dated February 8, 2006, shall continue to exist for the time being; the collective agreement shall also be binding on Bilfinger Berger Hochbau GmbH and

Bilfinger Berger Ingenieurbau GmbH as legal successor of Bilfinger Berger AG. Any works agreements concluded with the respective divisional works council shall continue to apply unchanged as divisional works agreements under collective bargaining law.

- Since Bilfinger Berger Hochbau GmbH and Bilfinger Berger Ingenieurbau GmbH are each wholly owned subsidiaries of Bilfinger Berger AG, the general works council of Bilfinger Berger Hochbau GmbH shall send representatives to the group works council of Bilfinger Berger AG as shall the general works council of Bilfinger Berger Ingenieurbau GmbH. Any group works agreements existing on the closing date shall continue to apply unchanged under collective bargaining law.
- Bilfinger Berger Hochbau GmbH and Bilfinger Berger Ingenieurbau GmbH shall become members of the same employers' associations which are parties to collective agreements (*tarifschließend*) as Bilfinger Berger AG. Consequently, the collective agreements that apply for Bilfinger Berger AG shall also apply for Bilfinger Berger Hochbau GmbH and Bilfinger Berger Ingenieurbau GmbH.
- Bilfinger Berger Hochbau GmbH and Bilfinger Berger Ingenieurbau GmbH shall be liable for all liabilities under the employment contracts to be transferred, including any outstanding liabilities. In respect of liabilities that were constituted before the closing date, Bilfinger Berger AG shall be liable as joint and several debtor together with Bilfinger Berger Hochbau GmbH and Bilfinger Berger Ingenieurbau GmbH if such liabilities are due before expiry of a five-year period after the closing date and claims have been established against Bilfinger Berger AG of

a nature as specified in Section 197 (1) nos. 3-5 BGB or judicial or official enforcement has been effected or applied for. The time limit for pension commitments established before the closing date on the basis of the German Company Pensions Act (*Betriebsrentengesetz*) pursuant to the preceding sentence shall be ten years.

- Pursuant to Section 613a (4) BGB and Section 324 UmwG, the employer is not permitted to terminate any employment contracts as a result of the spin-off. However, the employer may still terminate employment contracts for other reasons. The employees' legal situation in respect of dismissal will not be impaired due to the spin-off for a period of two years after the closing date.
- There are no plans to undertake any operational changes or to dismiss staff. It is envisaged that soon after the spin-off of the Civil division to Bilfinger Berger Ingenieurbau GmbH, the Foundation Engineering branch is to be spun off from this company. No further measures are envisaged in respect of the employees.
- The spin-off shall not result in any changes in respect of the supervisory board of Bilfinger Berger AG. At present, neither Bilfinger Berger Hochbau GmbH nor Bilfinger Berger Ingenieurbau GmbH have a supervisory board. After the closing date, both companies will, as a rule, have more than 500 employees and therefore be subject to co-determination in accordance with the German One-Third Participation Act (*Drittelbeteiligungsgesetz*; *DrittelbG*). For this reason, a status procedure (*Statusverfahren*) pursuant to

Sections 96-98 AktG in conjunction with Section 1 (1) no. 3 DrittelbG shall be initiated after the closing date. Thus, the supervisory board of Bilfinger Berger Hochbau GmbH and the supervisory board of Bilfinger Berger Ingenieurbau GmbH will in future have three members: two appointed by the shareholders and one appointed by the employees.

#### *Change of spin-off date and balance sheet date*

- If the spin-off has not been registered in the commercial register for Bilfinger Berger AG by March 1, 2009, the beginning of January 1, 2009 shall be deemed the spin-off date. In this case, the spin-off shall be based on the balance sheet of Bilfinger Berger AG to be prepared as at December 31, 2008 as closing balance sheet. In the event of a further delay in the registration beyond March 1 of the following year, the spin-off date and the closing balance sheet date shall be postponed according to the above provision by one year in each case.

#### *Costs*

- The costs arising as a result of the conclusion and execution of the Spin-Off and Transfer Agreement, including the costs of the preparation of this agreement and of the capital increase of Bilfinger Berger Hochbau GmbH and Bilfinger Berger Ingenieurbau GmbH, as well as any taxes incurred in connection with the implementation of the agreement, shall be borne by Bilfinger Berger AG. Each party shall bear the costs of its shareholders' meeting and the costs of filing for and entry in the commercial register.

### *Miscellaneous*

- The Spin-Off and Transfer Agreement shall be governed by German law and cites Mannheim as the place of jurisdiction. It contains a standard severability clause.
- The Spin-Off and Transfer Agreement shall only come into effect once it has been approved by the General Meeting of Bilfinger Berger AG and the shareholders' meetings of Bilfinger Berger Hochbau GmbH and Bilfinger Berger Ingenieurbau GmbH. In order to come into effect, the spin-off must in addition be entered in the commercial register for Bilfinger Berger AG. Such entry may only be effected once the spin-off has been entered in the commercial register for Bilfinger Berger Hochbau GmbH and Bilfinger Berger Ingenieurbau GmbH.

### *Annexes*

The Annexes to the Spin-Off and Transfer Agreement, which form part of such agreement, have the following material content:

- Annex 3.1 (a) contains the spin-off balance sheet of the Building division as at January 1, 2008, which has been prepared on the basis of the closing balance sheet.
- Annex 3.1 (b) (i) contains a list of organizational elements from the Bilfinger Berger Commercial System ('BCS'), together with their ID numbers, to which those cost units and cost centers have been allocated which comprise the assets and liabilities of the Building division that are to be transferred to Bilfinger Berger Hochbau GmbH.

- Annex 3.2 (a) (iv) contains a list of bank accounts the rights and obligations relating to which will be transferred to Bilfinger Berger Hochbau GmbH.
- Annex 3.3 (a) contains a list of companies in which Bilfinger Berger AG holds interests which will be transferred to Bilfinger Berger Hochbau GmbH.
- Annex 3.3 (b) contains a list of project numbers from the BCS under which consortia have been established in which Bilfinger Berger AG holds interests which will be transferred to Bilfinger Berger Hochbau GmbH.
- Annex 3.7 (a) contains a list of patents, utility models and trademarks of the Building division.
- Annex 3.8 (a) contains the spin-off balance sheet of the Civil division as at January 1, 2008, which has been prepared on the basis of the closing balance sheet.
- Annex 3.8 (b) (i) contains a list of organizational elements from the BCS, together with their ID numbers, to which those cost units and cost centers have been allocated which comprise the assets and liabilities of the Civil division that are to be transferred to Bilfinger Berger Ingenieurbau GmbH.
- Annex 3.8 (c) (i) contains a list of countries in which civil engineering projects were completed or are still to be completed, or in which foreign branches or permanent establishments are located that are not to be transferred.



- Annex 3.9 (a) (iv) contains a list of bank accounts the rights and obligations relating to which will be transferred to Bilfinger Berger Ingenieurbau GmbH.
- Annex 3.10 (a) contains a list of companies in which Bilfinger Berger AG holds interests which will be transferred to Bilfinger Berger Ingenieurbau GmbH.
- Annex 3.10 (b) contains a list of project numbers from the BCS under which consortia have been established in which Bilfinger Berger AG holds interests which will be transferred to Bilfinger Berger Ingenieurbau GmbH.
- Annex 3.14 (a) contains a list of patents, utility models and trademarks of the Civil division.

**c) Resolution on the approval of the domination and profit transfer agreement between Bilfinger Berger AG and Bilfinger Berger Hochbau GmbH**

On March 18, 2008, Bilfinger Berger AG entered into a domination and profit transfer agreement with Bilfinger Berger Hochbau GmbH. The domination and profit transfer agreement has already been approved by the shareholders' meeting of Bilfinger Berger Hochbau GmbH. The domination and profit transfer agreement will take effect only with the approval by the General Meeting of Bilfinger Berger AG and after it has been entered in the commercial register for Bilfinger Berger Hochbau GmbH.

The Executive Board and the Supervisory Board propose to resolve as follows:

The domination and profit transfer agreement dated March 18, 2008 between Bilfinger Berger AG and Bilfinger Berger Hochbau GmbH is approved.

The key terms of the domination and profit transfer agreement between Bilfinger Berger AG and Bilfinger Berger Hochbau GmbH (hereinafter the 'Subsidiary') are as follows:

- The Subsidiary entrusts Bilfinger Berger AG with managing its business (*Geschäftsleitung*). Bilfinger Berger AG is accordingly entitled to issue directions to the management of the Subsidiary with respect to managing its business. The right to issue instructions shall not include instructions to amend, maintain or terminate the agreement. The management of the Subsidiary remains responsible for conducting the Subsidiary's business (*Geschäftsführung*) and for representing the Subsidiary. It will retain its full decision-making powers to the extent they are not limited by instructions or by the provisions set out in the two following paragraphs.
- The Subsidiary undertakes to transfer its entire profit as determined in accordance with the relevant provisions of German commercial law to Bilfinger Berger AG, subject to Section 301 AktG. The profit to be transferred shall be deemed to comprise the annual net profit that would have been generated if no profit transfer arrangements were in place, subject to the establishment or liquidation of reserves as described in the following paragraph, less any loss carryforward from the preceding year.
- The Subsidiary may, subject the consent of Bilfinger Berger AG, allocate amounts from the annual net profit to revenue reserves (*Gewinnrücklagen*) within

the meaning of Section 272 (3) HGB only to the extent this is permissible under German commercial law and justified in economic terms on the basis of a reasonable commercial assessment. Any other revenue reserves established during the term of this agreement are to be liquidated at the request of Bilfinger Berger AG and to be used in order to balance an annual net loss or to be transferred as profit. Any revenue reserves or profit carryforward dating back to the time before this agreement took effect or any capital reserves may neither be transferred as profits nor used in order to balance any annual net loss. The obligation to transfer profit will for the first time apply with respect to the entire profit of the fiscal year of the Subsidiary during which this agreement takes effect and will be due at the end of each fiscal year. Bilfinger Berger AG may request that profits are transferred in advance if and to the extent that an advance dividend could be paid out.

- In accordance with Section 302 (1), (3) and (4) AktG, as amended from time to time, Bilfinger Berger AG is obligated to compensate any annual net loss that the Subsidiary would otherwise have sustained during the term of the agreement, to the extent that such loss is not balanced by withdrawing amounts from the other revenue reserves which were allocated to the other revenue reserves during the term of the agreement. The obligation to assume losses will for the first time apply with respect to the entire loss of the fiscal year of the Subsidiary during which this agreement takes effect and will be due at the end of each fiscal year.
- The agreement shall require the approval of the General Meeting of Bilfinger Berger AG and the shareholders' meeting of the Subsidiary in order to take

effect. It shall become effective upon registration in the commercial register for the Subsidiary. The agreement is concluded for a fixed term running for five full years, starting with the commencement of the fiscal year of the Subsidiary during which the obligation to transfer profits applies for the first time under the agreement. In the event that the end of this five-year period falls on a date within a running fiscal year of the Subsidiary, for example as a result of the creation of a short fiscal year, the agreement will end upon the expiry of that fiscal year. The agreement shall be automatically renewed by one full year unless it is terminated in writing by either of the contracting parties with three months' notice to the end of its term. In this respect, the provision contained in the previous-but-one sentence shall apply *mutatis mutandis*. In order to determine whether the notice period has been observed, the time of receipt of the termination notice by the respective other contracting party shall be decisive. This shall not affect the right of each party to terminate the agreement for cause. Such termination for cause and without notice will be permitted in particular if Bilfinger Berger AG sells or otherwise transfers more than 50 percent of its shareholding in the Subsidiary to third parties. If notice of termination is given in these circumstances, it will take effect upon receipt, but no earlier than upon the relevant share transfer taking effect.

- Should individual provisions of the agreement be or become invalid or impracticable, or should the agreement contain any gaps, this will not affect the validity of the other provisions of the agreement. The invalid or impracticable provision is to be replaced by a provision that is permissible and comes as close as possible to the economic effect of the invalid or

impracticable provision. A gap is to be filled by a provision which the parties would have agreed, bearing in mind their economic intention, if they had considered the relevant issue.

At the time of conclusion of the domination and profit transfer agreement, Bilfinger Berger AG was the sole shareholder in the Subsidiary, and it continues to be so (without any changes) at the time of the General Meeting. For this reason, Bilfinger Berger AG is not required to make any compensation or settlement payments to outside shareholders of Bilfinger Berger Hochbau GmbH.

**d) Resolution on the approval of the domination and profit transfer agreement between Bilfinger Berger AG and Bilfinger Berger Ingenieurbau GmbH**

On March 18, 2008, Bilfinger Berger AG entered into a domination and profit transfer agreement with Bilfinger Berger Ingenieurbau GmbH. The domination and profit transfer agreement has already been approved by the shareholders' meeting of Bilfinger Berger Ingenieurbau GmbH. The domination and profit transfer agreement will take effect only with the approval by the General Meeting of Bilfinger Berger AG and after it has been entered in the commercial register for Bilfinger Berger Ingenieurbau GmbH.

The Executive Board and the Supervisory Board propose to resolve as follows:

The domination and profit transfer agreement dated March 18, 2008 between Bilfinger Berger AG and Bilfinger Berger Ingenieurbau GmbH is approved.

With the exception of the names of the contracting parties, the wording of the domination and profit transfer agreement between Bilfinger Berger AG and Bilfinger Berger Ingenieurbau GmbH is identical to that of the domination and profit transfer agreement between Bilfinger Berger AG and Bilfinger Berger Hochbau GmbH; consequently, the key terms of this agreement, with the exception of the names of the contracting parties, are identical to those of the domination and profit transfer agreement between Bilfinger Berger AG and Bilfinger Berger Hochbau AG as summarized in lit. c). We therefore refer to the summary of key terms contained in lit. c).

At the time of conclusion of the domination and profit transfer agreement, Bilfinger Berger AG was the sole shareholder in Bilfinger Berger Ingenieurbau GmbH, and it continues to be so (without any changes) at the time of the General Meeting. For this reason, Bilfinger Berger AG is not required to make any compensation or settlement payments to outside shareholders of Bilfinger Berger Ingenieurbau GmbH.

#### **Note relating to Agenda Item 8:**

The following documents are available for inspection by the shareholders, from the day of calling the General Meeting, at the registered office of Bilfinger Berger AG at 68165 Mannheim, Carl-Reiss-Platz 1-5, and will also be available during the General Meeting.

- The Spin-Off and Transfer Agreement dated March 18, 2008 between Bilfinger Berger AG, Bilfinger Berger Hochbau GmbH and Bilfinger Berger Ingenieurbau GmbH,
- the domination and profit transfer agreement dated March 18, 2008 between Bilfinger Berger AG and Bilfinger Berger Hochbau GmbH,

- the domination and profit transfer agreement dated March 18, 2008 between Bilfinger Berger AG and Bilfinger Berger Ingenieurbau GmbH,
- the annual financial statements of Bilfinger Berger AG and the group financial statements for the 2005, 2006 and 2007 fiscal years as well as the management reports of Bilfinger Berger AG and the group for these fiscal years,
- the opening balance sheet and the annual financial statements for Bilfinger Berger Hochbau GmbH for the 2006 and 2007 fiscal years,
- the opening balance sheet and the annual financial statements for Bilfinger Berger Ingenieurbau GmbH for the 2006 and 2007 fiscal years,
- the joint spin-off report prepared by the Executive Board of Bilfinger Berger AG and the management of each of Bilfinger Berger Hochbau GmbH and Bilfinger Berger Ingenieurbau GmbH in accordance with Section 127 UmwG,
- the joint report prepared by the Executive Board of Bilfinger Berger AG and the management of Bilfinger Berger Hochbau GmbH in accordance with Section 293a AktG,
- the joint report prepared by the Executive Board of Bilfinger Berger AG and the management of Bilfinger Berger Ingenieurbau GmbH in accordance with Section 293a AktG.

The above documents may also be viewed on the internet at [www.bilfinger.com](http://www.bilfinger.com), and free copies will be sent to shareholders upon request.

**9. Resolution on the authorization to purchase and use treasury shares pursuant to Section 71 (1) no. 8 AktG with the possible exclusion of shareholder subscription rights and rights to offer shares**

The authorization to purchase treasury shares granted by the General Meeting of May 23, 2007 will expire on November 22, 2008. It is to be replaced by a new authorization taking effect as of the beginning of November 1, 2008.

The Executive Board and the Supervisory Board propose to resolve as follows:

- a) The authorization to purchase treasury shares resolved by the General Meeting of May 23, 2007 and limited in time until November 22, 2008 is revoked from the time the following authorization takes effect; this shall not affect the authorizations resolved by the General Meeting of May 23, 2007 concerning the use of treasury shares. The following authorization is to take effect as of the beginning of November 1, 2008.

The Executive Board is authorized to purchase, by November 20, 2009, shares in the Company with a pro rata amount of capital stock represented by such shares of up to € 11,158,830 in total, subject to the consent of the Supervisory Board and subject to the proviso that the shares to be purchased under this authorization, together with other shares in the Company which the Company previously purchased and still holds or which are attributable to the Company pursuant to Sections 71 d and 71 e AktG, will at no time account for more than ten percent of the capital stock of the Company. The authorization volume of up to € 11,158,830 in total will be reduced by the pro



rata amount of capital stock which is represented by shares purchased after the beginning of May 21, 2008 on the basis of the authorization to purchase treasury shares resolved by the General Meeting of May 23, 2007.

The purchase will be effected in compliance with the principle of equal treatment (*Gleichbehandlungsgrundsatz*) (Section 53 a AktG) on the stock exchange or by way of a public purchase offer to all shareholders. If the purchase is effected on the stock exchange, the purchase price (not including incidental purchase expenses) must not exceed, or fall short of, the average stock exchange price of the Company's share, calculated on the basis of the arithmetic mean of the closing auction prices of the Bilfinger Berger share in the XETRA trading system of Deutsche Börse AG (or any comparable successor system) during the five trading days preceding the purchase by more than ten percent. In the event of a public purchase offer, the offering price (not including incidental purchase expenses) must not exceed, or fall short of, the average stock exchange price of the Company's share during the period from the 13th (including) to the 4th trading day (including) preceding the publication of the purchase offer calculated on the basis of the arithmetic mean of the final auction prices of the Bilfinger Berger AG share in the XETRA trading system of Deutsche Börse AG (or any comparable successor system) by more than 20 percent. The volume of the purchase offer may be subject to an upper limit. If the total number of shares offered for sale in response to a public purchase offer exceeds this limit, acquisition may be performed according to the proportion of offered shares (proportion offered); moreover, offers pertaining to limited numbers of shares (up to 100 shares per shareholder) may be given preferential

treatment, and the number of shares may be rounded according to commercial principles, in order to avoid fractional shares. Any further right of the shareholders to offer shares is excluded in that respect.

The authorization may be exercised in whole or in part. During the term of the authorization, the purchase may be effected in partial tranches at different purchase dates up to the maximum purchase volume. The purchase may also be effected by dependent group companies of Bilfinger Berger AG within the meaning of Section 17 AktG or by third parties for the account of Bilfinger Berger AG or of such dependent group companies.

b) The Executive Board is authorized to either offer the treasury shares purchased under the above authorization for sale to all shareholders in compliance with the principal of equal treatment or to sell those shares on the stock exchange. The Executive Board is further authorized, in each case subject to the consent of the Supervisory Board,

ba) to sell the treasury shares purchased under the above authorization other than on the stock exchange or by way of an offer for sale to all shareholders, provided the shares are sold against payment in cash at a price that is not substantially below the average stock exchange price of the Company's share during the five trading days preceding the final determination of the selling price by the Executive Board, calculated on the basis of the arithmetic mean of the closing auction prices of the Bilfinger Berger share in the XETRA trading system of Deutsche Börse AG (or any comparable successor system); this authorization is limited to the lower of ten percent of the capital stock exist-

ing at the time the resolution is adopted at the General Meeting of May 21, 2008 or ten percent of the capital stock existing at the time the shares are sold. The authorization volume will be reduced by the pro rata amount of capital stock which is represented by shares, or attributable to conversion or option rights or obligations under bonds, which in each case were issued or sold after the beginning of May 21, 2008, subject to the exclusion of shareholder subscription rights, applying Section 186 (3) sentence 4 AktG directly, analogously, or *mutatis mutandis*; or

bb) to offer and transfer the treasury shares purchased under the above authorization in return for contributions in kind in connection with mergers with other companies or in connection with the acquisition of companies, or parts of or equity interests in companies; or

bc) to redeem the treasury shares purchased under the above authorization without a further resolution of the General Meeting being required; redemption shall lead to a capital reduction; notwithstanding the preceding, the Executive Board may determine that the capital stock will remain unchanged by the redemption and instead, by effecting the redemption, increase the amount of capital stock represented by the remaining shares in accordance with Section 8 (3) AktG; in that case, the Executive Board is authorized to adjust the statement of the number of shares in the Articles of Incorporation; or

bd) to use the treasury shares purchased under the above authorization to service conversion and/or option rights or obligations under convertible

bonds or bonds with warrants issued by the Company either directly or through a group company on the basis of the authorization resolved by the General Meeting of May 19, 2005 under Agenda Item 6.

The authorizations may be exercised once or several times and separately or collectively.

The shareholder subscription rights relating to the treasury shares are excluded to the extent those shares are sold on the stock exchange or used in accordance with the authorization as set out in lits. ba), bb) or bd) above. To the extent the shares are sold in an offering to all shareholders, the Executive Board may, subject to the consent of the Supervisory Board, exempt the shareholders' subscription rights in respect of fractional shares.

**Report of the Executive Board pursuant to Section 71 (1) no. 8 in conjunction with Section 186 (4) sentence 2 AktG relating to Agenda Item 9:**

With respect to Agenda Item 9 for the General Meeting of May 21, 2008, the Executive Board and the Supervisory Board propose that the Executive Board be authorized to purchase treasury shares on behalf of the Company and to either resell these shares or redeem them without a further resolution of the General Meeting being required. Pursuant to Section 71 (1) no. 8 sentence 5 in conjunction with Section 186 (4) sentence 2 AktG, the Executive Board submits this report on the reasons for the exclusion of shareholder subscription rights in connection with the sale of treasury shares, which report, constituting an integral part of the present invitation, will also be available at the General Meeting and, from the day on which the General Meeting is convened, at

the registered office of Bilfinger Berger AG at 68165 Mannheim, Carl-Reiss-Platz 1-5, may be viewed on the Internet at [www.bilfinger.com](http://www.bilfinger.com), and free copies of which will be sent to each shareholder upon request:

The Executive Board and the Supervisory Board propose that the Executive Board be authorized to purchase treasury shares on behalf of the Company. Under such authorization, the Executive Board may, until November 20, 2009, purchase shares in the Company representing a portion of capital stock worth up to € 11,158,830 in total, i. e. just below ten percent of the current capital stock. Such authorization is to take effect as of the beginning of November 1, 2008 and to replace, as of that date, the authorization to purchase treasury shares resolved by the General Meeting of May 23, 2007. In the event that, during the period from the beginning of May 21, 2008 (the date of this year's General Meeting) to the day the proposed new authorization takes effect, treasury shares are purchased on the basis of the authorization to purchase treasury shares resolved by the General Meeting of May 23, 2007, the authorization volume is to be reduced by the pro rata amount of capital stock represented by such shares. Thus, from the beginning of the day of the General Meeting, the right of the Executive Board to purchase treasury shares on the basis of both the previous authorization (which will initially continue in effect) and the proposed new authorization will be limited to just below ten percent of the capital stock.

According to the proposed authorization, the repurchase may be effected on the stock exchange or by way of a public offer to all shareholders.

If the purchase is effected by way of a purchase offer to all shareholders, the principle of equal treatment (Section 53a AktG) must be complied with, as would be the

case in the event of a purchase of the shares on the stock exchange. Should the volume offered at the stipulated price exceed the number of shares the Company seeks to purchase, it should be possible that the acquisition is performed according to the percentage of shares offered for sale (proportion offered). Only where acquisition is performed on the basis of the proportion offered as opposed to the proportion held can the acquisition process be executed along economically sound lines. Moreover, it should be possible for offers pertaining to limited numbers of shares (up to 100 offered shares per shareholder) to be given preferential treatment. This option serves to avoid small, generally uneconomic, residual amounts and any corresponding disadvantage for minor shareholders. It also serves to simplify the actual execution of the acquisition procedure. Provision should also be made for a rounding rule to be applied according to commercial principles in order to avoid fractional shares. Thus the acquisition ratio and/or the number of shares to be acquired from an individual shareholder exercising a right to offer may be rounded according to commercial principles in such a way as to ensure that only whole shares are acquired. In this context, it is necessary, and, in the opinion of the Executive Board and the Supervisory Board, justified, and reasonable from the shareholders' perspective to exclude any further right to offer.

According to the proposed authorization, treasury shares may be purchased directly by Bilfinger Berger AG or indirectly through dependent group companies of Bilfinger Berger AG within the meaning of Section 17 AktG or through third parties for the account of Bilfinger Berger AG or for the account of dependent group companies of Bilfinger Berger AG within the meaning of Section 17 AktG.

The Executive Board is to be authorized to sell the shares on the stock exchange or to offer the shares to the shareholders for acquisition in connection with an offer for sale, maintaining the shareholder subscription rights. The Executive Board is to be authorized, subject to the consent of the Supervisory Board, to redeem the treasury shares without a further resolution of the General Meeting being required. In this context, redemption as a matter of principle results in a reduction of the capital stock. However, in that respect the Executive Board is also to be authorized to effect the redemption in accordance with Section 237 (3) no. 3 AktG without any changes to the capital stock. In this case, the amount of capital stock represented by the remaining shares will be increased pursuant to Section 8 (3) AktG.

The Executive Board is to be authorized to sell, subject to the consent of the Supervisory Board, purchased treasury shares which in aggregate account for the lower of ten percent of the capital stock existing at the time the resolution is adopted at the General Meeting of May 21, 2008 or up to ten percent of the capital stock existing at the time the shares are sold, excluding the preemptive rights of shareholders, provided that the shares are sold against payment in cash at a price that is not substantially below the average stock exchange price of the Company's share during the five trading days preceding the final determination of the selling price by the Executive Board, calculated on the basis of the arithmetic mean of the closing auction prices of the Bilfinger Berger share in the XETRA trading system of Deutsche Börse AG (or any successor system). The statutory basis for this exclusion of shareholder subscription rights is Section 71 (1) no. 8 sentence 5 in conjunction with Section 186 (3) sentence 4 AktG. A possible deduction from the applicable stock exchange price will presumably not exceed three percent, but will in any event not exceed five per-

cent, of the stock exchange price. This possibility of excluding shareholder subscription rights is to enable the corporate bodies of the Company to selectively place shares with financial investors in order to ensure, by way of fixing a price that is near market, the highest possible disposal amount and thus the greatest possible strengthening of the equity base. As the Company will thus be able to act more quickly, this will allow a higher inflow of funds to the Company as compared to an offer for sale to all shareholders where the shareholder subscription rights are maintained. It is true that Section 186 (2) sentence 2 AktG now allows the subscription price to be published three days prior to the expiration of the subscription period at the latest. In light of the volatility in the stock markets, however, this still involves a market risk, in particular a price change risk, for several days, which may lead to a deduction of safety margins when the selling price is determined and, therefore, to conditions that are not near market. In addition, if the Company grants subscription rights, it will not be in a position to react quickly to favorable market conditions due to the length of the subscription period. By including a deduction clause, which is to provide for a corresponding reduction of the authorization volume in the event that other actions are performed in accordance with Section 186 (3) sentence 4 AktG (whether applied directly, analogously or *mutatis mutandis*) which are subject to an exclusion of shareholder subscription rights, it is furthermore intended to ensure that the ten percent threshold stipulated in Section 186 (3) sentence 4 AktG will not be exceeded when all authorizations permitting an exclusion of subscription rights in accordance with Section 186 (3) sentence 4 AktG are taken into account. For the stated reasons, the proposed authorization is in the interest of the Company and its shareholders. Since the selling price for the treasury shares to be granted will have to be determined by reference to the stock



exchange price and the scope of the authorization is limited, the interests of the shareholders are adequately protected. The shareholders have the option to maintain their participation ratios by purchasing shares on the stock exchange.

It is further proposed that the Executive Board be authorized to offer and transfer the repurchased treasury shares, subject to the consent of the Supervisory Board, to third parties in connection with mergers with other companies or acquisitions of companies, or parts of or equity interests in companies. In this context, the shareholder subscription rights are to be equally excluded. In connection with the acquisition of companies or equity interests, it is becoming increasingly necessary to deliver treasury shares as consideration rather than pay amounts of money. With this authorization, the Company is provided with the flexibility required to exploit opportunities to acquire companies, or parts of or equity interests in companies, and to effect mergers as it enables the Company to use this type of consideration. For this purpose, the Company is to be placed in a position to use purchased treasury shares to fund acquisitions. The proposed exclusion of shareholder subscription rights is necessary for this. If shareholder subscription rights are granted, however, mergers with other companies or acquisitions of companies, or parts of or equity interests in companies, in return for the granting of treasury shares will not be possible, and the associated benefits cannot be generated. Currently, there are no specific plans to exercise this authorization. Should any specific opportunities open up with regard to mergers with other companies or acquisitions of companies or parts of or equity interests in companies, the Executive Board will carefully assess whether or not to make use of the authorization to grant treasury shares. The Executive Board will do so only if it arrives at the conclusion that

the merger with or the acquisition of the relevant company or equity interest in return for the granting of Bilfinger Berger shares is in the best interest of the Company. The Supervisory Board will give its required consent to the use of treasury shares for this purpose only if it arrives at the same conclusion. The Executive Board will report on the details in connection with the exercise of the authorization to the General Meeting following any merger or acquisition in return for the granting of shares in Bilfinger Berger AG.

It is furthermore intended to permit the use of the repurchased treasury shares, subject to the consent of the Supervisory Board, in order to service conversion and/or option rights or obligations under bonds issued by the Company either directly or through a group company on the basis of the authorization resolved by the General Meeting of May 19, 2005 under Agenda Item 6. In order to service all or part of the rights arising under these bonds for subscription of shares in the Company, it may be expedient from time to time to use treasury shares rather than a capital increase, since this will represent a suitable instrument to prevent a dilutive effect on the shareholders' equity and voting rights, which may to a certain extent result from servicing such rights by issuing new shares. The authorization therefore permits the use of treasury shares for this purpose. In this respect, the shareholder subscription rights shall also be excluded.

The authorization resolution adopted by the General Meeting of May 19, 2005 under Agenda Item 6 may be inspected as part of the notarial record of such General Meeting filed with the commercial register of Mannheim. It is also contained in the invitation to the Annual General Meeting of May 19, 2005, which was published in the German electronic Federal Gazette on

April 8, 2005. The text of the authorization resolution will be available for inspection by the shareholders, from the day on which this year's General Meeting is convened, at the registered office of Bilfinger Berger AG at 68165 Mannheim, Carl-Reiss-Platz 1-5, as well as during the General Meeting. It may also be viewed on the internet at [www.bilfinger.com](http://www.bilfinger.com), and free copies will be sent to shareholders upon request.

Finally, to the extent the shares are to be sold through an offer to all shareholders, the Executive Board is to be authorized, subject to the consent of the Supervisory Board, to exempt fractional shares from shareholder subscription rights to treasury shares. The possibility of excluding subscription rights for fractional shares will serve to ensure a technically feasible subscription ratio. The treasury shares that are excluded from shareholder subscription rights as fractional shares will be realized either by way of a sale on the stock exchange or in any other manner as to best further the Company's interest. The potential dilutive effect is low due to the limitation to fractional shares.

Having considered all of the above circumstances, the Executive Board and the Supervisory Board consider the exclusion of shareholder subscription rights in the aforementioned cases to be factually justified and reasonable for the shareholders for the stated reasons.

### **Attendance at the General Meeting**

Shareholders are entitled to attend the General Meeting and to exercise their voting rights only if they have registered prior to the General Meeting and furnished evidence of their shareholding to the Company. The registration shall be made in German or English. Evidence of shareholding shall be furnished by way of a receipt

issued by the depositary institution in text form in German or English. Such evidence issued by the depositary bank must relate to the beginning of April 30, 2008 (00:00 hrs Central European Summer Time – CEST). Both the registration and the evidence of shareholding must be received by the Company no later than by the end of the day on May 14, 2008, at the address specified below:

Bilfinger Berger AG  
c/o Dresdner Bank AG  
WDHHV dwpbank AG  
Wildunger Straße 14  
60487 Frankfurt am Main  
Germany

or by fax to:

+49 (0) 69 5099 1110

or by e-mail to:

hv-eintrittskarten@dwpbank.de

### **Admission tickets**

Once the registration and the evidence of shareholding have been received by the Company in sufficient time at the mailing address, fax number or e-mail address stated above, admission tickets for the General Meeting will be sent to the shareholders. To ensure that the admission tickets are received in time, we would request that shareholders promptly register and send evidence of their shareholding to the Company.

### **No restriction on disposals of shares**

Shareholders who have registered for attendance at the General Meeting shall not thereby be prevented from freely disposing of their shares.

## **Voting by proxy**

Shareholders may exercise their voting rights at the General Meeting also through a proxy, for example their depository bank, a shareholders' association or another person of their choice. If the authorization is not given to a financial institution or shareholders' association or an equivalent institution or person pursuant to Section 135 AktG, the proxy must be granted in writing.

We offer our shareholders the option to authorize proxies designated by the Company and bound by instructions even prior to the General Meeting. Shareholders wishing to authorize the proxies designated by the Company will require an admission ticket for the General Meeting to do so. To ensure that admission tickets are received in time, the application and evidence of shareholding should be sent as early as possible. The proxies designated by the Company will in any event require instructions in order to exercise the voting right. If no such instructions are given, they will not exercise their authorization. The proxies designated by the Company are obligated to vote in accordance with the instructions given to them. Shareholders will receive the necessary documents and information together with their admission tickets.

Authorizations and instructions for the proxies designated by the Company must be received by the Company by the end of the day on May 19, 2008, failing which they will not be taken into account.

## **Provision of documents**

The annual financial statements, the group financial statements, the management report of Bilfinger Berger AG, the group management report, the report of the

Supervisory Board relating to the 2007 fiscal year, the explanatory notes of the Executive Board relating to the information provided pursuant to Section 289 (4) and Section 315 (4) HGB, the proposal by the Executive Board for the use of unappropriated retained earnings and the report of the Executive Board relating to Agenda Item 9, which is set out therein in full, as well as the documentation relating to Agenda Item 8 are available to our shareholders for inspection at the Company's registered office at 68165 Mannheim, Carl-Reiss-Platz 1-5, and during the General Meeting. A free copy of these documents will be provided to each shareholder upon request.

The full agenda, which was published in the German electronic Federal Gazette on April 9, 2008, as well as further documents are available for download on the internet at [www.bilfinger.com](http://www.bilfinger.com).

### **Counter-motions**

Should you wish to submit any counter-motions in accordance with Section 126 AktG regarding the proposals of the Executive Board and the Supervisory Board on any specific agenda item, or any proposals in accordance with Section 127 AktG regarding the appointment of the auditors of the financial statements or the election of Supervisory Board members, please address these exclusively to:

Bilfinger Berger AG  
Z/KA-Fe  
Carl-Reiss-Platz 1-5  
68165 Mannheim  
Germany

or by fax to  
+49 (0) 621 459-2221.

We will publish all shareholder motions and appointment proposals that are required to be made accessible, provided they are received at least two weeks prior to the date of the General Meeting at the address or fax number specified above, as well as possible comments by the corporate bodies of the Company, if any, on the Internet at [www.bilfinger.com](http://www.bilfinger.com).

### **Total number of shares and voting rights**

The total number of issued shares of Bilfinger Berger AG, each of which carries one voting right, is 37,196,102 at the time the General Meeting is convened (information according to Section 30b (1) no. 1 WpHG).

Mannheim, April 2008

Bilfinger Berger AG  
The Executive Board

### **Corporate Headquarters**

Carl-Reiss-Platz 1-5  
68165 Mannheim, Germany  
Phone +49 (0) 621-459-0  
Fax +49 (0) 621-459-2366  
[www.bilfinger.com](http://www.bilfinger.com)

### **Chairman of the Supervisory Board**

Bernhard Walter

### **Executive Board**

Herbert Bodner, Chairman  
Dr. Joachim Ott  
Klaus Raps  
Kenneth D. Reid  
Prof. Hans Helmut Schetter  
Dr. Jürgen M. Schneider

### **Corporate Headquarters and Place of Registration**

Mannheim  
District Court Mannheim  
Register of Companies HRB 4444

ISIN DE0005909006  
German Securities Identification Number  
(Wertpapier-Kenn-Nr.) 590 900