

Joint Report
by the Management Board of the General Partner of
Fresenius SE & Co. KGaA, Fresenius Management SE,
and
the Management Board of Fresenius Kabi AG
pursuant to Section 293a of the German Stock Corporation Act
on the Domination Agreement dated 12 March 2015

1 General Remarks

Fresenius Kabi AG is a wholly owned subsidiary of Fresenius SE & Co. KGaA. A Profit and Loss Transfer Agreement exists between the two companies, pursuant to which Fresenius Kabi AG undertakes to transfer its entire profits to Fresenius SE & Co. KGaA in accordance with Section 301 of the German Stock Corporation Act (*Aktiengesetz – AktG*). This Profit and Loss Transfer Agreement forms the basis for an organizational integration within the meaning of tax group for income tax purposes (*Organschaft*) in accordance with the German Corporate Tax Act (*Körperschaftsteuergesetz – KStG*) and the German Trade Tax Act (*Gewerbsteuergesetz*) between Fresenius SE & Co. KGaA, as controlling company, and Fresenius Kabi AG, as depending company. By way of supplement, Fresenius SE & Co. KGaA, as controlling company, and Fresenius Kabi AG, as dependent company, have now as of 12 March 2015 entered into a Domination Agreement. Through this Domination Agreement, Fresenius Kabi AG shall subordinate its management board under the direction of Fresenius SE & Co. KGaA. Fresenius SE & Co. KGaA shall henceforth be entitled to issue instructions to the members of the management board of Fresenius Kabi AG with regard to the management of Fresenius Kabi AG. In the following, the Management Board of the General Partner of Fresenius SE & Co. KGaA, Fresenius Management SE, and the management board of Fresenius Kabi AG submit a Joint Report in which they provide legal and economical explanation and justification for both the conclusion of the Domination Agreement and the detailed provisions stipulated therein (Section 293a of the AktG).

2 Parties to the Agreement

The Parties to the Domination Agreement are Fresenius SE & Co. KGaA, as controlling company, and Fresenius Kabi AG, as depending company.

2.1 Fresenius SE & Co. KGaA

Fresenius SE & Co. KGaA is a publicly listed partnership limited by shares (*Kommanditgesellschaft auf Aktien – KGaA*) with its operational headquarters in Bad Homburg v. d. Höhe. It is registered in the Commercial Register (*Handelsregister*) of the local court (*Amtsgericht*) of Bad Homburg v. d. Höhe under HRB 11852. Fresenius SE & Co. KGaA is the parent company of a global health care group with products and services for dialysis, hospitals and outpatient medical care. The Fresenius Group consists of four business segments, each of which is responsible for its own business operations worldwide: Fresenius Medical Care, Fresenius Kabi, Fresenius Helios and Fresenius Vamed.

The General Partner of Fresenius SE & Co. KGaA is Fresenius Management SE, with its operational headquarters in Bad Homburg v. d. Höhe, registered in the Commercial Regis-

ter of the local court of Bad Homburg v. d. Höhe under HRB 11673. The members of the Management Board of Fresenius Management SE are Dr. Ulf M. Schneider (Chairman), Dr. Francesco De Meo, Dr. Jürgen Götz, Mats Henriksson, Rice Powell, Stephan Sturm and Dr. Ernst Wastler.

The Supervisory Board of Fresenius SE & Co. KGaA currently comprises the following members: Dr. Gerd Krick (Chairman), Prof. Dr. med. D. Michael Albrecht, Prof. Dr. h.c. Roland Berger, Dario Ilossi, Konrad Kölbl, Klaus-Peter Müller, Dieter Reuß, Gerhard Roggemann, Stefan Schubert, Rainer Stein and Niko Stumpfögger.

Additionally, the General Partner, Fresenius Management SE, also has a Supervisory Board. This Supervisory Board consists of the following members: Dr. Gerd Krick (Chairman), Dr. Dieter Schenk, Prof. Dr.h.c. Roland Berger, Dr. Karl Schneider and Klaus-Peter Müller.

Fresenius SE & Co. KGaA's financial year corresponds to the calendar year.

Fresenius SE & Co. KGaA is subject to unlimited liability for corporation tax and trade tax in Germany.

2.2 Fresenius Kabi AG

Die Fresenius Kabi AG is a stock corporation (*Aktiengesellschaft*) with its operational headquarters in Bad Homburg v. d. Höhe. It is registered in the Commercial Register (*Handelsregister*) of the local court (*Amtsgericht*) of Bad Homburg v. d. Höhe under HRB 11654. Its share capital amounts to EUR 66,000,000.00. All shares are held by Fresenius SE & Co. KGaA.

Fresenius Kabi AG operates a global healthcare company that specializes in lifesaving medicines and technologies for infusion, transfusion and clinical nutrition. Its products and services are used to help care for critically and chronically ill patients. The product portfolio comprises a comprehensive range of I.V. generic drugs, infusion therapies and clinical nutrition products as well as the medical devices for administering these products. Within transfusion technologies, Fresenius Kabi offers products for whole blood and blood components collection and processing as well as for transfusion medicine and cell therapies.

The members of the management board of Fresenius Kabi AG are: Mats Henriksson (Chairman), Marc Crouton, Luc Depotter, John Ducker, Dr. Christian Hauer, Manfred Köhler, Dr. Michael Schönhofen and Gerrit Steen. If only one member of the management board is appointed, then this member shall represent the company alone. More than one member is appointed the company is represented by two members of the management board or one member together with a statutory representative (Prokurist).

The current members of the supervisory board of Fresenius Kabi AG are: Dr. Ulf M. Schneider (Chairman), Stephan Sturm (Deputy Chairman) and Christian Fischer.

Fresenius Kabi AG's financial year corresponds to the calendar year.

The company's purpose according to its articles of association is the holding of participations in other domestic or foreign companies which are active in the field of the development, manufacturing and/or distribution of pharmaceutical and dietetic products, in particular for the enteral and parenteral nutrition; in addition also the development, manufacturing and distribution of medical device products and IT solutions for hospitals.

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Fresenius Kabi AG has 48 employees in Germany and the balance sheet total amounts to kEUR 3,179,077 as at the end of 2014 (previous year: kEUR 2,631,746). The increase of assets on the balance sheet is mainly due to changes in financial assets and accounts receivable from affiliated companies. The balance sheet total on the liabilities side mainly increased because of accounts payable to affiliated companies.

The increase of financial assets mainly relates to equity contributions into the following companies: Fresenius Kabi R&D Clayton GmbH, Frankfurt a.M., Germany, Fresenius Kabi India Ltd., Pune, India, as well as Fresenius Kabi Chile Ltda., Santiago de Chile, Chile.

The loans of kEUR 319,916 (previous year: kEUR 167,422) comprise long-term loans to affiliated companies.

Other operating income decreased by kEUR 13,651 to kEUR 96,936 compared to the previous year. This is mainly due to a decline in exchange rate gains and the reversal of accruals. The results of ordinary operations increased to kEUR 205,592 (previous year: kEUR 149.103).

The company received income from participations in the amount of kEUR 124,105 (previous year : kEUR 84,980).

Fresenius Kabi AG holds important indirect or direct interest in the following companies:

- Fresenius Kabi Deutschland GmbH
- Fresenius Kabi Pharmaceuticals Holding, Inc.
- Fresenius Kabi USA, Inc.
- Fresenius Kabi USA, LLC
- Fresenius Kabi Austria GmbH
- Fresenius Kabi AB
- Fenwal Inc, USA
- Sino-Swed Pharmaceutical Corp. Ltd
- V. Krütten Medizinische Einmalgeräte GmbH
- HOSPED GmbH Lieferservice für Klinik, Handel und Patienten
- Fresenius Kabi Vermögensverwaltung GmbH

The company has entered into profit and loss transfer agreements with Fresenius Kabi Deutschland GmbH, Bad Homburg v.d.H., V. Krütten Medizinische Einmalgeräte GmbH, Idstein, as well as HOSPED GmbH Lieferservice für Klinik, Handel und Patienten, Friedberg, and – as of fiscal year 2014 – with Fresenius Kabi Vermögensverwaltung GmbH, Bad Homburg v.d.H.

In the reporting period, these subsidiaries transferred kEUR 113,082 to the company. In total, the income from participations and the results of ordinary operations led to a profit transfer of kEUR 205,952 to Fresenius SE & Co. KGaA.

The company expects its business to develop steadily over the next years.

3 Rationale for entering into the Domination Agreement

The basis for the above tax unity for income tax purposes between Fresenius SE & Co. KGaA, as controlling company, and Fresenius Kabi AG, as depending company, is the existing Profit and Loss Transfer Agreement dated December 20, 2001. As a result of the fiscal unity for income tax purposes, positive and negative income of Fresenius Kabi AG, as depending company, is directly attributed to Fresenius SE & Co. KGaA, as controlling company. In this way, Fresenius SE & Co. KGaA is able to set off positive and negative results tax effective. Depending on the fiscal earnings situation, this can result in tax advantages for the participating companies. Furthermore, within the frame of the fiscal unity for income tax purposes, Fresenius Kabi AG's profits can be transferred to Fresenius SE & Co. KGaA with no additional tax burden being imposed. Without a fiscal unity for income tax purposes, profits could at best only be passed on to Fresenius SE & Co. KGaA in the course of dividend payments; in such a case, they would be subject to corporation/trade tax at Fresenius SE & Co. KGaA, albeit to a limited extent; 5% of the distributed profits would be considered non-deductible operating expenses and would therefore increase the taxable income of Fresenius SE & Co. KGaA.

In addition to the tax unity for income tax purposes, there is also a tax unity for value-added tax purposes (umsatzsteuerliche Organschaft) between Fresenius SE & Co. KGaA, as controlling company, and Fresenius Kabi AG, as depending company. The result of the fiscal unity for value-added tax purposes is that the controlling company and the depending company form one company within the meaning of the Value Added Tax Act (*Umsatzsteuergesetz*). This has the effect that only the controlling company has to fulfill obligations under VAT law (such as the submission of preliminary tax returns and annual VAT declarations). As a result of formation of a tax unity for value added tax purposes, the complexity incurred through submitting VAT declarations is reduced. Furthermore, the maintenance of accounting records and the rendering of intra-group services are simplified, because, when services within a group of companies linked through a tax unity for value-added tax purposes are performed, there is no requirement to invoice and deduct value-added tax. This also has the result that there is no requirement for input tax to be deducted for intra-group services, which results in tax advantages for VAT-exempt services rendered, which only allow for deduction of input tax to a limited extent for services received.

The prerequisite for the justification of a fiscal unity for value added tax purposes is – in contrast to a tax unity for income tax purposes – the so-called organizational integration of the depending company into the controlling company. The German Federal Fiscal Court (Bundesfinanzhof) has refined its jurisdiction accordingly and, in the meantime, places stricter requirements on organizational integration. It is necessary that the possibility of controlling the subsidiary, associated with holding the voting majority, is actually exercised by the parent company in ongoing day-to-day management. It is important that the controlling company controls the depending company in such a manner, or at least such control is ensured through the manner in which relations between the depending company and the depending company are structured, that it is not possible for the depending subsidiary to create any policies that deviate from the will of the controlling company.

One way to form the organizational integration is through concluding a domination agreement (Section 2.8 para. 10 sent. 4 of the German Tax Utilization Decree on VAT (*Umsatzsteueranwendungserlass – UStAE*)). Hence, the Domination Agreement concluded between Fresenius SE & Co. KGaA and Fresenius Kabi AG serves to continue the tax unity

for value-added tax purposes in accordance with the amended, and in part tighter, requirements under tax law. In the light of a review of all organizational integration measures into Fresenius & Co. KGaA, the Domination Agreement is considered to be the best means of satisfying demands for organizational integration required by the German Fiscal Courts and the tax authorities in the future. The influence on the management of the depending company that is actually required is being accordingly exercised.

There are no negative consequences for Fresenius SE & Co. KGaA and its shareholders arising from the conclusion of the Domination Agreement, because, under the existing Profit and Loss Transfer Agreement, Fresenius SE & Co. KGaA is already obligated to assume any and all losses incurred by Fresenius Kabi AG. Furthermore, Fresenius SE & Co. KGaA has not in the past had to compensate any losses incurred by Fresenius Kabi AG; from the present-day perspective, it is not expected that corresponding losses will incur in the future.

Compensation payments or settlement payments pursuant to Sections 304, 305 of the AktG are neither due under the existing Profit and Loss Transfer Agreement nor under the new Domination Agreement, because Fresenius Kabi AG does not have any outside shareholders.

There is no economically and legally prudent alternative to the conclusion of the Domination Agreement in terms of the unequivocal continuation of the tax unity for VAT purposes. In particular, merger and integration do not present preferable variations, because such variations would result in Fresenius Kabi AG losing its independence as a legal entity.

4 Content of the Domination Agreement

The Domination Agreement is an intercompany agreement within the meaning of Section 291 para. 1 sent. 1 of the AktG. It requires both the approval of the Annual General Meeting of Fresenius SE & Co. KGaA and the Shareholders' Meeting of Fresenius Kabi AG. Subsequent to approval, it shall be entered in the Commercial Register competent for Fresenius Kabi AG; only upon registration will the Domination Agreement enter into legal effect. Pertaining to the individual provisions of the Domination Agreement, the following is to be noted:

4.1 Domination (Section 1)

Pursuant to Section 1.1 of the Domination Agreement, Fresenius Kabi AG shall subordinate its management under the direction of Fresenius SE & Co. KGaA. Thus, Fresenius SE & Co. KGaA shall be entitled to issue instructions to Fresenius Kabi AG with regard to its management. The members of the management board of Fresenius Kabi AG shall, in turn, be obligated to follow such instructions. The contractual domination underscores the integration of Fresenius Kabi AG into the Fresenius Group and is a customary element of the management of the Group.

Pursuant to Section 1.2, instructions are to be issued in text form or, where they are issued in oral form, they are to be immediately confirmed in text form. The text form shall not place any requirements on instructions in order to be deemed effective. Rather, oral instructions will also be effective, as shown by the expressly permitted opportunity to submit subsequent confirmation in text form. Hence, the text form shall pursue the sole purpose of ensuring appropriate documentation of all instructions.

Without prejudice to the right to issue instructions, the management and the legal representation of Fresenius Kabi AG is the responsibility of its management board members (Section 1.3).

The right of Fresenius SE & Co. KGaA to issue instructions shall not include the option to instruct the members of the management board of Fresenius Kabi AG with regard to amendments, continuity or termination of the Domination Agreement (Section 1.4).

4.2 Loss compensation (Section 2)

Fresenius SE & Co. KGaA undertakes to compensate any and all losses incurred by Fresenius Kabi AG in accordance with the provisions of Section 302 of the AktG, as amended. Such an obligation to compensate losses arises from the existing Profit and Loss Transfer Agreement. Accordingly, compensation shall be paid for any net annual loss that is incurred throughout the contractual term of the Profit and Loss Transfer Agreement, unless this is compensated through amounts deducted from the other revenue reserves that were paid in to the reserves during the term of the Agreement. For as long as the Profit and Loss Transfer Agreement exists, the provisions provided therein for the purpose of compensating losses shall also apply to the Domination Agreement.

In the event that the Profit and Loss Transfer Agreement is separately terminated and is not replaced by any other profit and loss transfer agreement, the Domination Agreement shall obtain its own provision on compensation of losses: accordingly, the statutory provisions of Section 302 of the AktG, as amended, shall also be decisive. Thus, as before, any net annual losses incurred during the contractual term shall be compensated in the manner as set forth above. The obligation to compensate losses shall fall due at the end of each of Fresenius Kabi AG's financial years; it shall accrue for the whole of each financial years for Fresenius Kabi AG in which the Domination Agreement is effective under civil law.

4.3 Effectiveness and duration (Section 3)

Section 3.1 determines that the Domination Agreement shall require both the approval of the Annual General Meeting of Fresenius SE & Co. KGaA and also the approval of the Shareholders' Meeting of Fresenius Kabi AG in order to be effective. It shall become legally effective upon entry in the Commercial Register competent for Fresenius Kabi AG.

Pursuant to Section 3.2, the Domination Agreement shall be entered into for an indefinite period. It can be terminated by any of the parties, subject to a notice period of six months, at the end of any one of Fresenius Kabi AG's financial years.

Additionally, both Fresenius SE & Co. KGaA and Fresenius Kabi AG shall have the option of extraordinary termination for cause without observing any period of notice. Section 3.3 stipulates that such cause shall exist, including but not limited to, when Fresenius SE & Co. KGaA no longer directly or indirectly holds the majority of the voting rights or capital of Fresenius Kabi AG, or upon the end of the Profit and Loss Transfer Agreement between Fresenius SE & Co. KGaA and Fresenius Kabi AG without being immediately replaced by another profit and loss transfer agreement between the parties. These grounds are not conclusive ("including but not limited to"); thus, in other cases, there may be the possibility to extraordinarily terminate the agreement for cause without observing any period of notice. In particular, the law provides for the existence of cause when it is likely that the other party to the agreement will not fulfill/no longer be capable of fulfilling its contractual obligations (Section 297 para.1 sent. 2 of the AktG).

Pursuant to Section 3.4, termination of the Domination Agreement – whether ordinary or extraordinary – shall require the written form. The meaning of the agreed written form is stipulated in more precise detail in Section 4.3 of the Domination Agreement (more thereon below).

4.4 Final provisions (Section 4)

Section 4.1 contains the usual severability clause, and is intended to ensure the continuance of the Domination Agreement in the event that individual provisions prove to be wholly or partially invalid or unenforceable, or contain any gaps. In such a case, the parties shall reach agreement on subsequently replacing the invalid or unenforceable provision with a valid or enforceable provision that comes closest to the commercial intent of the invalid or unenforceable provision. In the event of gaps in the Agreement, a provision shall be agreed within the meaning and purpose of the Agreement that would have been agreed upon becoming aware of the gap.

Section 4.2 stipulates that, in order to become effective, any amendments and supplements to the Domination Agreement shall require the written form, unless a stricter statutory requirement for the written form exists. This provision is solely of a clarifying nature, because the requirement for the written form is stipulated in law (Section 295 para. 1 sent. 2, Section 293 para. 3 of the AktG). Additionally, the law stipulates that a domination agreement may only be amended upon approval by the annual general meetings and the shareholders' meetings of both companies, and the amendment must be entered in the Commercial Register of the dependent company in order to become effective (Section 295 para. 1 sent. 1 and 2, Section 293 para. 1 and 2, Section 294 para. 2 of the AktG).

Pursuant to Section 4.3, the written form within the meaning of the Domination Agreement requires each declaration to be personally signed and sent to the other party to the agreement in original form. It shall not be possible to replace this written form through the electronic form.

Section 4.4 stipulates for both parties to the Agreement that the place of performance and court of jurisdiction shall be Frankfurt am Main.

Section 4.5 contains a choice of law clause stipulating that the Domination Agreement shall solely be governed by German law.

5 No compensation, no settlement and no contract auditing

All shares in Fresenius Kabi AG are directly held by the controlling company, Fresenius SE & Co. KGaA. Hence, Fresenius Kabi AG does not have any outside shareholders. For this reason, no compensation or settlement payments pursuant to Sections 304, 305 of the AktG shall be made in connection with the Domination Agreement. Likewise, there shall be no requirement for the Domination Agreement to be examined by an expert auditor (Section 293b para. 1 of the AktG).

6 Overall assessment

An overall assessment of the Domination Agreement comes to the result that, for the reasons as set forth, the Domination Agreement will be advantageous for both Fresenius SE & Co. KGaA and Fresenius Kabi AG.

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Bad Homburg v. d. Höhe, March 2015
Fresenius SE & Co. KGaA
The General Partner
Fresenius Management SE
The Management Board

Bad Homburg v. d. Höhe, March 2015
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Dr. Ulf M. Schneider

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Dr. Christian Hauer

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