

CERTIFICATE

Regarding the Capital Coverage in Connection with
the Change of the Legal Form of

FRESENIUS AG, Bad Homburg v. d. Höhe

into

FRESENIUS SE, Bad Homburg v. d. Höhe

TABLE OF CONTENTS	Page
A. TASK AND PERFORMANCE OF THE TASK	5
I. Mandate for the Audit	5
II. Nature and Scope of our Activities	8
B. LEGAL AND ECONOMIC SITUATION	8
C. AMOUNT OF THE CAPITAL	10
I. Subscribed Capital and Reserves	10
II. Conditional Capital	11
1. Conditional Capital I	11
2. Conditional Capital II	12
III. Authorised Capital	12
IV. Capital pursuant to Art. 37 para. 6 SE Regulation	13
D. DETERMINATION OF NET ASSET VALUE	14
I. Determination of the Fair Value of Fresenius AG	15
1. Valuation Principles and Methods	15
a) Capitalised Earnings Value in Accordance with IDW S 1 / RS HFA 10	15
b) Liquidation Value and Substance Value	19
c) Market Capitalisation	19
2. Assessment of the Net Asset Value of the Company	20
a) Considerations Regarding the Capitalised Earnings Value	20
b) Market Capitalisation	21
II. Balance Sheet Analysis of Fresenius AG as per June 30, 2006	22
1. Comments Regarding Principal Assets and Liabilities	22
a) Valuation Principles and Methods	22
b) Intangible Assets and Property, Plant and Equipment	23
c) Long-term Investments and Loans	24
d) Receivables and Other Assets	25
e) Liabilities	25
2. Result of the Balance Sheet Analysis as per June 30, 2006	25
E. CONCLUDING REMARKS REGARDING THE NET ASSET VALUE	27

ANNEXES

1. Interim balance sheet of Fresenius AG, Bad Homburg v. d. Höhe, in accordance with HGB as per June 30, 2006
2. Assets analysis as per June 30, 2006

(in each case prepared by the company and audited and issued with an unqualified audit opinion by KPMG Deutsche Treuhand-Gesellschaft Aktiengesellschaft Wirtschaftsprüfungsgesellschaft, Frankfurt am Main, on September 1, 2006)

General Engagement Terms

LIST OF ABBREVIATIONS

AG	<i>Aktiengesellschaft</i> – German stock corporation
AktG	<i>Aktiengesetz</i> – German Stock Corporation Act
Art.	Article
bn.	billion
CAPM	Capital Asset Pricing Model
cf.	confer
DCF method	Discounted Cash Flow method
et seqq.	and the following
EUR	Euro
Fresenius	Fresenius AG, Bad Homburg vor der Höhe
Fresenius Medical Care	Fresenius Medical Care AG & Co. KGaA, Bad Homburg vor der Höhe
HGB	<i>Handelsgesetzbuch</i> – German Commercial Code
IDW	<i>Institut der Wirtschaftsprüfer in Deutschland e.V., Düsseldorf</i> – Institute of Auditors in Germany, Düsseldorf
IDW S 1	IDW Standard No. 1 "IDW Principles for the Conduction of Enterprise Valuations" (as amended per: October 18, 2005)
IDW RS HFA 10	Accounting Principle No. 10 of the Main Technical Committee of the IDW, "Application of the Principles of IDW S 1 for the Valuation of Interests and Other Participations in Enterprises for the Purposes of Financial Statements Prepared in Accordance with Commercial Law"
KPMG	KPMG Deutsche Treuhand-Gesellschaft Aktiengesellschaft Wirtschaftsprüfungsgesellschaft, Frankfurt am Main
mn.	million
LG	<i>Landgericht</i> – Regional Court
para.	paragraph
SE	European Company (<i>Societas Europaea</i>)
SE Regulation	Council Regulation (EC) No. 2157/2001 of October 8, 2001, on the Statute for a European company
TEUR	thousand euro
WP	<i>Wirtschaftsprüfer</i> – auditor

A. TASK AND PERFORMANCE OF THE TASK

I. Mandate for the Audit

Fresenius AG, Bad Homburg v. d. Höhe, (hereinafter also referred to as "Fresenius" or the "Company") intends to convert into a European Company under the company name Fresenius SE.

Upon a motion of Fresenius by letter dated August 4, 2006, the Regional Court Frankfurt has appointed, by court order of August 9, 2006 (file reference 3-5 O 116/06), Ernst & Young AG Wirtschaftsprüfungsgesellschaft Steuerberatungsgesellschaft as a conversion auditor pursuant to Art. 37 para. 6 SE Regulation.

Pursuant to Art. 37 para. 6 SE Regulation, the conversion auditor in effect has to certify, in accordance with Council Capital Directive (77/91/EEC) of December 13, 1976, that the net assets of the company to be converted are at least equivalent to its subscribed capital plus those reserves which pursuant to statutory provisions or the company articles may not be distributed.

In this regard, it has to be stated

1. what the net assets of the company are and
2. which valuation methods have been applied.

The conversion plan is to be submitted to the extraordinary general meeting of shareholders of Fresenius on December 4, 2006, for the passing of a resolution.

In the course of our auditing activities we have adhered to the relevant statements of the Institute of Auditors in Germany (*Institut der Wirtschaftsprüfer in Deutschland e.V.*), Düsseldorf, in particular

- IDW S 1
- IDW RS HFA 10

We have conducted our examinations, with interruptions, from August 14 to October 9, 2006, at the offices of Fresenius in Bad Homburg as well as in our office in Stuttgart.

For the purposes of our activities, the following documents, in particular, were submitted to us:

- Planning documents of the Company regarding the development of the group of companies in which it is the parent company for the years 2006 to 2011
- Interim balance sheet of Fresenius AG as per June 30, 2006 (as well as the related audit report with unqualified opinion issued by KPMG of September 1, 2006)
- Articles of association of the Company as amended on May 10, 2006
- Financial statements and the related audit reports of KPMG for Fresenius as well as for principal group companies as per December 31, 2005
- Annual report of the Company for the financial year 2005
- Quarterly report of the Fresenius Group in accordance with IFRS as per June 30, 2006
- Quarterly balance sheet of Fresenius AG in accordance with HGB as per September 30, 2006 (unaudited)
- Projection of earnings 2006 for the Company as well as principal group companies

Additional information was willingly provided by the General Counsel of the Company, Prof. Dr. Götz, as well as by the Head of Group Controlling, Mr. Fischer.

The management board of Fresenius has issued to us a representation letter according to which all statements which are relevant for the preparation of this certificate have been made correctly and completely.

Auditing activities of our own as defined in Sections 316 et seqq. HGB were not part of our mandate.

With regard to the conduct of our audit and our responsibility and liability, the “General Engagement Terms for Wirtschaftsprüfer and Wirtschaftsprüfungsgesellschaften [German Public Auditors and Public Auditing Firms]” (*Allgemeine Auftragsbedingungen für Wirtschaftsprüfer und Wirtschaftsprüfungsgesellschaften*) in the version published by the Institute of Auditors on January 1, 2002, which are enclosed with this document, apply, including with regard to our relationship with third parties. Accordingly, in respect of an audit pursuant to statutory law the statutory liability provisions, in particular Section 323 para. 2 HGB, with a limitation of liability to EUR 1 million or EUR 4 million, respectively, apply. In respect of services which are not part of an audit pursuant to statutory law, No. 9 para. 2 of the General Engagement Terms applies which provides for a limitation of liability to EUR 4 million or EUR 5 million, respectively.

This report is exclusively intended for the purpose of information of the corporate bodies of Fresenius, for the purpose of submission to the shareholders in the course of the general meeting of shareholders on December 4, 2006, in connection with the resolution concerning

the conversion of the Company into an SE as well as for the purpose of filing with the commercial register. Therefore, this report is not intended to serve as a basis for decisions to be made by third parties and it is not to be used for purposes other than the ones mentioned above, with the consequence that in deviation from the “General Engagement Terms for Wirtschaftsprüfer and Wirtschaftsprüfungsgesellschaften [German Public Auditors and Public Auditing Firms]” as published by the Institute of Auditors on January 1, 2002, which apply vis-à-vis the principal as well as third parties, Ernst & Young AG Wirtschaftsprüfungsgesellschaft Steuerberatungsgesellschaft does not assume any responsibility, liability or other duties vis-à-vis third parties, unless a written agreement to the contrary has been concluded between us and such third party or such exclusion of liability would be invalid.

II. Nature and Scope of our Activities

Our examination included those auditing activities which we regarded as necessary in order to determine that the net assets of the company to be converted are at least equivalent to its subscribed capital plus those reserves which pursuant to statutory provisions or the company articles may not be distributed. For this purpose, a determination of the capitalised earnings value, in particular, was conducted on the basis of the planning documentation for the years 2006 to 2011 of Fresenius Group which was made available to us, as well as an analysis of the principal assets and liabilities of the Company at the point in time of observation. The basis of our assessment are the Principles for the Conduct of Enterprise Valuations in accordance with Standard No. 1 of the IDW (IDW S 1) as amended on October 18, 2005, as well as the application of the principles of IDW S 1 for the valuation of interests for the purposes of financial statements prepared in accordance with commercial law in accordance with Comments on Accounting (*Stellungnahme zur Rechnungslegung*) No. 10 of the Main Technical Committee of the IDW (IDW RS HFA 10).

B. LEGAL AND ECONOMIC SITUATION

The Company has developed from the Hirsch pharmacy, Frankfurt am Main, in the year 1912 and has been managed since 1981 under the company name Fresenius AG, Bad Homburg v. d. Höhe, in the legal form of a German stock corporation (*Aktiengesellschaft*). The Company is registered in the commercial register at the local court of Bad Homburg v. d. Höhe under the registration number HRB 2617.

The articles of association of the Company were first laid down on December 17, 1981. Major amendments were made on November 9, 1986, on November 29, 2005, as well as on May 10, 2006.

The corporate purpose of the Company is:

- development, manufacture, and sale as well as trading with pharmaceutical, dietary, and medical devices, systems, and processes, hospital products, disinfectants and other products;
- the planning and construction of production plants, in particular for the manufacture of pharmaceutical, dietary, and medical devices;
- the construction, development, and operation of medical and curative facilities as well as of hospitals;
- consulting in the medical and pharmaceutical fields as well as scientific information and documentation.

The Company is entitled to enter into all business transactions and take any measures which are deemed to be necessary or useful to accomplish the purposes of the Company, in particular, to acquire interests in other companies of the same or a similar nature, to take over their management and/or representation, to transfer company divisions, including major company divisions, to other companies, provided that the Company owns at least the majority of the voting capital and/or holds a controlling interest, and to establish branches at home and abroad.

The financial year is the calendar year.

The interim balance sheet of Fresenius AG in accordance with HGB as per June 30, 2006, which was prepared by the Company and on which an unqualified audit opinion was issued by KPMG, can be summarised as follows:

Assets	June 30, 2006	December 31, 2005
	TEUR	TEUR
A. FIXED ASSETS		
I. Intangible assets	85	100
II. Property, plant and equipment	76,506	73,564
III. Long-term investments	2,852,392	2,847,286
	<u>2,928,983</u>	<u>2,920,950</u>
B. CURRENT ASSETS		
I. Accounts receivable and other assets	617,201	585,542
II. Other securities	9,666	6,961
III. Cash and cash equivalents	133	16
	<u>627,000</u>	<u>592,519</u>
C. PREPAID EXPENSES	<u>346</u>	<u>266</u>
	<u>3,556,329</u>	<u>3,513,735</u>
Liabilities	June 30, 2006	December 31, 2005
	TEUR	TEUR
A. SHAREHOLDER'S EQUITY	1,992,790	2,067,518
B. SPECIAL RESERVE FOR INVESTMENT		
GOVERNMENT GRANTS	19	20
C. PROVISIONS	60,454	50,755
D. LIABILITIES	1,503,066	1,395,442
	<u>3,556,329</u>	<u>3,513,735</u>

C. AMOUNT OF THE CAPITAL

I. Subscribed Capital and Reserves

As per June 30, 2006, the Company has subscribed capital in the amount of EUR 130.4 mn. and non-distributable reserves in a total amount of EUR 1,503.7 mn. This amount includes other profit reserves in the amount of the accumulated balance sheet loss.

	Subscribed capital	Capital reserve	Reserve for treasury shares	Other profit reserves (balance sheet loss)	Subscribed capital plus non-distributable reserves
	EUR mn.	EUR mn.	EUR mn.	EUR mn.	EUR mn.
June 30, 2006	130.4	1,483.4	1.5	-18.8	1,634.1
Exercising of stock options August 2006	0.2	5.4	0.0	0.0	5.6
Alteration balance sheet loss 3rd quarter 2006	0.0	0.0	0.0	-26.3	26.3
September 30, 2006	130.6	1,488.8	1.5	-45.1	1,666.0
Capital increase authorised capital II (acquisition Humaine)	0.9	41.1	0.0	0.0	42.0
Capital increase from the company's funds	22.6	-22.6	0.0	0.0	0.0
	154.1	1,507.3	1.5	-45.1	1,708.0

On the basis of the existing stock option plans of the Company, in August of the current year 87,778 shares with a total nominal value of EUR 224,711.68 were issued to employees of the Company. In each case, the portion of the subscription price exceeding the nominal value of the share was transferred to the capital reserves.

As a consequence of the prudence principle (*Vorsichtsprinzip*), losses from profit and loss transfer agreements which have accumulated in the balance sheet loss of the Company have been included, whereas positive developments, in particular with regard to the wholly-owned subsidiaries Fresenius ProServe GmbH, Fresenius Kabi AG and Fresenius Versicherungsvermittlungsgesellschaft mbH, with whom profit and loss transfer agreements also have been concluded, have not been included. Earnings from participations already realised (e.g. the dividend from Fresenius Medical Care AG & Co. KGaA) were recognised in net income.

In addition, the subscribed capital of the Company is to be increased by utilisation of the Authorised Capital II in return for contributions in kind in the amount of EUR 903,884.80 in

connection with the acquisition of HUMAINE Kliniken GmbH. The capital increase in return for contributions in kind was filed with the commercial register on September 19, 2006. So far, the registration has not yet occurred.

By resolution of the extraordinary general meeting of shareholders on December 4, 2006, the subscribed capital of the Company is to be increased from the Company's funds (Sections 207 et seqq. AktG) by a nominal amount of EUR 22.6 mn. to EUR 154.1 mn. by means of a conversion of company assets which already exist in the form of reserves. The intended capital increase from the Company's funds is related to the increase of the nominal capital per share from EUR 2.56 to EUR 3.00.

Furthermore, pursuant to the articles of association of Fresenius, an increase of the subscribed capital by means of utilisation of the conditional capital of the Company by a total amount of EUR 7,001,364.48 is also permissible.

II. Conditional Capital

1. Conditional Capital I

Pursuant to § 4 para. 5 of the articles of association of Fresenius, the subscribed capital of the Company is conditionally increased by up to EUR 1,246,248.96 (not taking into account any subscription shares issued in the year 2006 because of the exercising of options) through the issuance of new ordinary bearer shares (Conditional Capital I Ordinary Shares – *Bedingtes Kapital I Stämme*).

Pursuant to § 4 para. 5 of the articles of association of Fresenius, the subscribed capital of the Company is conditionally increased by a further amount of up to EUR 1,246,248.96 (not taking into account any subscription shares issued in the year 2006 because of the exercising of options) through the issuance of new non-voting preference bearer shares (Conditional Capital I Preference Shares – *Bedingtes Kapital I Vorzüge*).

As a consequence of the capital increase from the Company's funds, the Conditional Capital I Ordinary Shares as well as the Conditional Capital I Preference Shares are increased by operation of law.

These conditional capital increases are only implemented to the extent that subscription rights for shares are exercised pursuant to the existing Stock Option Plan 1998 of the Company.

2. Conditional Capital II

Pursuant to § 4 para. 6 of the articles of association of Fresenius, the subscribed capital of the Company is conditionally increased by up to EUR 2,254,433.28 (not taking into account any subscription shares issued in the year 2006 because of the exercising of options) through the issuance of new ordinary bearer shares (Conditional Capital II Ordinary Shares – *Bedingtes Kapital II Stämme*).

Pursuant to § 4 para. 6 of the articles of association of Fresenius, the subscribed capital of the Company is conditionally increased by a further amount of up to EUR 2,254,433.28 (not taking into account any subscription shares issued in the year 2006 because of the exercising of options) through the issuance of new non-voting preference bearer shares (Conditional Capital II Preference Shares – *Bedingtes Kapital II Vorzüge*).

As a consequence of the capital increase from the Company's funds, the Conditional Capital II Ordinary Shares as well as the Conditional Capital II Preference Shares are increased by operation of law.

These conditional capital increases are only implemented to the extent that convertible bonds are being issued and conversion rights are exercised pursuant to the existing Stock Option Plan 2003 of the Company.

III. Authorised Capital

Pursuant to § 4 para. 3 of the articles of association of Fresenius, the management board is authorised, with the approval of the supervisory board, to increase the subscribed capital of the Company by a total of nominally EUR 12,800,000.00 through the single or multiple issuance of new ordinary bearer shares and/or non-voting preference shares in return for contributions in cash (Authorised Capital I – *Genehmigtes Kapital I*).

Pursuant to § 4 para. 4 of the articles of association of Fresenius, the management board is authorised, with the approval of the supervisory board, to increase the subscribed capital of the Company by a total of nominally EUR 6,400,000.00 through the single or multiple issuance of new ordinary bearer shares and/or non-voting preference shares in return for contributions in cash and/or in kind (Authorised Capital II – *Genehmigtes Kapital II*).

The management board has made use of this authorisation and the subscribed capital of the Company is to be increased by utilisation of the Authorised Capital II in return for contributions in kind in the amount of EUR 903,884.80 in the course of the acquisition of HUMAINE Kliniken GmbH. The capital increase in return for contributions in kind was filed with the commercial register on September 19, 2006. So far, the registration has not yet occurred.

IV. Capital pursuant to Art. 37 para. 6 SE Regulation

As per June 30, 2006, the shareholders' equity of the Company relevant for the purpose of assessing the capital contribution as defined in Art. 37 para. 6 SE Regulation amounts to EUR 1,634.1 mn.

Taking into account the exercises of stock options described above as well as the development of the balance sheet profits until September 30, 2006, the amount of the non-distributable shareholders' equity relevant under Art. 37 para. 6 SE Regulation amounts to EUR 1,666.0 mn. as per September 30, 2006. Taking further into account the described measures for capital increases which already have been initiated and the implementation of which is planned for the financial year 2006, this amount further increases to EUR 1,708.0 mn.

D. DETERMINATION OF NET ASSET VALUE

The provisions governing the capital contribution for corporations are based on the unwritten underlying legal principle to ensure the contribution of the subscribed capital pursuant to articles of association and of the non-distributable reserves as assets available in the case of liability of the company. The relevant point in time in this regard is the formation of the company as a legal entity, i.e. its registration in the commercial register. At this point in time, the integrity of the assets available in the case of liability has to be ensured in the interest of the creditors. Proof has to be provided that the required assets of the company available in the case of liability are covered completely by the existing assets of the company. For this purpose, it is generally required that in order to prove capital coverage a so-called balance sheet of previous charges (*Vorbelastungsbilanz*) is prepared which has the function to determine the value of the company assets at the point in time of the registration in the commercial register.

In the view of the BGH (*Bundesgerichtshof* – Federal Court of Justice, judgment of November 9, 1998, II ZR 190/97, *Kammergericht*), no balance sheet of previous charges is required if the entirety of the enterprise operated by the corporation is to be valued at the point in time of the registration. This requires that prior to the registration the enterprise has a form of organisation which can be regarded as an enterprise which constitutes an asset of its own beyond the individual assets it holds. In this case, a valuation is to be conducted in accordance with the general principles of enterprise valuations. The latter are documented in the statements of the IDW S 1 and RS HFA 10.

In the following, the determination of the net asset value of the Company is based on its fair value and on the analysis of the balance sheet as per June 30, 2006. For the determination of the fair value, information provided by the Company until October 9, 2006, has been taken into account. The balance sheet analysis is based on the interim balance sheet prepared in accordance with HGB as per June 30, 2006, which was prepared by the Company and on which KPMG has issued an unqualified audit opinion.

I. Determination of the Fair Value of Fresenius AG

1. Valuation Principles and Methods

a) Capitalised Earnings Value in Accordance with IDW S 1 / RS HFA 10

With regard to the capital amount to be used as a basis for the capital coverage examination, reference is made to section C. IV. Capital pursuant to Art. 37 SE Regulation.

For the purposes of determining the enterprise value the capitalised earnings value method (*Ertragswertverfahren*) was applied. The capitalised earnings value is the present value of net cash flows to the owners of the enterprise resulting from the ownership of the enterprise. On the presumption of merely financial objectives the value of the enterprise is derived exclusively from its ability to generate cash flows for the owners of the enterprise. It is generally accepted in the literature (cf. Moxter, *Grundsätze ordnungsmäßiger Unternehmensbewertung*, 3rd ed. 1990), valuation practice (cf. *WP-Handbuch*, 2002, Vol. II, Chapter A) and jurisprudence (cf. Pilz, *Die Unternehmensbewertung in der Rechtsprechung*, 3rd ed. 1994) that the capitalised earnings value, calculated as the present value of the future excess of receipts over expenses, is the correct value of an enterprise from a theoretical point of view. The projection of future surpluses in receipts or earnings, respectively, is the central element of enterprise valuation. In this regard, risks and opportunities have to be appreciated in the same way. An orientation in this respect is provided by an analysis of the results actually achieved in the past.

For the purposes of the examination, the following aspects of valuation technique also have to be taken into account:

Generally, the IDW requires, for the purposes of an enterprise valuation, the application of its Standard S 1, the focus of which is the determination of an objectified enterprise value from the perspective of a neutral expert. In this regard, an enterprise value is to be determined which is independent from the individual appraisals of the parties involved. In the cases of IDW S 1, the relevant perspective is the one of the owners of the enterprise (as private persons), not the perspective of the acquiring enterprise as a shareholder.

In contrast, IDW RS HFA 10 provides that the assessment of the value of participations under commercial law is to be made exclusively from the perspective of the company recording the participation in its balance sheet. Here, the focus is on the principles of creditor protection as well as on the determination of a potential to cover liabilities.

Thus, the enterprise value as defined in the law on capital contribution follows the same principles as the enterprise value subjectified in accordance with IDW RS HFA 10. It has to be observed that IDW RS HFA 10 does not allow for a subjective perspective which is completely detached from IDW S 1. Rather, the framework of the principles relevant for an objectified enterprise valuation pursuant to IDW S 1 is to be applied. It is merely with regard to the valuation of synergy effects, the relevance of individual income tax as well as the determination of the discount rate that principles deviating from IDW S 1 have to be taken into consideration.

Relevance of Income Taxation

With regard to the inclusion of income taxes in the valuation of participations, as is the case with the inclusion of synergy effects, generally the relevant perspective is the one of the company receiving or holding the participation, respectively. Therefore, for the purposes of determining the capitalised earnings value of the participation the net cash flows resulting from the participation to the company recognising the participation in its balance sheet have to be discounted. In this regard, the enterprise taxes to be borne by the company (trade income tax, corporation income tax, withholding tax) have to be deducted.

Discount Rate

In order to determine the capitalised earnings value of Fresenius, the future net income is to be discounted to the valuation date by applying an appropriate discount rate.

Pursuant to IDW RS HFA 10, the discount rate is to be determined in accordance with the principles stated in IDW S 1 by reference to the return of an alternative investment which is adequate in terms of risk. Because of the objectivity of valuation required for the purposes of financial statements prepared in accordance with commercial law, it is not permissible to take into account such expectations of returns which are determined individually and merely subjectively by the investor. In contrast, returns of similar investments achieved on the relevant capital market may be taken into account.

The basis for the determination of alternative returns can be seen, in particular, in the capital market returns of participations in enterprises (in form of share portfolios). According to IDW S 1, these share returns are, in principle, to be divided into a (risk-free) basic interest rate and a risk premium required by the shareholders because of the assumption of entrepreneurial risk. With regard to this division, recourse can be taken to capital market models such as CAPM (Capital Asset Pricing Model).

Basic Interest Rate

The basic interest rate has to reflect a return which is risk-free and equivalent to the object of valuation as to its maturity. If, as in the present case, an infinite life of the subject of valuation is assumed for the purposes of enterprise valuation, the basic interest rate also has to reflect the return of a risk-free alternative investment with an infinite maturity. According to the prevailing opinion, the determination of the risk-free interest rate (basic interest rate) is to be made by reference to the returns of fixed-interest securities issued by the government. However, since in Germany no bonds issued by public authorities are offered with an infinite maturity, reference can be made for the purposes of determining the basic interest rate to bonds issued by public authorities which have long maturities.

According to IDW S 1, both the historical interest rate development and the current yield curve may be taken into account for the determination of the uniform basic interest rate.

In the present case, the estimation of the basic interest rate has been made on the basis of the yield curve for government bonds. This yield curve describes the relation between interest rates and maturities which applies to zero bonds without credit default risk (i.e. government bonds). In detail, the yield curve was arithmetically derived from estimates. These estimates are made and published by the German Central Bank on each trading day on the basis of the observation of the current yields of coupon bonds (i.e. Federal bonds (*Bundesanleihen*), five-year Federal notes (*Bundesobligationen*) and two-year Federal notes (*Bundesschatzanweisungen*)).

Since a yield curve derived in such manner shows zero bond interest rates which are adequate as to their maturities, a determination of the basic interest rate which is made on this basis ensures that the equivalence of maturity is observed.

For the smoothing of short-term market fluctuations as well as of possible errors in estimation, in particular with regard to the long-term returns relevant for enterprise valuations, it can be appropriate not merely to refer to the estimated zero bond interest rates as of the valuation date, but to use average interest rates for the purpose of the valuation. In order to ensure a practicable and comprehensible smoothing, period-specific average interest rates can be derived from the estimated yields of the preceding three months.

Market Risk Premium

From share returns which are empirically determined in the capital market, risk premiums can be derived with the help of capital market pricing models (such as the CAPM).

Share returns and risk premiums are generally influenced by income taxes. The CAPM in its standard form represents a capital market model in which costs of capital and risk premiums are explained without taking into account the effect of individual income taxes.

Long-term capital market studies have shown that, historically, investments in shares have yielded higher returns than investments in low-risk bonds. Depending, among other things, on the chosen observation period, market risk premiums of about 4.0% to 5.0% – before taking into account individual income taxes – can be derived.

Risks

To the extent that a company to be valued deviates, with regard to its size, industry, capital structure, location of its registered office, etc., from the risk structure of the alternative investment which was used as a basis, this alternative return has to be adjusted accordingly. This is achieved by determining, on the basis of the CAPM, a market risk premium included in the capital market return which is then weighted with an industry-specific beta factor which expresses the systematic, non-diversifiable enterprise risk. In this regard, it is to be assumed that the capital market return merely includes systematic risk and that this corresponds to a beta factor of 1.0.

Generally, beta factors are derived to as large an extent as possible on the basis of market data by means of regression analysis using historical share price data. If the company to be valued is listed on a stock exchange itself, its own beta factor can be used under certain circumstances. Since it is not the historical but the future beta factor which is relevant for valuation purposes, it has to be established if the risk expected in the future is comparable.

Alternatively, the average beta factor of a comparable group of enterprises (peer group) may be used. In this case, it has to be ensured that the enterprises included in the peer group are comparable to the enterprise to be valued in terms of their systematic risk. Since for Fresenius as a listed company share prices are available, these need to be taken into consideration for the derivation of the respective beta factors. On the basis of these considerations, we have determined by reference to the data provided by Bloomberg a range for the beta factor of 0.8 to 1.0.

Taxes

With regard to the determination of the discount rate the income tax burden attributable from the perspective of the enterprise to the alternative investment used as a basis has to be taken

into account. As is the case with establishing future results, the individual income tax burden of the eventual shareholders of Fresenius is not to be taken into account.

Growth Reduction

The growth reduction in the discount rate takes into account a long-term progressive growth of distributable earnings which in the course of a nominal calculation is not included in the infinite constant rate of cash flows.

In the case of Fresenius, with regard to discounting the individual planned results for the years 2006 to 2011 no growth reduction had to be included for the determination of the capitalised earnings value, since the respective receipts and expenses have been planned nominally.

From the financial year 2012 onwards, in view of the market situation and the currently low rate of inflation a growth reduction of one to two percentage points was included in order to allow for the potential chance of an increase of the results induced by price or volume.

On the basis of the above-mentioned ranges for the basic interest rate, the market risk premium, the beta factor and the growth reduction a range for the discount rate from 5.7% to 7.5% can be derived.

b) Liquidation Value and Substance Value

The Principles for the Conduct of Enterprise Valuations (*Grundsätze zur Durchführung von Unternehmensbewertungen*) require that the liquidation value be used if the present value of the revenue surpluses from the liquidation of the enterprise exceeds the capitalised earnings value in the case of continuation of the enterprise and if there is a real possibility of a divestiture of the enterprise. Since currently there are no indications of a liquidation of the Company, we refrained from making even a rough estimate of the liquidation value of the operating assets for the purposes of our value assessment.

The substance value, which is based on the replacement value, is without relevance for the determination of the ability of an enterprise to cover its liabilities.

c) Market Capitalisation

The share price of an enterprise (stock market capitalisation) and the share price of an individual share are to be strictly distinguished from the values of enterprises and participations in enterprises which are determined in accordance with the capitalised earnings value method or the DCF method. Whereas share prices are daily prices on the stock market,

which represent the price of supply and demand in shares at the stock exchange leading to a maximum of sales, the value of enterprises or participations in enterprises represents the present value of the entirety or a quota of the cash flows to an owner resulting from the ownership of the enterprise or the participation therein. In contrast, the share price depends on the influence of numerous other factors (e.g. future developments and opportunities for the enterprise which are expected by market participants, the size of the market, speculations, changes of the interest level, exchange rates, political events, psychological aspects, general stock market trend, etc.). To the extent that share prices are available, they are to be used in the valuation of an enterprise for the purpose of verifying plausibility.

The shares of Fresenius and Fresenius Medical Care are listed on various stock exchanges. In view of this fact, the stock market capitalisation can be used in order to verify the plausibility of the result of the determination of the net asset value which was made by means of application of the capitalised earnings value method.

2. Assessment of the Net Asset Value of the Company

a) Considerations Regarding the Capitalised Earnings Value

On the basis of the valuation principles and methods described in the preceding chapter as well as on the basis of the documents provided to us we have determined the capitalised earnings value of the Company.

The business plans of Fresenius Group have been critically examined by us as to their plausibility and have been discussed with the employees of the Company named by the management of Fresenius.

For the determination of future earnings, we have used as a basis the consolidated business plans of Fresenius for the years 2006 to 2011 in accordance with the phase method (cf. IDW S 1). The consolidated business plans are based on the business plans of the legally independent subsidiaries of Fresenius as well as the latter's own business plans.

In the second phase of the projection from 2012 onwards, future earnings were described in the form of sustainable earnings. The planned earnings from the year 2012 onwards were increased using various perpetual growth rates.

As a result of the calculation of the capitalised earnings value on the basis of the aforementioned presumptions we found that as of the valuation date, June 30, 2006, the value

of the enterprise exceeds the subscribed capital plus the non-distributable reserves. This enterprise value represents the net asset value in accordance with Art. 37 para. 6 SE Regulation, which exceeds the capital contribution to be certified – also when taking into account the implementation of the capital increase measures described under “C. AMOUNT OF THE CAPITAL“. For the period from July 1, 2006, until the date of the execution of this certificate, reserves which were distributable as of June 30, 2006 may become subject to a statutory distribution prohibition. However, the enterprise value also exceeds the total value of the subscribed capital plus all reserves recorded in the balance sheet.

b) Market Capitalisation

As of June 30, 2006, the Company has issued 25,468,026 ordinary shares and the same number of preference shares. A valuation based on the relevant trading date share price of the ordinary shares and preference shares at this point in time leads to a stock market value of the Company of approx. EUR 6.6 bn. This value exceeds the subscribed capital plus the non-distributable reserves.

II. Balance Sheet Analysis of Fresenius AG as per June 30, 2006

In the following, we render comments on accounting and valuation principles as well as on principal assets and liabilities as they are described in the KPMG report on the audit of the interim balance sheet as per June 30, 2006.

1. Comments Regarding Principal Assets and Liabilities

a) Valuation Principles and Methods

The accounting and valuation methods in accordance with the provisions of German commercial law which were used in the preparation of the interim balance sheet as per June 30, 2006, were unchanged in comparison to the balance sheet as per December 31, 2005.

Acquired intangible assets are recognised at their original cost, reduced by scheduled straight-line amortisation. The useful life is normally between 2 and 5 years. In the case of PC support software the useful life is 2 years and in the case of know-how up to 5 years.

Property, plant and equipment are recognised at their original cost minus scheduled straight-line depreciation or, to the extent permissible under tax law, declining balance depreciation. For the determination of depreciation, in most cases the following durations of useful life apply:

- Office and factory buildings 10 – 40 years
- Machinery and equipment 5 – 10 years
- Other equipment, office furniture and fixtures 3 – 10 years
- Low value items are fully depreciated in the year of their acquisition

Extraordinary depreciation is made to the extent that as of the valuation date an asset is to be recognised at a lower value because of permanent impairment.

The financial assets are recognised at their original cost or at their lower actual value.

Accounts receivable and other assets are recognised at their nominal value minus necessary impairments of individual items, if applicable. The general credit risk is taken into account by means of a lump-sum allowance.

Securities are recognised at their original cost or at their lower actual value.

The provisions for pensions have been established on the basis of the Generations Table 2005 (GT 2005) by Prof. Dr. Klaus Heubeck and an interest rate of 6% in accordance with the entry age normal method as defined by Section 6a EStG (*Einkommensteuergesetz* – German Income Tax Act).

The tax provisions and other provisions are set up for identifiable risks and contingent liabilities and are recognised at the amount required by prudent business judgement.

Provisions for anniversary bonuses have been valued in accordance with the entry age normal method on the basis of an interest rate of 5.5%.

Liabilities are recognised at their repayment amount.

b) Intangible Assets and Property, Plant and Equipment

	<u>June 30, 2006</u> TEUR	<u>December 31, 2005</u> TEUR
I. Intangible assets		
Concessions, industrial property rights and similar rights and assets as well as licenses	85	100
II. Property, plant and equipment		
1. Land, buildings including buildings on third party property	74,105	58,392
2. Machinery and equipment	170	189
3. Other equipment, office furniture and fixtures	1,351	829
4. Payments on account and construction in progress	880	14,154
	<u>76,506</u>	<u>73,564</u>

The fixed assets are used exclusively for business purposes. According to the statements made by the Company, there are no hidden liabilities in connection with the fixed assets.

c) Long-term Investments and Loans

	<u>June 30, 2006</u>	<u>December 31, 2005</u>
	TEUR	TEUR
1. Shares in affiliated companies / participations	2,515,518	2,515,518
2. Loans to affiliated companies	331,692	331,720
3. Loans to third parties	5,010	0
4. Long-term securities	172	48
	<u>2,852,392</u>	<u>2,847,286</u>

The shares in affiliated companies in the amount of EUR 2,516 mn. are mostly composed of the 100% participation in Fresenius ProServe GmbH, the 100% participation in Fresenius Kabi AG, the participation of approx. 36% in Fresenius Medical Care AG & Co. KGaA as well as other 100% participations including, among others, in Fresenius Finance B.V., The Netherlands.

The book value of the participation in Fresenius ProServe GmbH largely results from the acquisition of 94% of the shares in HELIOS Kliniken GmbH, Fulda, and their contribution into Fresenius ProServe GmbH by Fresenius AG at the end of last year. Because of the importance of HELIOS group for the operational business of Fresenius ProServe GmbH, the development of its business has a significant influence on the capitalised earnings value of Fresenius ProServe GmbH. In the financial year 2005, HELIOS group generated sales in the amount of EUR 1.2 bn. and net income of EUR 69.2 mn. (according to the consolidated financial statements prepared in accordance with IFRS as per December 31, 2005).

In the financial year 2005, the business segment Fresenius Kabi generated sales in the amount of EUR 1.7 bn. and net income of EUR 111 mn. (according to the accounts prepared in accordance with US-GAAP as per December 31, 2005). In the first six months of 2006, an increase in sales of 15% to EUR 937 mn. was achieved as compared to the previous year. The net income for the same period was also increased by 18% to EUR 60 mn. as compared to the previous year.

The stock market capitalisation of the entity exceeds the book value of the participation of approximately 36% in Fresenius Medical Care AG & Co. KGaA.

On the basis of the business plans of the Company for the enterprises in which participations are held as well as the related comments made by the management board of Fresenius, there are currently no indications for a need to recognise any impairments.

d) Receivables and Other Assets

The accounts receivable due from affiliated companies are mostly accounts receivable from loans as well as from cash pooling.

e) Liabilities

The liabilities resulting from pension, anniversary and partial retirement obligations as per December 31, 2005 were verified by actuarial expert opinions from Mercer Human Resource Consulting GmbH, Munich, of November 24 and 28, 2005, as well as December 8, 2005, and have been extrapolated to June 30, 2006 by the Company. The valuation of the liabilities was made at interest rates which are significantly higher than the interest rate level of bonds with comparable maturities. Because of their secondary importance this does not affect the certification to be issued.

According to the statements of the Company, there are no previous covenants (*Altzusagen*) pursuant to Art. 28 EHGB in respect of which an option not to show such items on the liabilities side of the balance sheet was exercised.

The payables due to affiliated companies in the amount of EUR 1,403.0 mn. are essentially payables due to Fresenius Finance B.V. in connection, among other things, with the acquisition of the 94% interest in HELIOS Kliniken GmbH, Fulda.

2. Result of the Balance Sheet Analysis as per June 30, 2006

On the basis of the examination of the interim balance sheet of Fresenius AG, Bad Homburg v. d. Höhe, as per June 30, 2006, which was prepared by the Company and on which KPMG issued an unqualified audit opinion, there are no indications that the valuation principles and methods described under D. II. 1. a) may not have been applied.

As of this date, the Company shows total shareholders' equity of EUR 1,992.8 mn. Therefore, it was established that also on the basis of a balance sheet analysis in accordance with

commercial law standards the capital contribution to be examined of EUR 1,634.1 mn. (or, respectively, of EUR 1,708.0 mn. after the complete implementation of the capital measures described above as well as the development of the balance sheet loss until September 30, 2006) is exceeded.

E. CONCLUDING REMARKS REGARDING THE NET ASSET VALUE

We hereby certify the following pursuant to Art. 37 para. 6 SE Regulation:

According to our findings the net asset values exceed the subscribed capital plus those reserves which, pursuant to statutory provisions or the company articles, may not be distributed. If the capital measures which currently have already been initiated and which have been described in chapter "C. Amount of the Capital" had already been implemented as of the valuation date, the net asset values – not taking into account the net assets which are partially contributed in the course of such measures – would also exceed the subscribed capital to be shown in that case plus those reserves which pursuant to statutory provisions or the company articles may not be distributed.

Stuttgart, October 9, 2006

Ernst & Young AG
Wirtschaftsprüfungsgesellschaft
Steuerberatungsgesellschaft

Söhnle
Auditor
(*Wirtschaftsprüfer*)

Schill
Auditor
(*Wirtschaftsprüfer*)

Fresenius Aktiengesellschaft, Bad Homburg v. d. Höhe

Balance Sheet as per June 30, 2006

A s s e t s

	June 30, 2006		December 31, 2005	
	TEUR	TEUR	TEUR	TEUR
A. Fixed assets				
I. Intangible assets		85		100
II. Property, plant and equipment		76,506		73,564
III. Long-term investments and loans		2,852,392		2,847,286
		<u>2,928,983</u>		<u>2,920,950</u>
B. Current assets				
I. Accounts receivable and other assets				
1. Accounts receivable due from affil. companies	574,578		537,338	
2. Other assets	42,623	617,201	48,204	585,542
II. Other securities		9,666		6,961
III. Cash and cash equivalents		133		16
		<u>627,000</u>		<u>592,519</u>
C. Prepaid expenses		346		266
		<u>3,556,329</u>		<u>3,513,735</u>

Liabilities and shareholders' equity

	June 30, 2006		December 31, 2005	
	TEUR	TEUR	TEUR	TEUR
A. Shareholders' equity				
I. Subscribed capital				
1. Ordinary shares	65,198.15		64,924.5	
(conditional capital I TEUR 976; prev. yr. TEUR 1,246)				
(conditional capital II TEUR 2,251; prev. yr. TEUR 2,254)				
25,468,026 shares, incl. 106,886 from conditional capital increase 2006				
2. Preference shares	65,198.15	130,396.3	64,924.5	129,849
(conditional capital I TEUR 976; prev. yr. TEUR 1,246)				
(conditional capital II TEUR 2,251; prev. yr. TEUR 2,254)				
25,468,026 shares, incl. 106,886 from conditional capital increase 2006				
II. Additional paid-in capital				
Forward 1.1.	1,463,871		543,918	
Increase because of exercise of stock options	19,562		25,367	
Increase because of capital increase	0	1,483,433	894,586	1,463,871
III. Retained earnings				
1. Reserve for treasury shares	1,459		0	
2. Other retained earnings	396,286	397,745	397,745	397,745
IV. Profit carried forward				
		223		0
V. Unappropriated loss (prev. yr. Unappropriated profit)				
		-19,007		76,053
		1,992,790		2,067,518
B. Special reserve for investment government grants				
		19		20
C. Provisions				
1. Pensions and similar obligations		15,511		15,201
2. Provisions for taxes		31,725		17,847
3. Other provision		13,218		17,707
		60,454		50,755
D. Liabilities				
1. Debt securities		0		22,000
--incl. with a remaining term of up to one year TEUR 0 (prev. yr. TEUR 22,000)				
2. Convertible bonds		408		379
--incl. with a remaining term of up to one year TEUR 127 (prev. yr. TEUR 124)				
3. Bank loans		91,851		671,134
--incl. with a remaining term of up to one year TEUR 23,421 (prev. yr. TEUR 638,807)				
--incl. with a remaining term of more than five years TEUR 40,000 (prev. yr. TEUR 89)				
4. Trade accounts payable		2,728		3,783
--incl. with a remaining term of up to one year TEUR 2,728 (prev. yr. TEUR 3,783)				
5. Accounts payable to affiliated companies		1,403,031		69,112
--incl. with a remaining term of up to one year TEUR 389,555 (prev. yr. TEUR 365,003)				
--incl. with a remaining term of more than five years TEUR 994,275 (prev. yr. TEUR 0)				
6. Other liabilities		5,048		7,026
--incl. from taxes TEUR 3,108 (prev. yr. TEUR 2,390)				
--incl. with a remaining term of up to one year TEUR 5,048 (prev. yr. TEUR 7,026)				
		1,503,066		1,395,442
		3,556,329		3,513,735
Guarantees and other commitments				
Warranty agreements and guarantees		1,393,864		787,864
(incl. for the benefit of and vis-à-vis affiliated companies)		(1,393,864)		(787,864)

Fresenius Aktiengesellschaft, Bad Homburg v. d. Höhe

Assets analysis as per June 30, 2006

Acquisition costs					
	Jan. 1, 2006	Additions	Transfers	Disposals	June 30, 2006
	TEUR	TEUR	TEUR	TEUR	TEUR
I. Intangible assets					
Concessions, industrial property rights and similar rights and assets as well as licenses	1,831	5	0	0	1,836
II. Property, plant and equipment					
1. Land, buildings including buildings on third party property	92,062	3,100	14,021	0	109,183
2. Machinery and equipment	320	0	0	0	320
3. Other equipment, office furniture and fixtures	5,739	1,042	17	106	6,692
4. Payments on account and construction in progress	14,154	764	-14,038	0	880
	112,275	4,906	0	106	117,075
III. Long-term investments and loans					
1. Shares in affiliated companies/participations	2,515,706	0	0	0	2,515,706
2. Loans to affiliated companies	332,648	112	0	300	33,246
3. Loans to third parties	0	5,010	0	0	5,010
4. Long-term securities	48	126	0	2	172
	2,848,402	5,248	0	302	2,853,348
	2,962,508	10,159	0	408	2,972,259

Depreciations, amortizations and write-downs (accumulated)					Book value		
Jan. 1, 2006	Depreciations of the financial year	Disposals	Reversals of write- downs	June 30, 2006	June 30, 2006	Dec. 31, 2005	
TEUR	TEUR	TEUR	TEUR	TEUR	TEUR	TEUR	
1,731	20	0		1,751	85	100	
33,670	1,408	0	0	35,078	74,105	58,392	
131	19	0	0	150	170	189	
4,910	537	106	0	5,341	1,351	829	
0	0	0	0	0	880	14,154	
38,711	1,964	106	0	40,569	76,506	73,564	
188	0	0	0	188	2,515,518	2,515,518	
928	0	0	160	768	331,692	33,172	
0	0	0	0	0	5,010	0	
0	0	0	0	0	172	48	
1,116	0	0	160	956	2,852,392	2,847,286	
41,558	1,984	106	160	43,276	2,928,983	2,920,950	

General Engagement Terms

for
Wirtschaftsprüfer and Wirtschaftsprüfungsgesellschaften
[German Public Auditors and Public Audit Firms]
as of January 1, 2002

This is an English translation of the German text, which is the sole authoritative version

1. Scope

(1) These engagement terms are applicable to contracts between Wirtschaftsprüfer [German Public Auditors] or Wirtschaftsprüfungsgesellschaften [German Public Audit Firms] (hereinafter collectively referred to as the "Wirtschaftsprüfer") and their clients for audits, consulting and other engagements to the extent that something else has not been expressly agreed to in writing or is not compulsory due to legal requirements.

(2) If, in an individual case, as an exception contractual relations have also been established between the Wirtschaftsprüfer and persons other than the client, the provisions of No. 9 below also apply to such third parties.

2. Scope and performance of the engagement

(1) Subject of the Wirtschaftsprüfer's engagement is the performance of agreed services – not a particular economic result. The engagement is performed in accordance with the Grundsätze ordnungsmäßiger Berufsausübung [Standards of Proper Professional Conduct]. The Wirtschaftsprüfer is entitled to use qualified persons to conduct the engagement.

(2) The application of foreign law requires – except for financial attestation engagements – an express written agreement.

(3) The engagement does not extend – to the extent it is not directed thereto – to an examination of the issue of whether the requirements of tax law or special regulations, such as, for example, laws on price controls, laws limiting competition and Bewirtschaftungsrecht [laws controlling certain aspects of specific business operations] were observed; the same applies to the determination as to whether subsidies, allowances or other benefits may be claimed. The performance of an engagement encompasses auditing procedures aimed at the detection of the defalcation of books and records and other irregularities only if during the conduct of audits grounds therefor arise or if this has been expressly agreed to in writing.

(4) If the legal position changes subsequent to the issuance of the final professional statement, the Wirtschaftsprüfer is not obliged to inform the client of changes or any consequences resulting therefrom.

3. The client's duty to inform

(1) The client must ensure that the Wirtschaftsprüfer – even without his special request – is provided, on a timely basis, with all supporting documents and records required for and is informed of all events and circumstances which may be significant to the performance of the engagement. This also applies to those supporting documents and records, events and circumstances which first become known during the Wirtschaftsprüfer's work.

(2) Upon the Wirtschaftsprüfer's request, the client must confirm in a written statement drafted by the Wirtschaftsprüfer that the supporting documents and records and the information and explanations provided are complete.

4. Ensuring independence

The client guarantees to refrain from everything which may endanger the independence of the Wirtschaftsprüfer's staff. This particularly applies to offers of employment and offers to undertake engagements on one's own account.

5. Reporting and verbal information

If the Wirtschaftsprüfer is required to present the results of his work in writing, only that written presentation is authoritative. For audit engagements the long-form report should be submitted in writing to the extent that nothing else has been agreed to. Verbal statements and information provided by the Wirtschaftsprüfer's staff beyond the engagement agreed to are never binding.

6. Protection of the Wirtschaftsprüfer's intellectual property

The client guarantees that expert opinions, organizational charts, drafts, sketches, schedules and calculations – especially quantity and cost computations – prepared by the Wirtschaftsprüfer within the scope of the engagement will be used only for his own purposes.

7. Transmission of the Wirtschaftsprüfer's professional statement

(1) The transmission of a Wirtschaftsprüfer's professional statements (long-form reports, expert opinions and the like) to a third party requires the Wirtschaftsprüfer's written consent to the extent that the permission to transmit to a certain third party does not result from the engagement terms.

The Wirtschaftsprüfer is liable (within the limits of No. 9) towards third parties only if the prerequisites of the first sentence are given.

(2) The use of the Wirtschaftsprüfer's professional statements for promotional purposes is not permitted; an infringement entitles the Wirtschaftsprüfer to immediately cancel all engagements not yet conducted for the client.

8. Correction of deficiencies

(1) Where there are deficiencies, the client is entitled to subsequent fulfillment [of the contract]. The client may demand a reduction in fees or the cancellation of the contract only for the failure to subsequently fulfill [the contract]; if the engagement was awarded by a person carrying on a commercial business as part of that commercial business, a government-owned legal person under public law or a special government-owned fund under public law, the client may demand the cancellation of the contract only if the services rendered are of no interest to him due to the failure to subsequently fulfill [the contract]. No. 9 applies to the extent that claims for damages exist beyond this.

(2) The client must assert his claim for the correction of deficiencies in writing without delay. Claims pursuant to the first paragraph not arising from an intentional tort cease to be enforceable one year after the commencement of the statutory time limit for enforcement.

(3) Obvious deficiencies, such as typing and arithmetical errors and formelle Mängel [deficiencies associated with technicalities] contained in a Wirtschaftsprüfer's professional statements (long-form reports, expert opinions and the like) may be corrected – and also be applicable versus third parties – by the Wirtschaftsprüfer at any time. Errors which may call into question the conclusions contained in the Wirtschaftsprüfer's professional statements entitle the Wirtschaftsprüfer to withdraw – also versus third parties – such statements. In the cases noted the Wirtschaftsprüfer should first hear the client, if possible.

9. Liability

(1) *The liability limitation of § ["Article"] 323 (2) ["paragraph 2"] HGB ["Handelsgesetzbuch": German Commercial Code] applies to statutory audits required by law.*

(2) *Liability for negligence; An individual case of damages*

If neither No. 1 is applicable nor a regulation exists in an individual case, pursuant to § 54a (1) no. 2 WPO ["Wirtschaftsprüferordnung": Law regulating the Profession of Wirtschaftsprüfer] the liability of the Wirtschaftsprüfer for claims of compensatory damages of any kind – except for damages resulting from injury to life, body or health – for an individual case of damages resulting from negligence is limited to € 4 million; this also applies if liability to a person other than the client should be established. An individual case of damages also exists in relation to a uniform damage arising from a number of breaches of duty. The individual case of damages encompasses all consequences from a breach of duty without taking into account whether the damages occurred in one year or in a number of successive years. In this case multiple acts or omissions of acts based on a similar source of error or on a source of error of an equivalent nature are deemed to be a uniform breach of duty if the matters in question are legally or economically connected to one another. In this event the claim against the Wirtschaftsprüfer is limited to € 5 million. The limitation to the fivefold of the minimum amount insured does not apply to compulsory audits required by law.

(3) *Preclusive deadlines*

A compensatory damages claim may only be lodged within a preclusive deadline of one year of the rightful claimant having become aware of the damage and of the event giving rise to the claim – at the very latest, however, within 5 years subsequent to the event giving rise to the claim. The claim expires if legal action is not taken within a six month deadline subsequent to the written refusal of acceptance of the indemnity and the client was informed of this consequence. The right to assert the bar of the preclusive deadline remains unaffected. Sentences 1 to 3 also apply to legally required audits with statutory liability limits.

10. Supplementary provisions for audit engagements

(1) A subsequent amendment or abridgement of the financial statements or management report audited by a Wirtschaftsprüfer and accompanied by an auditor's report requires the written consent of the Wirtschaftsprüfer even if these documents are not published. If the Wirtschaftsprüfer has not issued an auditor's report, a reference to the audit conducted by the Wirtschaftsprüfer in the management report or elsewhere specified for the general public is permitted only with the Wirtschaftsprüfer's written consent and using the wording authorized by him.

(2) If the Wirtschaftsprüfer revokes the auditor's report, it may no longer be used. If the client has already made use of the auditor's report, he must announce its revocation upon the Wirtschaftsprüfer's request.

(3) The client has a right to 5 copies of the long-form report. Additional copies will be charged for separately.

11. Supplementary provisions for assistance with tax matters

(1) When advising on an individual tax issue as well as when furnishing continuous tax advice, the Wirtschaftsprüfer is entitled to assume that the facts provided by the client – especially numerical disclosures – are correct and complete; this also applies to bookkeeping engagements. Nevertheless, he is obliged to inform the client of any errors he has discovered.

(2) The tax consulting engagement does not encompass procedures required to meet deadlines, unless the Wirtschaftsprüfer has explicitly accepted the engagement for this. In this event the client must provide the Wirtschaftsprüfer, on a timely basis, all supporting documents and records – especially tax assessments – material to meeting the deadlines, so that the Wirtschaftsprüfer has an appropriate time period available to work therewith.

(3) In the absence of other written agreements, continuous tax advice encompasses the following work during the contract period:

- a) preparation of annual tax returns for income tax, corporation tax and business tax, as well as net worth tax returns on the basis of the annual financial statements and other schedules and evidence required for tax purposes to be submitted by the client
- b) examination of tax assessments in relation to the taxes mentioned in (a)
- c) negotiations with tax authorities in connection with the returns and assessments mentioned in (a) and (b)
- d) participation in tax audits and evaluation of the results of tax audits with respect to the taxes mentioned in (a)
- e) participation in Einspruchs- und Beschwerdeverfahren [appeals and complaint procedures] with respect to the taxes mentioned in (a).

In the afore-mentioned work the Wirtschaftsprüfer takes material published legal decisions and administrative interpretations into account.

(4) If the Wirtschaftsprüfer receives a fixed fee for continuous tax advice, in the absence of other written agreements the work mentioned under paragraph 3 (d) and (e) will be charged separately.

(5) Services with respect to special individual issues for income tax, corporate tax, business tax, valuation procedures for property and net worth taxation, and net worth tax as well as all issues in relation to sales tax, wages tax, other taxes and dues require a special engagement. This also applies to:

- a) the treatment of nonrecurring tax matters, e. g. in the field of estate tax, capital transactions tax, real estate acquisition tax
- b) participation and representation in proceedings before tax and administrative courts and in criminal proceedings with respect to taxes, and
- c) the granting of advice and work with respect to expert opinions in connection with conversions of legal form, mergers, capital increases and reductions, financial reorganizations, admission and retirement of partners or shareholders, sale of a business, liquidations and the like.

(6) To the extent that the annual sales tax return is accepted as additional work, this does not include the review of any special accounting prerequisites nor of the issue as to whether all potential legal sales tax reductions have been claimed. No guarantee is assumed for the completeness of the supporting documents and records to validate the deduction of the input tax credit.

12. Confidentiality towards third parties and data security

(1) Pursuant to the law the Wirtschaftsprüfer is obliged to treat all facts that he comes to know in connection with his work as confidential, irrespective of whether these concern the client himself or his business associations, unless the client releases him from this obligation.

(2) The Wirtschaftsprüfer may only release long-form reports, expert opinions and other written statements on the results of his work to third parties with the consent of his client.

(3) The Wirtschaftsprüfer is entitled – within the purposes stipulated by the client – to process personal data entrusted to him or allow them to be processed by third parties.

13. Default of acceptance and lack of cooperation on the part of the client

If the client defaults in accepting the services offered by the Wirtschaftsprüfer or if the client does not provide the assistance incumbent on him pursuant to No. 3 or otherwise, the Wirtschaftsprüfer is entitled to cancel the contract immediately. The Wirtschaftsprüfer's right to compensation for additional expenses as well as for damages caused by the default or the lack of assistance is not affected, even if the Wirtschaftsprüfer does not exercise his right to cancel.

14. Remuneration

(1) In addition to his claims for fees or remuneration, the Wirtschaftsprüfer is entitled to reimbursement of his outlays: sales tax will be billed separately. He may claim appropriate advances for remuneration and reimbursement of outlays and make the rendering of his services dependent upon the complete satisfaction of his claims. Multiple clients awarding engagements are jointly and severally liable.

(2) Any set off against the Wirtschaftsprüfer's claims for remuneration and reimbursement of outlays is permitted only for undisputed claims or claims determined to be legally valid.

15. Retention and return of supporting documentation and records

(1) The Wirtschaftsprüfer retains, for seven years, the supporting documents and records in connection with the completion of the engagement – that had been provided to him and that he has prepared himself – as well as the correspondence with respect to the engagement.

(2) After the settlement of his claims arising from the engagement, the Wirtschaftsprüfer, upon the request of the client, must return all supporting documents and records obtained from him or for him by reason of his work on the engagement. This does not, however, apply to correspondence exchanged between the Wirtschaftsprüfer and his client and to any documents of which the client already has the original or a copy. The Wirtschaftsprüfer may prepare and retain copies or photocopies of supporting documents and records which he returns to the client.

16. Applicable law

Only German law applies to the engagement, its conduct and any claims arising therefrom.