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Statutes of Fresenius SE

(as of March 12, 2010)

I. General Provisions

Section 1 Company Name and Registered Office

The company is a European Company having the company name

Fresenius SE.

Its registered office is in Bad Homburg vor der Höhe.

Section 2 Corporate Purpose

- (1) The corporate purpose of the company is:
- a) development, manufacture, and distribution as well as trading with products, systems, and processes in the health care sector,
 - b) construction, development, and operation of medical and curative facilities as well as of hospitals,
 - c) planning and construction of production plants, in particular for the manufacture of pharmaceutical, dietary, and medical devices products,
 - d) consulting in the medical and pharmaceutical fields as well as scientific information and documentation.

The company engages in business activities in its domestic market or abroad either directly or through associated companies (*Beteiligungsgesellschaften*).

- (2) The company is entitled to enter into any business transactions and take any measures that are deemed necessary or useful in accomplishing the corporate purpose of the company, in particular, to acquire interests in other companies of the same or a related kind, to take over their management and/or representation, to transfer company divisions, including major company divisions, to other enterprises, provided that the company owns at least the majority of the latter's voting capital and/or holds a controlling interest, and to establish branches at home and abroad.

Section 3 Notifications

All proclamations of the company shall be published in the electronic Federal Gazette (*elektronischer Bundesanzeiger*).

II. Subscribed Capital and Shares

Section 4 Subscribed Capital

- (1) The subscribed capital (*Grundkapital*) of the company amounts to Euro 161,315,376.00 and is divided into 80,657,688 ordinary bearer shares (*Inhaber-Stammaktien*) and 80,657,688 non-voting preference bearer shares (*Inhaber-Vorzugsaktien*).

The terms of the non-voting preference bearer shares are set out in Section 20. The issuance of further preference shares, which with respect to the distribution of the profits or of the company's assets rank equal to or prevail over the preference shares already issued, is not subject to the approval of the holders of preference shares.

- (2) The portion of the subscribed capital attributable to the ordinary bearer shares was paid in
- a) in the amount of DM 100,000 against an issue of shares in the nominal amount of DM 100,000 through the conversion of Fresenius Verwaltungs GmbH;
 - b) in the amount of DM 19,538,800 against an issue of shares in the nominal amount of DM 19,538,800 through contribution in kind by Mrs. Else Kröner, namely through the contribution of her interests in the limited partnerships (*Kommanditbeteiligungen*)
 - aa) Dr. Eduard Fresenius Chemisch-pharmazeutische Industrie KG
Apparatebau KG
 - bb) Dr. Eduard Fresenius Chemisch-pharmazeutische Industrie KG
Klinikbedarf KG
 - cc) Dr. Eduard Fresenius Chemisch-pharmazeutische Industrie KG,

- c) in the amount of DM 361,200 against an issue of shares in the nominal amount of DM 361,200 through contribution in kind by Mr. Detlef Kröner, namely through the contribution of his interests in the limited partnerships (*Kommanditbeteiligungen*)
- aa) Dr. Eduard Fresenius Chemisch-pharmazeutische Industrie KG Apparatebau KG
 - bb) Dr. Eduard Fresenius Chemisch-pharmazeutische Industrie KG Klinikbedarf KG
 - cc) Dr. Eduard Fresenius Chemisch-pharmazeutische Industrie KG,
- d) in the amount of DM 3,162,100 against an issue of shares in the nominal amount of DM 3,162,100 through cash contribution by Mrs. Else Kröner, with a premium of 195%, and in the amount of DM 837,900 against an issue of shares in the nominal amount of DM 837,900 through cash contribution by Mr. Hans Kröner, with a premium of 195%;
- e) in the amount of DM 6,000,000 through the conversion of capital reserves in the amount of DM 6,000,000 through the issuance of new shares with a nominal value of DM 6,000,000, with one new share being issued in each case for four old shares.
- (3) The subscribed capital of Fresenius SE was provided by way of conversion of Fresenius AG into a European Company (SE).
- (4) The management board is authorized until May 7, 2014, with the approval of the supervisory board, to increase the Company's subscribed capital by a total amount of up to Euro 12,800,000.00 through a single or multiple issuance of new ordinary bearer shares and/or non-voting bearer preference shares against cash contributions (*Authorized Capital I – Genehmigtes Kapital I*). The number of shares shall increase in the same proportion as the subscribed capital. The shareholders shall be granted a subscription right; the subscription right may also be granted in such a manner that the new shares are taken up by a bank or syndicate of banks under an obligation to offer them for subscription to shareholders of Fresenius SE. The management board is, however, authorized, to exclude fractional amounts from the shareholders' subscription right and, if ordinary and preference shares are issued at the same time, to exclude rights of the holders of one class of shares to subscribe to the shares of the other class, provided that the subscription ratio is set the same for both share classes. The authorization also includes the right to issue additional preference shares which

are equal to the previously issued non-voting preference shares in respect of the distribution of the Company's profits or assets. The authorization may only be exercised to the extent that when utilizing the entire Authorized Capitals registered in the Commercial Register pursuant to the resolutions in the General Meeting on May 8, 2009, the number of ordinary shares issued does not exceed the number of non-voting preference shares issued. The management board is further authorized, with the approval of the Supervisory Board, to determine the further details of the implementation of capital increases from Authorized Capital I. The supervisory board is authorized to amend section 4 para. 4 of the Statutes after complete or partial implementation of the capital increase from Authorized Capital I or after the expiry of the authorized period in accordance with the amount of the capital increase from Authorized Capital I.

- (5) The management board is authorized until May 7, 2014, with the approval of the supervisory board, to increase the Company's subscribed capital by a total of up to Euro 6,400,000 through a single or multiple issuance of new bearer ordinary shares and/or non-voting bearer preference shares against cash contributions and/or contributions in kind (Authorized Capital II – *Genehmigtes Kapital II*). The number of shares shall increase in the same proportion as the subscribed capital. The management board is authorized to exclude fractional amounts from the shareholders' subscription right and, if ordinary and preference shares are issued at the same time, to exclude rights of the holders of one class of shares to subscribe to the shares of the other class if the subscription ratio is set the same for both share classes. The management board is further authorized to decide on the exclusion of the shareholders' subscription rights, in each case with the approval of the supervisory board. The exclusion of subscription rights is only permissible, however, if in the case of a capital increase against cash contribution, the issue price is not significantly lower than the stock exchange price. In case of a capital increase against contributions in kind, the exclusion of subscription rights is only permissible for the acquisition of a company or parts of a company, or a participation in a company. The authorization also includes the right to issue further preference shares which are equal to the previously issued non-voting preference shares in the distribution of the Company's profits or assets. This authorization may be exercised only to the extent that, when utilizing the entire authorized capitals registered in the commercial register pursuant to the resolutions in the general meeting on May 8, 2009, the number of ordinary shares issued does not exceed the number of non-voting preference shares issued. The management board is further authorized, with the approval of the supervisory board, to determine the further details of the implementation of capital increases from authorized capital II. The supervisory board is authorized to amend section 4 para. 5 of the statutes after complete or partial implementation of the

capital increase from authorized capital II or after the expiry of the authorized period in accordance with the amount of the capital increase from authorized capital II.

- (6) The subscribed capital of the company is conditionally increased by up to Euro 656,550.00, divided into 656,550 shares, through the issuance of new ordinary bearer shares (Conditional Capital I Ordinary Shares – *Bedingtes Kapital I Stämme*). The conditional capital increase will only be implemented to the extent that subscription rights for ordinary bearer shares are issued in accordance with the stock option plan pursuant to the resolution of the general meeting of Fresenius AG of June 18, 1998, and taking into account the amendment resolution of the general meeting of December 4, 2006, required due to the new division of the subscribed capital, and the holders of these subscription rights exercise these rights. The new ordinary bearer shares are entitled to profit participation starting from the beginning of the financial year in which they are issued.

The subscribed capital of the company is conditionally increased by up to Euro 656,550.00, divided into 656,550 shares, through the issuance of new non-voting preference bearer shares (Conditional Capital I Preference Shares – *Bedingtes Kapital I Vorzüge*). The conditional capital increase will only be implemented to the extent that subscription rights for non-voting preference bearer shares are issued in accordance with the stock option plan pursuant to the resolution of the general meeting of Fresenius AG of June 18, 1998, and taking into account the amendment resolution of the general meeting of December 4, 2006, required due to the new division of the subscribed capital, and the holders of these subscription rights exercise these rights. The new non-voting preference bearer shares are entitled to profit participation starting from the beginning of the financial year in which they are issued.

- (7) The subscribed capital of the company is conditionally increased by up to Euro 2,149,221.00 divided into up to 2,149,221 shares, through the issuance of new ordinary bearer shares (Conditional Capital II Ordinary Shares – *Bedingtes Kapital II Stämme*). The conditional capital increase will only be implemented to the extent that convertible bonds for ordinary bearer shares are issued in accordance with the stock option plan pursuant to the resolution of the general meeting of Fresenius AG of May 28, 2003, and taking into account the amendment resolution of the general meeting of December 4, 2006, required due to the new division of the subscribed capital, and the holders of these convertible bonds exercise their conversion rights. The new ordinary bearer shares are

entitled to profit participation starting from the beginning of the financial year in which they are issued.

The subscribed capital of the company is conditionally increased by up to Euro 2,149,221.00, divided into up to 2,149,221 shares, through the issuance of new non-voting preference bearer shares, (Conditional Capital II Preference Shares – *Bedingtes Kapital II Vorzüge*). The conditional capital increase will only be implemented to the extent that convertible bonds for non-voting preference bearer shares are issued in accordance with the stock option plan pursuant to the resolution of the general meeting of Fresenius AG of May 28, 2003, and taking into account the amendment resolution of the general meeting of December 4, 2006, required due to the new division of the subscribed capital, and the holders of these convertible bonds exercise their conversion rights. The new non-voting preference bearer shares are entitled to profit participation starting from the beginning of the financial year in which they are issued.

- (8) The subscribed capital of the company is conditionally increased by up to Euro 3,100,000.00 (in words: Three Million One Hundred Thousand Euro), divided into 3,100,000 shares, through the issuance of new ordinary bearer shares (Conditional Capital III Ordinary Shares – *Bedingtes Kapital III Stämme*). The conditional capital increase will only be implemented to the extent that subscription rights are issued in accordance with the 2008 stock option plan pursuant to the resolution of the general meeting of May 21, 2008, and the holders of these subscription rights exercise their rights and the company does not grant any shares of its own to satisfy the subscription rights or utilise its right to a cash settlement, whereby the supervisory board alone shall be responsible for granting subscription rights to management board members and for handling such subscription rights. The new ordinary bearer shares are entitled to profit participation starting from the beginning of the financial year in which they are issued.

The subscribed capital of the company is conditionally increased by up to Euro 3,100,000.00 (in words: Three Million One Hundred Thousand Euro), divided into 3,100,000 shares, through the issuance of new preference bearer shares (Conditional Capital III Preference Shares – *Bedingtes Kapital III Vorzüge*). The conditional capital increase will only be implemented to the extent that subscription rights are issued in accordance with the 2008 stock option plan pursuant to the resolution of the general meeting of May 21, 2008, and the holders of these subscription rights exercise their rights and the company does not grant any shares of its own to satisfy the subscription rights or utilise its right to a cash settlement, whereby the supervisory board alone shall be responsible

for granting subscription rights to management board members and for handling such subscription rights. The new preference bearer shares are entitled to profit participation starting from the beginning of the financial year in which they are issued.

- (9) In the case of a capital increase, participation in profits (*Gewinnbeteiligung*) may be determined in derogation of Section 60 of the German Stock Corporation Act (*Aktiengesetz*).

Section 5 Shares

- (1) The shares are non-par value shares and are issued to bearer.
- (2) The company is entitled to issue share certificates made out to the bearer which embody multiple shares (global share certificates). The shareholders' right to have their shares embodied in certificates is excluded, unless certificates are required under the rules applicable at a stock exchange where the shares are admitted.
- (3) The management board, with the approval of the supervisory board, shall determine the form of the share certificates and of the dividend and renewal coupons.

III. Organisational Constitution of the Company

Section 6 Corporate Bodies

The company's corporate bodies are:

the management board,

the supervisory board, as well as

the general meeting of shareholders.

A. Management Board

Section 7 Composition

- (1) The management board shall comprise of at least two persons. The supervisory board may determine a higher number. It may appoint a chairman of the management board as well as deputy members of the management board.
- (2) The members of the management board are appointed by the supervisory board for a maximum term of five years. Reappointments are permissible.
- (3) The resolutions of the management board shall be adopted by simple majority of the votes unless required otherwise by statutory law. If a chairman of the management board has been appointed he shall have the casting vote in case of a parity of votes (tie).
- (4) If a chairman of the management board has been appointed he shall have the right to object to a management board resolution (veto right). If the chairman of the management board exercises his veto right the resolution shall be deemed to not have been passed.

Section 8 Representation of the Company

- (1) The company shall be represented by two management board members or by one management board member jointly with an executive holding a general power of attorney (*Prokura*). The general power of attorney (*Prokura*) may only be granted as joint power of attorney (*Gesamtprokura*) subject to the restrictions referred to in Section 8 (3).
- (2) The supervisory board may grant the right to solely represent the company (*Einzelvertretung*) to individual or several members of the management board and revoke such right at any time.
- (3) The express prior consent of the supervisory board is required:
 - a) for the acquisition, disposal and encumbrance of real property and equivalent rights, if in an individual case the amount of Euro 15,000,000 is exceeded,
 - b) the taking up of new and the discontinuation of existing lines of business,
 - c) the granting of consent to the undertaking of any of the above legal acts by an associated company (*Beteiligungsgesellschaft*).

- (4) Notwithstanding the collective responsibility of the management board, the supervisory board may assign the duties of the management board to the individual members of the management board, in particular in form of rules of procedure for the management board and, within the scope of mandatory legal provisions and the statutes, determine the relations of the management board members among each other and towards the company and define, in extension of Section 8 (3), the acts for which the management board shall require the express prior consent of the supervisory board. The supervisory board may also grant consent in accordance with Section 8 (3) in a general manner, for limited or unlimited periods, as well as to individual members of the management board, in particular to the chairman of the management board. The supervisory board may at any time extend, restrict or revoke the rules of procedure for the management board. The supervisory board may transfer the passing of resolutions in accordance with Section 8 (3) and the granting of approvals in accordance with the rules of procedure for the management board to a committee of the supervisory board; such a committee must have three members, but otherwise the supervisory board may freely determine its composition.
- (5) The management board, with the approval of the supervisory board, may give to itself rules of procedure, as long as and to the extent that the supervisory board has not issued such rules of procedure for the management board.

B. Supervisory Board

Section 9 Election and Term of Office of the Supervisory Board

- (1) The supervisory board shall comprise twelve members who are appointed by the general meeting. Of the twelve members, six members are to be appointed upon proposal of the employees. The general meeting shall be bound to the proposals for the appointment of the employee representatives.
- (2) As members of the first supervisory board are appointed for a term until the close of the general meeting which resolves on the ratification of actions for the first financial year of Fresenius SE, however, for no longer than a term of three years:

Dr. Gerd Krick, Königstein, Former Chairman of the Management Board of Fresenius AG

Dr. Gabriele Kröner, Berg, doctor

Dr. Gerhard Rupprecht, Gerlingen, Member of the Management Board of Allianz AG, chairman of the Management Board of Allianz Deutschland AG

Dr. Dieter Schenk, München, attorney and tax advisor, law firm Nörr, Stiefenhofer & Lutz

Dr. Karl Schneider, Mannheim, Former Chairman of the Management Board of Südzucker AG

Dr. Bernhard Wunderlin, Bad Homburg v.d.H., Former Managing Director of Harald Quandt Holding GmbH.

The other six members of the supervisory board shall be appointed upon proposal of the employees. The first financial year of Fresenius SE is the financial year in which the conversion of Fresenius AG into a European company (SE) is registered in the commercial register of Fresenius AG.

- (3) The general meeting appoints the supervisory board members, subject to Section 9 (2), for a term until the close of the general meeting which resolves on the ratification of actions for the fourth financial year after the term of office commenced, with the financial year in which the term of office commences not being counted, however, for no longer than for a period of six years. Reappointments are permissible.
- (4) If a member appointed by the general meeting ceases to be a member of the supervisory board before his term of office expires, a new member is to be appointed by the next general meeting. The newly-appointed member shall hold office for the remaining term of office of the member whose membership has ceased.
- (5) The general meeting may appoint substitute members for the supervisory board members to be appointed by it. Their positions as substitute members shall revive if and when the general meeting appoints a new member for a former member who has left office and has been replaced by the respective substitute member. The term of office of the substitute member is limited to the period up to the close of the general meeting at which an appointment according to Section 9 (4) takes place.
- (6) Each member of the supervisory board may resign from office, also without cause, by giving one month's written notice to the chairman of the supervisory board. The chairman of the supervisory board shall give notification of his resignation from office to his deputy.

Section 10 Constitution of the Supervisory Board

- (1) Following the general meeting at which a new supervisory board has been appointed, the supervisory board shall hold a meeting without special notice in which the supervisory board shall elect, if necessary, a chairman and two deputy chairmen from among its members for the whole term of their office on the supervisory board.
- (2) In case the membership of the chairman or one of his deputies should cease before the expiry of his term of office, the supervisory board shall elect a successor without undue delay (*unverzüglich*).
- (3) For the election of the chairman of the supervisory board, the oldest member in terms of age among the shareholder representatives on the supervisory board shall have the chair; Section 11 (5) sentence 2 shall apply.

Section 11 Meetings and Resolutions of the Supervisory Board

- (1) The meetings of the supervisory board are to be convened by the chairman in writing with a notice period of 14 days. The individual items of the agenda are to be stated in the invitation to the meeting. In urgent cases, this notice period may be shortened and the meeting convened by telegram, telex, facsimile, by other means of electronic communication (e-mail etc.) or by telephone.
- (2) Resolutions of the supervisory board generally are to be passed in actual meetings (*Präsenzsitzungen*). However, it is permissible that meetings of the supervisory board are held by means of video conference, or that individual members of the supervisory board participate by means of video transmission, and that in such cases resolutions or votes are also passed or cast by means of video conference or video transmission, respectively. Outside of meetings, resolutions may be passed in text form (in writing, by telegram, telex, facsimile, by other means of electronic communication (e-mail etc.)) or by telephone, if the chairman of the supervisory board, or in case the chairman is unavailable, his deputy directs to do so and no member of the supervisory board objects to this procedure in text form without undue delay (*unverzüglich*).
- (3) The supervisory board shall constitute a quorum if half of the total number of members of which it comprises participates in the passing of a resolution. If no equal number of shareholders' representatives and of employees' representatives on the supervisory board takes part in the passing of a resolution, or if the chairman of the supervisory board does not take part, the passing of the resolution is, upon motion of at least two supervisory board members, to be

postponed. Section 11 (1) shall apply to the new passing of a resolution; the latter may take place on the same day if the chairman of the supervisory board so directs.

- (4) If members of the supervisory board are unable to attend meetings, they may have their written vote submitted by another member of the supervisory board. The submission of a written vote shall count as participation in the passing of the resolution.
- (5) Resolutions of the supervisory board require the majority of the votes cast. In the case of a parity of votes, the vote of the chairman, or, if he does not participate in the passing of the resolution, the vote of the deputy chairman, provided that he is a shareholder representative, shall be decisive. A deputy chairman who is an employee representative shall not be entitled to a casting vote. Section 11 (5) sentence 2 of the statutes also applies to the passing of resolutions in the committees of the supervisory board of which the chairman or his deputy, if he is a shareholder representative, is a member.
- (6) Minutes shall be prepared of the supervisory board meetings which are to be signed by the chairman of the meeting. The chairman of the supervisory board shall sign the records of resolutions passed outside of actual meetings pursuant to Section 11 para. 2 (*Präsenzsitzungen*).

Section 12 Rights and Duties of the Supervisory Board

- (1) The supervisory board has the rights and duties defined by mandatory legal provisions and by these statutes.
- (2) The supervisory board is supposed to issue rules of procedure for the management board in accordance with Section 8 (4).
- (3) The supervisory board is entitled to make such amendments to the statutes which only concern their wording without a resolution of the general meeting. This also applies in the cases of Section 4 para. 1 sentence 1, and paras. 4, 5, 6 and 7.

Section 13 Rules of Procedure of the Supervisory Board

The supervisory board shall issue rules of procedure for itself within the framework of applicable mandatory legal provisions and the statutes.

Section 14 Remuneration of the Supervisory Board

- (1) Each member of the supervisory board shall receive a fixed remuneration of Euro 13,000.00 per annum for every full financial year, payable after the completion of the financial year. For each full financial year, the remuneration shall increase by 10% if the dividend distributed per ordinary share for such financial year (dividend amount according to the resolution of the general meeting – gross dividend) is one percentage point higher than 3.6% of the proportionate amount per individual no-par value share of the subscribed capital; intermediate amounts shall be interpolated. If the general meeting resolves a higher remuneration in view of the results of the financial year, such new amount shall be applicable. The chairman of the supervisory board shall receive twice, his deputies one and a half times the remuneration of a supervisory board member.
- (2) For a membership in the audit committee (*Prüfungsausschuss*) and for a membership in the personnel committee (*Personalausschuss*) of the supervisory board a member shall receive an additional remuneration of Euro 10,000.00 for each membership, while the chairman of such committee shall receive twice the amount.
- (3) If a financial year does not comprise a full calendar year or if a member of the supervisory board is on the supervisory board only for part of a financial year, the remuneration shall be paid on a *pro-rata temporis* basis. This shall apply accordingly to the membership in the audit committee and in the personnel committee of the supervisory board.
- (4) The members of the supervisory board shall be reimbursed for the expenses incurred exercising their office, including applicable value-added tax. The company shall provide insurance coverage to the members of the supervisory board in an extent appropriate with regard to the exercise of the supervisory board office, and with an appropriate deductible (*angemessener Selbstbehalt*).

C. General Meeting of Shareholders

Section 15 Convening the General Meeting

- (1) The general meeting shall be convened at least 30 days prior to the day by the end of which the shareholders have to register for the general meeting.

- (2) The general meeting shall be held at the registered office of the company, or at the place of a German stock exchange, or at the registered office of a domestic associated company (*Beteiligungsgesellschaft*).

Section 16 Participation in the General Meeting

- (1) Shareholders who wish to participate in the general meeting or to exercise their voting right have to register for the general meeting and prove their eligibility. The registration and proof of eligibility must be received by the company at the address stated for this purpose in the invitation no later than on the seventh day prior to the general meeting (registration date). If the end of the period falls on a Saturday, Sunday, or a holiday recognised by statute law at the registered office of the company, the preceding working day shall be relevant for the delivery.
- (2) For the purpose of proving eligibility under para. 1, a special proof of share ownership issued by the custodian institution in text form in the German or English language is sufficient. The proof regarding shares which are not held in a collective custody account may also be issued by the company or by a bank against delivery of the shares. The proof of shareholding has to relate to the point in time as determined by the German Stock Corporation Act (*Aktiengesetz*).

Section 17 Date of the General Meeting of Shareholders

The general meeting which receives the approved annual financial statements or, as the case may be, which resolves upon the approval of the annual financial statements as well as the ratification of the actions of the management board and supervisory board (*Entlastung*), and the appropriation of profits (general meeting of shareholders) shall be held within the first six months after the completion of a financial year.

Section 18 Chairmanship of the General Meeting and Voting

- (1) The general meeting shall be chaired by the chairman of the supervisory board, and, if he is unavailable or at the request of the chairman of the supervisory board, by another member of the supervisory board which the chairman of the supervisory board determines. If no such determination was made, another member of the supervisory board to be determined by the supervisory board shall chair the meeting if the chairman of the supervisory board is unavailable.
- (2) The chairman shall chair the meeting, determine the order of items to be discussed and of the speakers as well as the manner and form of voting. The chairman may determine appropriate restrictions of the speaking time, of the question time, and of the combined speaking and question time at the beginning

or during the general meeting, regarding the discussions on individual items of the agenda, as well as for individual speaking and question contributions. He shall order the end of the debate to the extent that and as soon as this is necessary for an orderly conduct of the general meeting.

- (3) The resolutions of the general meeting shall be passed by a simple majority of votes cast unless the statutes or mandatory legal provisions do require otherwise. Unless mandatory legal provisions require otherwise, amendments of the statutes require a majority of two thirds of the votes cast or, if at least half of the subscribed capital is represented, the simple majority of votes cast. If, for the effectiveness of the passing of resolutions, mandatory legal provisions require that, in addition, a majority of the subscribed capital be represented when the resolution is passed, the simple majority of the subscribed capital represented shall be sufficient, to the extent that this is permitted by law. If the voting results in a tie a motion shall be deemed rejected.
- (4) Each ordinary share grants one vote in the general meeting. The preference shares carry no voting rights unless mandatory legal provisions provide otherwise.

IV. Annual Financial Statements and Distribution of Balance Sheet Profits

Section 19 Financial Year, Accounting

- (1) The financial year shall be the calendar year.
- (2) The management board shall prepare the financial statements and the management report for the respective previous financial year within the first three months of the financial year, however, at the latest within the maximum period set by mandatory legal provisions, and submit them to the auditors.
- (3) The supervisory board mandates the auditor for the audit.
- (4) The management board shall present the annual financial statements and the management report as well as the consolidated financial statements and the group management report to the supervisory board without undue delay after their preparation. At the same time, the management board shall submit to the supervisory board the proposal which it intends to submit to the general meeting concerning the appropriation of balance sheet profits (*Verwendung des Bilanzgewinns*).

Section 20 Appropriation of Profits

- (1) The general meeting shall resolve upon the appropriation of balance sheet profits (*Bilanzgewinn*), subject to the following paragraphs 2 through 4.
- (2) The non-voting preference shares (Section 4) shall receive a dividend from annual balance sheet profits which is Euro 0.01 per preference share higher than the dividend for the ordinary shares, however, the dividend shall amount to at least Euro 0.02 per preference share.
- (3) The minimum dividend in an amount of Euro 0.02 per preference share shall prevail over the distribution of a dividend to ordinary shares.
- (4) If the balance sheet profits of one or more financial years are not sufficient to distribute Euro 0.02 per preference share, the lacking amounts excluding interest shall be paid subsequently from the balance sheet profits of the following financial years, in each case after distribution of the minimum dividend to the preference shares for these financial years and before distributing a dividend to the ordinary shares. The right to the payment of arrears is part of the share in profits for the financial year from the balance sheet profits of which the payment of arrears on the preference shares is made.

Section 21 Formation Expenses / Benefits

- (1) The company shall bear the formation expenses (conversion costs) in connection with the formation of Fresenius AG, especially any corporate taxes, commercial register and notary fees, notification costs and the costs for the audit up to a total amount of DM 5,790.
- (2) In connection with the formation of Fresenius AG, the company shall also bear the formation expenses (costs of the capital increase) especially any corporate taxes, commercial register and notary fees, notification costs, costs for the audit (audit of contribution in kind and capital increase) and consulting fees up to a total amount of DM 433,000.
- (3) With regard to the conversion of Fresenius AG into Fresenius SE, the formation expenses up to an amount of Euro 3,000,000 shall be borne by the company.
- (4) In connection with the conversion of Fresenius AG into Fresenius SE, the following is pointed out for reasons of legal precaution:

Notwithstanding the statutory competences of the supervisory board of Fresenius SE, it is to be assumed that the acting members of the management board of Fresenius AG will be appointed members of the management board of Fresenius SE. Members of the management board of Fresenius AG are Dr. Ulf M. Schneider (chairman), Rainer Baule, Andreas Gaddum, Dr. Ben J. Lipps and Stephan Sturm.

Furthermore, the shareholders' representatives on the supervisory board of Fresenius AG are to be appointed as members of the supervisory board of Fresenius SE (see Section 9 para. 2).