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## **ARTICLES OF ASSOCIATION**

### **Fresenius SE & Co. KGaA**

#### **I.**

#### **General Provisions**

##### **Article 1**

##### **Corporate Name and Registered Office**

- (1) The Company is a partnership limited by shares (KGaA). The corporate name of the Company is

##### **Fresenius SE & Co. KGaA**

- (2) The registered office of the Company is in Bad Homburg vor der Höhe.

##### **Article 2**

##### **Corporate Purpose**

- (1) The corporate purpose of the Company is:
- a) the development, manufacture and distribution of, as well as trading in, products, systems and processes in the health care sector,
  - b) the construction, development and operation of medical and curative facilities as well as of hospitals,
  - c) consulting in the medical and pharmaceutical fields as well as scientific information and documentation.

The Company will operate directly or through associated companies (*Beteiligungsgesellschaften*) in Germany and abroad.

- (2) The Company is entitled to enter into any and all business transactions and to take

any and all measures that are deemed necessary or useful in accomplishing the corporate purpose of the Company and may, in particular, participate in other undertakings of the same or a related kind, take over the management and/or the representation of such undertakings, transfer company divisions, including major company divisions, to undertakings in which the Company holds at least a majority of the voting capital and/or a controlling interest, and establish branch offices in Germany and abroad.

### **Article 3 Notifications**

All notifications of the Company shall be published in the Federal Gazette (*Bundesanzeiger*).

## **II. Share Capital and Shares**

### **Article 4 Share Capital**

- (1) The share capital (*Grundkapital*) of the Company amounts to Euro 554,710,473.00 and is divided into 554,710,473 ordinary bearer shares.
- (2) The share capital has been paid in
  - a) in the amount of DM 100,000 against an issue of shares in the total 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 total nominal amount of DM 19,538,800 through a contribution in kind by Mrs. Else Kröner, namely through the contribution of her limited partner's interests
    - aa) in Dr. Eduard Fresenius Chemisch-pharmazeutische Industrie KG Apparatebau KG,
    - bb) in Dr. Eduard Fresenius Chemisch-pharmazeutische Industrie KG Klinikbedarf KG,

- cc) in Dr. Eduard Fresenius Chemisch-pharmazeutische Industrie KG,
- c) in the amount of DM 361,200 against an issue of shares in the total nominal amount of DM 361,200 through a contribution in kind by Mr. Detlef Kröner, namely through the contribution of his limited partner's interests
- aa) in Dr. Eduard Fresenius Chemisch-pharmazeutische Industrie KG Apparatebau KG,
  - bb) in Dr. Eduard Fresenius Chemisch-pharmazeutische Industrie KG Klinikbedarf KG,
  - cc) in Dr. Eduard Fresenius Chemisch-pharmazeutische Industrie KG,
- d) in the amount of DM 3,162,100 against an issue of shares in the total nominal amount of DM 3,162,100 through a 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 total nominal amount of DM 837,900 through a cash contribution by Mr. Hans Kröner with a premium of 195%,
- e) in the amount of DM 6,000,000 through the conversion of statutory reserves of DM 6,000,000 through the issuance of new shares with a total nominal amount of DM 6,000,000, with one new share being issued in each case for four old shares.
- (3) The share capital existing at the time of the conversion of the Company into a European Company (SE) was provided by way of the change of the legal form of the legal entity of previous legal form, Fresenius AG with registered office in Bad Homburg vor der Höhe.
- The share capital existing at the time of the conversion of the Company into a partnership limited by shares (KGaA) was provided by way of the change of the legal form of the legal entity of previous legal form, Fresenius SE with registered office in Bad Homburg vor der Höhe.
- (4) The General Partner is authorized to increase the share capital of the Company once or several times with the consent of the Supervisory Board by up to Euro 114,851,824.00 (Authorized Capital I) by the issue of new ordinary bearer shares for cash and/or contributions in kind up to May 15, 2019. The number of shares must be increased in the same proportion as the share capital. The

shareholders shall be granted, in principle, a subscription right; the subscription right can also be granted in such a way that new shares are taken up by credit institutions or companies operating according to sec. 53 para. 1 sent. 1 or sec. 53b para. 1 sent. 1 or para. 7 German Banking Act (*Kreditwesengesetz*) (financial institution) or a consortium consisting of such credit or financial institutions with the obligation to offer the shares to the shareholders for subscription.

The General Partner is, however, authorized, with the consent of the Supervisory Board, to exclude the subscription right of the shareholders in the following cases:

- insofar as it is necessary to eliminate fractional amounts;
- in the case of a capital increase for cash, if the issue price does not fall significantly below the stock exchange price of the already listed shares at the time the issue price is fixed with final effect by the General Partner, and the proportionate amount of the shares issued with exclusion of subscription rights does not exceed 10% of the share capital. The basis for the calculation of the 10% limit is the total share capital resulting from the capital increase from company funds resolved under agenda item 7 by the General Meeting on May 16, 2014. If, at the time the authorization is exercised, the total share capital is lower, this value shall be decisive. If during the period of validity of the Authorized Capital I until its utilization, other authorizations concerning the issue or the sale of the shares of the Company or the issue of rights which authorize or bind to the subscription of shares of the Company, are used and thereby the right of subscription is excluded in direct or analogous application of sec. 186 para. 3 sent. 4 Stock Corporation Act, this has to be taken into consideration with regard to the abovementioned 10% limit;
- in the case of a capital increase for contribution in kind for the purpose of acquiring a company, parts of a company or investment in a company.

The General Partner may only use the authorizations granted above concerning the exclusion of subscription rights to such an extent that the proportional amount of the total number of shares issued with exclusion of the subscription rights does not exceed 20% of the share capital., The basis for the calculation of the 20% limit is the total share capital resulting from the capital increase from company funds resolved under agenda item 7 by the General Meeting on May 16, 2014. If, at the time the authorization is exercised, the total share capital is lower, this value shall be decisive. If during the period of validity of the Authorized Capital I until its utilization,

other authorizations concerning the issue or the sale of the shares of the Company or the issue of rights which authorize or bind to the subscription of shares of the Company, are used and thereby the right of subscription is excluded, this has to be taken into consideration with regard to the abovementioned 20% limit.

The General Partner is authorized to determine the further details regarding the implementation of capital increases using the Authorized Capital I with the consent of the Supervisory Board. The Supervisory Board is authorized to amend sec. 4 para. 4 and sec. 4 para. 1 after the implementation, in whole or in part, of the increase of the share capital using the Authorized Capital I or after the expiry of the authorization period according to the amount of the capital increase from the Authorized Capital I.

- (5) The share capital of the Company is conditionally increased by up to Euro 4,735,083.00, divided into 4,735,083 shares, by the issue of new ordinary bearer shares (Conditional Capital I). The conditional capital increase will be implemented only to the extent that, in accordance with the stock option plan resolved on by the General Meeting of Fresenius AG of May 28, 2003, and taking account of the amendment resolution of the General Meeting of December 4, 2006, required due to the new division of the share capital, and of the conversion resolution of the General Meeting of May 12, 2010, convertible bonds have been issued and the holders of these convertible bonds exercise their right of conversion. The new ordinary bearer shares are entitled to profit participation from the beginning of the financial year in which they are issued.
- (6) The share capital of the Company is conditionally increased by up to Euro 5,141,264.00, divided into 5,141,264 shares, by the issue of new ordinary bearer shares (Conditional Capital II). The conditional capital increase will be implemented only to the extent that, in accordance with the Stock Option Plan 2008 resolved on by the General Meeting of May 21, 2008, and taking account of the conversion resolution of the General Meeting of May 12, 2010, subscription rights have been issued or will be issued and the holders of these subscription rights exercise their rights, and the Company grants no own shares to satisfy the subscription rights nor exercises its right to cash compensation, whereas the General Partner's Supervisory Board shall be exclusively competent regarding the granting and settlement of subscription rights to members of the General Partner's Management Board. The new ordinary bearer shares are entitled to profit participation from the beginning of the financial year in which they are issued.
- (7) The share capital of the Company is conditionally increased by up to

Euro 48,971,202.00 through issuing of up to 48,971,202 new ordinary bearer shares (Conditional Capital III). The conditional capital increase will only be implemented to the extent that the holders of convertible bonds issued for cash or of warrants from option bonds issued for cash by Fresenius SE & Co. KGaA or an affiliated company up until May 15, 2019, on the basis of the authorization granted to the general partner by the General Meeting of May 16, 2014, exercise their conversion or option rights and as long as no other forms of settlement are used. The new ordinary bearer shares shall participate in the profits from the start of the financial year in which they are issued.

The general partner is authorized to determine the further details regarding the implementation of the conditional capital increase with the consent of the Supervisory Board. The Supervisory Board is authorized to amend the version of Article 4 para (7) of the Articles of Association in accordance with the utilization of the Conditional Capital III from time to time. The same applies if the authorization to issue convertible/option bonds is not exercised after the end of the authorization period and if the Conditional Capital III is not utilized after the expiry of all conversion and option periods.

- (8) The share capital of the Company is conditionally increased by up to Euro 24,928,200.00 by the issuance of up to 24,928,200 new ordinary bearer shares (Conditional Capital IV). The conditional capital increase will only be implemented to the extent that subscription rights have been or will be issued in accordance with the Stock Option Program 2013 as resolved by the General Meeting on May 17, 2013 and – if applicable – as amended by the General Meetings on May 16, 2014 and on May 12, 2017, the holders of subscription rights exercise their rights and the Company does not grant treasury shares to satisfy the subscription rights, whereas the General Partner's Supervisory Board shall be exclusively competent regarding the granting and settlement of subscription rights to members of the General Partner's Management Board.
- (9) In case of a capital increase, participation in profits (*Gewinnbeteiligung*) may be determined in derogation of sec. 60 German Stock Corporation Act (AktG).

## **Article 5 Shares**

- (1) The shares are no-par value bearer shares.
- (2) The Company is entitled to issue share certificates made out to the bearer, each evidencing a plurality of shares (collective share certificates). The shareholders' right to have their individual shares represented by certificates is excluded, unless a share certificate is required under the rules applicable at a stock exchange to which the shares are admitted.
- (3) The form of the share certificates and of the dividend coupons and renewal coupons shall be determined by the General Partner with the approval of the Supervisory Board.

## **III. Constitution of the Company**

### **A. General Partner**

## **Article 6 General Partner, Special Contribution, Legal Relationships, Resignation**

- (1) The General Partner of the Company is

### **Fresenius Management SE**

with registered office in Bad Homburg vor der Höhe.

- (2) The General Partner has not made a special contribution (*Sondereinlage*). It shall participate neither in the profit or the loss of the Company nor in its assets.
- (3) (a) The General Partner is excluded from the Company if and as soon as all shares in the General Partner are no longer held directly or indirectly by a person holding more than 10% of the share capital of the Company, directly or indirectly via a controlled enterprise within the meaning of sec. 17 German Stock Corporation Act (AktG); this will not apply if and when all shares in the General Partner are held directly or indirectly by the Company.

- (b) Additionally, the General Partner is excluded from the Company if the shares in the General Partner are acquired by a person who does not, within twelve months after such acquisition takes effect, submit a takeover bid or a compulsory bid to the shareholders of the Company pursuant to the rules of the German Securities Acquisition and Takeover Act (WpÜG) according to the following stipulations.

The consideration offered to the other shareholders must take account of a payment made by the acquirer to the direct or indirect holder of the shares in the General Partner for the acquisition of the shares in the General Partner and the Company in excess of the sum of the General Partner's equity and of the average stock exchange price of the shares in the Company being acquired, during the last five stock exchange trading days before the day of the conclusion of the agreement on the acquisition of the shares in the General Partner (calculated on the basis of the average final quotations in the XETRA trading system or a comparable successor system) in the following amount:

Payment multiplied by [(50 minus quota) divided by quota].

For the purposes of these stipulations, a "quota" shall mean the quota of the participation expressed in percent held by the direct or indirect holder of the shares in the General Partner directly or indirectly in the share capital of the Company at the time of the conclusion of the agreement on the acquisition of the shares in the General Partner.

- (c) Any obligation of the acquirer of the shares in the Company and of the shares in the General Partner to submit a takeover bid or a compulsory bid to the shareholders of Fresenius Medical Care AG & Co. KGaA shall remain unaffected.
- (d) The other statutory grounds for withdrawal of the General Partner remain unaffected.
- (4) If the General Partner leaves the Company or if such leave is foreseeable, the Supervisory Board is authorized and obliged to admit promptly, or at the time of the leave of the General Partner, as the case may be, as new General Partner of the Company a corporation whose shares are fully owned by the Company. If the General Partner leaves the Company without any General Partner being admitted at



the same time, the Company shall for a transitional period be continued by the limited shareholders alone. In such case, the Supervisory Board shall promptly apply for the appointment of a substitute representative who will represent the Company until the admission of a new General Partner according to sentence 1 of this paragraph, in particular with respect to the acquisition or formation of such new General Partner.

The Supervisory Board is authorized to amend the version of the Articles of Association so as to reflect the change of the General Partner.

- (5) In case the Company is continued pursuant to Article 6 para. 4 of the Articles of Association or in case all shares in the General Partner are held directly or indirectly by the Company, an extraordinary General Meeting or the next Ordinary General Meeting shall decide on the change of the legal form of the Company into a European Company (SE), if legally admissible, and otherwise into a stock corporation. The resolution with respect to such change of the legal form can be taken by simple majority of the votes cast. The General Partner is obliged to consent to such resolution on the change of the legal form adopted by the General Meeting.

## **Article 7**

### **Management and Representation of the Company, Reimbursement of Expenses and Remuneration**

- (1) The Company shall be represented by its General Partner. Vis-à-vis the General Partner the Company shall be represented by the Supervisory Board.
- (2) The General Partner shall be responsible for the management of the Company. The General Partner's management competence also encompasses exceptional management measures. The shareholders' right to consent to exceptional management measures at the General Meeting is excluded.
- (3) The General Partner shall be reimbursed for any and all expenses in connection with the management of the Company's business, which includes remuneration of the members of its corporate bodies. The General Partner shall, in principle, invoice its expenses monthly; it is entitled to claim payment in advance.
- (4) As consideration for assuming the management of the Company and the liability, the General Partner shall receive from the Company an annual remuneration of 4% of its share capital that shall be independent of a profit or loss.

- (5) The General Partner is not authorized to undertake transactions for its own or for another's account outside the scope of its responsibilities within the Company.

**B.**  
**Supervisory Board**

**Article 8**  
**Election and Term of Office of the Supervisory Board**

- (1) The Supervisory Board shall consist of twelve members, unless a different number of members is required by mandatory legal provisions.
- (2) Half of the members of the Supervisory Board shall be elected by the General Meeting according to the provisions of the German Stock Corporation Act. The other half of the members of the Supervisory Board shall be elected by the employees.
- (3) Unless expressly otherwise resolved by the General Meeting, the Supervisory Board members shall be appointed for a term ending with the close of the Ordinary General Meeting which resolves on the ratification of actions for the fourth financial year after the term of office commenced. The year in which the term of office commences shall not count for this calculation. The reappointment of Supervisory Board members shall be permissible.
- (4) If a member elected 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 elected in the next General Meeting in his place. The newly elected member shall hold office for the withdrawing member's remaining term of office.
- (5) The General Meeting may, for the Supervisory Board members to be elected by it, appoint substitute members who will become members of the Supervisory Board in a specific order to be determined at the time of their appointment, if Supervisory Board members cease to be members before the end of their term of office. Their position as substitute members shall revive if and when the General Meeting appoints a new member for a former member of the Supervisory Board replaced by such substitute member. The substitute member's term of office is limited to the period until the close of the General Meeting at which an election according to Article 8 para. 4 takes place.

- (6) Each member of the Supervisory Board may resign from office, even without good cause, by giving one month's written notice to the Chairman of the Supervisory Board. The Chairman of the Supervisory Board shall give notice of his resignation to one of his deputies.

### **Article 9** **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 deputies from among its members for the duration of their term of office on the Supervisory Board.
- (2) If the Chairman or one of his deputies should cease to hold office before the expiry of his term of office, the Supervisory Board shall promptly (*unverzüglich*) hold a new election to replace the former member.
- (3) The election of the Chairman of the Supervisory Board shall be chaired by the oldest member in terms of age among the shareholder representatives on the Supervisory Board; Article 10 para. 5 sentence 2 shall apply.

### **Article 10** **Meetings and Resolutions of the Supervisory Board**

- (1) The meetings of the Supervisory Board must be convened by the Chairman in writing subject to a notice period of 14 days. The individual items of the agenda must be stated in the invitation to the meeting. In urgent cases, the period may be shortened and the meeting may be convened by telegram, telex, telefax, other means of electronic communication (e-mail etc.) or telephone.
- (2) As a rule, resolutions of the Supervisory Board shall be adopted in meetings personally attended by the members. It is, however, permissible that meetings of the Supervisory Board be held by way of a video or telephone conference, or that individual Supervisory Board members participate by means of video transmission or telephone and that in such cases the passing of resolutions or voting takes place by way of video or telephone conference or video transmission or telephone, respectively. Outside of meetings, resolutions in text form (sec. 126b BGB, especially in writing, by telegraph, telex, telefax, other means of electric communication (e-mail etc.)) or by telephone are admissible if the Chairman of the Supervisory Board

or, in the event of his being unavailable, his deputy directs to do so.

- (3) The Supervisory Board shall constitute a quorum if half of the total number of members of which it must consist take part in the voting. If the number of Supervisory Board members representing the shareholders who take part in voting is not the same as the number of Supervisory Board members representing the employees who take part in voting, or if the Chairman of the Supervisory Board does not take part, the voting shall, upon motion of at least two members of the Supervisory Board, be postponed. Article 10 para. 1 shall apply to the new voting; however it can also be held on the same day if so directed by the Chairman of the Supervisory Board.
- (4) If members of the Supervisory Board are unable to attend meetings, they may have another member of the Supervisory Board submit their written vote. The submission of a written vote shall be deemed to be participation in the passing of the resolution.
- (5) Resolutions of the Supervisory Board shall require the majority of the votes cast. In the event of a tie, the vote of the Chairman of the Supervisory Board or, if he does not attend, the vote of the Deputy Chairman, provided he is a shareholder representative, shall be decisive. A deputy who is an employee representative shall not have the right to a casting vote. Article 10 para. 5 sentence 2 of the Articles of Association shall also apply 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 of the meeting of the Supervisory Board shall be prepared and shall be signed by the Chairman of the meeting. The Chairman of the Supervisory Board must sign the records of resolutions adopted outside a meeting by personal attendance pursuant to Article 10 para. 2.

## **Article 11**

### **Rights and Duties of the Supervisory Board**

- (1) The Supervisory Board has the rights and duties defined by mandatory legal provisions and by these Articles of Association.
- (2) The Supervisory Board must supervise the management of the General Partner. The Supervisory Board can inspect and audit all books and records as well as the assets of the Company.

- (3) The General Partner shall regularly report to the Supervisory Board. In addition, the Supervisory Board may request the submission of a report if and when there is an important reason for this, also if this relates to a business transaction at an affiliated undertaking which has become known to the General Partner and may substantially affect the situation of the Company.
- (4) If the Company holds a participation in its General Partner, all rights of the Company under and with respect to this participation (e.g. voting rights, information rights etc.) will be exercised by the Supervisory Board.
- (5) The Supervisory Board is entitled, without a resolution of the General Meeting, to make any amendments to the Articles of Association which concern only their wording.

#### **Article 12**

##### **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 Articles of Association.

#### **Article 13**

##### **Remuneration of Supervisory Board Members**

- (1) Each member of the Supervisory Board shall as fixed remuneration receive an amount of Euro 150,000.00 annually for each full fiscal year, payable after the end of the fiscal year.
- (2) Each member of the Supervisory Board shall in addition receive variable success-oriented remuneration for each full fiscal year that is oriented on the respective average growth rate of Group net income for the remuneration year and the two preceding fiscal years (3-year average growth of Group net income). The calculation of the amount of this variable remuneration shall be made in accordance with the following formula:

3-year average growth of Group net income (in %)	Amount variable remuneration (in Euro)
> 0 to 2.5	30,000.00
> 2.5 to 5	60,000.00

> 5 to 7.5	90,000.00
> 7.5 to 10	120,000.00
> 10	150,000.00

A claim to grant variable remuneration shall only accrue from the achievement of 3-year annual growth of Group net income of more than 0%. On the achievement of the five percentage corridors described above, the amounts of variable remuneration shall each be provided in full i.e. no interpolation shall take place within these corridors (e.g. 2.0% = Euro 30,000.00; 9.9% = Euro 120,000.00). The Group net income disclosed in the consolidated annual financial statements shall be authoritative in each case.

The variable remuneration in accordance with this article 13 para. (2) is limited to a maximum amount of Euro 150,000.00 p. a.

The disbursement of variable remuneration in accordance with this article 13 para. (2) shall generally be made annually, provided targets have been reached and in each case at the end of the calendar quarter in which the annual financial statements of the Company are approved.

- (3) If the General Meeting approves a resolution providing higher remuneration, this shall apply.
- (4) The Chairman of the Supervisory Board receives three times, his deputies one and a half times the fixed remuneration of a member of the Supervisory Board according to Article 13 para. (1).
- (5) A member of the Audit Committee ("Prüfungsausschuss") of the Supervisory Board shall for their membership receive additional fixed remuneration of Euro 20,000.00 and the Chairman of the Audit Committee twice this amount.
- (6) If a financial year does not encompass a full calendar year or if a member of the Supervisory Board is on the Supervisory Board only for a part of the financial year, the remuneration shall be paid on a pro rata temporis basis. This applies accordingly to membership of the Audit Committee of the Supervisory Board.
- (7) The members of the Supervisory Board shall be refunded expenses incurred when exercising their functions, which also includes applicable value added tax due for payment.

- (8) The Company shall provide members of the Supervisory Board with insurance cover to an appropriate extent for exercising Supervisory Board activities.
- (9) If a member of the Supervisory Board is at the same time a member of the Supervisory Board of the General Partner, Fresenius Management SE, and receives remuneration for his services on the Supervisory Board of Fresenius Management SE, remuneration pursuant to Article 13 para. (1) and para. (2) shall be reduced by half. The same applies with respect to the additional part of remuneration for the Chairman according to Article 13 para. (4), provided they are simultaneously the Chairman of the Supervisory Board of Fresenius Management SE; this applies to his deputies accordingly, provided the deputies are at the same time the deputies of the Chairman of the Supervisory Board of Fresenius Management SE. If a deputy of the Chairman of the Supervisory Board of the Company is at the same time the Chairman of the Supervisory Board of Fresenius Management SE, Article 13 para. (4) shall not apply.

### **C.**

#### **Joint Committee**

##### **Article 13a**

#### **Joint Committee**

The Company has a Joint Committee consisting of two members of the Supervisory Board of the General Partner, delegated by the General Partner and of two members of the Supervisory Board of the Company (Joint Committee). The General Partner shall appoint one of its delegates to be the chairman of the Joint Committee.

##### **Article 13b**

#### **Appointment and Period of Office of the Members of the Joint Committee**

- (1) Sec. 103 para. 2 Stock Corporation Act shall apply accordingly to the members of the Joint Committee to be delegated by the General Partner.
- (2) The members of the Supervisory Board of the Company on the Joint Committee will be appointed by resolution of the General Meeting. For the appointment to, and removal from, the Joint Committee of members of the Company's Supervisory Board, the provisions on the election and removal of members of the Supervisory Board in secs. 103 para. 1 and 5, 124 para. 3 ss. 1 and 4, 127, 137, 285 para. 1 sent. 2 no. 1 Stock Corporation Act apply accordingly. If a member of the Supervisory Board of

the Company on the Joint Committee leaves the Joint Committee prior to the expiry of his period of office and no replacement member is appointed, the Supervisory Board of the Company shall appoint a replacement member from among its members, whose period of office will end at the end of the next Ordinary General Meeting of the Company.

- (3) Sec. 103 para. 3 ss. 1 and 4 Stock Corporation Act applies accordingly to the members of the Joint Committee. The Joint Committee shall decide on resolutions with a simple majority.
- (4) The provisions of sec. 8 paras. 3 to 6 shall apply to the election and periods of office of the members of the Joint Committee unless otherwise provided in paras. 1 and 2.

### **Article 13c**

#### **Rights and Duties of the Joint Committee**

- (1) The General Partner requires the consent of the Joint Committee for the following matters:
  - (a) transactions between the Company and affiliated companies of the Fresenius Group – with the exception of Fresenius Medical Care AG & Co. KGaA and its affiliated companies – on the one hand and the Else Kröner-Fresenius-Foundation on the other hand, if essential importance is attributed to them and the value of the transaction in a particular case or – in the case of continuing obligations – the annual expense exceeds 0.25% of the consolidated sales. The consolidated sales as shown in the consolidated financial statements of the Company presented most recently to the General Meeting according to secs. 278 para. 3, 176 para. 1 sent. 1 Stock Corporation Act is decisive.
  - (b) the acquisition and sale of significant participations in and parts of companies;
  - (c) the spin-off of significant parts of the business from the assets of the Company or of a business in which the Company directly or indirectly holds all the shares;
  - (d) mergers in part which refer to significant parts of the business;



- (e) conclusion of inter-company agreements between a significant business controlled by the Company and a third party;
- (f) conclusion of leases of operations and transfer of possession agreements with third parties insofar as the subject matter of the lease or the transfer of possession is a significant part of the business;
- (g) initial public offering of a significant business controlled by the Company;
- (h) conclusion of profit-sharing agreements between a third party and a significant business controlled by the Company.

The Joint Committee is not competent, however, for matters decided by the Joint Committee of Fresenius Medical Care AG & Co. KGaA according to sec. 13c of its articles of association.

- (2) Matters referred to in para. (1) b) to h) are significant if 40% of the consolidated sales, the consolidated balance-sheet total and the consolidated profit (earnings before interest and taxes/EBIT) are affected by the matter. The degree of significance of each matter shall be determined on the basis of the mathematical average of the said figures in the consolidated financial statements of the Company that have been audited without qualification by the auditors in the previous three financial years.
- (3) The competences and rights of the General Meeting under statute and the articles of association remain unaffected.

#### **Article 13d** **Meetings and Resolutions of the Joint Committee**

- (1) Meetings of the Joint Committee will be called by its chairman stating the matter which is to be the subject of the resolution.
- (2) The chairman of the Joint Committee shall submit, together with the invitation, but at the latest by the third day prior to the meeting of the Joint Committee, a report of the General Partner on the matters which are to be the subject matter of the resolutions. The report shall conclude with a draft resolution of the General Partner.

- (3) Every member of the Joint Committee may demand from the General Partner information on all affairs of the Company which are to be the subject matter of the resolutions. At the request of two members of the Joint Committee, the members of the Joint Committee shall be enabled to inspect the books and documents of the Company if and to the extent these are related to the subject matter of the resolution in any way.
- (4) The Joint Committee has a quorum if at least three members participate in the adoption of resolutions. If a resolution is not passed because of the lack of a quorum, the chairman of the Joint Committee shall again call a meeting of the Joint Committee with notice of at least one week, which shall have a quorum if at least two members participate in the adoption of the resolution. The Joint Committee shall decide by a majority of the votes. Each member of the Joint Committee shall have one vote. In the case of a tie, a new vote on the same subject shall be taken at the request of the chairman or another member of the Joint Committee. In that vote, if there is again a tie, the chairman of the Joint Committee shall have two votes.
- (5) Sec. 10 of the articles of association shall apply accordingly to the meetings and the resolutions of the Joint Committee unless otherwise provided in paras. (1) to (4).

**Article 13e**  
**Rules of Procedure, Report, Compensation**

- (1) Subject to mandatory statutory provisions and the articles of association of the Company, the Joint Committee may adopt rules of procedure which will, in particular, take account of the interests of the non-German speaking members of the Joint Committee.
- (2) If the Joint Committee has met, it shall report to the General Meeting on its activities. Sec. 171 para. 2 ss. 1 and 2 (first half sentence) Stock Corporation Act and sec. 176 para. 1 sent. 1 Stock Corporation Act shall apply mutatis mutandis. It shall be disclosed in the report if any resolutions are passed by the exercise of the second vote of the chairman of the Joint Committee.
- (3) The members of the Joint Committee shall receive an attendance fee of Euro 3,000.00. The provisions of Article 13 paras. (7) and (8) of the Articles of Association apply accordingly.

### **Article 13f**

#### **Duty of Care and Responsibility of the Members of the Joint Committee**

Sec. 116 Stock Corporation Act applies mutatis mutandis to the members of the Joint Committee.

### **D.**

#### **General Meeting**

### **Article 14**

#### **Convening the General Meeting**

- (1) Unless a shorter period is allowed by law, the General Meeting shall be convened at least 30 days prior to the day of the General Meeting. This convocation period shall be extended by the number of days of the registration period. The day of the General Meeting and the day on which the meeting is convened shall not count for this purpose.
- (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*).

### **Article 15**

#### **Participation in the General Meeting**

- (1) Shareholders who wish to participate in the General Meeting or to exercise their voting right must 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 six days prior to the General Meeting. A shorter period to be expressed in days can be fixed in the invitation. The day of the General Meeting and the day of receipt shall not count for this purpose. Shareholders must register in text form (Sec. 126b BGB) and in German or English.
- (2) For the purpose of proving eligibility under Article 15 para. 1, special proof of ownership issued by the custodian institution in text form in the German or English language shall suffice. The proof regarding shares that are not held in a collective custody account may also be issued by the Company or a credit institution against delivery of the shares. The proof of ownership must relate to the point in time

determined by the German Stock Corporation Act for this purpose.

- (3) The members of the General Partner's Management Board and of the Supervisory Board of the Company are to participate personally in the General Meeting. If a member of the Supervisory Board is not able to attend at the place of the General Meeting, he can also participate in the General Meeting by way of video and audio transmission.
- (4) The voting right can be exercised by proxy. The power of attorney must be granted or revoked and proof of such authority must be provided to the Company in text form; sec. 135 German Stock Corporation Act shall remain unaffected. The formal requirements may be eased in the invitation to the General Meeting.
- (5) The General Partner is authorized to provide for shareholders to be allowed to cast their votes also without attending the meeting, in writing or by way of electronic communication (postal voting). The General Partner is also authorized to make procedural rules for this purpose.

#### **Article 16**

##### **Date of the Ordinary General Meeting**

The General Meeting which resolves on the formal approval of the annual financial statements as well as the ratification of the actions of the General Partner and of the Supervisory Board (*Entlastung*) and on the appropriation of profits (Ordinary General Meeting) shall be held within the first eight months of a financial year.

#### **Article 17**

##### **Chairmanship of the General Meeting and Voting**

- (1) The General Meeting shall be chaired by the Chairman of the Supervisory Board or, if he is unavailable or at the request of the Chairman of the Supervisory Board, by another member of the Supervisory Board whom the Chairman of the Supervisory Board shall appoint. If no such appointment is 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 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 simple majority of the votes cast unless mandatory provisions of the law or of the Articles of Association require a greater majority. In cases where the law prescribes – in a non-mandatory form – a particular majority of the share capital represented during the passing of the resolution, the simple majority of the represented share capital shall suffice. If the voting results in a tie, a motion shall be deemed rejected.
- (4) Each ordinary share grants one vote in the General Meeting.
- (5) The General Partner as well as the Chairman during the General Meeting may determine that the General Meeting should be partly or completely broadcast by video and/or audio transmission. The transmission can also be effected in any other way which provides unrestricted access to the general public.
- (6) Resolutions of the General Meeting require the approval of the General Partner to the extent the approval of the general partners and the limited partners would be required in case of a limited partnership. Where a resolution of the General Meeting requires the approval of the General Partner, the General Partner shall declare at the General Meeting whether it approves or rejects the resolution.

#### **IV.**

### **Annual Financial Statements and Appropriation of Profits**

#### **Article 18**

#### **Financial Year, Accounting**

- (1) The financial year shall be the calendar year.
- (2) The General Partner shall prepare the annual financial statements and the management report for the respective previous financial year within the first three months of the financial year, however no later than within the maximum period set by mandatory legal provisions, and submit them to the auditors. In preparing the

financial statements, the General Partner can transfer a part of the annual profit not exceeding half of the profit to other profit reserves.

- (3) The Supervisory Board mandates the auditor for the audit. The General Partner shall be given an opportunity to comment prior to the submission of the auditor's audit report to the Supervisory Board.
- (4) At the same time as the submission of the annual financial statements and the management report as well as the consolidated financial statements and the group management report, the General Partner shall submit to the Supervisory Board its proposal for the appropriation of the distributable profit.
- (5) The annual financial statements shall be formally approved by resolution of the General Meeting with the consent of the General Partner.
- (6) Article 18 para. 2 and para. 3 shall apply analogously to the consolidated financial statements and a group management report if sec. 170 para. 1 sentence 2 German Stock Corporation Act is applicable to the Company as a parent company.

## **Article 19** **Appropriation of Profits**

The General Meeting shall resolve on the appropriation of the distributable profit.

## **V.** **Miscellaneous**

### **Article 20** **Severability**

Should any of the provisions of these Articles of Association entirely or partly be or later become ineffective, or should these Articles of Association turn out to contain a gap, the validity of the remaining provisions shall not be affected thereby. The parties shall replace any such ineffective provision by, or fill any such gap with, a reasonable provision which to the extent legally possible comes closest to the intent and purpose of the Articles of Association.

**Article 21**  
**Formation Expenses**

- (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 notarial fees, notification costs and the costs for the conversion 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 notarial fees, notification costs, costs for the formation audit (audit of contributions 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 SE into Fresenius SE & Co. KGaA, the Company shall bear the formation expenses up to a total amount of up to Euro 7,000,000.