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## MAN Aktiengesellschaft

Munich

**Certification in accordance with article 37 (6) of Council  
Regulation (EC) 2157/2001 of the planned change of legal  
form of MAN AG, Munich, to a European stock corporation  
(SE)**

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**Annex [Not included with this translation]**

No.

Pages

General Engagement Terms for Wirtschaftsprüfer and Wirtschaftsprüfungsgesellschaften  
(German Public Auditors and Public Audit Firms) as of January 1, 2002

## **I. Engagement and conduct of the engagement**

At the request of the Executive Board of

### **MAN Aktiengesellschaft, Munich**

(hereinafter also referred to as "MAN AG" or "Company")

the *Landgericht I* (Regional Court) in Munich appointed us by court order (file name: 5 HK O 863/09) of January 19, 2009 as an independent expert to prepare a certificate pursuant to article 37 (6) of Council Regulation (EC) No. 2157/2001 of October 8, 2001 (hereinafter referred to as the SE Council Regulation).

The certificate is required because the Company intends to change its legal form to that of a European stock corporation (SE), in accordance with article 2 (4) of the SE Council Regulation. The Annual General Meeting of the Company is to pass a resolution regarding this change of legal form on April 3, 2009.

Pursuant to article 37 (6) of the SE Council Regulation, an independent expert has to certify in accordance with the Second Council Directive 77/91/EEC of December 13, 1976 that the net assets of the Company are at least equivalent to its share capital plus those reserves which, by act of law or the Articles of Incorporation, may not be distributed.

We conducted the audit in January and February 2009.

We were provided with the following material in particular as a basis for information:

- The financial plans of the MAN Group, of which MAN AG is the holding company (November 18, 2009)
- The annual financial statements and consolidated financial statements of MAN AG for the year ending December 31, 2008 issued with an unqualified opinion by KPMG AG Wirtschaftsprüfungsgesellschaft (KPMG)
- Published annual financial statements of MAN AG for the years ending December 31, 2007 and December 31, 2006
- Articles of Incorporation/Bylaws of MAN AG as amended on May 10, 2007

- Excerpt from the commercial register of MAN AG dated January 26, 2009
- Draft Articles of Incorporation of MAN SE dated February 9, 2009
- Draft Terms of Conversion dated February 9, 2009 and Draft Report on MAN AG's change of legal form to an SE dated February 17, 2009

Furthermore, we were willingly furnished with information by the informants whose names were provided to us by the client.

Our audit is based on the documents provided to us for this purpose. We have critically reviewed these documents but did not perform an audit in the sense of a legal audit of the annual financial statements. In line with the standards of professional conduct, we limited the individual auditing procedures to the extent necessary.

In accordance with professional practice, the Executive Board of the Company confirmed to us in a letter of representation that all the information furnished which was necessary for our audit was accurate and complete.

The General Engagement Terms for Wirtschaftsprüfer and Wirtschaftsprüfungsgesellschaften (German Public Auditors and Public Audit Firms) as of January 1, 2002 (a copy of which was included as an **Annex** to the original German version of this certification report) govern the conduct of this engagement and our responsibility, including our dealings with third parties. This report is exclusively intended for the purpose of information of the corporate bodies of MAN AG, for the purpose of submission to the shareholders in the course of the Annual General Meeting on April 3, 2009, in connection with the resolution regarding the legal change of form of the Company into an SE, as well as for the purpose of submission to the commercial register court. Any further distribution to third parties is only permissible with the prior consent of PKF Industrie- und Verkehrstreuhand GmbH Wirtschaftsprüfungsgesellschaft.

## II. Legal and economic situation

The Company is entered in the commercial register under HRB No. 78706, with the *Amtsgericht* (Local Court) in Munich under the company name "MAN Aktiengesellschaft" and has its headquarters in Munich.

The share capital currently amounts to €376,422,400 and is divided into 147,040,000 no-par value bearer shares. Of these, 140,974,350 are common shares and 6,065,650 preferred shares. 70.1% of the shares are in free float and traded on all German stock exchanges.

In accordance with article 4 (3) of the Articles of Incorporation/Bylaws of MAN AG, the Executive Board is authorized to increase the share capital, with the consent of the Supervisory Board, by up to €188,211,200 by issuing bearer shares of common stock on one or more occasions against cash contributions and/or noncash contributions in the period up to June 2, 2010 (Authorized Capital 2005). So far, this authorization has not been utilized by the Executive Board.

This provision is being adopted in the new Articles of Incorporation of MAN SE, as can be seen under article 4 (4). The Executive Board is also authorized in article 4 (4) of the new Articles of Incorporation of MAN SE, with the consent of the Supervisory Board, to disapply stockholders' subscription rights for up to €4,000,000 of Authorized Capital 2005 and to issue new shares against cash contributions to executives with managerial responsibility (managers) of the Company and/or affiliated Group companies. Provision can be made to ensure that the required contributions are covered according to the conditions of section 204 (3) *Aktiengesetz* (AktG – German Stock Corporation Act).

In addition, in accordance with article 4 (4) of the Articles of Incorporation/Bylaws of MAN AG, the share capital has been contingently increased by up to €76,800,000, composed of up to 30,000,000 bearer shares of common stock (Contingent Capital 2005). The contingent capital increase will only be implemented to the extent that the holders of conversion rights or options under bonds issued for cash consideration by MAN AG or its Group companies exercise their conversion rights or options. The rule stipulating that new stock will be entitled for dividend for the first time in the year of issuance has been adopted in the new Articles of Incorporation of MAN SE under article 4 (5).

If MAN AG makes use of Authorized Capital 2005 and/or Contingent Capital 2005 before its change of legal form to an SE, this will reduce the relevant limits authorized for the share capital increase in accordance with article 4 (4) and (5) of MAN SE's Articles of Incorporation and increase the share capital figure and the numbers of shares specified under article 4 (1) and (3) of MAN SE's Articles of Incorporation accordingly. Any capitalization measures resolved by the Annual General Meeting before the time of the change of legal form shall apply equally to MAN SE. The same shall also apply in the case that the Company buys back its own stock.

The fiscal year corresponds to the calendar year.

The company's corporate bodies are the Executive Board, the Supervisory Board and the Annual General Meeting.

The Articles of Incorporation/Bylaws of MAN AG, last amended on May 10, 2007, provide the legal basis. According to them, the Company's purpose is:

- to hold equity interests in enterprises of any type, including (without being limited to) mechanical and plant engineering, motor vehicle and engine manufacturing as well as trading companies;
- to manufacture such products and process materials of any kind.

In pursuit of this corporate objective, MAN AG, as the holding company of the MAN Group, supplies trucks, buses, diesel engines and turbo machinery. Approximately 51,000 employees work for the Company worldwide.

The balance sheet of MAN AG for the year ending December 31, 2008, which is part of the annual financial statements bearing the unqualified auditors' opinion can be summarized as follows (figures in € thousand):

MAN AG – Balance Sheet (HGB)			
Assets		Equity and Liabilities	
Intangible fixed assets	3,037	Equity	2,419,789
Tangible fixed assets	2,101		
Long-term financial assets	2,940,789		
<i>Fixed assets</i>	<u>                    </u>	Provisions	420,751
	2,945,927	<i>of which pension provisions</i>	23,267
Receivables and other assets	197,169	<i>of which other provisions</i>	397,475
Securities	301		
Cash and cash equivalents	3,005,669		
<i>Current assets</i>	<u>                    </u>	Liabilities	3,311,660
	3,203,139		
Prepaid expenses	3,134		
<b>Total assets / Total equity and liabilities</b>	<b>6,152,200</b>		<b>6,152,200</b>

Almost half of the assets are accounted for by cash and cash equivalents, of which approximately 69% relate to receivables from affiliated companies due to central Group financing.

In accordance with the holding function of MAN AG, the long-term financial assets of the Company represent around 48% of total assets. The item mainly includes shares in affiliated companies of €1,429,423 and other long-term equity investments of €1,406,869.

95% of liabilities are accounted for by financial liabilities. 85% of these are also due to central Group financing.

The change in MAN AG's earnings is mainly impacted by income from long-term equity investments and can be summarized for 2006 till 2008 (figures in € thousand) as follows:

MAN AG (HGB)	2006	2007	2008
Result from ordinary activities	502,662	875,906	860,896
Net income for the year	334,080	497,176	667,046

### III. Nature and extent of the audit

MAN AG, which has its headquarters in Munich, is to change its legal form to an SE, in accordance with article 2 (4) of the SE Council Regulation. The change of legal form, according to article 37 (2) and (3) of the SE Council Regulation will not lead to a dissolution of the company, the formation of a new legal entity or relocation of the headquarters.

The registration of the change of legal form to an SE requires, among other things, that the net assets of the company are at least equivalent to its capital plus those reserves which by act of law or the Articles of Incorporation may not be distributed (article 37 (6) of the SE Council Regulation). In accordance with article 37 (6) of the SE Council Regulation, an independent expert has to issue a certificate attesting to the required capital coverage. Pursuant to articles 10 and 15 (1) of the SE Council Regulation, the provisions in the *Umwandlungsgesetz* (UmwG – German Reorganization and Transformation Act) generally apply, especially sections 190 et seq. of the UmwG and sections 23 et seq. of the AktG.

With regard to the certification of the capital coverage, article 37 (6) of the SE Council Regulation refers to the Second Council Directive (77/91/EEC) dated December 13, 1976). According to article 10 (2) of the Second Council Directive, the report of the independent expert must include a description of each capital contribution, the measurement method used and state whether the amounts resulting from this method correspond at least to the number or par value, or – if a par value is not available – the notional value and, where applicable, the total share premium amount.

In accordance with article 7 of the Second Council Directive, it is necessary to take into account when calculating the net assets that the capital may only comprise assets whose economic value is ascertainable (see also article 27 (2) of the AktG).

Based on the term “net assets” used in article 37 (6) of the SE Council Regulation, it follows that the assets must be measured individually in order to calculate the net assets for the certificate. However, since the entire company is being examined, the net assets to be certified can also be measured collectively. Consequently, in addition to examination of the individual amounts, we have also looked at the collective amounts by determining the capitalized income of MAN AG, in order to establish whether the capital and the reserves that may not be distributed are covered.

#### IV. Checking the capital coverage

##### 1. Equity as defined by article 37 (6) of the SE Council Regulation

The reported equity as of December 31, 2008 which is presented above in the amount of €2,419,789 can be broken down as follows (figures in € thousand):

MAN AG – Equity (HGB)	December 31, 2008
Subscribed capital	376,422
Capital reserves	794,897
Revenue reserve	914,000
Net retained profits	<u>334,470</u>
Total equity	<u><u>2,419,789</u></u>

MAN AG's share capital is reported under the subscribed capital item and amounted to €376,422.400 as of December 31, 2008.

In addition, it was only the capital reserves pursuant to section 272 (2) of the *Handelsgesetzbuch* (HGB – German Commercial Code) in the amount of €794,897 that were not distributable as of December 31, 2008 owing to statutory regulations (section 150 AktG).

Given the amount of the capital reserves, it is not necessary to recognize legal reserves pursuant to section 150 of the AktG.

The Articles of Incorporation/Bylaws of MAN AG does not stipulate the recognition of reserves with distribution restrictions.

Capital within the meaning of article 37 (6) of the SE Council Regulation thus amounts to €1,171,319:

MAN AG – Capital (in accordance with article 37 (6) of the SE Council Regulation)	December 31, 2008
Subscribed capital	376,422
Capital reserves	<u>794,897</u>
Total equity	<u><u>1,171,319</u></u>

## 2. Calculation of net assets

### a) Reported net assets

We first determined the net assets by measuring the assets individually. We derived the figures for the following net assets from the annual financial statements of MAN AG, pursuant to HGB, for the year ending December 31, 2008 with the unqualified auditors' opinion of KPMG AG Wirtschaftsprüfungsgesellschaft (KPMG).

MAN AG – Net Assets derived from the HGB financial statements	
Assets	December 31, 2008
Fixed assets	2,945,927
Current assets	3,203,139
Prepaid expenses	3,134
<i>Total assets</i>	<u>6,152,200</u>
Liabilities	
Provisions	420,751
Liabilities	3,311,660
<i>Total liabilities</i>	<u>3,732,411</u>
<b>Reported net assets</b>	<b><u>2,419,789</u></b>

The assets and liabilities in the annual financial statements of MAN AG for the year ending December 31, 2008 were measured as follows:

Intangible assets are carried at cost and amortized over their useful life, primarily over three years, using the straight-line method.

Tangible fixed assets are carried at cost less depreciation and, in some cases, write-downs. Repair costs and interest on outside capital are recognized as current expenses. Buildings are depreciated at the maximum rates permitted under section 7 of the *Einkommensteuergesetz* (EStG – German Income Tax Act). Moveable assets are depreciated using the declining balance method while acquisitions in fiscal year 2008 are depreciated using the straight-line method. Depreciation in both cases is calculated using the maximum rates permissible under tax law over the expected useful life of such assets. Write-downs are charged in the event of lasting impairment.

Low-value assets of less than €150 are written off in full in the year of acquisition. Assets of between €150 and €1,000 are recognized in an annual collective item which is reduced equally in the year of recognition and the four years that follow by one fifth each year.

Long-term financial assets are recognized at the lower of cost or fair value.

Receivables and other assets are carried at their principal amounts.

Securities are carried at the lower of cost or market.

Cash and cash equivalents are carried at their nominal amounts.

Pension provisions were calculated on the basis of the German entry age normal method under section 6a of the EStG using the mortality tables published by Dr. Klaus Heubeck in July 2005 and applying a discount rate of 6%.

Other provisions were recognized at the amount dictated by prudent business judgment and discounted if they contained an interest component.

Liabilities were recognized at their settlement amount.

Receivables and liabilities denominated in foreign currency are carried at the hedging rate where applicable or translated at the closing rate in accordance with the imparity principle.

Our interim conclusion can be summarized as follows: based on measurement individually, the net assets of €2,419,789 significantly exceed the capital of €1,171,319 to be certified in accordance with article 37 (6) of the SE Council Regulation.

## **b) Enterprise value**

During the investigation of the capital coverage and the non-distributable reserves as part of the above-mentioned examination of the individual amounts, we also carried out a company valuation in order to check whether coverage also applies after examining the collective amounts.

The capitalized income of a company is determined in accordance with the Principles for the Valuation of Companies promulgated by the *Institut der Wirtschaftsprüfer* (IDW – German Institute of Public Auditors) and laid down in the 2008 edition of IDW standard S1, supplemented by the principles for valuing equity investments and shares in companies for the purposes of annual financial statements prepared in accordance with HGB in the IDW Accounting Principle of its Accounting and Auditing Board (IDW AcP HFA 1).

According to (4) of IDW S1, the enterprise value acts as a future performance indicator on the basis of purely financial targets. It is determined by the net present value of the net funds connected to ownership of the company (excess of income over expenditure) that accrue to stockholders. This present value is calculated on the basis of a capitalization rate representing the return on an appropriate alternative investment to an investment in the company being valued. Thus the value of the company is deduced solely from its earnings capacity, i.e. its ability to produce financial surpluses for the company stockholders.

The financial plans of the MAN Group for the years 2009 to 2011 (dated November 18, 2008) and the capitalization rate derived from capital market data provided the main basis for estimating the amount of the capitalized income of MAN AG for the year ending December 31, 2008.

Calculated in this way, the value for this period vis-à-vis the market value of the company's equity is significantly higher than the capital to be certified in accordance with article 37 (6) of the SE Council Regulation.

In accordance with (15) of IDW S1, we also used the market capitalization resulting from the stock market prices of MAN AG as a plausibility check. As of December 30, 2008, the market capitalization amounted to approx. €5.7 billion on the basis of a stock market price of €38.72 (common stock) and €43.05 (preferred stock). In 2008, market capitalization fluctuated between €4.1 billion and €16.3 billion. At the end of January 2009 the market capitalization was approximately €5.0 billion. As a result of the turbulence on the financial

markets, the stock market price has recently been very volatile, but has always been significantly higher than the capital to be certified in accordance with article 37 (6) of the SE Council Regulation in the amount of €1.2 billion.

Based on our investigations regarding the enterprise value, there are no indications to show that the net assets are not at least equivalent to the capital plus those reserves which, by act of law or the Articles of Incorporation, may not be distributed.

## **V. Certificate**

In accordance with article 37 (6) of the SE Council Regulation, we issue the following opinion:

"Based on the findings of our dutiful audit in accordance with article 37 (6) of the SE Council Regulation and the documents, account books and papers presented to us as well as the explanations and evidence with which we were provided, we certify that MAN AG has net assets at least in the amount of its capital plus those reserves which, by act of law and the Articles of Incorporation, may not be distributed."

Munich – February 19, 2009

PKF Industrie- und Verkehrstreuhand GmbH  
Wirtschaftsprüfungsgesellschaft

Wohldorf  
Wirtschaftsprüfer

Hirschmann  
Wirtschaftsprüfer