

## **Disclosure pursuant to sections 289 (4) and 315 (4) of the HGB and explanatory report pursuant to section 176 (1) of the AktG**

### **Composition of subscribed capital**

Aareal Bank AG's subscribed capital amounted to €128 million as at the reporting date. It is divided into 42,755,159 notional no-par value share ("unit shares") with a notional value of € 3 per share. The shares are bearer shares. Each share carries one vote. There are no pre-emptive rights or constraints with respect to dividend payouts. There was no change in the number of shares issued in the year under review.

### **Restrictions affecting voting rights or the transfer of shares**

In March 2009, the German Financial Markets Stabilisation Fund (SoFFin) provided a silent participation to Aareal Bank AG. Within the scope of this stabilisation measure, SoFFin and Aareal Holding Verwaltungsgesellschaft mbH, the bank's main shareholder, entered into an agreement under which Aareal Holding undertook to (i) retain its current stake of 37.23% of the bank's issued share capital during the term of the capital support; and to (ii) act in SoFFin's interests for the purpose of certain resolutions to be taken by the General Meeting (or to coordinate voting with SoFFin prior to the General Meeting). Furthermore, Aareal Holding agreed to exercise its voting rights, in the event of a General Meeting resolution on capital measures, in a manner so as to retain its blocking minority.

Otherwise, the exercise of voting rights and the transferability of shares by shareholders are governed exclusively by applicable law. There are no limitations to voting rights to a given number of shares or votes. All shareholders who have registered for attending the General Meeting in good time, providing evidence of their entitlement to attending the General Meeting and casting votes, are entitled to exercise the voting rights from all the shares they hold and have registered. The exercise of voting rights from the shares concerned is precluded by law in the cases where section 136 of the AktG applies. Where the company holds treasury shares, section 71b of the AktG prohibits the exercise of rights vested in such shares. We are not aware of any other restrictions affecting voting rights or the transfer of shares.

### **Shareholdings exceeding 10% of voting rights**

Pursuant to the German Securities Trading Act (WpHG) any investor whose shareholding in a listed company reaches, exceeds or falls short of certain threshold values in terms of voting rights (whether by purchase, sale or by any other means) must notify the company and the German Financing Supervisory Authority (BaFin) (insofar as a non-consideration of voting rights pursuant to section 23 WpHG is made). The lowest threshold for this notification requirement is 3 %. 62.77 % of Aareal Bank AG shares are held in free float, i.e. in the hands of shareholders who do not own more than 5 % of the subscribed capital. The largest shareholder of the Company is Aareal Holding Verwaltungsgesellschaft mbH with an interest of 37.23 %.

As a result of the agreement entered into with SoFFin, we were notified on 17 March by SoFFin pursuant to sections 21 (1) and 22 (2) of the WpHG that the threshold of 30 % has been exceeded due to the assignment of shares owned by Aareal Holding Verwaltungsgesellschaft mbH.

We are not aware of any other direct or indirect shareholdings of 10 % or more of the voting rights.

### **Shares with special rights granting the holder supervisory powers**

Aareal Bank AG's Memorandum and Articles of Association do not grant any shareholder the right to nominate members to Supervisory Board, nor are there any other shares with special rights granting the holder supervisory powers.

## **Type of control of voting rights regarding shares held by employees with their rights of control not being directly exercised**

There are no Aareal Bank AG shares held by employees where the rights of control cannot be directly exercised.

## **Statutory provisions, and provisions in the Memorandum and Articles of Association regarding the appointment and removal of members of the Management Board, and regarding amendments to the Memorandum and Articles of Association**

The appointment and removal of members of the Management Board of Aareal Bank AG is carried out in accordance with sections 84 and 85 of the AktG and Article 7 of the Memorandum and Articles of Association, according to which the Management Board must have a minimum of two members. The Supervisory Board shall appoint the Members of the Management Board and determine their number. The Supervisory Board may appoint deputy members, and may appoint one member of the Management Board to be the Chairman of the Management Board. The members of the Management Board are appointed for a maximum term of five years. This term of office may be renewed or extended for a maximum of five years in each case.

Pursuant to section 179 of the AktG, the Memorandum and Articles of Association may be amended by way of resolution passed by the General Meeting. Resolutions of the General Meeting regarding amendments to the Memorandum and Articles of Association are passed by a simple majority of the votes cast, or – to the extent permitted by law – by the majority of the issued share capital present at the Meeting. In accordance with section 181 (3) of the AktG, amendments to the Memorandum and Articles of Association become effective upon their entry in the company's Commercial Register. In the event of a capital change, the Supervisory Board is authorised to modify the wording of the Articles of Association in line with the amount of the capital change (Article 5 (8) of the Memorandum and Articles of Association).

## **Authorisation of the Management Board to issue or repurchase shares**

### **Authorised capital**

The Annual General Meeting held on 19 May 2010 resolved to authorise the Management Board to increase, subject to the consent of the Supervisory Board, on one or more occasions, the Company's share capital by up to a maximum total amount of € 64,132,500.00 (Authorised Capital) by issuance of new shares for contribution in cash or in kind. This authorisation will expire on 18 May 2015. The shareholders must be granted subscription rights in the event of a capital increase against cash contributions. The Management Board is authorised to exclude shareholders' pre-emptive subscription rights in the event of a capital increase not exceeding 10% of the issued share capital at the time of the authorisation becoming effective or being exercised, subject to approval by the Supervisory Board and provided that the issue price is not significantly lower than the prevailing market price. Article 5 (4) lit. b) to d) of the Memorandum and Articles of Association sets out further conditions for excluding shareholders' pre-emptive subscription rights. The Management Board may exclude shareholders' pre-emptive subscription rights in the event of a capital increase against contributions in kind. When exercising this authorisation, the Management Board will restrict the exclusion of shareholders' subscription right to a total of 20 % of the Company's registered share capital. Accordingly, the aggregate exclusion of shareholders' subscription rights upon exercise of this authorisation must not exceed 20 % of the registered share capital at the time said authorisation comes into effect or is exercised. No use has been made to date of the authorised capital.

### **Conditional capital**

Pursuant to Article 5 (5) of the Memorandum and Articles of Association, the share capital is subject to a conditional capital increase of up to € 30 million by means of issuing up to 10 million new notional no-par value bearer shares. The purpose of the conditional capital increase is the granting of shares to holders or creditors of convertible bonds and/or bonds cum warrants issued in accordance with the authorisa-

tion by the General Meeting held on 19 May 2010. Under this authorisation, convertible bonds and / or bonds cum warrants in an aggregate nominal amount of € 600 million may be issued until 18 May 2015. Under the authorisation, subsidiaries of Aareal Bank AG may also issue convertible bonds and / or bonds cum warrants, and subject to approval by the Supervisory Board allows the company to guarantee such issues as well as to issue shares to fulfil the resulting conversion or option rights. Subject to the approval of the Supervisory Board, the Management Board may exclude shareholders' pre-emptive rights in the certain cases. Notwithstanding the provisions of section 9 (1) of the AktG, in certain circumstances holders of conversion or option rights are entitled to be protected against dilution. The new shares will be issued at the conversion or option price to be set as defined in the resolution passed by the General Meeting on 19 May 2010. The conditional capital increase will be executed only to the extent that holders of conversion or option rights exercise such rights or any conversion obligation from such convertible bonds and/or bonds with warrants is performed, and to the extent that treasury shares are not utilised to service such convertible bonds and/or bonds cum warrants. The new shares will be entitled to a share in the profits from the beginning of the financial year in which they come into existence, by way of exercise or conversion. The Management Board is authorised to determine any further details of the conditional capital increase, subject to approval by the Supervisory Board. The purpose of this authorisation to issue convertible bonds and/or bonds cum warrants (where the issue of shares to honour the obligations under such convertible bonds and/or bonds cum warrants is covered by the conditional capital) is to provide the Management Board with the flexibility to act swiftly when raising finance, in the interests of the company. The Company has not yet exercised this authorisation.

### **Authorisation to purchase treasury shares**

The General Meeting held on 19 May 2010 authorised the Management Board, pursuant to Section 71 (1) No. 8 of the AktG, up to 18 May 2015, to acquire and sell treasury shares for purposes other than securities trading, up to a maximum volume of ten per cent (10%) of the issued share capital at the time of passing the resolution or – if this value is lower – of the share capital existing at the time of exercising this authorisation for purposes other than securities trading. Shares may be acquired via the stock exchange or by means of a public offer to buy, directed at all shareholders. Where acquisition is effected via the use of derivatives in the form of put or call options, or a combination of both, the option terms must ensure that said options are only serviced with shares that were purchased, in accordance with the principle of equal treatment, at the stock exchange at the prevailing share price of the Company's share in Xetra trading (or a comparable successor system) at the time of the purchase on the stock exchange.

The Management Board is authorised to effect the sale of any treasury shares acquired in accordance with this authorisation, subject to approval by the Supervisory Board, via channels other than the stock exchange or an offer to all shareholders, provided that the sale is carried out at a price that is not significantly lower than the stock exchange price of the company's shares at the time of sale. This authorisation is subject to the proviso that the aggregate value of shares sold under this authorisation and of shares issued to the exclusion of shareholders' subscription rights, in accordance with section 186 (3) sentence 4 of the AktG, shall not exceed ten per cent (10%) of the issued share capital at the time of said authorisation becoming effective or being exercised. Subject to approval by the Supervisory Board, pre-emptive subscription rights on the sold shares may also be excluded in the event of a sale against contributions in kind, or if the sold shares are given to the holders of conversion or option rights in lieu of new shares from a contingent capital increase. The Management Board is also authorised to exclude the pre-emptive subscription rights to the extent required to grant subscription rights to new shares to owners of convertible bonds or bonds cum warrants which were issued in the meantime in such an amount as would be due to them once they exercised their option rights. The Management Board is authorised to call in any of the shares acquired under this authorisation, without any further resolutions by the General Meeting being necessary. The company did not exercise this authorisation to purchase or dispose of treasury shares during the year under review.

The authorisation to purchase treasury shares is granted for a five-year period; it is in line with widely accepted practice in German listed companies. In line with author-

ised capital an conditional capitals this serves the company's interest of havin access to flexible financing options.

### **Material agreements which are subject to change of control clauses triggered in the event of a takeover offer**

There are no material agreements which are subject to change of control clauses triggered in the event of a takeover offer. Any public offers to acquire the company's shares are governed exclusively by the law (including the provisions of the German Securities Acquisition and Takeover Act), and the Memorandum and Articles of Association.

### **Compensation agreements entered into with members of the Management Board in the event of a takeover offer**

In case of a change of control an a resulting loss of membership in the Management Board, the members affected receive, in settlement of their total remuneration, their fixed remuneration, as agreed in their employment contracts, as well as a contractually agreed one-off payment. Depending on the type of change of control – termination by the company or termination by the respective Board Member – the agreed benefits for the members of the Management Board are as follows:

|                                    |   | Termination by the company | Termination by The Board Member |
|------------------------------------|---|----------------------------|---------------------------------|
| <b>Euro</b>                        |   |                            |                                 |
| Dr. Wolf Schumacher                | p.M der Vertragslaufzeit <sup>1)</sup><br>Einmalige Zahlung | 141.667<br>350.000         | 70.833<br>225.000               |
| Dirk Große Wördemann <sup>2)</sup> | p.M der Vertragslaufzeit <sup>1)</sup><br>Einmalige Zahlung | 120.833<br>225.000         | 54.167<br>162.500               |
| Norbert Kickum <sup>3)</sup>       | p.M der Vertragslaufzeit <sup>1)</sup><br>Einmalige Zahlung | 120.833<br>225.000         | 54.167<br>162.500               |
| Hermann J. Merkens                 | p.M der Vertragslaufzeit <sup>1)</sup><br>Einmalige Zahlung | 120.833<br>225.000         | 54.167<br>162.500               |
| Thomas Ortmanns                    | p.M der Vertragslaufzeit <sup>1)</sup><br>Einmalige Zahlung | 120.833<br>225.000         | 54.167<br>162.500               |

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- 1) Upon the request of the member of the Management Board, the benefits may be paid in form of a one-off payment. In this case, the amount is discounted using the interest rate of the ECB for one-year deposits of private households in the month of payment.
  - 2) Appointed with the effect from 1 November 2010; the regulation for the change of control applicable to Mr. Große Wördemann suspended for the term of the silent Participation by SoFFin, pursuant to the employment contract.
  - 3) Retired with effect from 31. October 2010.

Wiesbaden, April 2010

Aareal Bank AG

Management Board