

## **Explanatory Report of the Management Board on the disclosure pursuant to sections 289 (4) and 315 (4) of the German Commercial Code (HGB)**

### **Composition of subscribed capital, and rights and obligations attached to shares**

The composition of Aareal Bank AG's subscribed capital is shown in Note 6I to the consolidated financial statements. Each share casts one vote at a General Meeting. There are no shares with special rights granting supervisory powers to any shareholder or shareholder group. The Company currently does not hold any treasury shares, which would not be entitled to vote.

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

The German Financial Markets Stabilisation Fund (SoFFin) agreed to provide a stabilisation measure to the Bank in March 2009, in the form of a silent participation. In the context of this stabilisation measure, SoFFin and the Bank's main shareholder, Aareal Holding Verwaltungsgesellschaft mbH ("Aareal Holding") entered into an agreement under which Aareal Holding has undertaken to maintain its stake in the Bank's capital (currently 15,916,881 shares) throughout the term of the recapitalisation, and to act in SoFFin's interest when casting certain votes during the General Meeting (or to seek SoFFin's opinion prior to such a poll). Furthermore, Aareal Holding has undertaken to exercise its voting rights for resolutions to be adopted by a General Meeting in such a way that Aareal Holding will retain its blocking minority. This agreement was cancelled concurrently with the full repayment of the silent participation to SoFFin, on 30 October 2014.

In all other respects, the transfer and exercise of voting rights is governed exclusively by legal restrictions. Voting rights are not limited to a certain number of shares, or of votes. All shareholders who have registered to attend a General Meeting in good time, and who have provided the Com-

pany with evidence of their shareholding and their right to vote, are entitled to attend the General Meeting, and to exercise their voting rights from all shares held and so 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**

Details regarding any shareholdings exceeding 10 % of voting rights are provided in Note 97 to the consolidated financial statements.

### **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 the 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, such amendments 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 (7) 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 23 May 2012 resolved to authorise the Management Board to increase, on one or more occasions, the Company's share capital by up to a maximum total amount of € 89,785,830 (Authorised Capital) by issuance of new shares for contribution in cash or in kind. This authorisation will expire on 22 May 2017. 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 of shares already listed, at the time of final determination of the issue 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' pre-emptive rights to a total of 20 % of the Company's issued share capital. Accordingly, the aggregate exclusion of shareholders' subscription rights upon exercise of this authorisation must not exceed 20 % of the share capital at the time said authorisation comes into effect or is exercised. This limitation also includes shares issued by the Company on the basis of the authorisation by the General Meeting on 23 May 2012, under convertible bonds and/or bonds with warrants issued excluding the pre-emptive rights of shareholders.

The authorised capital has not been utilised.

#### **Conditional capital**

The share capital is subject to a conditional capital increase not exceeding € 89,785,830 by issuance of up to 29,928,610 new bearer no-par value shares ("Conditional Capital 2014"). The conditional capital increase shall be implemented only insofar as (i) the holders or creditors of conversion rights from convertible profit participation rights issued by the Company (or by an enterprise in which the Company either directly or indirectly holds a majority interest) until 20 May 2019 on the basis of the Annual General Meeting's authorisation resolution of 21 May 2014 exercise their conversion rights or (ii) the holders or creditors of convertible profit participation rights issued by the Company (or by an enterprise in which the Company either directly or indirectly holds a majority

interest) until 20 May 2019 on the basis of the Annual General Meeting's authorisation resolution of 21 May 2014 and who are obliged to exercise those rights fulfil their obligation or (iii) the Company makes use of alternative performance; insofar as treasury shares are not used to service the rights or, in the aforementioned cases (i) and (ii), no cash compensation is granted. The new shares shall be entitled to a share in the profits from the beginning of the financial year in which they come into existence through the exercise of conversion rights or the fulfilment of conversion obligations. The Management Board is authorised to determine the details of the conditional capital increase.

The purpose of the authorisation passed by the General Meeting on 21 May 2014 is to create Tier I capital that is eligible for regulatory purposes; it provides for the issue of profit-participation rights with or without conversion rights, as well as for issues with mandatory conversion. It is in accordance with the various structuring alternatives for Additional Tier I capital instruments, pursuant to the Capital Requirements Regulation.<sup>1)</sup> For instance, a conversion obligation may be provided for if the Bank falls short of certain capital ratios (to be defined in the terms of convertible profit-participation certificates) or other financial indicators; conversion is required, in the opinion of the Company's Management Board and Supervisory Board, to safeguard the Company's continued existence; or if conversion is instructed by a supervisory authority within the scope of its powers. Under the authorisation, subsidiaries of Aareal Bank AG may also issue convertible bonds, 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 rights.

Subject to the approval of the Supervisory Board, the Management Board may exclude shareholders' pre-emptive rights in certain cases. The new shares will be issued at the conversion price to be set as defined in the resolution passed by the General Meeting on 21 May 2014.

To date, the Conditional Capital has not yet been utilised.

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

The General Meeting held on 19 May 2010 also authorised the Management Board, pursuant to section 71 (1) No. 7 of the AktG, to purchase and sell treasury shares for the purposes of securities trading, at a price not falling below or exceeding the average closing price of the Company's share in Xetra<sup>®</sup> trading (or a comparable successor system) during the three trading days on the Frankfurt Stock Exchange prior to the relevant transaction by more than 10 %. This authorisation expires on 18 May 2015. The volume of shares acquired for this purpose must not exceed 5 % of the issued share capital of Aareal Bank AG at the end of any given day.

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 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<sup>®</sup> 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

<sup>1)</sup> Regulation 575/2013/EU

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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 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 of German listed companies. In line with authorised capital and conditional capital, this serves the Company's interest of having 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 or employees in the event of a takeover offer**

For details regarding compensation agreements entered into with members of the Management Board or employees in the event of a takeover bid, please refer to the Remuneration Report, which forms part of the Notes to the consolidated financial statements.