

# To the Shareholders

## Corporate governance

Corporate management and supervision at MAN is focused on ensuring the continuation of the Company and sustained value creation in line with the principles of the social market economy.

The Group's corporate governance system plays a key role in this. It is shaped by the applicable laws, in particular the provisions of German stock corporation law, by our Articles of Association and internal regulations, and by internationally and nationally recognized standards of good and responsible governance. The German Corporate Governance Code ("the Code") presents the statutory regulations for the governance of German stock corporations that apply to MAN and provides recommendations and suggestions for corporate governance in accordance with recognized standards. These were applicable to MAN as an *Aktiengesellschaft* (German stock corporation) until May 19, 2009 and continued to apply to MAN SE as a European company from the date on which MAN AG's change of legal form to a *Societas Europaea* ("SE") became effective after the approval of the Annual General Meeting on April 3, 2009 and entry in the commercial register.

These rules are supplemented by MAN's "Industrial Governance" management system, which defines the responsibilities for Group management by MAN SE and the responsibilities of the divisions. It is presented on our website at [www.man.eu/MAN/en/Investor\\_Relations/Strategie/](http://www.man.eu/MAN/en/Investor_Relations/Strategie/). The compliance and ethical guidelines that apply to the MAN Group are described in our Code of Conduct (available at [www.man.eu/MAN/en/Unternehmen/Management/](http://www.man.eu/MAN/en/Unternehmen/Management/)). The Group's management principles are formalized in Group guidelines.

### Corporate governance at MAN<sup>1</sup>

MAN's Executive Board and Supervisory Board have examined the Group's corporate governance system in detail. They are aware that good and transparent corporate governance that complies with both national and international standards is of central importance for the Company to ensure responsible, long-term management. In particular, MAN AG's change of legal form to an SE resulted in adjustments to reflect the rules applicable to an SE and to enhance the efficiency of the Supervisory Board's activities. Furthermore, the governing bodies focused on compliance with the German Corporate Governance Code, and especially the new requirements of the Code as amended on June 18, 2009.

#### Declaration of Conformity

In December 2009, the Executive and Supervisory Boards issued the following Declaration of Conformity:

"MAN SE (formerly MAN Aktiengesellschaft) complied with the recommendations of the Government Commission on the German Corporate Governance Code in accordance with its Declaration of Conformity of December 2008 and will comply with the recommendations of the German Corporate Governance Code (the Code), as amended on June 18, 2009, with one exception: when concluding Executive Board contracts, a severance payment cap in the event of an Executive Board member's contract being terminated prematurely without good cause is agreed under the compensation system in place at MAN, as recommended in the Code. However, in view of the calculation method that applies at MAN, it may exceed a severance payment cap calculated in accordance with section 4.2.3 of the Code in exceptional cases; such cases were not foreseeable in the past but can be expected given current developments. MAN SE wishes to retain the calculation method used to date, which is based on the average remuneration of the last three years, due to the evening-out effect in the event of extraordinary developments.

<sup>1</sup> Also the corporate governance report of the Executive and Supervisory Boards in accordance with section 3.10 of the German Corporate Governance Code as per June 18, 2009.

In line with the new recommendation under section 3.8 of the Code, a deductible is to be agreed for Supervisory Board members, as is already the case for the Executive Board, in the D&O policy soon due for renewal.

The recommendation that members of the Supervisory Board do not exercise a directorship or similar function for important competitors of the Company (section 5.4.2 of the Code) is also complied with. No member exercises a directorship or similar function at Scania, which MAN considers to be an important competitor. MAN does not consider Volkswagen AG (where Prof. Dr. Ferdinand K. Piëch is Chairman of the Supervisory Board) or Volkswagen AG's subsidiary Audi AG (where Rupert Stadler is Chief Executive Officer) to be important competitors."

The Executive and Supervisory Boards of Renk Aktiengesellschaft, a listed subsidiary based in Augsburg, have also issued a declaration of conformity. This is published on the company's website at [www.renk.biz](http://www.renk.biz).

We comment in more detail in the following on the key recommendations and suggestions contained in the Code, with particular reference to the changes. We also explain the departure from one of the Code's recommendations that is disclosed in our Declaration of Conformity and the departure from the Code's suggestions relating to the Supervisory Board's remuneration.

#### **Promoting transparency and shareholders' rights**

The information we provide through our website ([www.man.eu/MAN/en/Investor\\_Relations](http://www.man.eu/MAN/en/Investor_Relations)), financial publications, and capital market conferences enables our German and international shareholders as well as other interested parties to build an accurate and up-to-date picture of our Company and gain an insight into our corporate governance practices.

On its website, MAN also publishes without delay annual reports, interim reports, and a financial calendar showing all upcoming events (section 6.3 of the Code), as well as the annual document it is required to prepare under section 10 of the *Wertpapierprospektgesetz* (WpPG—German Securities Prospectus Act), summarizing all the relevant information disclosed by the Company during the past calendar year.

In keeping with the principle of equal treatment, we are committed to providing all our Company's shareholders with equal access to information.

#### **Annual General Meeting**

The Annual General Meeting is the platform where MAN shareholders can exercise their voting rights, obtain information, and engage in a dialog with the Executive and Supervisory Boards.

In organizing and conducting its Annual General Meeting, MAN aims to provide all shareholders with prompt, comprehensive, and effective information both before and during the event. We also wish to make it easy for them to register for the Annual General Meeting and exercise their rights. Consequently, we do not limit ourselves to publishing the invitation to the Annual General Meeting as required by law, but also make all reports and documents relating to the Annual General Meeting accessible to our shareholders and all other interested parties via the MAN website. In addition, we e-mail the documents to interested shareholders and other parties if we have their consent to do so, or post them on our website for download.

If shareholders are unable to attend the Annual General Meeting, they may either authorize a bank, shareholders' association, or other person to represent them, or authorize an MAN employee, either in writing or by electronic means, to exercise their voting rights by proxy.

To enable all shareholders to follow the Annual General Meeting, the entire event is broadcast live on the Internet.

### **Executive Board and Supervisory Board**

In accordance with the law governing German stock corporations, MAN AG had a two-tier structure comprising an Executive Board and a Supervisory Board. These governing bodies were retained when the Company became an SE. Both governing bodies work closely together to the benefit of the Company and seek to achieve a sustained increase in enterprise value for its shareholders.

The Executive Board, which currently comprises four members, is responsible for performing managerial and operational tasks. Its responsibilities extend in particular to the Group's strategic focus, which it agrees with the Supervisory Board. The Executive Board is also responsible for target-driven, active management and the central financing of the Group, the development and deployment of managers, and the preparation of quarterly and annual financial statements. In addition, it ensures compliance with legislation, official regulations, and internal guidelines. The various tasks are allocated to the individual Executive Board functions in accordance with the list of responsibilities. The full Executive Board addresses all key decisions and measures; the Executive Board's Rules of Procedure define the decisions and measures that require the approval of the full Executive Board. Meetings of the full Executive Board are held at least once a month and additionally as needed. The Executive Board reports to the Supervisory Board. It consults the Supervisory Board on decisions of fundamental importance. The Executive Board also ensures open and transparent corporate communications. The Supervisory Board has an oversight and advisory role. Important transactions require the Supervisory Board's approval.

MAN AG's Supervisory Board comprised ten shareholder representatives and ten employee representatives in accordance with the provisions of German stock corporation and co-determination law. Their responsibilities and mandates ended on May 19, 2009 when the Company's change of legal form to an SE became effective. The new, sixteen-member Supervisory

Board of MAN SE, which comprises an equal number of shareholder and employee representatives, assumed responsibility for MAN SE on May 19, 2009. The shareholder representatives were elected by the Annual General Meeting in accordance with the resolution on the change of legal form adopted by the Annual General Meeting on April 3, 2009, and the employee representatives were appointed under the agreement with the employees' Special Negotiating Body. Please refer to the Report of the Supervisory Board and the Notes to the Annual Financial Statements for further information on the composition of the Supervisory Board of MAN AG and MAN SE, its committees and duties, and its cooperation with the Executive Board.

No member of the Supervisory Board exercised or exercises a directorship or similar function or performs advisory tasks for important competitors of MAN. More specifically, as explained in the Declaration of Conformity of December 2009, no member exercises a directorship or similar function at MAN's important competitor Scania. Rather, this is only the case at its majority shareholder, Volkswagen AG (where Prof. Dr. Piëch is Chairman of the Supervisory Board, and Rupert Stadler has been a member of the Board of Management since January 1, 2010), and at Volkswagen AG's subsidiary Audi AG (where Rupert Stadler is Chief Executive Officer), which MAN does not consider to be important competitors. Furthermore, in his role as "Spokesman of the Brand Board of Management of Volk-

swagen AG Nutzfahrzeuge," Mr. Stephan Schaller, who left the Supervisory Board when MAN AG changed its legal form to an SE, did not exercise a directorship function at Volkswagen AG.

MAN also complies with the Code's recommendation that no more than two former members of the Executive Board be members of the Supervisory Board; there is currently one former member of the Executive Board on the Supervisory Board.

No conflicts of interest were reported by members of either the Executive or Supervisory Board during the reporting period. In this context, it should be noted that the action brought to contest the election of Prof. Dr. Piëch and Mr. Schaller to the Supervisory Board by the 2007 Annual General Meeting, which was based on alleged general conflicts of interest affecting both individuals, among other things, was dismissed by the responsible Munich Regional Court. The judgment was affirmed in the second instance by the Munich Higher Regional Court; the appeal lodged with the *Bundesgerichtshof* (German Federal Supreme Court) against denial of leave to appeal on points of law was rejected during the reporting period, which means that the decision by the Munich Regional Court is final and absolute.

MAN complied with the age limit set by the Supervisory Board for members of the Executive Board, which stipulates retirement from office at the age of 62 with the option for an extension up to a maximum age of 65 years. It also complied with the standard age limit of 70 years set for members of the Supervisory Board. Only the chairman of the Supervisory Board and an additional Supervisory Board member have exceeded 70 years of age. The age limit set and the correctness of the elections to the Supervisory Board at the 2007 Annual General Meeting were confirmed by the above-mentioned court rulings.

There were no advisory or other contracts for services or work between the Company and its board members during the reporting period. The Supervisory Board approved the second-

ary activities of Executive Board members only to the extent that these involved serving on other companies' supervisory boards or management activities at Group companies.

The Company has taken out D&O (directors' and officers' liability insurance) coverage with a reasonable deductible for members of the Executive and Supervisory Boards. Effective January 1, 2010, this insurance was adjusted to reflect the new requirements of the *Gesetz zur Angemessenheit der Vorstandsvergütung* (VorstAG—German Act on the Appropriateness of Executive Board Remuneration) dated July 31, 2009 and of the German Corporate Governance Code with regard to the minimum deductible.

#### **Compliance/risk management**

The Code highlights compliance with existing laws and internal company guidelines as a key management and supervisory task. The Executive Board therefore continues to regularly enhance the existing compliance system and ensure its implementation.

It is supported in this by the Chief Compliance Officer (CCO) and the Compliance Board, which includes the CCO, the heads of MAN SE's key functions, and the compliance officers of the subgroups. Significant measures in the reporting period entailed continuing employee training, especially in anticorruption, and in antitrust compliance issues, reviewing the implementation of compliance guidelines by external lawyers and the internal audit function, as well as clarifying and addressing suspicious cases. A particular focus was the clarification of bribery allegations that arose in connection with the preliminary investigation by the Munich Public Prosecution Office (I) and the subsequently initiated special investigations by lawyers engaged by MAN. Please refer to the detailed disclosures in the Management Report on

the clarification of the bribery allegations and on the compliance system and its enhancement, as well as the information provided in the Report of the Supervisory Board.

Risks resulting from compliance violations and other business risks were assessed under the risk management system and addressed in detail by the Executive Board and Supervisory Board, and in particular by the Audit Committee. Please refer to the description of MAN's risk management system and the risk report contained in the management report.

#### Reportable securities transactions

Section 15 a of the *Wertpapierhandelsgesetz* (WpHG—German Securities Trading Act) requires individuals with management tasks and certain related parties to report dealings in MAN shares and related financial instruments to the issuer and the *Bundesanstalt für Finanzdienstleistungsaufsicht* (BaFin—German Federal Financial Supervisory Authority). No transactions were reported in 2009. Any disclosures are published on the Company's website at [www.man.eu/MAN/en/Investor\\_Relations/Corporate\\_Governance/Meldepflichtige\\_Wertpapiergeschaefte/](http://www.man.eu/MAN/en/Investor_Relations/Corporate_Governance/Meldepflichtige_Wertpapiergeschaefte/).

According to the reports received, the Executive and Supervisory Board members' direct and indirect holdings of shares and derivatives on shares do not exceed 1% of the shares issued by the Company, either individually or in total.

#### Financial reporting

The year-end consolidated financial statements of the MAN Group are prepared by the Executive Board on the basis of the International Financial Reporting Standards (IFRSs), while the single-entity financial statements of MAN SE are prepared in accordance with the *Handelsgesetzbuch* (HGB—German Commercial Code). The financial statements are examined and approved by the Supervisory Board. All deadlines for the publication of financial statements and interim reports were met during the reporting period. In accordance with the new recommendation in section 7.1.2 of the Code as amended in 2008, the Audit Committee discusses MAN's half-yearly and quarterly financial reports with the Executive Board prior to their issue.

#### Audit of the financial statements

In the reporting period, the Supervisory Board proposed KPMG AG Wirtschaftsprüfungsgesellschaft, Munich, (KPMG) as auditors of the financial statements. The Annual General Meeting endorsed its proposal. In 2009, KPMG again provided MAN's Audit Committee with confirmation of its independence. It was also agreed that the Chairman of the Audit Committee would be immediately informed of any grounds for disqualifying the auditors or questioning their impartiality that might occur during the audit, unless such grounds could be immediately eliminated.

## Remuneration report for fiscal year 2009 <sup>2</sup>

#### Executive Board remuneration in 2009

In fiscal 2009, changes were made with regard to the responsibility for determining Executive Board remuneration. Following MAN AG's change of legal form to a *Societas Europaea* (SE) on May 19, 2009, this responsibility—which was previously held by the Personnel and Nomination Committee—was assigned to the newly created Presiding Committee of the Supervisory Board. The full Supervisory Board assumed responsibility for determining the total remuneration of the Executive Board when the *Gesetz zur Angemessenheit der Vorstandsvergütung* (VorstAG—German Act on the Appropriateness of Executive Board Remuneration) came into force on July 31, 2009. Supervisory Board resolutions are now prepared and proposed by the Presiding Committee. The corresponding amendments were made to the Supervisory Board's Rules of Procedure. As before, the full Supervisory Board regularly discusses the structure of the Executive Board remuneration system based on the Presiding Committee's proposals. It also resolves and regularly reviews the remuneration system in accordance with the recommendation in the German Corporate Governance Code that

<sup>2</sup> The remuneration report is part of the Group management report in accordance with section 315 of the HGB.

was slightly modified in 2009 (section 4.2.2). The next review of the remuneration system, in particular with regard to the new statutory requirements under the VorstAG, will take place in spring 2010.

The Supervisory Board's objective and duty is to set remuneration at an appropriate amount. The criteria for doing so include in particular the tasks of the respective Executive Board member, his personal performance, the economic situation, the performance and outlook of the Company and how customary the remuneration is when measured against its peer group, as well as the remuneration structure that applies to other areas of MAN.

#### Remuneration structure and components in 2009

The remuneration of Executive Board members comprises fixed salary payments and non-cash benefits, pension and other benefit contributions, and performance-related components. The variable performance-related components comprise annual components linked to business performance and long-term incentive components that entail an element of risk.

- The fixed remuneration is paid as a monthly salary. In addition, Executive Board members receive non-cash benefits that primarily comprise the provision of a company car and driver, and the payment of insurance premiums. The fixed remuneration is reviewed on a regular basis and adjusted where necessary.
- In accordance with the applicable bonus guidelines, the annual performance-related bonus is linked to MAN value added. This is calculated as operating profit minus the cost of capital employed. The cost of capital is the minimum return investors expect to receive on equity and debt employed. A weighted average cost of capital (WACC) is calculated; for equity, it is the rate of return on long-term, risk-free securities plus a specific risk premium, and for debt, it is the rate of return for risk-free securities plus a risk premium for long-term corporate securities. It is currently set at 11% before tax.

The Executive Board is not entitled to a bonus unless profit exceeds the cost of capital. The amount of the bonus is based on the extent to which a value added target previously set by the Supervisory Board is attained or exceeded. It is capped at an

amount also set by the Supervisory Board. Two-thirds of the bonus is paid as a cash bonus. One third must be used in the same way as under the MAN Stock Program (see below), with 50% invested in MAN shares. The shares are subject to a two-year lock-up.

- Since 2005, the component linked to long-term business performance has been awarded through the MAN Stock Program. Under this program, Executive Board members receive cash payments of 50% of their fixed remuneration, which are taxable annually. Half of the payment must be invested in MAN SE common shares. These are purchased and held in safekeeping centrally by MAN SE on behalf of and for the account of Executive Board members. Purchased shares may be freely disposed of after a lock-up period of three years. During the vesting period, the shares may not be sold, pledged, or hedged. If an Executive Board member retires or departs from the MAN Group, the lock-up period ends no later than one year after the date of departure.
- The Executive Board members' benefit entitlements comprise retirement, disability, and survivors' benefits. Entitlements to such benefits are accumulated under a defined contribution system, with the value of benefits dependent upon the performance of certain fund indices. Each year, MAN SE contributes an amount equal to 20% of an Executive Board member's fixed remuneration and the bonus paid to that member in the previous year into an MAN fund. Executive Board members may elect to make additional contributions out of their gross salary. Contributions and the returns thereon are held in individual capital accounts. The rate of return on the accumulated capital account balance depends upon the performance of selected capital market indices, which are weighted according to an Executive Board member's age. Contributions, the returns thereon, and any additional returns earned

by the fund together constitute the total amount of capital available. At retirement, the beneficiary may take the balance of the capital account, or at a minimum the total amount of the contributions, as a lump-sum payment, in installments, or as an annuity. In the event of disability or death, the beneficiary is paid the accumulated account balance, or at a minimum four times the fixed annual remuneration and bonus.

#### **Executive Board members' remuneration in 2009**

The remuneration awarded to active members of the Executive Board for their services in fiscal 2009 totaled €4,270 thousand plus €1,437 thousand for pensions (previous year: €13,523 thousand plus €1,321 thousand for pensions). Please see Note 33 to the Consolidated Financial Statements for details of the Executive Board members' individual remuneration, broken down into fixed, performance-related, and long-term incentive components.

A total of €21,064 thousand related to severance payments made or approved in respect of former Executive Board members. These payments are also described in detail in the above-mentioned Note to the Consolidated Financial Statements.

#### **Special contract provisions**

Under a provision that has been in effect since 2007, an Executive Board member receives his fixed remuneration, bonus, insurance premiums, and contributions to the pension system until the end of his normal term of office, but for no more than two years, in the event of the early termination of his contract without good cause and at the instigation of the Company. Income from his activities elsewhere is offset and the basis for calculating the amount of the contributions to the pension system reduced accordingly. MAN uses an Executive Board member's

average remuneration in the past three years as a basis for calculating the remuneration components that constitute his severance payment on leaving his position. However, this calculation method could lead to the severance payment cap calculated in accordance with section 4.2.3 of the Code being exceeded in exceptional cases; such cases were not foreseeable in the past but cannot be ruled out given current developments. The departure from the recommendation relating to the severance payment cap under section 4.2.3 of the Code is disclosed and justified in the Declaration of Conformity dated December 2009.

If a contract is terminated at the instigation of an Executive Board member (a member may do so, without having to cite his reasons, by giving 18 months' notice), remuneration is awarded only up until the end of the period of notice. There are no special change-of-control provisions in place.

### Supervisory Board remuneration

The structure and amount of the Supervisory Board's remuneration are determined by the Annual General Meeting and governed by Article 12 of the Articles of Association. It is based on the tasks and responsibilities of the Supervisory Board members as well as on the Group's economic performance.

The annual remuneration comprises the following components:

The annual remuneration comprises the following components:

- basic (fixed) remuneration of €35,000;
- variable remuneration (bonus). This is based on actual earnings per share as reported in the consolidated financial statements. The variable remuneration is €175 for every €0.01 by which earnings per share exceeds €0.50. It is capped at twice the basic remuneration.

Additional remuneration is paid to the chairman and deputy chairman of the Supervisory Board as well as to the chairmen and members of the Supervisory Board committees. The Supervisory Board chairman receives double and his deputy one and a half times the fixed and variable remuneration. Members of the Standing Committee, the Audit Committee, and the Personnel and Nomination Committee—or, after MAN AG's change of legal form to an SE, members of the Presiding Committee of the Supervisory Board and the Audit Committee—each receive an additional 50% and the chairman of the respective committee an additional 100% of the basic remuneration.

In addition, members of the Supervisory Board are reimbursed their expenses.

Supervisory Board remuneration does not include a component linked to long-term business performance, as it is almost impossible to measure the Supervisory Board members' individual contribution to the Company's long-term performance. The Company does not, therefore, follow the suggestion in section 5.4.6 of the Code.

The remuneration for the first Supervisory Board of MAN SE will be paid pro rata from May 19, 2009 in accordance with the Articles of Association; in line with the view taken in some of the legal literature, this remuneration is subject to the approval of the Annual General Meeting, which will be sought as a

precautionary measure at the 2011 Annual General Meeting when the Supervisory Board's first term of office ends as defined by the Articles of Association.

### Supervisory Board remuneration in 2009

The remuneration payable to the members of the Supervisory Board in 2009 totaled €941 thousand (previous year: €2,628 thousand). In addition, members of MAN AG's or MAN SE's Supervisory Board received remuneration totaling €39 thousand (previous year: €58 thousand) for serving on supervisory boards at Group companies in fiscal 2009. Please see Note 34 to the Consolidated Financial Statements for a breakdown of the individual remuneration of the Supervisory Board members in 2009.

### Additional information

In the reporting period, Supervisory Board members did not receive any additional remuneration or awards for personal services, particularly advisory or intermediary services.

Former Supervisory Board members who left the Board prior to January 1, 2009 do not receive any remuneration.