

## Share capital, authorized and contingent capital, purchase of own shares

MAN SE's share capital is unchanged at €376,422,400. It is composed of 147,040,000 no-par value bearer shares, divided into 140,974,350 common shares and 6,065,650 nonvoting preferred shares.

Further information on the subscribed capital, the classes of shares, the authorizations of the Annual General Meeting to create Authorized Capital 2010 and to issue convertible bonds and bonds with warrants, together with the contingent capital created in this context (Contingent Capital 2010), and on the authorizations to purchase own shares granted in the year under review is contained in the following chapter.

Disclosures in accordance with sections 289 (4) and 315 (4) of the *Handelsgesetzbuch* (HGB—German Commercial Code) and explanatory report in accordance with section 176 (1) sentence 1 of the *Aktiengesetz* (AktG—German Stock Corporation Act)

### Composition of share capital, classes of shares

MAN SE's share capital is unchanged at €376,422,400. It is composed of 147,040,000 no-par value bearer shares with a notional value of €2.56 each. In accordance with Article 4 (1) of the Articles of Association, the no-par value shares are divided into 140,974,350 common shares and 6,065,650 nonvoting preferred shares. All shares are fully paid up. Under Article 4 (2) sentence 2 of the Articles of Association, shareholders may not claim delivery of physical share certificates.

All shares have the same dividend rights; however, a cumulative preferred dividend of €0.11 per preferred share is payable in advance from net retained profits to holders of preferred shares, as well as a further €0.11 per common share as a subordinate right to holders of common shares. If there are insufficient net retained profits to pay the preferred dividend, the shortfall is payable in arrears, without interest, from the net retained profits of the subsequent fiscal years before the distribution of a dividend to common shareholders.

The common shares are voting shares, while preferred shares do not generally carry voting rights. Under section 140 (2) of the AktG, this does not apply if the preferred dividend is not paid in a year, or is not paid in full, and the shortfall is not made good in the following year in addition to the full preferred dividend for that year. In such cases, preferred shareholders have voting rights until the shortfalls are made good, and the preferred shares must be included in the

calculation of any capital majority required by the law or the Articles of Association. Preferred shareholders also have voting rights in accordance with section 141 (1) and (2) sentence 1 in conjunction with (3) of the AktG, under which a consenting resolution by the preferred shareholders is required if the Annual General Meeting adopts a resolution to revoke or limit the preferred dividend or to issue preferred stock that would rank prior to or equal with the existing nonvoting preferred shares in the distribution of profit or the net assets of the Company.

The same rights and obligations attach to all shares in all other respects.

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

Other than restrictions on voting rights for preferred shares and restrictions by virtue of statutory provisions, for instance under section 136 of the AktG, MAN SE is not aware of any restrictions on voting rights. The same applies to the transfer of shares, except for shares received by members of the Executive Board, certain managing directors, and other beneficiaries at MAN companies under the MAN Stock Program (MSP), to which lockups (vesting periods) apply. Details are contained in the Remuneration Report.

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

Under the *Wertpapierhandelsgesetz* (WpHG—German Securities Trading Act), any investor who reaches, exceeds, or falls below certain shares of the voting rights of the Company by virtue of acquisitions, disposals, or by other means, is required to notify this to the Company and the *Bundesanstalt für Finanzdienstleistungsaufsicht* (BaFin—Federal Financial Supervisory Authority). In accordance with section 21 (1) of the WpHG, the relevant thresholds in this respect are 3%, 5%, 10%, 15%, 20%, 25%, 30%, 50%, and 75% of the voting rights of the Company. Under section 28 of the WpHG, any violation of this notification obligation results in the holder being barred from exercising the corresponding voting rights for the period for which the notification obligations under section 21 (1) of the WpHG were not satisfied.

Under sections 289 (4) no. 3 and 315 (4) no. 3 of the HGB, all direct and indirect interests that exceed 10% of the voting rights must be disclosed.

Volkswagen Aktiengesellschaft notified MAN SE (MAN Aktiengesellschaft at the time) in February 2007 in accordance with section 21 (1) sentence 1 of the WpHG that the share of voting rights held by Volkswagen Aktiengesellschaft had exceeded the limit of 25% and amounted to 29.9% at that time. In addition, Porsche Automobil Holding SE and its controlling shareholders notified us in September 2008 in accordance with section 21 (1) of the WpHG that—because Porsche Automobil Holding SE had assumed control of Volkswagen AG—Volkswagen AG's 29.9% interest is also attributable to Porsche Automobil Holding SE and its controlling shareholders. In 2010, we also received notifications in accordance with section 21 (1) of the WpHG that the share of voting rights held by BlackRock, Inc. (and companies affiliated with it) exceeded the threshold of 3%. We have not been notified of, nor are we aware of, further existing direct or indirect interests in the capital of MAN SE that reach or exceed 10% of the voting rights or the relevant thresholds of the WpHG, or of any changes in the above-mentioned interests.

#### Appointment and dismissal of members of the Executive Board, amendments to the Articles of Association

The appointment and dismissal of members of the Company's Executive Board is governed by Articles 39 (2) and 46 of the SE Regulation in conjunction with sections 84 and 85 of the AktG and Article 5 of the Articles of Association. Under these provisions, the Executive Board must consist of at least two members. It falls within the responsibility of the Supervisory Board, and it is entitled to do so, to appoint the members of the Executive Board for a period of up to five years and to revoke the appointment for good cause. Members may be reappointed once or several times.

Article 59 (1) of the SE Regulation in conjunction with sections 179 et seq. of the AktG apply to amendments to the Articles of Association. Under these provisions, the Annual General Meeting may resolve to amend the Articles of Association by a majority of at least three-quarters of the share capital represented when the vote is taken. Under Article 10 (6) of the Articles of Association, the Supervisory Board is authorized to resolve amendments to the Articles of Association that affect only the wording.

### Powers of the Executive Board, in particular to issue and repurchase shares

The powers of the Executive Board are governed by Article 39 of the SE Regulation in conjunction with sections 77 et seq. of the AktG and Article 6 of the Articles of Association. These provisions require the Executive Board to manage the Company independently and to represent the Company both in and out of court.

The powers of the Executive Board to utilize the contingent and authorized capital and to issue or repurchase shares are presented in the following. The corresponding authorizations were not exercised in fiscal 2010.

### Authorized Capital 2010

The resolution dated June 3, 2005, authorizing the creation of Authorized Capital 2005, supplemented by a resolution of the Annual General Meeting on April 3, 2009, was superseded when the authorizing resolution of the Annual General Meeting dated April 1, 2010, to create Authorized Capital 2010 took effect.

The Annual General Meeting on April 1, 2010, resolved to authorize the Executive Board of the Company to increase the share capital, with the consent of the Supervisory Board, by up to €188,211,200 (=50%) by issuing common bearer shares on one or more occasions against cash contributions and/or noncash contributions in the period up to March 31, 2015 (Authorized Capital 2010).

The shareholders must generally be granted preemptive rights. However, the Executive Board is authorized, with the consent of the Supervisory Board, to disapply preemptive rights when shares are issued against noncash contributions for the purpose of acquiring companies, investments in companies, or significant assets of companies. In the case of cash capital increases, the Executive Board is also authorized, with the consent of the Supervisory Board, to disapply preemptive rights

- (i) to the extent necessary to grant the holders of convertible bonds or bonds with warrants that were or will be issued by the Company or its Group companies a right to subscribe for new shares to the extent to which they would be entitled after exercise of their conversion rights or options if they had previously exercised their conversion rights or options or if they had converted their rights in the case of a conversion obligation (antidilution provision); and/or
- (ii) if the issue price of the new shares is not more than 5% lower than the quoted market price and the shares issued in accordance with section 186 (3) sentence 4 of the AktG do not in the aggregate exceed 10% of the share capital. Shares issued or sold by direct or indirect application of this provision on the basis of other authorizations during the term of these authorizations count towards this limit until the time of utilization. Shares issued or issuable by virtue of convertible bonds or bonds with warrants or with conversion obligations issued at the time of utilization in accordance with this provision shall also count towards the above-mentioned 10% limit; and/or
- (iii) to settle any fractions needed to round the share capital; and/or
- (iv) to issue new shares against cash contributions to employees with managerial responsibility (managers) of the Company and/or of Group companies in respect of a proportion of Authorized Capital 2010 of up to €4,000,000. It may also be stipulated that the contribution to be paid is covered in accordance with section 204 (3) of the AktG.

Apart from the issue of shares to employees with managerial responsibility while disapplying preemptive rights, the authorization is restricted to the extent that, after the authorization is exercised, the total shares issued under Authorized Capital 2010 and/or under Contingent Capital 2010 while disapplying preemptive rights may not exceed 20% of the share capital existing at the time the authorization took effect (= €75,284,480) or—if lower—the share capital existing at the time the authorization was utilized. Further details are governed by Article 4 (4) of the Articles of Association.

#### Issuance of convertible bonds and/or bonds with warrants, Contingent Capital 2010

The resolution dated June 3, 2005, authorizing the creation of Contingent Capital 2005, supplemented by a resolution of the Annual General Meeting on May 10, 2007, was superseded when the authorizing resolution of the Annual General Meeting dated April 1, 2010, to create Contingent Capital 2010 to issue convertible bonds and/or bonds with warrants took effect.

By way of a resolution of the Annual General Meeting dated April 1, 2010, the Company's Executive Board was authorized, with the consent of the Supervisory Board, to issue convertible bonds and/or bonds with warrants—hereinafter referred to collectively as “bonds”—of MAN SE in the aggregate principal amount of up to €2.5 billion on one or more occasions until March 31, 2015, and to grant the bondholders options or conversion rights or to establish conversion obligations on new common bearer shares of MAN SE with a notional interest in the share capital of up to €76,800,000 (approximately 20%) as specified in greater detail by the option or conversion terms. The bonds are issuable against cash contributions.

The authorization also includes the option to guarantee bonds issued by other Group companies and to grant shares of MAN SE to settle the conversion rights or options or conversion obligations conveyed by these bonds. Furthermore, the authorization allows the Executive Board, with the consent of the Supervisory Board, to define the additional terms of the bonds, in particular the interest rate, issue price, duration and denomination, the subscription or conversion ratio, the option or conversion price, and the option or conversion period, or to do so in consultation with the governing bodies of the issuing Group companies.

The bonds must be offered for subscription by the shareholders. However, the Executive Board is also authorized, with the consent of the Supervisory Board, to disapply preemptive rights

- (i) to the extent that the issue price of the bond is not materially lower than its theoretical market value calculated by recognized financial techniques. In addition, the disapplication of preemptive rights within the meaning of section 186 (3) sentence 4 of the AktG only applies to bonds with rights to shares with a notional interest in the share capital that does not in the aggregate exceed 10% of the share capital. Shares issued, sold, or issuable by direct or indirect application of this provision on the basis of other authorizations during the term of this authorization count towards this limit until the time of utilization;
- (ii) to the extent that this is necessary to settle fractions that result from the subscription ratio;
- (iii) to grant the bondholders with existing conversion rights/options on, or obligations to convert bonds to, shares of the Company, preemptive rights to the extent to which they would be entitled if they had previously exercised their conversion rights or options or if they had converted their rights in the case of a conversion obligation, in order to prevent dilution of the economic value of these rights.

The authorization to issue convertible bonds or bonds with warrants or with conversion obligations is restricted to the extent that, after the conversion rights/options or the conversion obligations are exercised, the total shares issuable while disapplying preemptive rights under Contingent Capital 2010 and/or issued under Authorized Capital 2010—apart from the issue of shares to employees with managerial responsibility while disapplying preemptive rights—may not exceed 20% of the share capital existing at the time the authorization took effect (= €75,284,480) or—if lower—the share capital existing at the time the authorization was utilized.

At the same time, the Annual General Meeting on April 1, 2010 resolved to contingently increase the share capital by up to €76,800,000, composed of up to 30,000,000 common bearer shares. The contingent capital increase will only be implemented to the extent that the holders of convertible bonds or bonds with warrants or of conversion obligations issued for cash consideration by MAN SE or its Group companies by virtue of the authorizing resolution of the Annual General Meeting on April 1, 2010 exercise their conversion rights or options or settle their conversion obligations, and provided that other forms of settlement are not used. The new shares carry dividend rights for the first time for the fiscal year in which they are issued (Contingent Capital 2010).

### Share repurchase

The resolution dated April 3, 2009, to purchase the Company's own shares was superseded when the authorizing resolution of the Annual General Meeting on April 1, 2010, to purchase the Company's own shares took effect.

The resolution of the Annual General Meeting on April 1, 2010 authorized the Executive Board to purchase common and/or nonvoting preferred shares of the Company, with the consent of the Supervisory Board, on one or more occasions until March 31, 2015 up to a maximum total amount of 10% of the share capital. Together with other treasury shares held by the Company or attributable to the Company in accordance with sections 71d and 71e of the AktG, the shares purchased by virtue of this authorization may not account for more than 10% of the existing share capital at any time. The shares may also be purchased by other Group companies and/or third parties for the account of MAN SE or other Group companies.

The shares may be purchased on the stock exchange or by means of a public purchase offer to the holders of the class of shares concerned. If the shares are purchased on the stock exchange, the purchase price (net of transaction costs) may not exceed or fall below the price for the relevant class of shares determined by the opening auction on the trading day in Xetra trading (or in a comparable successor system) by more than 10%. In the case of a public purchase offer, the bid price or the bid price range per share (net of transaction costs) may not exceed or fall below the average price for the relevant class of shares determined by the closing auction in Xetra trading (or in a comparable successor system) on the three market days after the date of the public announcement of the offer by more than 10%. The purchase offer or the invitation to submit such an offer may entail additional conditions. If the total stock tendered exceeds the volume of the purchase offer, it must be accepted on a proportionate basis. The terms of the offer may provide for preferred acceptance of small numbers of shares to the extent provided by law, but in any case up to no more than a maximum of 100 shares tendered per shareholder. Additional details and conditions relating to the offer may be established in the conditions of the offer.

The Executive Board has been additionally authorized, with the consent of the Supervisory Board, to use purchased common shares of the Company for all purposes permitted by law in addition to sale on the stock exchange or by a public offer to all shareholders, and to disapply shareholders' preemptive rights. This applies in particular

- (i) if the purchased common shares are sold at a price that is not materially lower than the quoted market price; and/or
- (ii) to the extent that they are used as consideration in a business combination or to acquire companies or investments in companies or assets of companies; and/or
- (iii) to the extent that they are used to settle options or conversion rights or conversion obligations established by the Company or a Group company when bonds were issued. The shares transferred by virtue of this authorization may not in the aggregate exceed 10% of the share capital where they are used to settle conversion rights and options or conversion obligations established in corresponding application of section 186 (3) sentence 4 of the AktG. Shares issued or sold by direct or indirect application of this provision during the term of this authorization shall count towards this limit until the time of utilization. Shares issued or issuable by virtue of convertible bonds or bonds with warrants or with conversion obligations issued at the time of utilization in accordance with this provision shall also count towards this limit; and/or
- (iv) to the extent that the common shares are used to settle stock bonus commitments to employees with managerial responsibility (managers) of the Company and/or of Group companies.

The Annual General Meeting on April 1, 2010, further authorized the Executive Board to redeem the Company's own common shares and/or nonvoting preferred shares with the consent of the Supervisory Board, but without any further resolution by the Annual General Meeting.

#### Material agreements of the Company that are subject to a change of control following a takeover bid

As already described above in the "MAN Group funding" section, MAN SE has entered into various material agreements that are subject to a change of control.