

# **Aurubis AG**

## **Articles of Association**

**(Status: 3 March 2011)**

### **I. General Conditions**

#### **§ 1**

- 1) The public limited company is called

#### **Aurubis AG**

and has its registered office in Hamburg.

- 2) The duration is not limited to a certain time.

#### **§ 2**

- 1) The object of the company shall be the production of precious and non-precious metals from concentrates and other metal-bearing starting materials, the treatment of by-products arising and the production of chemical and metallic products, in addition the development of corresponding technology and its utilisation, also

of industrial plants by the design and construction of same, as well as the execution of all connected business.

- 2) The company may acquire, establish or invest in other enterprises in Germany and abroad. It shall be authorised to conclude agreements for joint ventures and other agreements on profit distribution with other companies.

### § 3

Announcements of the Company shall be made only in the electronic Federal Gazette inasmuch as the law does not stipulate something else in particular cases.

## II. Subscribed capital and shares

### § 4

- 1) The subscribed capital shall amount to € 115,089,210.88 (in words: onehundredandfifteenmillionand eightyninethousandtwohundredandten 88/100 EURO) and shall be divided into 44,956,723 (in words: fortyfourmillionninehundredandfiftysixthousandsevenhundredandtwentythree) no-par-value shares.

The Executive Board shall be authorised to increase the subscribed capital of the Company in the period until 2 March 2016, subject to the approval of the Supervisory Board, by issuing a total of up to 22,478,361 new no-par-value bearer shares once or in several instalments for a cash contribution or a contribution in kind up to an amount of €57,544,604.16. The shareholders shall be granted a subscription right. The new shares can be acquired by one or several banks provided they offer them to the shareholders for subscription. The Executive Board shall, however, be authorised, subject to the approval of the Supervisory Board, to exclude the subscription right of the shareholders once or on several occasions,

- a) inasmuch as it is necessary to exclude subscription rights for possible fractional amounts,
- b) up to an arithmetical face value totalling €38,046,026.24 if the new shares are issued for a contribution in kind,
- c) for capital increases against cash contributions up to an arithmetical nominal value totalling €11,508,920.32 or, if this amount is lower, by a total of 10 % of the subscribed capital existing when this power was exercised for the first time (in each

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case taking into account the possible use of other authorisations to exclude the subscription right in accordance with or in the corresponding application of Section 186 paragraph 3 sentence 4 AktG), if the issuing price for the new shares is not significantly lower than the price of company shares in the same category on the stock exchange at the time when the issuing price is finally fixed,

d) in as much as it is necessary to grant holders or creditors of bonds with warrants or convertible bonds issued by the Company relating to shares a subscription right for new shares to the same extent as they would be entitled after exercising their option or conversion rights.

- 2) The Executive Board shall be empowered, subject to the approval of the Supervisory Board, to define the other details of the capital increase, in particular the rights of the shares and the terms of issue. The Supervisory Board shall be empowered to amend Section 4 of the Articles of Association after the full or part increase of the subscribed capital to accord with the particular utilisation of the authorised capital and after expiry of the period of authorisation.
- 3) The subscribed capital shall be conditionally increased by up to €52,313,277.44 by issuing up

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to 20,434,874 new bearer shares without a nominal amount (no-par-value shares), each with notional interest in the subscribed capital of €2.56 (conditional capital). The conditional increase in capital will be used to grant no-par-value bearer shares to the holders or creditors of convertible bonds and/or bonds with warrants, profit participation rights or participating bonds (or combinations of these instruments), which are issued by the Company or companies, in which it has an indirect or direct majority interest, for a cash contribution as a result of the authorisation resolved at the Annual General Meeting on 3 March 2010 under item 8 of the agenda, and grant a conversion or option right to new no-par-value bearer shares in the Company or establish a conversion obligation. The conditional increase in capital shall only be carried out to the extent that option or conversion rights are used or those holders or creditors that are required to convert fulfil their obligation to convert and that the Company's own shares or new shares from the utilisation of authorised unissued capital are used for this purpose.

The new no-par-value bearer shares shall be entitled to participate in the profits from the beginning of the fiscal year in which they are come into existence through the exercise of option or conversion rights or the fulfilment of conversion obligations. The Executive Board is

authorised to define the further details of how the conditional capital increase shall be performed.

- 4) The Supervisory Board is authorised to amend the version of Section 4 paragraphs 1 and 3 of the Articles of Association in accordance with the respective issuance of new bearer no-par-value shares and to make all other related amendments to the Articles of Association that only relate to the wording. The same applies in the event of non-utilisation of the authorisation to issue bonds with warrants or convertible bonds, following expiry of the authorisation period, and also in the event of the non-utilisation of the conditional capital following expiry of the deadlines for exercising the option or conversion rights or the fulfilment of conversion or option rights.

## **§ 5**

- 1) The shares shall be made out to the bearer.
- 2) The Executive Board shall, in agreement with the Supervisory Board, decide the form and contents of the shares, profit appropriation coupons and talons.
- 3) The shareholders' right to have their shareholdings recorded in a certificate shall be denied.

- 4) The Company is entitled to send shareholders information by way of remote data transmission pursuant to the stipulations of § 30b par. 3 German Securities Trading Act (WpHG).

### **III. The Executive Board**

#### **§ 6**

- 1) The Executive Board shall consist of at least two members. In other respects the Supervisory Board shall stipulate the number of members of the Executive Board.  
Deputy members of the Executive Board can be appointed.
- 2) In the event of differences of opinion in the Executive Board, inasmuch as the Law does not stipulate that voting must be unanimous, the majority of votes shall decide, even if a member of the Executive Board has been appointed Chairman of the Executive Board. If such a Chairman has been appointed, his vote shall be the casting vote in the event of a tie.

#### **§ 7**

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- 1) The company shall be represented by two members of the Executive Board or by one member of the Executive Board together with a "procurist". The authority of the Executive Board to empower two procurists together to legally represent and sign on behalf of the firm shall not be changed as a result.
  - 2) Deputy members of the Executive Board shall have equal authority compared with the ordinary members of the Executive Board as regards power of attorney.

## **IV. The Supervisory Board**

### **§ 8**

- 1) The Supervisory Board shall consist of twelve members, six members of the Supervisory Board representing the employees, whose election shall be conducted in accordance with the legislation on Co-determination 1976, and six members of the Supervisory Board representing the shareholders, who are elected at the Annual General Meeting.
- 2) The period of office of the Supervisory Board shall last until the Annual General Meeting has ended in which the resolution has been passed

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to approve the actions of the Supervisory Board for the fourth fiscal year after the election of the Supervisory Board members of the shareholders; in doing this the fiscal year shall not be included in which the vote takes place.

- 3) Each member of the Supervisory Board can resign from office by sending his resignation in writing to the Chairman of the Supervisory Board or, in the event of the latter being prevented from attending the meeting, to his Deputy giving one month's notice.
- 4) The shareholders can elect deputies for the Supervisory Board members whom they are to elect at the Annual General Meeting. A deputy member can also be elected for several Supervisory Board members. The election and the legal status of deputies for the Supervisory Board members elected by the employees shall be in compliance with the regulations of the Law on Co-determination.
- 5) If one of its members resigns before the end of the period of office, the new member elected to replace the outgoing member shall have a period of office limited to the remaining period of office of the outgoing member.

## § 9

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- 1) Immediately after the Annual General Meeting, in which all the Supervisory Board members of the shareholders are to be newly elected, a Supervisory Board meeting will be held to which there will not be a special invitation. At this meeting, initially under the Chairmanship of the oldest member of the Supervisory Board, the Supervisory Board shall elect for the duration of the period of office of the Supervisory Board in accordance with the procedure laid down in the Law on Co-determination
    - a) a chairman and his deputy
    - b) the other two members of the committees formed in compliance with Section 27 par. 3 of the Law on Co-determination.
  
  - 2) If, in the course of the period of office, the Chairman or its Deputy resigns from office, the Supervisory Board shall elect replacements without delay.

## **§ 10**

The Chairman of the Supervisory Board, or in his absence his Deputy, shall send invitations to the Supervisory Board Meetings giving two weeks' advance notice. In urgent cases or with the agreement of all the Supervisory Board members the period for calling the meeting can be shortened. The items on the agenda shall be submitted with the invitation. Supervisory Board Meetings can be called in writing, telegraphically, over the telephone, by facsimile message, as a telecopy, by

telex or in another comparable form using the technical facilities of modern data transfer.

## § 11

- 1) Members of the Supervisory Board can authorise other members in writing to submit their written votes at a Supervisory Board Meeting.
- 2) The Supervisory Board shall be deemed as having a quorum if, after all the members have been invited, at least six members participate personally or by written vote in accordance with Section 108 par. 3 German Company Law. Resolutions should only be passed on items on the agenda, which have been notified in the invitation. Deviations from this procedure shall be acceptable if no member raises objections.
- 3) The resolutions of the Supervisory Board shall be passed with a simple majority of the votes submitted, inasmuch as no other majorities are mandatory by law. The Chairman shall stipulate the course of the meetings and the method of voting. In the event of equality in votes, the vote shall be repeated if requested by a member of the Supervisory Board. In the event that the new vote again results in a tie, the Chairman can by law have a second vote. In the event of being prevented from attending, the Chairman can also make use of the written vote as regards the

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second vote. The Deputy Chairman shall not be entitled to a second vote.

- 4) Minutes shall be made of the Supervisory Board Meetings which the Chairman or, in the event of his being prevented from attending the meeting, the Deputy Chairman shall have to sign.
  
- 5) Members unable to attend a meeting can vote in writing, telegraphically, over the telephone, by facsimile message, as a telecopy, by telex or in another comparable form using the technical facilities of modern data transfer (e.g. connecting by video transmission, e-mail, etc.) and – inasmuch as the facilities suffice – participate in the negotiations of the Supervisory Board if no objections to this procedure are raised by a member of the Supervisory Board within a reasonable period before the meeting, such period to be determined by the Chairman. Resolutions passed apart from at the meetings shall be permitted in the form of written circulars, by facsimile message, by telephone, as a telecopy, by telex or in another comparable form using the technical facilities of modern data transfer (e.g. video conference calls) if no objections to this procedure are raised by a member of the Supervisory Board within a reasonable period before the arranged date or the scheduled technical connection. The directives as regards the passing of resolutions in meetings apply accordingly.

- 6) In other respects the Supervisory Board shall establish its rules of procedure itself. Apart from the committees listed in Section 9 par. 1b, it can form further committees and - insofar as is permissible by law - give them the power to make decisions. Inasmuch as a Chairman has been elected of the Committee, the Supervisory Board can grant him the casting vote.
- 7) Declarations of intent of the Supervisory Board shall be submitted in the name of the Supervisory Board by the Chairman or, in the event that he is prevented from attending the meeting, by his Deputy.
- 8) The Supervisory Board shall stipulate that certain types of business may only be carried out with its agreement.
- 9) The Supervisory Board shall be authorised to make amendments to the Articles of Association in the event that such amendments only concern the wording.

## **§ 12**

- 1) Each member of the Supervisory Board shall receive, in addition to the reimbursement of expenses incurred while exercising his office, fixed compensation of € 40,000 per fiscal year.

The Chairman of the Supervisory Board shall receive twice this amount and his Deputy one and a half times this amount. Supervisory Board members, who belong to a Supervisory Board committee, shall receive an additional € 5,000 per fiscal year per committee, not however exceeding € 10,000 per fiscal year. Supervisory Board members, who chair a Supervisory Board committee, shall receive an additional € 10,000 per fiscal year per chairmanship, not however exceeding € 20,000 per fiscal year.

- 2) In addition, each member of the Supervisory Board shall receive an annual bonus linked to the company's long-term performance of € 250 for every € 1,000,000 of the adjusted consolidated earnings before taxes (EBT) in excess of an average adjusted consolidated EBT of € 50,000,000 per annum over the last three fiscal years. The adjusted consolidated EBT is the consolidated EBT in accordance with IFRS before revaluation of LIFO inventories using the average cost method and without taking the effects of copper price fluctuations on the valuation of inventories of the former Cumerio companies. The Chairman shall receive double and his Deputy 1.5 times this amount.
- 3) The fixed compensation in accordance with paragraph 1 sentence 1 and the bonus linked

to the company's long-term performance in accordance with paragraph 3 shall be limited to €80,000 per fiscal year for each member of the Supervisory Board. The limit shall be €160,000 per fiscal year for the Chairman and €120,000 per fiscal year for the Deputy Chairman.

- 4) The compensation in accordance with paragraphs 1 and 2 shall be payable on the day after the Annual General Meeting, when the resolution is passed on the exoneration of the members of the Supervisory Board for the respective fiscal year.
- 5) Supervisory Board members shall receive an attendance fee of €500 for each meeting of the Supervisory Board and its committees that they attend.
- 6) Furthermore, members of the Supervisory Board shall receive the value added tax payable on their compensation and on the reimbursement of their expenses.
- 7) Supervisory Board members, who have only served on the Supervisory Board or one of its Committees for part of a fiscal year, shall receive compensation in accordance with the period that they have served.

- 8) Members of the Supervisory Board shall be entitled to compensation in the amount resulting from the current version of this § 12 for the first time for the financial year commencing on 1 October 2009.
  
- 9) In its own interests, the Company shall maintain third party liability insurance against pecuniary loss for its Boards and Management with reasonable retentions taking the legal provisions into account, in which the Supervisory Board members are also included and are insured at the expense of the Company.

## **V. The Annual General Meeting**

### **§ 13**

- 1) Inasmuch as the law does not provide for other stipulations, the Annual General Meeting shall be called by the Executive Board. It shall take place at the place of business of the Company or of a German stock exchange at which the Company's shares are registered for trading.
  
- 2) The Annual General Meeting shall be convened by a single announcement in the Electronic Federal Gazette, which shall be published at least 30 days prior to the day of the Annual General Meeting. The minimum period of notice

under sentence 1 is extended by the days of the period during which shareholders register their attendance at the Meeting in accordance with Section 14 paragraph 1 of the Articles of Association. The period of notice shall be calculated in accordance with the legal provisions.

## **§ 14**

- 1) Shareholders wishing to participate in the Annual General Meeting and exercise their voting rights must register with the Company beforehand and provide proof of their authorisation to do so. The registration and proof of authorisation must reach the Company at this address or one of the Company's authorised addresses given in the invitation at least six days before the Meeting. A shorter period of notice measured in days can be given in the invitation. The period of notice shall be calculated in accordance with the legal provisions.
- 2) The right to participate in the Annual General Meeting and to exercise voting rights shall be confirmed in a special record of the shareholding issued in text form (Section 126b German Civil Code) by the depository bank. This proof of authorisation must be given in German or English and must refer to the beginning of the twenty-first day before the Annual General Meeting.

- 3) Each no-par-value share entitles the bearer to one vote.
- 4) The voting right can be exercised by proxy. The authorisation of the proxy, its revocation and the proof of authorisation must be given to the Company in writing, inasmuch as nothing to the contrary is stipulated by law. The revocation can also be exercised by the personal appearance of the shareholder at the AGM. A further relaxation of the formal requirements can be agreed in the invitation to the Annual General Meeting. Proof of authorisation can be submitted to the Company in an electronic communication which shall be defined further in the invitation.

## **§ 15**

- 1) The chair at the Annual General Meeting shall be taken by the Chairman of the Supervisory Board or, in the event of his being prevented from attending, by a Supervisory Board member nominated by him. In the event that no member of the Supervisory Board shall take the chair, the notary-public who has been called in to make the official recording of the minutes shall open the meeting and shall arrange for the Chairman of the meeting to be elected at the AGM by the shareholders with voting rights.

- 2) The Chairman shall preside over the Meeting and stipulate the order of the items on the Agenda, the order of voting on the resolutions and the method of voting.
- 3) The Chairman is authorised to set an appropriate time limit on the shareholder's right to ask questions and to speak.
- 4) The Chairman shall be authorised to decide whether shareholders can participate in the Annual General Meeting by means of electronic communication and, as required, make stipulations on the scope of the electronic participation and the procedure. These shall be made known with the invitation to the Annual General Meeting.

## **§ 16**

- 1) Members of the Supervisory Board, whose residence and/or place of work is located outside the Federal Republic of Germany or who cannot attend due to a stay abroad, can participate in an Annual General Meeting of the company via a sound and vision transmission. Exceptions to this ruling are Supervisory Board members, who in accordance with § 15 of the Articles of Association are in the chair at the Annual General Meeting.

- 2) The Chairman of the Meeting is authorised to permit picture and sound transmission of the Annual General Meeting in excerpts or in full via suitable electronic means.

## **§ 17**

The Annual General Meeting shall take place within the first eight months of each financial year. The agenda shall include:

- a) The report by the Executive Board on the Company's financial situation and business relations as well as the results of the past fiscal year and the Supervisory Board's report on the examination of the management report and the financial statements.
- b) The resolution on the appropriation of the profit
- c) The granting of formal approval of the actions of the Executive and Supervisory Boards
- d) The election of the shareholders' members of the Supervisory Board
- e) The election of the auditors

## **§ 18**

Apart from in the legally provided cases, extraordinary general meetings shall only be called if the Executive Board considers it necessary.

## **VI. Financial Year, Financial Statements and Profit Appropriation**

### **§ 19**

The financial year runs from 1 October to 30 September of the following calendar year.

### **§ 20**

- 1) The Executive Board shall compile the financial statements, the management report, the consolidated financial statements and the consolidated management report for the previous financial year within the statutory time limit and immediately after completion shall present these to the Supervisory Board and the auditors. At the same time the Executive Board shall make a recommendation to the Supervisory Board on the appropriation of the net income. The legal stipulations and business principles shall be observed in compiling the financial statements and consolidated financial statements.
- 2) In the event that the Executive and Supervisory Boards adopt the financial statements, they can allocate amounts of up to half of the annual net profit in other revenue reserves; furthermore they shall be additionally authorised to allocate further

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amounts of up to a quarter of the annual net profit in other revenue reserves as long as the other revenue reserves do not exceed half of the subscribed capital or inasmuch as, after allocation, they would not exceed half the subscribed capital.

## **§ 21**

- 1) At the Annual General Meeting it shall be resolved how the annual profit in the adopted financial statements shall be appropriated. A different appropriation can also be stipulated than that planned in Section 58 par. 3, sentence 1, of German Company Law.
  
- 2) In the event that new shares are distributed, a different profit assessment can be determined other than that laid down in Section 60 of German Company Law.