

**KION GROUP AG**

**Annual General Meeting on 11 Mai 2017**

**Report of the Executive Board on agenda item 9**

The Executive Board is to have the possibility in future as well of making use of financing options with the consent of the Supervisory Board in the interest of the Company in order to take advantage of business opportunities and to strengthen the Company's equity capital base. It was authorized, by a resolution adopted by the General Meeting on 19 May 2014, to increase the Company's share capital with the consent of the Supervisory Board, once or repeatedly up to and including 18 May 2019, by up to a total of EUR 9,890,000.00 by issuing up to 9,890,000 new no-par value bearer shares against cash and/or non-cash contributions (Authorized Capital 2014). The Authorized Capital 2014 was utilised in full in the 2016 financial year and has therefore ceased to exist.

It is therefore intended to resolve on a new authorized capital.

For this reason, the Executive Board and the Supervisory Board propose to the General Meeting under agenda item 9 that new authorized capital of up to a total of EUR 10,879,000.00 be created by the issuance of up to 10,879,000 new no-par value bearer shares (Authorized Capital 2017). The Executive Board shall be authorized to issue shares at any time up to and including 10 May 2022 on the basis of the Authorized Capital 2017. The Authorized Capital 2017 shall be available both for capital increases against cash and for capital increases against non-cash contributions.

The issuance of new shares on the basis of the proposed Authorized Capital 2017 is restricted in that the total pro rata amount of the share capital attributable to the shares may not exceed 10% of the share capital, either when this authorization comes into effect or when it is exercised. This restriction to 10% of the share capital shall also include the proportional amount of the share capital that is attributable to shares which may or must be issued in order to service bonds carrying a conversion or option right or a conversion or option obligation, if the bonds are issued during the term of the Authorized Capital 2017. Because of this capital limit, the total extent of any issuance of shares on the basis of the authorized capital and the issuance of bonds is restricted to 10% of the current share capital. In this way, shareholders will be protected to a particularly high degree against dilution of their holdings.

By way of the proposed Authorized Capital 2017, the Executive Board of KION GROUP AG will be enabled to align the equity base of KION GROUP AG to the business requirements at any time within the specified limits and to act quickly and flexibly in the interest of the Company. In order to be able to do so, the Company must always have the necessary instruments for procuring capital available, regardless of the specific utilisation plans. As decisions on the coverage of capital requirements normally need to be made on short notice, it is important that the Company does not have to wait for the next annual general meeting and does not have to call an extraordinary general meeting either. The instrument of authorized capital has been created by the legislator to address the need to procure capital on short notice. Common reasons for utilising authorized capital include to strengthen the equity capital base and to finance the acquisition of equity interests.

If and when the Authorized Capital 2017 is utilised, the shareholders will generally have a subscription right. Pursuant to section 186(5) German Stock Corporation Act, the new shares may also be subscribed to by one or more credit institutions which undertake to offer the shares for subscription to the shareholders (so-called indirect subscription right). The proposed authorization provides for the Executive Board to be allowed – in accordance with the legal provisions – to exclude the shareholders' subscription right in whole or in part with the consent of the Supervisory Board in the cases described below.

### **Exclusion of the subscription right for fractional amounts**

The Executive Board shall be authorized to exclude the shareholders' subscription right for fractional amounts with the consent of the Supervisory Board. Such exclusion of the subscription right shall allow for a practicable subscription ratio and shall thus facilitate the technical implementation of a capital increase. The value of the fractional amounts is normally low, whereas the time and effort required to issue shares without excluding the subscription right for fractional amounts is regularly much higher. When it comes to fractional amounts, the costs associated with trading in subscription rights would be out of proportion to the shareholders' actual benefits. The new shares that will be excluded from the shareholders' subscription right as so-called “non-allocable fractional amounts” will be used in the best possible way for the Company. The exclusion of the subscription right in these cases will thus serve to make an issue and its implementation more practicable and feasible.

### **Exclusion of the subscription right for bonds with warrants and convertible bonds**

Further, the Executive Board shall be authorized to exclude the shareholders' subscription right with the consent of the Supervisory Board also to the extent that this is necessary to grant the holders or creditors of conversion or option rights and/or the holders or creditors of financing instruments carrying conversion or option obligations, which were or are issued by the Company or by a domestic or foreign company in which the Company directly or indirectly holds the majority of the votes and capital, a subscription right to the same extent to which they would be entitled after exercising the conversion or option rights or after performing a conversion or option obligation.

The reasons for this are as follows: The economic value of the aforementioned conversion or option rights or the bonds with conversion or option obligations depends not only on the conversion or option price but also and in particular on the value of the shares of the company to which the conversion or option rights or conversion or option obligations relate. In order to ensure a successful placement of the respective bonds or, rather, to avoid a corresponding markdown in the price during placement, it is therefore common practice to include so-called anti-dilution provisions in the terms and conditions of the bonds, which will protect the holders of the rights from a loss in the value of their conversion or option rights as a result of a dilution of the value of the shares to be subscribed; the inclusion of such anti-dilution provisions in the terms and conditions of the bonds is therefore also provided for in the authorization to issue convertible bonds and/or warrant bonds and/or participation rights and/or participation bonds, as proposed under agenda item 10. In the absence of such protection against dilution,

the subsequent issuance of shares by granting the shareholders' subscription right would typically result in such dilution of the value of the shares. The aforementioned anti-dilution provisions in the terms and conditions of the bonds regularly provide for a reduction of the conversion or option price in such a case, with the result that in the event of the subsequent conversion or exercise of the option or the subsequent performance of a conversion or option obligation, the funds accruing to the Company are reduced and the number of shares to be issued by the Company is increased, respectively.

As an alternative which makes it possible to avoid reducing the conversion or option price, the anti-dilution provisions usually permit the holders of rights under bonds with conversion or option rights or conversion or option obligations to be granted a right to subscribe to new shares to the extent to which they would be entitled after exercising their own conversion or option rights or after performing their conversion or option obligations. They are thus placed in the position in which they would be, if they had already become a shareholder prior to the offer to subscribe, by exercising the conversion or option rights or by performing any conversion or option obligations, and would already be entitled to subscribe to that extent; thus, they are compensated – like all shareholders already holding shares – for the dilution of value by the value of the subscription right. For the Company, this second alternative for granting protection against dilution has the benefit that the conversion or option price need not be reduced; therefore, this alternative serves to ensure the largest possible inflow of funds in the event of a subsequent conversion or exercise of the option or the subsequent performance of any conversion or option obligation, and reduces the number of shares to be issued in this case, respectively. This also benefits the participating shareholders, so that this is at the same time compensation for the restriction of their subscription right. Their subscription right as such continues to exist and is merely reduced pro rata to the extent to which, in addition to the participating shareholders, the holders of the conversion or option rights or the bonds with conversion or option obligations are also granted a subscription right. In case of an issue of subscription rights, the present authorization will enable the Company to choose between one of the two above alternatives for granting protection against dilution, by weighing the shareholders' interests against those of the Company.

### **Exclusion of the subscription right in case of capital increases against cash**

In the case of capital increases against cash, the Executive Board shall be authorized to exclude the subscription right with the consent of the Supervisory Board in accordance with section 203(1) sentence 1 and (2) and section 186(3) sentence 4 German Stock Corporation Act if the issue price of the new shares is not substantially lower than the stock exchange price of the shares which are already listed.

It may be expedient to make use of this statutory possibility of excluding the subscription right in order to enable the Company to quickly and flexibly take advantage of favourable market situations and to satisfy any capital requirements arising in this regard, if necessary, even at very short notice. The two-week subscription period required when granting a subscription right to the shareholders (section 186(1) sentence 2 German Stock Corporation Act) does not allow for a comparably swift reaction to the current market situation. Moreover, due to the volatility of the stock markets, terms and conditions which are close to market terms and conditions can generally only be achieved if the Company is

not bound to them for a prolonged period. If a subscription right is granted, section 186(2) German Stock Corporation Act stipulates that the final subscription price must be announced no later than three days before the expiry of the subscription period. This means that the granting of a subscription right is connected with a greater market risk – in particular the risk of price changes over several days – than an allocation without a subscription right is. When granting a subscription right, one must hence regularly provide for corresponding safety discounts on the current market price in order to achieve a successful placement; this will normally result in less favorable terms and conditions for the Company than when increasing the capital with the subscription right being excluded. The exclusion of the subscription right allows for a placement close to the stock exchange price. Also, when granting a subscription right, a full placement is not definitely ensured due to the uncertainty regarding the exercise of the subscription rights by those entitled thereto, and a subsequent placement with third parties is normally associated with additional expenses.

The proportion of the share capital which is attributable to the shares issued by such exclusion of the subscription right must not exceed, in total, 10% of the share capital either at the time when this authorization takes effect or at the time of when this authorization is exercised. Within this limit, the legislator deems it reasonable for the shareholders to maintain the percentage of their shareholding by purchases on the market. This restriction to 10% of the share capital also includes the proportional amount of the share capital that is attributable to shares which are issued or sold during the term of the Authorized Capital 2017, with a subscription right being excluded, on the basis of an authorization to issue new shares or sell own shares by direct or analogous application of section 18(3) sentence 4 German Stock Corporation Act. The proportional amount of the share capital that is attributable to shares which may or must be issued in order to service bonds carrying a conversion or option right or a conversion or option obligation shall also count towards this 10% limit if the bonds are issued during the term of the Authorized Capital 2017 by excluding the shareholders' subscription right by analogous application of section 186(3) sentence 4 German Stock Corporation Act. Such taking into account serves to protect the shareholders in order to keep the dilution of their shareholding as low as possible.

This model for taking into account specific portions of the share capital allows for the shareholders' participation rate to be diluted by not more than 10% even when capital measures are combined with the issue of bonds and/or the sale of own shares of the Company. Aside from this, the shareholders will be generally able, because the issue price of the new shares is close to the stock exchange price and because the volume of the capital increase with the subscription right being excluded is limited, to maintain their participation rate by acquiring the necessary shares on the stock exchange on approximately the same terms and conditions. It is therefore ensured that the financial and participation-related interests remain adequately protected, in line with the legal rationale of section 186(3) sentence 4 German Stock Corporation Act, when Authorized Capital 2017 is utilised with the subscription right being excluded, while the Company is given a wider scope of action in the interest of all the shareholders.

### **Exclusion of the subscription right in case of capital increases against contributions in kind**

Further, the Executive Board shall be authorized to exclude the shareholders' subscription right with the consent of the Supervisory Board in the case of capital increases against contributions in kind, in particular for the purpose of acquiring enterprises, parts of enterprises, or interests in enterprises.

This shall enable KION GROUP AG to offer shares of the Company quickly and flexibly in suitable individual cases in order to satisfy claims arising from the preparation, implementation, closing or settlement of contractual or statutory acquisition processes as well as company mergers without using the stock markets. KION GROUP AG competes at a global level. It must be in a position at all times to act quickly and flexibly on the international and regional markets in the interest of its shareholders. This includes acquiring enterprises, businesses, parts of or interests in enterprises or other assets or claims to the acquisition of assets, including claims against the Company or its group companies, at short notice in order to improve its competitive position. In return, it may be expedient or even necessary to grant shares in order to preserve liquidity or to meet the sellers' expectations. The granting of shares instead of money may also be reasonable from the perspective of an optimum financing structure. This will not be disadvantageous to the Company, as the issue of shares against a contribution in kind requires for the value of such contribution in kind to be in due proportion to the value of the shares. When determining the valuation ratio, the Executive Board will ensure that the interests of the Company and of its shareholders are appropriately protected and that an adequate issue price is achieved for the new shares. Moreover, the Company's listing on the stock exchange generally enables every shareholder to increase its participation rate by acquiring additional shares.

### **Exclusion of subscription rights for the issuing of shares to employees**

The Executive Board shall also to be authorized, with the Supervisory Board's consent, to exclude the shareholders' subscription rights in order to issue shares to persons employed by or in a service relationship with the Company or any of its group companies. The exclusion of subscription rights in this regard is restricted to a total of no more than 5% of the share capital, both at the time at which this authorization comes into effect and when it is exercised. The purpose of this provision is to increase the ties between employees and their respective companies. This is in the interest of the Company. The Executive Board and the Supervisory Board also regard the restriction to 5% of the share capital as appropriate.

### **Further information**

Each and every case of an exclusion of the subscription right, as proposed herein, will require the consent of the Supervisory Board.

Further, the Executive Board will carefully consider in each individual case whether it would be in the interest of the Company to make use of the Authorized Capital 2017; the Executive Board will consider also and in particular whether a possible exclusion of the subscription right is objectively justified in

a specific case. The Executive Board will report to the next General Meeting on any utilisation of the authorization.