

# **Norddeutsche Affinerie Aktiengesellschaft**

## **Articles of Association**

**(Status: 29 February 2008)**

### **I. General Conditions**

#### **§ 1**

- 1) **NORDDEUTSCHE AFFINERIE Aktiengesellschaft** is a public limited company with 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 participate 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 € 104,626,557.44 (in words: onehundredandfourmillionsixhundrednadtwentysixthousandfivehundredandfifty-seven 44/100 EURO) and shall be divided into 40,869,749 (in words: fortymillioneighthundredandsixtyninethousandsevenhundredandfortynine) bearer shares.
- 2) The Executive Board shall be authorised to increase the subscribed capital of the Company in the period until 29 March 2011, subject to the approval of the Supervisory Board, by issuing new shares once or in several instalments for a cash contribution or a contribution in kind up to an amount of € 38,046,026.24. The shareholders shall be granted a subscription right. 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) on increases in capital for a contribution in cash up to an arithmetical nominal value of altogether € 10,462,653.44 or, if this amount is lower, of altogether 10 % of the subscribed capital existing at the time of the first-time exercise of this power to exclude the right of subscription (in each case taking into account the possible exercise of other power granted to exclude the right of subscription in accordance with or in commensurate application of Section 186 paragraph 3 sentence 4 AktG – Companies Act), if the issue price for the new shares is not materially lower than the stock market price of quoted shares in the Company of the same category at the time of the final definition of the issue price,
  - d) inasmuch as it is necessary to grant holders or creditors of the warrants/ convertible bonds issued by the Company a subscription right for new shares to the same extent as they would be entitled after exercising their option or conversion rights.
- 3) The subscribed capital shall be conditionally increased by up to € 41,500,000 by issuing up to 16,210,937 new bearer shares. The conditional capital increase shall only be carried out inasmuch as holders of convertible bonds or warrants or those obliged to conversion/exercise of warrants or convertible bonds respectively, which have been issued or guaranteed until 30 March 2010 by Norddeutsche Affinerie Aktiengesellschaft or by companies in which Norddeutsche Affinerie Aktiengesellschaft has an indirect or direct majority

interest, make use of their option/conversion rights as a result of the authorisation of the Executive Board resolved at the Annual General Meeting on 31 March 2005 or, insofar as such holders are obliged to exercise their warrants/conversion rights, they fulfil their obligations to exercise their warrants/conversion rights. The new shares shall be issued at the warrant exercise price or conversion price in accordance with the aforementioned resolution on authorisation. The new shares shall have dividend rights beginning in the fiscal year in which they are issued by the exercising of option and conversion rights or are issued in fulfilment of option and conversion obligations respectively. The Executive Board shall be authorised, subject to the approval of the Supervisory Board, to stipulate further details concerning the execution of the conditional capital increase.

## **§ 5**

- 1) The shares shall be made out to the holder.
- 2) The Executive Board shall, in agreement with the Supervisory Board, decide the form and contents of the shares, profit appropriation coupons and talons.
- 4) The shareholders' right to have their shareholdings recorded in a certificate shall be denied.
- 5) The Company is entitled to send shareholders information by way of remote date 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**

- 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 to approve the actions of the Supervisory Board for the fourth financial year after the election of the Supervisory Board members of the shareholders; in doing this the 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's 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**

- 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 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 teletype, 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 teletype, 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 € 10,000 per fiscal year. The Chairman of the Supervisory Board shall receive twice this amount, his Deputy one and a half times this amount. Supervisory Board members, who belong to a Supervisory Board committee, shall receive an additional € 2,500 per fiscal year per committee, however, not more than € 5,000 per fiscal year. Supervisory Board members, who are in the chair of a Supervisory Board committee, shall receive an additional € 5,000 per fiscal year per chairmanship, however not more than € 10,000 per fiscal year.
2. Apart from the fixed component in accordance with Section 1, the members of the Supervisory Board shall receive a performance-related bonus of € 200 per € 0.01 of dividend distributed to the shareholders in excess of € 0.20 per no-par-value share for the fiscal year. The Chairman of the Supervisory Board shall receive double, his Deputy 1.5 times this amount.
3. In addition, each member of the Supervisory Board shall receive an annual bonus linked to the company's long-term performance in the amount of € 500 for every € 1,000,000 of the company's earnings before taxes (EBT) in excess of € 70,000,000 per annum on average over the last three fiscal years (reference period). The Chairman shall receive double, his deputy 1.5 times this amount.
4. The compensation in accordance with paragraphs 1 to 3 shall be payable on the day after the Annual General Meeting, when the resolution is passed on the appropriation of the consolidated net income of the respective fiscal year.
5. Supervisory Board members shall receive an attendance fee in the amount of € 500 for each meeting of the Supervisory Board and of 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 pro rata temporis.
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 as of 1 April 2007, that is pro rata temporis for fiscal year 2006/07. For the period of

1 October 2006 to 31 March 2007 compensation shall apply as laid down in the old version of § 12.

9. In its own interests the Company shall maintain third party liability insurance against pecuniary loss for its Boards and Management with reasonable deductibles taking practices in the industry 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 called by a one-time announcement in the electronic German Federal Gazette, which must be published at least 30 days prior to the day by the end of which the shareholders have to register their attendance at the Meeting in accordance with Section 14 par. 1 of the Articles of Association. The period of notice of convocation is 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 official addresses specified in the invitation for the respective Meeting at the latest seven days before the Meeting. The legal provisions apply for the calculation of the deadlines. A shorter period of notice between the day of the Annual General Meeting and the last registration day can be given in the invitation.
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 bearer share entitles the holder to one vote.

- 4) Each shareholder can issue power of attorney in writing or in another manner stipulated by the Company, which will be made known by the Company in each case together with the invitation to the Annual General Meeting."

## **§ 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.

## **§ 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 Annual General Meeting can be transmitted in sound and vision to an unlimited extent via a suitable electronic means. This shall be expressly announced in the invitation to the Annual General Meeting.

## **§ 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 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 reserves; furthermore they shall be additionally authorised to allocate further amounts of up to a quarter of the annual net profit in other reserves as long as the other 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 clause 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.