

GILDEMEISTER Aktiengesellschaft Bielefeld

ISIN-Code: DE0005878003

Security Code Number (WKN): 587800

Explanatory report of the Executive Board of GILDEMEISTER  
Aktiengesellschaft on the disclosures required in accordance with  
Section 289 (4) and (5), Section 315 (2) no. 5 and (4) of the  
German Commercial Code (Handelsgesetzbuch – HGB)

**Explanatory report of the Executive Board of GILDEMEISTER Aktiengesellschaft on the disclosures required in accordance with Section 289 (4) and (5), Section 315 (2) no. 5 and (4) of the German Commercial Code (Handelsgesetzbuch – HGB).**

In the following, the disclosures, which pursuant to Section 289 (4) and (5), Section 315 (2) no. 5 and (4) HGB were given in the management report or group management report of GILDEMEISTER Aktiengesellschaft, are explained.

**Disclosures required by Section 289 (4), Section 315 (4) HGB and Explanatory Report**

GILDEMEISTER Aktiengesellschaft is a stock corporation under German law with registered office in Bielefeld and has issued shares with voting rights, which are listed on a regulated market within the meaning of Section 2 (7) of the German Securities Acquisition and Takeover Act (Wertpapiererwerbs- und Übernahmegesetz – WpÜG).

**As to Section 289 (4) no. 1 HGB**

The share capital of GILDEMEISTER Aktiengesellschaft amounted to € 118,513,207.80 as of 31 December 2010. It is divided into 45,582,003 no par value shares with a theoretical no par value of € 2.60 per share.

Due to the capital increase resolution passed by the GILDEMEISTER Aktiengesellschaft Executive Board, with the consent of the Supervisory Board, the share capital has increased with the partial use of authorised capital by € 11,851,320 through the issue of 4,558,200 new, no par value bearer shares to a total of € 130,364,527.80, divided into 50,140,203 no par value bearer shares with a theoretical par value of € 2.60 per share. By carrying out the resolution on a further capital increase passed on 24 May 2011 by the Executive Board of GILDEMEISTER Aktiengesellschaft with the consent of the Supervisory Board, the share capital has increased with the partial use of authorised capital by € 26,072,904.00 through the issue of 10,028,040 new, no par value bearer shares to a total of € 156,437,431.80 divided into 60,168,243 no par value bearer shares with a theoretical par value of € 2.60 per share (compare with respect to these two capital increases the disclosures below “As to Section 289 (4) no. 7 HGB”).

The same rights and obligations are associated with all the shares. Each share grants one voting right at the annual general meeting of shareholders and is decisive in determining the shareholder's share in the company's profit. This excludes treasury shares held by the company, for which the company is not entitled to any rights arising out of the same. The rights and obligations of the shareholders arise in each case out of the regulations of the German Stock Corporation Act (Aktiengesetz AktG), in particular out of Sections 12, 53a et seqq. and 186 AktG.

**As to Section 289 (4) no. 3 HGB**

GILDEMEISTER Aktiengesellschaft did not receive any notification in financial year 2010 of any direct or indirect equity investments that exceeded 10 % of the voting rights. Due to the capital increase passed by the Executive Board of the company on 15 March 2011 with the consent of the Supervisory Board with the partial use of authorised capital and excluding subscription rights of other shareholders, the direct or indirect equity interest of Mori Seiki Co., Ltd., Nagoya, Japan, the cooperation partner of GILDEMEISTER Aktiengesellschaft, has risen to 13.64 %. This equity interest will increase further, as the case may be, due to the additional capital increase planned.

**As to Section 289 (4) no. 6 HGB**

GILDEMEISTER Aktiengesellschaft is managed by the Executive Board and represented by the same with respect to third parties. The appointment and revocation of appointment of members of the Executive Board is regulated in Sections 84 and 85 of the AktG as well as in Section 31 of the German Co-Determination Act (Mitbestimmungsgesetz – MitbestG). In accordance with these acts, members of the Executive Board are appointed by the Supervisory Board for a maximum term of five years. A subsequent appointment or extension of the period of office is permissible in each case for a maximum of five years. According to Section 31 (2) MitbestG a majority of a minimum of two-thirds of the members of the Supervisory Board is necessary for the appointment of members of the Executive Board. Should such majority not be achieved, the appointment may take place pursuant to Section 31 (3) MitbestG in a second vote with a simple majority vote. Should the necessary majority not be achieved in this instance, a third vote shall take place in which likewise a simple majority vote shall be determining. However, in this case, the chairman of the Supervisory Board shall be entitled to two votes pursuant to Section 31 (4) MitbestG. Pursuant to Article 7 (1) of the Articles of Association of GILDEMEISTER AG, the Executive Board comprises several members. Moreover, Article 7 (2) of the Articles of Association of GILDEMEISTER Aktiengesellschaft provides that the Supervisory Board appoints the members of the Executive Board, determines their number and assigns their duties. Furthermore, the Supervisory Board may appoint a member as the chairman.

Pursuant to Section 179 (1) AktG, amendments to the Articles of Association require a resolution passed by the general meeting of shareholders which, insofar as the Articles of Association do not provide for any other majority, pursuant to Section 179 (2) AktG requires a majority of three-quarters of the share capital represented during the vote. Insofar as this involves an amendment to the object of the company, the Articles of Association may only provide for a larger majority. The Articles of Association of GILDEMEISTER AG make use in Article 15 (4) of the possibility of differing from this pursuant to Section 179 (2) AktG and provide that in principle resolutions are passed with a simple majority vote and, insofar as a capital majority is required, can be passed with a simple capital majority unless statutory provisions prescribe otherwise. In accordance with Article 10 (8) of the Articles of Association, the Supervisory Board is authorised to make amendments to the Articles of Association that only affect the wording. Any amendments to the Articles of Association will become effective in accordance with Section 181 (3) AktG upon registration in the Commercial Register.

The most recent amendment to the Articles of Association took place at the 108<sup>th</sup> Annual General Meeting of Shareholders on 14 May 2010; Articles 2, 5 16 and 15 of the Articles of Association were revised or amended with additional subsections.

#### **As to Section 289 (4) no. 7 HGB**

Pursuant to Article 5 (3) of the Articles of Association, the Executive Board is authorised to increase the share capital in the period until 13 May 2015 with the consent of the Supervisory Board by up to a nominal amount of € 59,256,600 through a single or several issues of new shares in return for cash and/or contributions in kind (authorised capital; as at 31 December 2010, on the capital increased passed on 15 March 2011 with the partial use of authorised capital as well as on the additional, currently ongoing capital increase, see below). The Executive Board is authorised to issue shares to company employees and to companies affiliated with the company and in this respect to exclude subscription rights of shareholders with respect to a partial amount of € 5,000,000. Moreover, the Executive Board is authorised with the consent of the Supervisory Board to exclude subscription rights for capital increases in return for contributions in kind. In the event of cash capital increases, the subscription right may be excluded (i) to grant bearers of conversion or option rights, which have been issued by the company or its affiliates, insofar as this is necessary to prevent dilution, (ii) to use any residual amounts, as well as (iii) if the issue amount of the new shares does not fall significantly below the stock exchange price and the proportionate amount of the share capital attributable to the new shares for which the subscription rights are excluded does not exceed 10 %.

To grant shares to holders of convertible bonds or bonds with warrants, which were guaranteed or issued in return for cash by the company or a group company under the management of the company on the basis of the authorisation of the Executive Board by the annual general meeting of shareholders of 15 May 2009, pursuant to Article 5 (4) of the Articles of Association, the share capital is conditionally increased by € 37,500,000.00 through the issue of up to € 14,423,076.00 no par value bearer shares (conditional capital I). The issue of new shares takes place in accordance with the resolution of the annual general meeting of 15 May 2009 in each case at conversion or warrant prices to be determined. The conditional capital increase is to be effected only insofar as the options or conversion rights relating to warrant or convertible bonds, issued or guaranteed pursuant to the resolution of the annual general meeting of shareholders of 14 May 2004 in the period until 31 March 2009 are exercised or any conversion obligation or obligation to exercise an option under the aforementioned bonds are fulfilled and existing shares or the payment of funds have not been used as servicing.

Moreover, by resolution of the annual general meeting of 14 May 2010, the company is authorised to purchase its own shares until 13 May 2012 up to a pro rata amount of almost 10 % of the registered capital, which corresponds to € 11,851,321.00. At the same time, the shares acquired on the basis of this authorisation together with any other shares of the company, which the company has already acquired or still possesses, or which are attributable to it pursuant to Sections 71d and 71e AktG, may not at any time account for more than 10 % of the share capital. The acquisition of shares takes place at the discretion of the Executive Board via the stock exchange or by way of a public purchase offer or by way of a public offer to tender such an offer. Should the acquisition of shares take place by way of the stock exchange, the counter value per share paid by the company (excluding

incidental expenses) may not exceed or undercut by more than 5 % the price determined on the day of trading by the opening auction in the XETRA trading system (or a comparable successor system). If the shares are acquired by way of a public purchase offer or a public invitation to tender a purchase offer, the purchase price offered or the price spread offered per share (excluding incidental expenses) may not exceed or undercut by more than 10 % the average closing price in the XETRA trading system (or a comparable successor system). Insofar as the purchase offer is oversubscribed or in the event of an invitation to tender an offer not all of several equivalent offers can be accepted, acceptance must be based on quotas. The preferred acceptance of a small number of shares of up to 100 shares per shareholder of the shares offered for acquisition may be provided for.

The Executive Board is further authorised by resolution of the annual general meeting of 14 May 2010 with respect to treasury shares that have been acquired based on the aforementioned or an earlier issued authorisation also to (i) collect the shares, (ii) to sell to third parties with the consent of the Supervisory Board in return for cash if the price at which the shares are sold does not significantly undercut the stock exchange price of the same class of shares at the time of the sale, (iii) sell in return for contribution in kind, (iv) issue the shares to fulfil conversion rights from convertible bonds issued by the company or group companies of the company as well as (v) to issue the shares to employees of the company and of its affiliated companies as well as to members of the management of affiliated companies and to use them to service the rights to acquire or duties to acquire shares of the company, which have been granted to employees of the company and of its affiliated companies as well as to members of the management of affiliated companies. Moreover, the Supervisory Board is authorised to use the treasury shares acquired on the basis of this or of an earlier authorisation granted or in any other way to service the rights to acquisition or duties of acquisition of shares of the company that have been granted to members of the Executive Board of the company.

The above-referred authorisations are intended to place the company in a position of having its own shares available at short notice, without having recourse to the stock market, in order to offer these to the seller in return for the acquisition of companies or interests in other companies.

In the reporting year 2010 the Executive Board did not exercise the above-referred authorisations. As of 31 December 2010, GILDEMEISTER Aktiengesellschaft did not have any treasury shares.

On 15 March 2011, the Executive Board of GILDEMEISTER Aktiengesellschaft passed a resolution with the consent of the Supervisory Board to increase the company's share capital with the partial utilisation of authorised capital by up to € 11,851,320 through the issue of to 4,558,200 new no-par value bearer shares (no-par value shares) in exchange for cash. The ten percent capital increase is to be carried out with the exclusion of existing shareholders' subscription rights. All the new shares arising out of this capital increase have been subscribed by the cooperation partner of GILDEMEISTER Aktiengesellschaft, Mori Seiki Co., Ltd., Nagoya, Japan. The placement price amounted to € 18.22 per new share; this corresponds to a premium of 27 % measured on the volume-weighted average price of the GILDEMEISTER share on the date of the resolution.

Moreover, on 24 March 2011, with the consent of the Supervisory Board, the Executive Board passed a resolution to increase the company's share capital with the partial utilisation of authorised capital by a further € 26,072,904.00 through the issue of 10,028,040 new no-par value bearer shares (no-par value shares) in exchange for cash. The new shares will be offered by subscription to GILDEMEISTER shareholders by way of an indirect subscription offer at a ratio of 5:1 through the consortium banks.

The shares from both capital increases will be fully entitled to dividend from 1 January 2010. The proceeds from the issue will be used primarily to reduce financial debt and thus to strengthen the equity basis. Furthermore any possible remaining part of the proceeds from the issue shall be invested for growth in the "Machine Tools" core business and for "Services", and also to build up the "Energy Solutions" segment.

#### **As to Section 289 (4) No. 8 HGB**

As significant agreements that are subject to a change of control condition in the event of a takeover, the syndicated loan agreements of € 175,000 and € 211,900, and the borrowers' notes with a total volume of € 201,500 of GILDEMEISTER Aktiengesellschaft must be stated. In the event of a change of control (acquisition of 25 % or more of the voting rights) the repayment of the syndicated loan (if necessary, also in part payments) or the repayment of the borrower's notes may be requested. The conditions agreed in the event of a change of control comply with customary agreements. They do not lead to an automatic termination of the above-referred agreements but, in the event of a change of control, merely grant our contractual partners the possibility of terminating these.

#### **Disclosures required by Section 289 (5), Section 315 (2) no. 5 HGB and Explanatory Report**

The primary goal of the accounting-related internal control and risk management system is to ensure the correctness of the financial reporting within the meaning of consistency between the consolidated financial statements and the group management report with all pertinent regulations.

#### **Essential features and explanation of the internal control system and of the risk management system with respect to the accounting process**

The accounting-related internal control system is part of the entire internal control system (IKS) of GILDEMEISTER Aktiengesellschaft, which is embedded in the group-wide risk management system. It comprises organisational, control and monitoring structures to ensure the legal collection, preparation and assessment of entrepreneurial content and their ultimate inclusion in the HGB annual accounts in the IFRS consolidated financial statements of GILDEMEISTER Aktiengesellschaft.



The analyses carried out by risk management contribute to identifying risks with an impact on financial reporting and to introduce measures to minimise risks. The accounting-related internal control system includes basis principles, procedures and measures to ensure the correctness of the (group) accounting. In this respect we analyse new laws, accounting standards and other communiqués with respect to their effect on the consolidated financial statements. Throughout the group, we have codified relevant regulations in guidelines, such as those in the accounting handbook. These guidelines together with the financial statement calendar valid throughout the group form the basis of the process of drawing up the financial statements. Local companies are responsible for compliance with relevant regulations and in this respect are supported and monitored by the group accounting department. In addition, there are local regulations that each have to be harmonised with the group accounting. This also includes compliance with local accounting principles. The internal audit department checks the effectiveness of the accounting-related internal controls. Consolidation is carried out centrally by the group accounting department. As required, GILDEMEISTER avails itself of external service providers, for example in measuring pension obligations. The employees entrusted with drawing up the financial reports undergo regular training. The control system covers both preventive as well as discovery control activities, which include plausibility checks, separation of functions and the “four-eyes” principle (dual control). Additionally, the analyses carried out by risk management contribute to identifying risks with an impact on financial reporting and to introduce measures to minimise such risks.

Financial risks arise, amongst others, from our international activities. We hedge against currency-related risks with our currency strategy. In view of our hedging, we estimate currency-related risks to be low. Significant components of GILDEMEISTER financing are syndicated loans, borrowers’ notes and a factoring program. A risk from changes in interest rates from the borrowers' notes does not exist as a fixed interest rate agreement has been agreed by means of a hedging instrument (swap). All financing agreements include a customary agreement on compliance with covenants. In the event of non-compliance with the covenants, which could also cause deviances from planning, the banks would have a right to terminate the financing agreements. GILDEMEISTER'S liquidity is sufficiently measured. A risk could arise from the timing occurrence of payments in the project business. The agreed financing framework can absorb any possible time delays that are identifiable today. Possible losses amount in total to about € 24 million. The probability of occurrence of any loss is low.

Risks with respect to the assets of GILDEMEISTER Aktiengesellschaft arise mainly through the accounting and assessment of financial assets. Financial assets are accounted for at purchase cost or with the lower fair value. The value retention of financial assets is determined annually with the aid of the capitalised income value calculation, which is based on the budget overview of the investment companies. Due to the values determined, there was no need for devaluation at the reporting date. In the event that the planned results are not achieved, devaluation to the lower fair value may be required. The current existing budget overview does not give rise to impairment in 2010. Insofar as deferred tax assets on loss carry forwards or interest carry forwards are not impaired, it is

assumed in the planning period that this potential tax reduction can be used against taxable income. Should there be higher tax charges than expected, or should it not be possible to use loss and interest carry forwards, this could have a detrimental effect on GILDEMEISTER's assets, financial position and results of operations. In addition, there is a risk of tax charges from ongoing tax audits. Overall, we have calculated any possible losses arising out tax risks at € 4 million with a low probability of occurrence.

The risks are thus controllable and the continued existence of the GILDEMEISTER group as a going concern is not at risk from today's perspective.

Bielefeld, March 2011

GILDEMEISTER Aktiengesellschaft



Dr. Rüdiger Kapitza



Günter Bachmann



Kathrin Dahnke



Dr. Thorsten Schmidt



GILDEMEISTER Aktiengesellschaft  
Gildemeisterstraße 60, D-33689 Bielefeld  
Local Court HRB 7144  
Phone: +49 (0) 52 05 / 74 - 0  
Fax: +49 (0) 52 05 / 74 - 30 81  
info@gildemeister.com, www.gildemeister.com