

Text: EGMS Minutes of 29 September 2004

COPY

**Number 148 of the Notary's Register of Deeds for the year 2004**

D O N E

to Frankfurt am Main, Germany, on this 29<sup>th</sup> day of September 2004

The undersigning Notary,

**DR. GÜNTER PAUL,**

in my capacity as Notary for the judicial district of the Higher Regional Court  
(*Oberlandesgericht*) of the City of Frankfurt am Main,  
having my official office at Untermainanlage 1, 60329 Frankfurt am Main,

have, at the request of the Management Board of BKN International AG, today proceeded to  
the Arabella Sheraton Grand Hotel, Konrad-Adenauer-Strasse 7, 60313 Frankfurt am Main, for  
the purpose of

taking the minutes of the

**Extraordinary General Meeting of Shareholders**

of

**BKN International AG,**

having its registered office in the city of Cologne, Germany.

Text: EGMS Minutes of 29 September 2004

The persons to follow were present at the General Meeting of Shareholders:

(A) of the members to the Supervisory Board of the Company composed of

---

(1) Mr Karl B e n e t z,  
Durbach/Baden, Germany,

C h a i r m a n

(2) Mr Michael J. K u g l e r,  
Greenwich, USA,

(3) Mr Robert K. P a f f,  
Creedmor, USA,

the persons named in items (1) through (3);

(B) of the Management Board of the Company composed of

---

(1) Mr Allen J. B o h b o t,  
New York, USA,

C h a i r m a n

(2) Mr Wayne M o w a t,  
London, United Kingdom,

(3) Mr Ben H e n g C h i n G u a n,  
Singapore,

the persons named in items (1) through (3);

(C) the shareholders respectively representatives of shareholders named in the list of participants and, vis-à-vis the company, having duly proved their authorisation to participate in today's General Meeting of Shareholders and to exercise their voting right.

Text: EGMS Minutes of 29 September 2004

In accordance with Article 16 of the Articles of Incorporation, Mr Karl Benetz took the chair and opened the General Meeting of Shareholders at 11:00 a.m.

The Chairman stated that the General Meeting of Shareholders had been convoked in due form. The convocation of today's General Meeting of Shareholders as well as the announcement of the agenda, including the proposals of the Management, had been published in the Electronic Official Gazette of the Federal Republic of Germany on 20 August 2004. The said publication has been attached to the present minutes in form of **ANNEX 1**.

The Chairman informed the participants that Dr. Günter Paul, had been requested to take the minutes of today's General Meeting of Shareholders in his capacity as notary.

The Chairman pointed out that exclusively the conference room in which today's General Meeting of Shareholders was held, constituted the area of presence and vote for the implementation of today's General Meeting of Shareholders. Votes could only be cast in that conference room. The company would neither record today's General Meeting of Shareholders onto tape, nor have shorthand minutes prepared. Moreover, none of the participants was permitted to record today's Meeting of Shareholders onto tape or to take photographs of, or film, the convention.

As to the written documentation for today's General Meeting of Shareholders, the Chairman explained as follows:

- ▶ The invitation to today's General Meeting of Shareholders, including the agenda and the Management Report for the General Meeting of Shareholders, was forwarded to the stockholders in accordance with Section 186 subsection 4 sentence 2 and Section 221 subsection 4 of the German Stock Corporation Act (*Aktiengesetz, AktG*).
- ▶ The above-mentioned documentation is open for inspection by the shareholders next to the speaker's desk.

Thereafter, the Chairman, making reference to Article 15 of the Articles of Incorporation, specified the voting procedure as follows: All votes shall be cast by way of poll cards. The result of the vote shall be determined on the basis of the subtraction method by subtracting the number of negative votes and abstentions from the total number of votes to which the present or represented voting

Text: EGMS Minutes of 29 September 2004

shareholders are entitled. The Chairman provided an in-depth explanation of the voting procedure and declared that only negative votes and abstentions would be counted. First, abstentions would be subtracted from the total number of represented votes which would reflect the number of cast votes. Then, the number of negative votes would be subtracted therefrom, the result of which would be equal to the number of affirmative votes. He requested such shareholders wishing to vote against a motion or to abstain from voting to indicate their intention by raising their hands and mentioning the poll card number as well as the number of votes with the aid of the microphones set up for that purpose. Moreover, the Chairman repeated that any participation in a vote could take place only within that conference room (area of presence and vote). Prior to voting, he would provide further explanations on the details of the procedure. He reserved the right to change the type of voting in the course of the General Meeting of Shareholders, if such other voting procedure should prove to be necessary.

The Chairman requested such shareholders and representatives of shareholders intending to temporarily withdraw from the General Meeting of Shareholders or leave the convention before its closing to deliver a power of attorney or to sign out at the registration/deregistration desk to make sure that their temporary or final withdrawal can be taken into due consideration in keeping the list of shareholders.

At 11:12 a.m., the Chairman announced the list of present shareholders, including subsequent entries, undersigned that list of present shareholders, including subsequent entries, together with the Notary, and opened executed copies thereof for inspection.

The Chairman explained the submitted documentation and the item on the agenda.

The participants did not request the Chairman to read out the submitted documentation and the agenda. Motions for the adoption of proposed resolutions were not submitted.

Thereafter, at 11:12 a.m., the Chairman announced the number of present shareholders as follows for the first time:

**Out of the capital stock currently totalling €15,012,487.00  
shares in the nominal amount of €5,804,788, constituting 5,804,788 votes,  
being equal to 36.666% of the capital stock, are represented.**

Text: EGMS Minutes of 29 September 2004

Thereafter, the Chairman opened the discussion on the item of the agenda and explained the handling of and procedure for any requests to take the floor, including any requests to comment on the rules of procedure. He requested the speakers to keep their comments succinct and to adhere to the agenda only when taking the floor.

Some of the questions Mr Peter Eck, one of the shareholders, asked were as follows:

- Please tell us the reason which caused you to obtain our consent to the agenda.
- What is the reason making “additional capital” necessary?
- What does the Management intend to do with the additional capital?
- What alternative scenarios did the Management verify?
- What other obvious alternatives were there?
- Why did the Management opt for the solution now submitted for adoption?
- Why should this matter be adopted within the framework of an extraordinary meeting of stockholders and why can it not wait until the next ordinary meeting of stockholders?
- What stage have potential negotiations reached so far?
- With whom have negotiations been conducted on what in this context?
- Please communicate the essential aspects of the loan agreement with the Dresdner Bank.
- Please calculate – or let us know – the financial advantage linked to the “other funding option”.
- What are the conditions on which the “convertible bond” is projected to be based?
- As regards the exclusion of subscription rights, please tell us the reason for this exclusion of subscription rights.
- Please explain the calculations according to which a maximum of 10% of the “convertible bond” will be subject to the exclusion of subscription rights.
- Please give us the reasons making you opt for the exclusion of subscription rights.

The replies of the Management included the statement that the adoption of the proposed resolution aims at restructuring the debt level arising from the current loan with the Dresdner Bank. With the aid of additional capital, the company is projected to clear its debts. The Management opted for the proposed approach, as it offers maximum flexibility, clears the company’s debts and thus increases the value of the undertaking/its shares. Other alternatives do not offer the same benefits. That holds true especially for a capital increase. Against that backdrop, the company opted for the proposed approach standing for the best solution. For the company, it has not been possible to wait until the ordinary General Meeting of Shareholders, as urgent decisions need to be taken. It is not projected to

Text: EGMS Minutes of 29 September 2004

take up negotiations until the proposed resolution has been adopted. As to the contents of the loan agreement, the Management Board informs the participants of the total amount of the current loan as well as the period over which, on the basis of equal instalments, interest and redemption payments will pay off the remaining amount. Incidentally, the Management Board regards the interest and loan conditions of the Dresdner Bank as fair. At present, the advantage of a different funding option cannot be ascertained, as negotiations are still underway. The convertible bond will be based upon the conditions of the proposed resolution. The exclusion of subscription rights is required to repay the loan taken out with the Dresdner Bank. Therefore, the proposed 10% quota is sufficient.

The Chairman answered the questions raised by the shareholders and invited Mr Bohbot to take the floor to reply to questions he did not answer himself.

Finally, the Chairman asked each of the speakers whether the questions posed by them were answered; the speakers answered the Chairman's question in the affirmative.

Thereafter, after the end of the discussion at 11:36 a.m., the Chairman established that all requests to take the floor had been complied with. Anew, the Chairman posed the question whether any of the shareholders still wished to take the floor and whether all questions had been answered; there was no reply on the part of the shareholders. However, Mr Peter Eck declared that he was not satisfied with the answers to his questions, that he expressly complained about that circumstance and that, therefore, he wanted his questions to be put on the record in writing separately. Simultaneously, he, as of now, declared his protest against the adoption of the proposed resolution and requested his protest to be put on the record. Thereafter, the Chairman closed the debate.

Apart from the questions stated hereinabove, the list of questions delivered in writing after closure of the debate and attached hereto in form of **ANNEX 2** contains another final question:

- How much time would it take to issue convertible bonds with subscription rights – and how much time without subscription rights?

Prior to voting, the Chairman explained anew the details of the voting procedure. Again, he pointed out that poll cards could only be cast within the conference room and not in the lobby or adjacent rooms; further, he asked all shareholders wishing to participate in the voting to proceed to the conference room.

Text: EGMS Minutes of 29 September 2004

Thereafter, the Chairman invited the shareholders to vote on the item on the agenda and announced the following changed number of present shareholders at 11:36 a.m.:

**Out of the capital stock of €15,012,487.00  
shares in the nominal amount of €5,815,839, constituting 5,815,839 votes,  
being equal to 38.740% of the capital stock, are represented.**

For counting the votes, the relevant shareholders are requested to put their hands up on being called.

### **As to the item on the agenda**

- Adoption of the proposed resolution on the authorisation of the Management Board to issue convertible bonds and stock warrants; creation of contingent capital, and amendment to the Articles of Incorporation

the Chairman made anew reference to the Management Report for the General Meeting of Shareholders in accordance with Section 186 subsection 4 sentence 2 and Section 221 subsection 4 of the German Stock Corporation Act.

The Chairman announced, that the Management Board and the Supervisory Board propose the adoption of the resolution to follow:

#### **a) Authorization to issue Convertible Bonds and/or Stock Warrants**

aa) Authorization period, nominal amount, term to maturity, number of shares

The management board is authorized until 29 September 2009 with the supervisory board's approval to allot on one or more occasions convertible bonds or stock warrants issued to the holder up to a total nominal value of € 25,000,000.00 with a maximum 20-year term to maturity and to grant to stock warrant and/or convertible bond holders and creditors option rights and/or conversion rights to new, ordinary bearer shares (no-par value shares) in the company with a total share of up to € 4,000,000.00 in the share capital as detailed in the option and/or conversion conditions. In addition to euros, bonds can be issued in the statutory currency of an OECD country, subject to limitation to the equivalent in euros. If they are issued in a currency other than the euro, this must be based on the equivalent value calculated in accordance with the European Central Bank's euro foreign exchange reference rate on the day when the resolution to issue the stock warrants or convertible bonds is adopted. Bonds can also be issued by enterprises in which the company has a majority holding, whether indirectly or directly. In this case, the management board is authorized with the supervisory board's approval to accept on behalf of the

Text: EGMS Minutes of 29 September 2004

Company a guarantee to repay the bonds and to grant bond beneficiaries option and/or conversion rights for new shares in the Company.

bb) Subscription rights, exclusion of subscription rights

As a matter of principle, bonds are to be taken over by a bank or a consortium of banks that undertake to offer them to shareholders for subscription. However, the management board is authorized with the supervisory board's approval to exclude the shareholders' rights to subscribe to bonds with a conversion or option right to shares with a total proportion of the share capital up to € 1,501,248.00. However, subscription rights can only be excluded to the extent to which the authorized capital in accordance Article 186 Para. 3 Sentence 4 AktG remains unutilized, and then only if bonds are issued at a price that is not substantially lower than their theoretical market value as determined by recognized time-adjusted methods. In addition, the management board is authorized with the supervisory board's approval to rule out shareholders' subscription rights in respect of residual amounts resulting from the subscription ratio as required in order to grant stock warrant or convertible bond creditors, or holders of convertible bond with an obligation to convert, subscription rights on the scale to which they would be entitled after exercising their option or conversion rights or fulfilling their obligation to convert.

cc) Option rights

If bonds with warrants are issued, each bond will be accompanied by one or more warrants that entitle the holder to subscribe to new, ordinary bearer shares (no-par value shares) in the Company as specified in the option conditions to be laid down by the management board. The option conditions may provide for the exercise price to be paid also by the transfer of bonds or claims to payment in connection with them. If stock warrants are issued by a direct or indirect wholly owned subsidiary of the Company, the option conditions are to provide for funds raised from the bond issue to be passed on to the Company by way of a loan, for the resulting loan claim to be assigned pro rata to the warrant holders, or to a trustee appointed on their behalf, for safety and for loan claims assigned in this way to be assigned to the Company when the option is exercised, thereby lapsing. The proportional amount of the share capital represented by the ordinary bearer shares (no-par value shares) to be subscribed to per stock warrant may not exceed the nominal value of the stock warrant. The term to maturity of the option rights may not exceed 20 years.

dd) Conversion right, conversion obligation

If convertible bonds are issued, creditors will have the right to exchange their bonds for new, ordinary bearer shares (no-par value shares) in the Company. The proportional amount of the share capital represented by the shares to be issued on conversion may not exceed the nominal value of the convertible bonds. The conversion ratio will be calculated by dividing the nominal value of a convertible bond by the conversion price laid down for a new, ordinary bearer share (no-par value share) in the Company and can be rounded up or down to a whole number. The conversion ratio can also be calculated by dividing the issue price of a convertible bond, if lower than the nominal value, by the conversion price laid down for a new, ordinary bearer share (no-par value share) in the Company. The bond conditions can provide for conversion to be obligatory.

ee) Further possible arrangements

Provision can also be made for the conversion ratio and/or the exercise price to be variable and for the exercise price to be set within a specified bandwidth depending on the share price trend during the term to maturity. If there is a subscription right to fractions of new shares, provision can be made for these fractions to be added together as specified in the option or bond conditions so that whole shares can be

Text: EGMS Minutes of 29 September 2004

subscribed to. In addition, the requirement for an additional cash contribution and/or compensation for non-convertible residual amounts can be specified.

#### ff) Exercise price

The exercise price to be paid for one registered, no par value, ordinary share with a one euro share of share capital must be equivalent to at least 80% of the average closing price of the Company's shares in XETRA trading (or a successor system) on the Frankfurt Stock Exchange on the ten trading days before the day when the management board resolved to issue the stock warrants and convertible bonds, or at least 80% of the average closing price of the Company's shares in XETRA trading (or a successor system) on the Frankfurt Stock Exchange during the trading days when a bookbuilding process was carried out, or at least 80% of the average closing price of the Company's shares in XETRA trading (or a successor system) on the Frankfurt Stock Exchange during the subscription period, except for the last four days of the subscription period. Notwithstanding Article 9 Para 1 AktG, the option or conversion price will be reduced on the basis of a dilution protection clause as defined in detail in the option and/or convertible bond conditions if, during the option or conversion period, the Company increases the share capital by means of a rights issue to shareholders only, or issues or guarantees further warrants or convertible bonds and when doing so does not grant the holders of existing warrants or convertible bonds subscription rights such as they would be entitled to after exercising their option or conversion right. The warrant and convertible bond conditions can also provide for an adjustment to the option or conversion price for other capital measures, restructuring, extraordinary dividends or comparable measures that can lead to a dilution of the share value. The reduction in the exercise price can also be effected by means of a cash payment and by increasing the number of shares to be granted when the bond is converted or the option exercised. The management board is authorized to fix the details of the bond and warrant conditions, in particular, the interest rate, issue price, term to maturity and denomination, exercise price and exercise period.

### b) Contingent Capital

The company's share capital will be increased conditionally by up to € 4,000,000.00 by issuing up to 4,000,000 new, ordinary bearer shares (no-par value shares) (Contingent Capital XIV). This contingent capital is for allotting new shares to the holders or creditors of stock warrants or convertible bonds issued by the company in accordance with the above authorization resolution or by companies in which it has a direct or an indirect majority holding. Shares will be issued at the exercise price to be determined as specified in the above resolution. This contingent capital increase will be affected only to the extent that holders or creditors of stock warrants or convertible bonds utilize their option or conversion rights or to which conversion obligations arising from such bonds are fulfilled. Shares that originate by exercise by the beginning of the Company's Annual Meeting of Shareholders will participate in profit from the beginning of the preceding fiscal year, and others from the beginning of the fiscal year in which they originate by the exercise of subscription rights. The supervisory board is authorized to amend the wording of the Articles of Incorporation after full or partial utilization of the contingent capital or after expiry of the authorization period.

### c) Amendment to the Articles of Incorporation

A new Para 5 is added to Article 4 of the Articles of Incorporation, as follows:

“(5) The company's share capital is increased conditionally by up to € 4,000,000.00 by the issuance of up to 4,000,000 new, ordinary bearer shares (no-par value shares) (Contingent Capital II). This contingent

Text: EGMS Minutes of 29 September 2004

capital is solely for the purpose of allotting new shares to holders or creditors of stock warrants or convertible bonds that were issued as resolved by the shareholders' meeting held on 29 September 2004. The shares will be issued at the exercise price to be determined as specified in the abovementioned resolution. The contingent capital increase will be effected only to the extent that holders or creditors of stock warrants or convertible bonds make use of their subscription rights or right to convert into bearer shares of the company, or to which conversion obligations arising from such bonds are fulfilled shares that originate by exercise by the begin of the company's Annual General Meeting of Shareholders will participate in profit from the beginning of the preceding fiscal year. Others will participate from the beginning of the fiscal year when they originate by exercise of subscription rights."

The Chairman enquired whether he should read out the item on the agenda. The participants of the meeting gave their consent to refrain from reading out the item on the agenda.

For voting on the proposed resolution, the Chairman invited the participants to make use of their poll cards to cast their votes.

Counting the votes cast on the item of the agenda showed that the resolution as proposed by the Management Board and the Supervisory Board was adopted

by 5,804,132 votes for  
to 1,707 against the proposed resolution  
with 10,000 abstentions

i.e. by a majority of 99.9706% of the votes, and thus, with regard to the amendment to the Articles of Incorporation, by the required  $\frac{3}{4}$  majority.

The Chairman declared that the resolution was adopted as proposed by the Management on the basis of the indicated vote and capital ratio.

As none of the participants wished to take the floor, the Chairman closed the convention at 11:45 a.m.

I, the Notary, hereby undersign this debate as follows:

[[Seal]]

[[Signature]] \_\_\_\_\_

Dr. Günter Paul, Notary