



## **REPORT**

**by the Management Board of A-TEC INDUSTRIES AG**

**pursuant to section 174(4) *Aktiengesetz* ([AktG] Companies Act) in conjunction with section 153(4) AktG**

The extraordinary General Meeting of A-TEC INDUSTRIES AG (registered office in Vienna, reg. no. FN 216262 h) will, among other things, resolve on the authorisation of the conferral on holders of the bonds issued by the Company on 23 September 2009 of rights to convert up to an initial 7,452,575 bonds (or 8,130,082 bonds in the event of full exercise of the over-allotment option by the lead manager to place additional bonds carrying such rights up to a total face value of €10,000,000) into bearer shares in the Company of no par value representing a total of up to €7,452,575 (or up to €8,130,082 in the event of exercise of the over-allotment option) of the Company's share capital, and simultaneously excluding the subscription rights of shareholders under section 174(4) AktG in conjunction with section 153(4) of that act.

In accordance with the provisions of section 174(4) AktG, in conjunction with section 153(4) of that act, requiring the presentation of a legal and business case for the exclusion of subscription rights, the Management Board makes the following

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In the opinion of the Management Board, where rights to convert bonds into the Company's shares are conferred on bondholders, the exclusion of subscription rights is in the overriding interests of the Company and hence — at least indirectly — of existing shareholders.

### **1. Purpose of the bonds and short description of the bond terms and conditions**

The purpose of issuing bonds and conferring rights on bond holders to convert them into shares in the Company is to strengthen its capital and financial structure, and hence the Company itself.

The bonds issued by the Company, with a total face value of €10,000,000 (and additional bonds carrying the same rights up to a total face value of €10,000,000 in the event of exercise of the over-allotment option by the lead manager), are divided into bonds carrying equal rights with a face value of €50,000 each and evidenced by a global certificate deposited with the Oesterreichische Kontrollbank. The bonds bear interest of 8.75% p.a. of face value, payable retroactively on 27 October each year. The bonds will

mature on 27 October 2014, by which date they must be redeemed by the Company at face value plus accrued interest unless the bondholders have exercised the options granted to them under the terms and conditions of the issue. If bondholders exercise their options the bonds must initially be redeemed for the cash amount corresponding to the average value of the number of Company shares to which the bondholders are entitled in the event of conversion. If the Company's General Meeting grants bondholders the right to convert bonds into shares in the Company, shareholder subscription rights are excluded, and the conditional capital of €3,100,000 required to satisfy the conversion rights is created and entered in the register of companies (hereinafter "fulfilment of the conversion conditions"), then bondholders exercising their options will only be entitled to require conversion of the bonds into shares in the Company at the ruling exercise price — which was initially set at €4.76 on 23 September 2009 on the basis of a 27.5% premium over the volume weighted average price of the Company's shares on the Vienna Stock Exchange during the bookbuilding period, and which is subject to adjustments during the term of the bond in accordance with the bond terms and conditions — instead of payment of the cash price. The initial exercise price, the interest rate and the conversion premium were set by an experienced investment bank using a normal bookbuilding procedure, and determined on this basis by the Management Board with the approval of the Supervisory Board.

## **2. Advantages of conversion rights for the Company**

Issuing bonds carrying conversion rights has significant advantages for the Company. In the first place, the bonds can be partly recognised as equity in the Company's balance sheet upon fulfilment of the conversion conditions, and in the second, exercise by bondholders of their conversion rights would transform an obligation reported under long-term borrowings into equity. Furthermore, in the absence of cash redemption to bondholders exercising their conversion rights there would be no outflow of cash from the Company. Conversion would thus strengthen the Company's equity base and increase its holdings of cash and cash equivalents.

True, even if the conversion conditions were not fulfilled the Company would be entitled to furnish existing shares in place of cash redemption in the event of the exercise of conversion options. However, this would ultimately negate the desired advantages, since the bonds would have to be recognised entirely as long-term borrowings, and the Company would be obliged to repurchase its own shares to enable bondholders to make use of their conversion rights. This would normally, in turn, impose a financial burden on the Company and lead to an outflow of resources from it. In consequence, the full desired positive effects on the Company's capital and financial structures can only be

achieved by granting of conversion rights to bondholders whilst also excluding shareholders' subscription rights.

### **3. Exceptional economic situation**

It should also be emphasised that for about a year both bank lending and issuance on capital markets have been at a virtual standstill due to the global economic and financial crisis. This shortage of finance could have a particularly negative impact on a company with subsidiaries operating in capital-intensive industries. There has been an unmistakable recovery in international financial markets in recent weeks, and the Management Board has responded rapidly to this favourable situation by obtaining the approval of the Supervisory Board for a bond issue. By attaching conversion conditions to the bonds issued, thereby making it possible to confer conversion rights on holders, subject to the approval of the General Meeting, the Company was able to tap the existing investor base created by the 2007 convertible bond issue. Moreover, the Management Board has left the General Meeting the option of fully utilising the aforementioned positive effects of conversion rights on the Company's capital costs by resolving accordingly.

Precisely because of the continuing extreme volatility and nervousness of the capital market, and the great difficulty of raising finance on the domestic and international capital markets over the past year or more, it was not possible to wait for a prior resolution of the General Meeting and a subsequent offer of subscription rights to existing shareholders. The immediate issue of convertible bonds (i.e. without attaching conversion conditions) would have required the prior approval of the General Meeting, with a lead time of at least 21 days' notice of convocation. Thereafter, it would have been necessary to await a rights offering with a mandatory statutory minimum subscription period of 14 days. Such a lengthy interval would have precluded exploitation of the (possibly shortlived) positive conditions on international capital markets, and the timing would have made it impossible to find suitable investors. This would have jeopardised the success of the issue — especially in the event of negative short-term developments on financial markets. The aim was to forestall this risk for the good of the Company and its shareholders.

By attaching conversion conditions to the bonds the Company was able to: (i) exploit favourable short-term capital market trends; and (ii) increase the attractiveness of the bonds (particularly for existing investors), thus leveraging the benefits generally associated with issuance of convertible bonds. As a result it was possible to place the bonds rapidly at favourable terms, and they were subscribed by institutional investors that specialise in convertible bonds.

Issuing bonds without conversion options (i.e. pure bonds) would only have been possible at inferior terms, if at all. Much of the attraction of convertible bonds lies in the fact that investors receive interest at comparatively little risk of default on the principal, and are accorded the right to purchase shares in the future at prices determined when the convertible bonds are issued (see bond terms and conditions, and the possibility of adjustments), such that bondholders have a claim on the issuer's assets and earnings upon conversion. In addition, bondholders have a chance of profiting from price increases, and this makes issuing convertible bonds a good way of keeping down the cost of capital and obtaining finance at relatively attractive terms.

The importance of convertibility and of fulfilment of the conversion conditions is shown by the facts that the majority shareholders undertook during the placement to vote for the conferral of conversion rights on bondholders and the related exclusion of subscription rights, meaning that the Company will be able to capitalise on all the financial advantages discussed above, and that it proved possible to place the issue.

#### **4. Common practice and generally accepted substantive justification**

An important consideration is the fact that the exclusion of existing shareholders' subscription rights is consonant with common practice with regard to authorisations of management boards to issue convertible bonds subject to supervisory board approval under section 174(2) AktG, and to the related resolutions of issuing companies' governing bodies. Subscription rights are also excluded because better terms can usually be obtained for such issues as they can be placed immediately, thereby avoiding the price risk attendant on changes in the market situation. For this reason, the exclusion of subscription rights is also common practice when issuing convertible bonds under an authorisation in accordance with section 174(2) AktG. Excluding subscription rights when issuing convertible bonds is thus customary and generally accepted as substantively justified from this perspective.

If the Management Board had had the relevant authorisation for an issue of convertible bonds of the size in question excluding subscription rights, under current international capital market conditions it would undoubtedly have made use of such an authorisation to the benefit of the Company, and would have excluded existing shareholders' subscription rights.

## 5. Balance of interests

The exclusion of subscription rights is substantively justified by the objectives pursued, namely those of improving the Company's capital and financial structure, and strengthening its competitive position. Excluding subscription rights is not disproportionate. In the case of convertible bonds it is common practice as it permits rapid and flexible responses to capital market conditions, and is also in the overriding interests of the Company and its shareholders.

Fulfilment of the conversion conditions would, among other things, benefit the Company because, as argued above, it would not be obliged to make financially burdensome bond redemptions in the event of the exercise of bondholders' conversion options, and borrowings reported on the balance sheet would be converted into equity upon exercise of the options, such that the bonds could partly be taken to equity during their term. This would strengthen the Company's equity base and increase its liquidity. The positive effects on the Company's capital and financial structures cannot be achieved unless the conversion conditions are fulfilled, and in the Management Board's view, the conferral of conversion rights on bondholders and the related exclusion of the subscription rights of existing shareholders — due to the placement of the bonds, which has already been effected — are therefore to the advantage of the Company and its shareholders. It is questionable whether the bond could have been placed at all in the event of a rights offering.

Conferral of conversion rights on bondholders and exclusion of the subscription rights of existing shareholders is thus in the overriding interests of the Company, indirectly benefits all shareholders, and clearly outweighs the proportionate reduction in the value of the investments of the shareholders whose subscription rights have been excluded. To sum up, it is clear that the exclusion of subscription rights is substantively justified, necessary and appropriate, is not disproportionate, and is in the overriding interests of the Company.

Vienna, 25 September 2009



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