

Bayerische Motoren Werke  
Aktiengesellschaft

# Articles of Incorporation

as of 25<sup>th</sup> November 2015

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**Non-Binding English Translation:**

To the extent that a conflict between the English and the German version of these Articles of Incorporation should arise, the German version applies.

First Section

**General Provisions****§ 1 Name, Registered Office**

The name of the Corporation is Bayerische Motoren Werke Aktiengesellschaft. The Corporation was established in 1916. The registered office of the Corporation is in Munich/Germany.

**§ 2 Purpose of the Corporation**

1. The general purpose of the Corporation is to engage in the production and sale of engines and all engine-equipped vehicles, related accessories and all products of the machinery, metalworking and timber industries.
2. Within these limits the Corporation shall be entitled to take all actions and measures, which appear necessary or desirable in order to accomplish the foregoing purposes. In particular, the Corporation shall be entitled to acquire or sell land, set up domestic and foreign branches, establish or acquire other companies of the same or a similar kind, participate in such companies and enter into agreements on community of interests and similar agreements.

**§ 3 Announcements, Place of Jurisdiction**

1. Announcements by the Corporation shall, where permitted under German law, be published in the electronic version of the Federal Gazette (Bundesanzeiger).
2. By subscribing or acquiring shares or interim certificates of the Corporation the shareholder shall submit to the ordinary place of jurisdiction of the Corporation regarding all disputes between the shareholder and the Corporation or its corporate bodies.

**§ 4 Capital Stock**

1. The capital stock of the Corporation is EUR 656,804,600.

It is divided into:

- a) 601,995,196 ordinary shares  
with a face value of EUR 1
- and
- b) 54,809,404 non-voting preferred shares  
with a face value of EUR 1

The shares shall be issued to bearer.

2. Upon distribution of the balance sheet profit, non-voting preferred shares shall be entitled to the rights as determined in § 24 of the Articles of Incorporation. The issuance of new preferred shares having priority over or being on a par with existing non-voting preferred shares in the event of the distribution of profit or corporate assets shall be reserved pursuant to § 141 sub-section 2 sentence 2 of the German Stock Corporation Act (Aktiengesetz).
3. In the event of an increase of capital stock, the new shares shall be issued to bearer; preferred shares may be recorded in the name of the shareholder.
4. Shareholders shall not have the right to have their shares issued in individual share certificates.
5. The Board of Management is authorised, with the approval of the Supervisory Board, to increase the Company's share capital in the period up to 14 May 2019 by up to EUR 4,450,383 in total by the issuance of new shares of non-voting preferred stock, carrying the same rights as existing non-voting preferred stock, in return for cash contributions. The authorisation may also be used in parts on more than one occasion.

Shareholders' subscription rights shall be excluded. The new shares may only be used for issuing shares to employees of the Company and its affiliated companies. The Board of Management is authorised, with the approval of the Supervisory Board, to stipulate further details of the rights attached to the shares and the conditions of their issue (Authorised Capital 2014).

**§ 5 Share Certificates**

The form of share certificates and dividend coupons shall be determined by the Board of Management upon approval of the Supervisory Board. The same shall apply to debentures and interest coupons.

**§ 6 Corporate Bodies**  
**Bodies of the Corporation are:**

- A. The Board of Management;
- B. The Supervisory Board;
- C. The General Meeting of Shareholders.

**A. The Board of Management**

**§ 7 Composition**

- 1. The Board of Management shall consist of two or more members.
- 2. The Supervisory Board shall determine the number of the members of the Board of Management and shall appoint the members of the Board of Management. The Supervisory Board shall further be responsible for the conclusion of the employment contracts as well as the revocation of appointments of members of the Board of Management. The same is true for the designation of a member of the Board of Management as Chairman of the Board of Management.
- 3. The Supervisory Board may assign the conclusion, modification and termination of the employment contracts of the members of the Board of Management to a Committee of the Supervisory Board.

**§ 8 Management, Adoption of Resolutions and Rules of Procedure of the Board of Management**

- 1. The members of the Board of Management shall only jointly be entitled to manage the affairs of the corporation. The rules of procedure of the Board of Management may determine otherwise.
- 2. All resolutions by the Board of Management shall be passed by a simple majority of votes. If a chairman of the Board of Management has been designated, his vote shall be decisive in the event of a tied ballot.
- 3. The Board of Management shall unanimously adopt its rules of procedure and regulate the allocation of its duties thereby taking into consideration the content of the respective employment contracts of the members of the Board of Management.

## **§ 9 Representation of the Corporation**

The Corporation shall be legally represented by two members of the Board of Management or by one member of the Board of Management jointly with one holder of general commercial power of attorney (Prokurist).

### **B. The Supervisory Board**

## **§ 10 Composition of the Supervisory Board**

1. The Supervisory Board shall consist of twenty members, of whom ten are to be elected by the General Meeting of Shareholders and ten to be elected by the employees in accordance with the German Co-determination Act (Mitbestimmungsgesetz).
2. If the General Meeting of Shareholders does not specify a shorter term of office for individual Supervisory Board members elected by it or for the entire Supervisory Board, the members of the Supervisory Board shall be appointed until the close of the Annual General Meeting of Shareholders, which ratifies the Supervisory Board members' actions for the fourth financial year following the commencement of the term of office. The financial year in which the term of office starts shall not be included in the calculation in determining the term of office.
3. Members of the Supervisory Board may resign from the Supervisory Board at any time, even without good cause.

## **§ 11 The Chairman of the Supervisory Board**

1. The Supervisory Board shall appoint a Chairman and not less than one Deputy Chairman from its members for the duration of the term of office of the respective Supervisory Board member. If the Chairman or a Deputy Chairman resigns before the expiration of its term of office, a successor of the resigning Chairman or Deputy Chairman shall be elected without delay.
2. If the Chairman and any Deputy Chairman are prevented from performing their duties, such duties shall be assumed by the Supervisory Board member being oldest in age for the period the Chairman and any Deputy Chairman are prevented from doing their duties.
3. The Chairman, or in its absence, a Deputy Chairman shall be the permanent representative of the Supervisory Board with respect to third parties, in particular, courts and authorities as well as the Board of Management.

## **§ 12 Rules of Procedure, Committees, Advisory Boards**

1. The Supervisory Board shall determine its rules of procedure.
2. The Supervisory Board shall form a committee pursuant to § 27 sub-section 3 of the German Co-determination Act. The Supervisory Board may form further committees from its members and determine their duties and powers. Powers of the Supervisory Board to render decisions may also be delegated to and exercised by such committees.

In the event that the Chairman of the Supervisory Board happens to be a member of a committee consisting of an equal number of Supervisory Board members representing shareholders and employees and if a voting in the committee results in a tie, then the Chairman of the Supervisory Board shall have two votes in case of a new voting on the same subject-matter, if such voting also results in a tie.

§ 108 sub-section 3 of the German Stock Corporation Act shall apply to the casting of the second vote.

The Supervisory Board and the committees may make use of experts that may support them in the performance of their duties and responsibilities. They may call in experts and informants for their respective meetings.

3. § 11 sub-section 3 shall apply mutatis mutandis to committees.
4. The Supervisory Board may appoint advisory boards for special purposes. Members of such advisory boards do not have to be members of the Supervisory Board. The Supervisory Board may lay down rules of procedure for such advisory boards and determine the remuneration for their members.

## **§ 13 Meetings of the Supervisory Board, Passing of Resolutions**

1. Meetings of the Supervisory Board shall be called in writing, by telephone, facsimile or electronic means by the Chairman of the Supervisory Board, or if the Chairman is prevented, by the Chairman's Deputy with a notice of two weeks. The invitation shall indicate the individual items of the agenda. In urgent cases, the period of notice may be shortened. The chairman may postpone a convened meeting before its opening.
2. The Chairman of the Supervisory Board, or if the Chairman is prevented, the Chairman's Deputy, shall preside the meeting.
3. The Supervisory Board shall be deemed to constitute a quorum if notices have been issued to all of its members at their last known address and if at least half of the members of the Supervisory Board, of which the Supervisory Board has to consist, participate in passing the resolution. The passing of the resolution on an item of the agenda not contained in the notice shall only be admissible if no

member of the Supervisory Board present objects to the passing of the resolution and if at least two-thirds of the members of the Supervisory Board are present.

4. Resolutions shall be passed by a simple majority of votes cast, unless required otherwise by law. The same shall apply to elections. The Chairman of the Supervisory Board shall determine the manner of voting. Upon request by a member of the Supervisory Board, the voting shall be secret.
5. In the event of a tie, another consultation of the Supervisory Board shall only take place if the majority of the members of the Supervisory Board decide so. If the second vote also results in a tie, the Chairman of the Supervisory Board shall have two votes.
6. An absent member of the Supervisory Board can arrange for his/her vote cast in writing to be handed over by another member of the Supervisory Board. This shall also apply to the casting of the second vote of the Chairman of the Supervisory Board. A vote cast by facsimile or by electronic media shall also be deemed to be a vote cast in writing. A vote may be cast subsequently if the Chairman, or if the Chairman is prevented, the Chairman's Deputy, has permitted said vote to be cast subsequently within a period to be stipulated by him and did so prior to the vote in the meeting and for all absent members of the Supervisory Board.
7. If not the same number of shareholders' representatives and employees' representatives take part in the adoption of a resolution, the vote on an agenda item can be postponed by a maximum of four weeks upon the request of two members of the Supervisory Board if the Chairman of the Supervisory Board, or if the Chairman is prevented, the Chairman's Deputy, does not allow all of the members of the Supervisory Board, who are absent, to cast their votes subsequently in accordance with sub-article (6). A further postponement of the same agenda item is not permitted.
8. The Chairman of the Supervisory Board, or if the Chairman is prevented, the Chairman's Deputy may arrange for the passing of a resolution of the Supervisory Board to be in writing, by telephone, facsimile or electronic means for special reasons. A written record shall subsequently confirm such resolutions. As for the rest, the aforementioned provisions shall apply mutatis mutandis.
9. The invalidity of a resolution of the Supervisory Board may only be asserted by filing a lawsuit not later than one month after taking notice of the resolution.

#### **§ 14 Records, Statements of Intent of the Supervisory Board, Amendments of the Articles of Incorporation**

1. Minutes of the resolutions and consultations of the Supervisory Board and its committees shall be issued and signed by the member of the Supervisory Board presiding the respective meeting or in the event of § 13 sub-section 8 by the Chairman of the Supervisory Board.



2. The Chairman of the Supervisory Board, or if the Chairman is prevented, the Chairman's Deputy shall issue the statements of intent of the Supervisory Board or its committees.
3. The Supervisory Board shall be authorized to approve amendments to the Articles of Incorporation, which only affect the wording of the Articles of Incorporation.

## **§ 15 Remuneration of the Supervisory Board**

1. Each member of the Supervisory Board shall receive the following for each financial year (remuneration year)
  - a) a fixed amount of EUR 70,000 payable at the end of the financial year and
  - b) a performance-based remuneration of EUR 170 for each full EUR 0.01, by which the average of the (undiluted) earnings per share (EPS) reported in the Group Financial Statements for the remuneration year and the two preceding financial years exceeds a minimum amount of EUR 2.00, capped however at a maximum of twice the fixed annual remuneration pursuant to a). The performance-based remuneration shall be payable at the end of the Annual General Meeting at which the Group Financial Statements for the remuneration year are presented or at which the resolution concerning their approval is taken.
2. The Chairman of the Supervisory Board shall receive three times the amount resulting from subarticle 1. Each Deputy Chairman of the Supervisory Board shall receive twice the amount resulting from subarticle 1. Provided the relevant committee convened for meetings on at least 3 days during the financial year, the chairmen of the Supervisory Board's committees shall receive twice the amount resulting from subarticle 1 and the members of those committees shall receive one and a half times the amount resulting from subarticle 1. If a member of the Supervisory Board exercises more than one function that is subject to remuneration pursuant to sentence 1 or 2, the remuneration shall be measured only on the basis of the function which is remunerated with the highest amount.
3. In the event that a member of the Supervisory Board has only belonged to the Supervisory Board for a part of the financial year or has exercised more than one function that is subject to remuneration pursuant to sub-section 2 sentence 1 or 2, the amount of remuneration payable to that member pursuant to subsections 1 and 2 shall be reduced on a time-apportioned basis.
4. In addition, each member of the Supervisory Board shall receive an attendance fee of EUR 2,000 for each full meeting of the Supervisory Board which the member has attended. These fees are payable at the end of the financial year. Attendance at more than one meeting on the same day shall not be remunerated separately.

5. The Corporation shall reimburse each member of the Supervisory Board for reasonable expenses as well as the value added tax attributable to any remuneration. The Corporation can include the members of the Supervisory Board in the insurance coverage provided by an insurance against economic loss and errors and omissions maintained at the Corporation's cost.
6. This regulation shall apply for the first time for the financial year commencing on 1 January 2013 (remuneration year).

## **C. The General Meeting of Shareholders**

### **§ 16 Place and Convocation of the General Meeting of Shareholders**

1. The General Meeting of Shareholders shall be held at the registered office of the Corporation, the seat of a branch or subsidiary of the Corporation or at the seat of a stock exchange within the territory of the Federal Republic of Germany. If the convening of the General Meeting of Shareholders at these places should create difficulties, the General Meeting of Shareholders may be held at any other location. The location of the General Meeting of Shareholders shall be indicated in the notice. The General Meeting of Shareholders may, at the order of the person chairing the Meeting, be transmitted in sound and vision either in part or in full, and also in such a way that the general public has unrestricted access. Members of the Supervisory Board shall, exceptionally and with the agreement with the person chairing the Meeting, be permitted to participate at the General Meeting of Shareholders by means of sound and vision transmission, if attendance would otherwise necessitate extensive journeys by the members of the Supervisory Board from their place of domicile abroad to the location of the General Meeting of Shareholders.
2. The General Meeting of Shareholders shall be convoked by the Board of Management or, if so required by law, by the Supervisory Board.
3. Notice of the General Meeting of Shareholders shall be given in the German Federal Gazette no later than the last permissible date for notification, taking into account the minimum statutory period of notice.

### **§ 17 Requirements for Attendance and for Exercising Voting Rights**

1. Shareholders shall only be entitled to attend the Annual General Meeting and exercise their voting rights if, prior to the meeting, they have given notice (in the form prescribed by § 126b of the German Civil Code), either in German or English, of their intention to attend. Shareholders shall also be required to provide evidence of their entitlement to attend and exercise their voting rights at the Annual General Meeting. For this purpose, documentary evidence of the shareholding, issued by the custodian bank (in the form prescribed

by § 126b BGB), in either German or English, shall be required.

2. The Board of Management is authorised to make provisions for shareholders to vote in writing or electronically without attending the Annual General Meeting (postal voting). The Board of Management is also authorised to determine the relevant details for this procedure.
3. Voting rights may also be exercised via an authorized person (proxy). The Board of Management is authorised to make provisions in the Notice of the Annual General Meeting for shareholders to grant a proxy authorisation, revoke a proxy authorisation and provide evidence of a proxy authorisation to the Company and to include details on contents and procedures, as well as on the use of forms. § 135 AktG shall remain unaffected.

## **§ 18 Voting Rights**

1. Each share's voting right shall correspond to the share's face value. One vote shall be granted per each face value of EUR 1 of the capital stock represented at the voting.
2. In the event shares have not been fully paid up, the voting right shall commence upon the payment of the minimum contribution.

## **§ 19 Chairmanship in the General Meeting of Shareholders**

1. The Chairman of the Supervisory Board shall preside as Chairman of the General Meeting of Shareholders. In its absence, the General Meeting of Shareholders shall be chaired by another member of the Supervisory Board appointed by the Chairman of the Supervisory Board. If the Chairman of the Supervisory Board is absent and has failed to make such an appointment the General Meeting of Shareholders shall be chaired by the member of the Supervisory Board elected by the shareholders' representatives on the Supervisory Board.
2. The Chairman of the General Meeting of Shareholders shall preside over the proceedings and determine the order of the items on the agenda as well as manner and form of voting. The Chairman of the General Meeting of Shareholders may determine a reasonable time limit with respect to the right of shareholders to raise questions and speak.

## **§ 20 Majorities for the Adoption of Resolutions**

1. Resolutions shall be passed at the General Meeting of Shareholders by a simple majority of votes cast, unless otherwise expressly required by binding provisions of law. In the event of a tie of votes cast, the proposal shall be deemed rejected. If law requires that a resolution be passed by a majority of the capital stock represented at

the General Meeting of Shareholders, a simple majority of the capital stock represented shall suffice, unless otherwise required by law.

2. The outcome of the vote shall be determined by counting the yes and the no votes. The outcome of the vote may also be determined by deducting the yes or no votes and the number of abstentions from the total number of votes represented at the General Meeting of Shareholders. The Chairman of the General Meeting of Shareholders may arrange for a different procedure to determine the outcome of the vote and may direct further details of the vote.

## **§ 21 Adoption of Resolutions in Case of Elections**

If in an election no candidate could achieve a majority of the votes on the first ballot, a tie-breaking vote shall take place between the two candidates who have received the most votes.

**§ 22 Financial Year**

The financial year of the corporation shall be the calendar year.

**§ 23 Accounting, Annual General Meeting of Shareholders**

1. Within the first three months of each financial year, the Board of Management shall prepare the balance sheet, the profit and loss account and the appendix to the annual financial statement of accounts (annual accounts) for the previous financial year as well as the management report and submit them to the auditors. Upon receipt of the audit report, the Board of Management shall immediately present it and the aforementioned documents to the Supervisory Board along with the proposal for the resolution of the General Meeting of Shareholders on the appropriation of the net profit.
2. Within one month after having received the annual accounts, the management report and the proposal for the appropriation of the net profit, the Supervisory Board shall submit to the Board of Management its own report. If the Supervisory Board fails to timely submit its report to the Board of Management, the Board of Management shall immediately determine a new period of time of up to one month in which the Supervisory Board has to submit its report. In the event that the Supervisory Board again fails to timely submit its report to the Board of Management, the annual accounts shall be deemed not approved by the Supervisory Board.
3. Within the first eight months of the following financial year, the annual accounts, the management report, the Supervisory Board's report and the proposal for the appropriation of the net profit shall be submitted to the Annual General Meeting of Shareholders. The Annual General Meeting of Shareholders shall ratify the approval of the actions of the Board of Management and of the Supervisory Board, the appropriation of the net profit (§ 24), the appointment of the auditor and the adoption of the annual accounts as provided by law.
4. The annual accounts shall be considered adopted if approved by the Supervisory Board, unless the Board of Management and the Supervisory Board decide to assign the responsibility to approve the annual accounts to the General Meeting of Shareholders. If both the Board of Management and the Supervisory Board approve the annual accounts, they shall be authorized to allocate more than half of the annual surplus to other retained earnings.

## **§ 24 Appropriation of the Net Profit**

1. The General Meeting of Shareholders shall decide on the appropriation of the net profit of the corporation based upon the adopted annual accounts.
2. Following the financial year-end, the Board of Management, with the approval of the Supervisory Board, may pay an interim dividend with respect to the expected net profit to the shareholders pursuant to § 59 of the German Stock Corporation Act.
3. The net profit shall be appropriated in the following order:
  - a) Subsequent payment of any arrears on dividends upon non-voting preferred shares in the sequence of their accrual;
  - b) Payment of advance dividends in the amount of EUR 0,02 per EUR 1 face value upon non-voting preferred shares;
  - c) Uniform payment of any other dividends, upon common and preferred shares, provided the General Meeting of Shareholders does not determine a different appropriation scheme.

## **§ 25 Calculation of the Distribution of Profits**

1. Dividends paid to shareholders shall be proportional to the shareholders' contributions to the stock capital of the Corporation based on the face nominal value of their shares as well as to the time elapsed since the date of the payment of the contribution.
2. If new shares are being issued, the commencement of the entitlement to profits may be specified contrary to § 60 of the German Stock Corporation Act.