

## **Supplementary information on agenda item 9.6:**

Joint Report pursuant to § 293a AktG of the Board of Management of BMW AG and the Management of BMW M GmbH Gesellschaft für individuelle Automobile dated 17 March 2022

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## **Joint Report pursuant to § 293a AktG**

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of the **Board of Management of Bayerische Motoren Werke Aktiengesellschaft,  
Munich,**

(hereinafter also referred to as "**BMW AG**" or "**Controlling Entity**")

and

of the **Management of BMW M GmbH Gesellschaft für individuelle Automobile,  
Munich,**

(hereinafter also referred to as "**Controlled Entity**")

**on the Amendment Agreement of**

**17 March 2022**

**to the Profit and Loss Transfer Agreement in the version of 15 March 2010**

between

**BMW AG and BMW M GmbH Gesellschaft für individuelle Automobile**

(hereinafter also referred to individually as "**Party**" or collectively as "**Parties**")

## 1. Introduction

A Profit and Loss Transfer Agreement exists between the Controlling Entity and the Controlled Entity, which was last amended on 15 March 2010 (hereinafter referred to as "Profit and Loss Transfer Agreement"). Through this agreement, the Controlled Entity undertook to transfer its entire profit to the Controlling Entity. In turn, the Controlling Entity undertook to assume the losses of the Controlled Entity. The Annual General Meeting of Shareholders of the Controlling Entity approved the Profit and Loss Transfer Agreement on 18 May 2010, after the shareholders' meeting of the Controlled Entity had already given its approval on 18 March 2010. The Profit and Loss Transfer Agreement became effective upon entry in the Commercial Register of BMW M GmbH Gesellschaft für individuelle Automobile on 28 September 2010. As a result of the Profit and Loss Transfer Agreement, fiscal unity applies in the area of corporate income tax and trade tax between BMW AG and BMW M GmbH Gesellschaft für individuelle Automobile.

The Parties take the occasion of an amendment of § 302 of the German Stock Corporation Act (AktG) to clarify the relevant provisions in the existing Profit and Loss Transfer Agreement and to adapt the agreement as a whole to current standards. Therefore the Controlling Entity and the Controlled Entity concluded an agreement on 17 March 2022 containing amendments to individual provisions of the Profit and Loss Transfer Agreement (hereinafter "Amendment Agreement"). The Board of Management of BMW AG and the Management of BMW M GmbH Gesellschaft für individuelle Automobile jointly issue the following report on the Amendment Agreement pursuant to § 293a of the German Stock Corporation Act ("AktG"). The report serves to inform BMW AG shareholders in preparation for the Annual General Meeting on 11 May 2022.

## 2. General information on BMW M GmbH Gesellschaft für individuelle Automobile; relationship with BMW AG

BMW M GmbH Gesellschaft für individuelle Automobile with its registered office in Munich, is entered in the Commercial Register of Munich District Court under HRB 44621.

The object of BMW M GmbH Gesellschaft für individuelle Automobile is

- the development, production, modification as well as the distribution of individual automobiles, in particular automobiles manufactured to individual customer specifications, as well as high-performance vehicles, and
- engaging in any kind in motor sports, in particular by engaging in, conducting and supervising motor sports events at home and abroad, development, preparation, construction, use, homologation and modification of racing touring cars, furthermore development, production and sale of motor sports equipment, sports vehicles and vehicle components.

In addition, the object of BMW M GmbH Gesellschaft für individuelle Automobile is any other commercial activity in the industrial field and in the field of trade at home and abroad. BMW M GmbH Gesellschaft für individuelle Automobile may establish branches at home and abroad. It may acquire, establish or invest in other enterprises.

BMW AG is the sole shareholder of BMW M GmbH Gesellschaft für individuelle Automobile.

The Management of BMW M GmbH Gesellschaft für individuelle Automobile currently consists of the following members: Mr Jan Lubig and Mr Franciscus van Meel.

In the annual financial statements of BMW M GmbH Gesellschaft für individuelle Automobile under commercial law as at 31.12.2020, total assets amount to EUR 96.85 million. Profit after tax amounts to EUR 96.45 million.

All in all, from today's perspective, neither the current nor the expected net assets, financial position and results of operations based on current estimates offer any indication that the Controlled Entity might assert claims for the assumption of losses against the Controlling Entity in the financial years 2021 to 2023.

### **3. Amendment Agreement; framework data and consent requirement**

The Amendment Agreement between BMW AG and BMW M GmbH Gesellschaft für individuelle Automobile was concluded on 17 March 2022. It will be submitted to the Annual General Meeting of BMW AG on 11 May 2022 for approval in accordance with §§ 295, 293 AktG. BMW AG as the sole shareholder of BMW M GmbH Gesellschaft für individuelle Automobile is expected to approve the Amendment Agreement in notarised form by the end of April 2022. In order to become effective, the Amendment Agreement continues to require entry in the Commercial Register of BMW M GmbH Gesellschaft für individuelle Automobile by analogous application of §§ 295, 294 (2) AktG.

### **4. Legal and economic reasons for concluding the Amendment Agreement; effects of the Amendment Agreement**

A prerequisite for the recognition of a fiscal unity between BMW AG and BMW M GmbH Gesellschaft für individuelle Automobile is, inter alia, pursuant to § 17 para. 1 sentence 2 of the German Corporation Tax Act (KStG), a dynamic inclusion of the respective applicable versions of §§ 301, 302 of the German Stock Corporation Act (AktG) in the Profit and Loss Transfer Agreement. The previous Profit and Loss Transfer Agreement between BMW AG and BMW M GmbH Gesellschaft für individuelle Automobile contains, in addition to such dynamic references, also some literal reproductions of the legal text in force at the time of the conclusion of the agreement.

The Parties take an amendment of § 302 AktG as of 1 January 2021 as an opportunity to remove the literal reproductions of the law subordinate to the dynamic references from the agreement without replacement for the sake of legal clarity and certainty. In addition, the contractual provisions are to be adapted to group-wide standards and

editorially revised in such a way that future amendments to the relevant legal standards do not trigger a need to amend the Profit and Loss Transfer Agreement, if possible.

The proposed amendments to the existing Profit and Loss Transfer Agreement thus largely consist of editorial revisions without affecting the essential content of the existing contractual provisions.

## **5. Alternatives to the conclusion of the Amendment Agreement**

In the opinion of the Parties, the minor amendment of § 302 AktG as of 1 January 2021 does not give rise to a legal need to amend the existing agreement. This is because, taking into account the requirements pursuant to the letter of the Federal Ministry of Finance of 4 July 2013 (IV C 2 - S 1910/10/1077:005, DOK 2013/0640187, FD-DStR 2013, 350430, see also OFD Karlsruhe, 16 January 2014, S 277.0/52/2-St 221), the interpretation of the agreement in the view of the Parties undoubtedly results in a priority of the dynamic references over the literal reproductions of the law.

Since no substantial change in the content of the existing agreement is intended, leaving the existing agreement in place is an alternative to concluding the amendment agreement. However, the combination of dynamic references with literal reproductions of the law no longer corresponds to the best practice standard for profit transfer agreements. Without an amendment of the agreements, there is a risk for future financial years as it cannot be ruled out that the tax authorities call the fiscal unity between the Parties into question. Should the fiscal unity no longer be recognised, this could result in tax disadvantages for the Parties. To eliminate this tax risk, the amendments to the existing agreement are proposed.

## **6. Explanatory notes on the Amendment Agreement**

The content of the proposed amendments can be seen in detail in the comparison of the old and new provisions in section I. of the Amendment Agreement.

None of the proposed amendments will result in a significant change in the rights and obligations of the Parties.

Section 2.1 remains unchanged.

The amendments to the preamble and to sections 1.1, 1.3, 1.4, 1.5 sentence 1, 2.4, 3.1, 3.3 sentence 1 as well as section 4 (old version in each case) are merely clarifying and/or editorial amendments as well as linguistic adjustments to standard clauses used throughout the Group.

Insofar as sections 1.2, 2.2 and 2.3 (old version in each case) contained literal reproductions of the law, these were deleted.

In section 1.5 sentence 2 old version, the right of the Controlling Entity was stipulated to demand an advance on profits if and to the extent that an advance distribution could be paid. However, the Controlling Entity is entitled to this right by law and irrespective of any statutory provision. It is therefore not necessary to include this provision in the agreement, which is why it has been deleted. This also serves the purpose of standardisation, as this dispensable provision is not included in some other profit transfer agreements within the BMW Group.

Section 3.2 old version contained a (minimum) agreement period of five years with a specific end date. If the agreement was not terminated in time, it was automatically extended by one year at a time. According to the new provision, the agreement is concluded for an indefinite period, but the right of termination is excluded for the duration of the minimum period applicable in each case. In effect, the old and new provisions are largely the same. Unlike the old provision, however, the new provision no longer requires the specification of a concrete end date. Such an agreement would have to be amended in the event of a change in the statutory minimum contractual term during contract implementation. This is not (any longer) necessary with the new provision.

In section 3.3 sentence 2 new version, a change of the voting majority in the Controlling Entity was expressly included in the agreement as an extraordinary reason for termination. In these cases, both Parties have the right to terminate the Agreement.

## **7. No compensation and no settlement, no contract review**

No compensation or settlement is payable to external shareholders, as all shares in the Controlled Entity are held by the Controlling Entity. For this reason, there is likewise no need for a review of the Amendment Agreement by one or more experts pursuant to § 295, 293b et seq. AktG.

**Munich, 17 March 2022**

**Bayerische Motoren Werke Aktiengesellschaft**

[SIGNATURE]

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Oliver Zipse  
Chairman of the Board of  
Management

[SIGNATURE]

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Dr Nicolas Peter  
Member of the Board of  
Management (Finance)

**BMW M GmbH Gesellschaft für individuelle Automobile**

[SIGNATURE]

\_\_\_\_\_  
Jan Lubig  
Managing Director

[SIGNATURE]

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Franciscus van Meel  
Managing Director