

**Joint report**  
**of the executive board of Porsche Automobil Holding SE**  
**and**  
**the management board of Porsche Dritte Beteiligung GmbH**  
  
**on the Domination and Profit and Loss Transfer Agreement**  
**of 5 March 2015**

**between**  
**Porsche Automobil Holding SE**  
**and**  
**Porsche Dritte Beteiligung GmbH**  
**pursuant to § 293a AktG**

In order to inform the shareholders of Porsche Automobil Holding SE (“**Porsche SE**”) and to prepare the resolution at Porsche SE’s annual general meeting and the shareholder meeting of Porsche Dritte Beteiligung GmbH (“**P3B**”), Porsche SE’s executive board and P3B’s management board render the following report in accordance with § 293a German Stock Corporation Act (AktG) on the Domination and Profit and Loss Transfer Agreement between Porsche SE and P3B (“**Agreement**”).

**I.**  
**Conclusion of Agreement; effective date**

The Agreement between Porsche SE and P3B was signed on 5 March 2015.

A domination and profit and loss transfer agreement between an SE and a wholly owned subsidiary GmbH (German limited liability company) is subject, at the level of the SE to §§ 291 et seq. AktG (in conjunction with Art. 9 (1) (c) (ii) of the SE Regulation) and, at the level of the GmbH, primarily to §§ 53 et seq. German Limited Liability Companies Act (GmbHG) applied *mutatis mutandis* and, additionally, to §§ 291 et seq. AktG. Pursuant to § 53 GmbHG applied *mutatis mutandis*, the effectiveness of the Agreement requires the

approval of P3B's shareholder meeting and, pursuant to § 293 AktG applied mutatis mutandis, the approval of Porsche SE's annual general meeting. The Agreement will be presented to the annual general meeting of Porsche SE on 13 May 2015 and to the shareholder meeting of P3B for approval prior to the annual general meeting. It is also necessary to register the existence of the Agreement in the commercial register responsible for P3B's registered office for the Agreement to become effective.

## II.

### Parties to the Agreement

Porsche SE is a European company. It is registered in the commercial register at the Local Court (*Amtsgericht*) Stuttgart under HRB 724512. The share capital is EUR 306,250,000.00 and is divided one half each into common shares and preferred shares. The preferred shares are listed on the stock exchange. Porsche SE holds 50.73% of the voting rights and has a participation of 32.2% in the total share capital in Volkswagen Aktiengesellschaft, Wolfsburg.

P3B was founded on 11 February 2015 and was entered in the commercial register under HRB 751843 at Stuttgart local court on 18 February 2015. The share capital amounts to EUR 25,000. Sole shareholder of P3B is Porsche SE. The purpose of the company is to hold and manage its own assets for its own account. The company may perform all transactions and take all measures which are related to the purpose of the company or indirectly or directly suited to serving the purpose of the company. The company may take over other similar companies and participate in such companies. P3B currently does not carry out any business operations. It is supposed to serve in the future for the purpose of acquiring strategic participations with an emphasis in the automobile value creation chain. The assets of P3B currently consist exclusively of the contributed share capital. In light of this P3B expects no economically material loss for the current fiscal year.

Since P3B was established only in February 2015, there are no annual financial statements for P3B. The opening balance sheet of P3B as at 18 February 2015 is attached hereto in **Annex 1**; no material changes have occurred since.

### **III. Explanation of the Agreement**

The Domination and Profit and Loss Transfer Agreement concluded between Porsche SE and P3B is an affiliation agreement within the meaning of §§ 291 et seq. AktG. It contains the standard provisions for such an agreement.

The Agreement essentially provides for the following:

#### **a) Right to issue instructions (§ 1)**

P3B becomes a dependent company by placing itself under the management of Porsche SE which becomes the dominating company. Porsche SE is entitled to issue instructions to P3B's executives concerning the management of the company. This right to issue instructions does not affect the fact that P3B continues to be a legally independent entity with its own corporate bodies. Consequently, P3B's executives will continue to be responsible for the management and representation of the company. If no instructions are issued, P3B's executives may, and are obliged to, manage the company at their own responsibility and in the best interest of P3B.

P3B is obliged under applicable law to follow the instructions of Porsche SE. The statutory scope of the right to issue instructions is defined pursuant to § 308 AktG. Pursuant to § 308 AktG, it is permissible to issue instructions to the management of P3B that are detrimental to P3B if they serve the interests of Porsche SE or any companies affiliated to it and P3B. The management must not comply with any instructions that may, in exceptional cases, not be permitted because, for example, compliance would breach mandatory statutory provisions or the provisions of P3B's articles of association or cause damage to P3B to such an extent that it would cease to exist.

It is not permissible to issue instructions to amend, maintain or terminate the Agreement – as pursuant to the corresponding provision contained in § 299 AktG. The right to issue instructions may only be exercised after the Agreement has become effective, but not retroactively.

## **b) Transfer of profits (§ 2)**

P3B agrees to transfer its total profits to Porsche SE. The net income for the year is to be transferred, such net income being calculated as if no profit and loss transfer agreement were in place, allowing for the creation or reversal of reserves and less any loss carryforward from the prior year and the amount barred for distribution pursuant to § 268 para. (8) German Commercial Code (HGB). P3B may, with the consent of Porsche SE, transfer part of the net income for the year to other revenue reserves to the extent that this is admissible under commercial law and economically justified if applying prudent business judgment. Other revenue reserves set up during the term of this Agreement shall be released at the request of Porsche SE and transferred as profit. This provision corresponds to the limits on profit transfer set in § 301 AktG and is applicable here *mutatis mutandis*. This excludes the transfer of income resulting from the reversal of other reserves – also in cases where they were created during the term of this Agreement – or using such reserves to balance out any net loss for the year. The same shall apply to any profit carryforward in existence at the beginning of the term of the Agreement.

## **c) Loss absorption (§ 3)**

Applying § 302 AktG, as applicable from time to time, *mutatis mutandis*, Porsche SE is obliged to absorb any losses. According to this provision, Porsche SE must offset any net loss for the year incurred during the term of the Agreement. Any free reserves set up during the term of this Agreement are to be released at the request of Porsche SE and to be used to offset any net loss for the year unless this conflicts with the provisions of § 302 AktG, as applicable from time to time. In application of § 302 para. (3) AktG *mutatis mutandis*, P3B may not waive, or enter into a settlement relating to, the entitlement to loss absorption until three years after the date on which entry of the termination of the Agreement in the commercial register has been published.

The entitlement to the absorption of losses becomes statute-barred pursuant to § 302 para. (4) AktG ten years after the date on which entry of termination of the Agreement in the commercial register has been published.

The obligation to absorb any losses comes into effect for the first time for the entire fiscal year of the controlled company in which this Agreement comes into force.

**d) Due date and interest (§ 4)**

§ 4 governs how and when the entitlements to profit transfer pursuant to § 2 and loss absorption pursuant to § 3 are incurred in accordance with the provisions of law and supreme court precedents. The entitlements must be settled, in either case, within three months of approval of P3B's annual financial statements. Interest of the statutory rate applicable to transactions between merchants is payable for the period between the due date and the date of actual settlement (§§ 352, 353 German Commercial Code). Furthermore, it is made clear that the statutory provisions on delayed payment are not affected by the provisions agreed in § 4.

**e) Effective date and term of the Agreement (§ 5)**

This Agreement becomes effective on the date of its entry in the commercial register responsible for P3B's registered offices and is effective – with the exception of the right to issue instructions – retroactively for the period from the beginning of P3B's fiscal year in which the Agreement is registered. The Agreement is entered into for an indefinite period of time. The Agreement may be terminated with six months' notice to the end of any given fiscal year, but not before the end of the fiscal year of P3B coinciding with the lapse of the minimum period of five calendar years which is required under § 14 para. (1) sentence 1 no. 3 of the German Corporate Income Tax Act (KStG) for recognition of fiscal unity for corporate income tax purposes (*ertragsteuerliche Organschaft*). If the Agreement is not terminated, it is automatically renewed for a further fiscal year each time with the same conditions for termination applying. In addition, the Agreement can be terminated for good cause without notice. Good cause includes but is not limited to a situation where Porsche SE no longer holds the majority of the voting rights in P3B or in the event that good cause exists within the meaning of § 297 para. (1) AktG or § 14 para. (1) sentence 1 no. 3 sentence 2 KStG, each as applicable from time to time, or in the event of a merger, division or liquidation of P3B or Porsche SE. In the event of termination for good cause without notice, a balance sheet (*Abgrenzungsbilanz*) shall be prepared for P3B based on the provisions applying to P3B's annual financial statements using the date on which the termination becomes effective as the cut-off date. Based on the profit or loss reported in the balance sheet, P3B is obliged to transfer any profits up to the date of effectiveness of the termination and Porsche SE is obliged to absorb any losses up to that date.

The Agreement has to be concluded for a term of at least five calendar years in order to ensure that it is recognized for the purpose of fiscal unity. The contracting parties have agreed that the Agreement is to be retroactively effective as detailed above in order to be already able to use the tax-related advantages of fiscal unit in the year in which the Agreement is registered.

**f) Interpretation of the Agreement**

Unless there is a conflict with the provisions of mandatory law, the provisions of this Agreement are to be interpreted such that they fulfill the requirements for recognition of fiscal unity within the meaning of §§ 14 and 17 KStG and § 2 para. (2) sentence 2 of the German Trade Tax Act (GewStG).

**g) No compensation payments for minority interests**

The Agreement does not provide for any compensation payments for minority shareholders as Porsche SE is the sole shareholder of P3B.

**h) No examination of the Agreement**

Since Porsche SE holds all shares in P3B, no examination of the contract by an expert examiner (contract examiner) and no preparation of a corresponding examination report under § 293e AktG are required as a result of § 293b para. (1) AktG applied *mutatis mutandis*.

**IV.**

**Financial relevance and purpose of the Agreement**

Among other things, the Agreement serves to create fiscal unity between Porsche SE and P3B for corporate income tax and trade tax purposes. The Agreement contains the usual provisions of a domination and profit and loss transfer agreement concluded to create fiscal unity within a group.

Fiscal unity for corporate income tax and trade tax purposes means that the respective earnings of P3B (dependent company) and Porsche SE (dominating company) are aggregated at the level of Porsche SE. This avoids any stand-alone profits or losses for tax purposes at P3B and ensures that the best use can be made of P3B's profits or losses for tax purposes. Fiscal unity does not mean that the general fiscal law obligations incumbent upon P3B no longer apply. P3B has to determine its earnings for tax purposes according to general provisions and separately from Porsche SE. P3B's taxable (trade) income established in this way is attributed to Porsche SE.

In addition, the domination agreement makes it easier to exercise common control over P3B. In this context, the domination agreement ensures that Porsche SE is able to issue instructions to P3B's executives in accordance with the Agreement with regard to the management of the company. While the GmbHG grants P3B's shareholder meeting the right to issue instructions, such instructions issued by the shareholder meeting additionally require a formal resolution in each case. The right of the shareholder meeting to issue instructions is, for this reason, not as suitable as a domination agreement to safeguard the intended common control of P3B. Similarly, there is no legal certainty as to the extent to which the shareholder meeting can also issue instructions to the management that are detrimental to P3B. The domination agreement creates the necessary legal clarity in this respect.

## **V.**

### **Alternatives to concluding the Agreement**

There was no economically rational alternative to concluding the agreement between Porsche SE and P3B under which the aims detailed above could have been achieved equally well or better. Specifically, the conclusion of any other kind of affiliation agreement as defined in § 292 AktG (lease of undertaking, agreement to relinquish undertaking, profit pool or partial profit transfer agreement) or an operating agreement would not facilitate joint taxation of Porsche SE and P3B.

## **VI.**

### **Documents available on the Internet**

The Agreement, the annual financial statements and the management reports pertaining to Porsche SE's last three fiscal years, P3B's opening balance sheet and this report will be available at the following website as of the date on which the annual general meeting is called:

**<http://www.porsche-se.com/investorrelations/hv>**

The aforementioned documents will also be available at the annual general meeting itself.

Since P3B was established only in February 2015, there are no annual financial statements for P3B.

March 2015

Porsche Automobil Holding SE

The Executive Board

**Prof. Dr. Martin Winterkorn (Chairman)**

**Matthias Müller**

**Hans Dieter Pötsch**

**Philipp von Hagen**

Porsche Dritte Beteiligung GmbH

The Management Board

**Dr. Manfred Döss**

**Dr. Johannes Lattwein**



## Annex 1

### Opening balance sheet of Porsche Dritte Beteiligung GmbH as at 18 February 2015

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18 February 2015

#### Assets

Current assets

Cash and cash equivalents 50,000.00

50,000.00

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**50,000.00**

#### Equity and liabilities

Equity

Share capital 25,000.00

Loss carried forward – 1,008.19

23,991.81

Liabilities

Trade payables 1,008.19

Liabilities to affiliated companies 25,000.00

26,008.19

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**50,000.00**