

**Joint report
of the executive board of Porsche Automobil Holding SE
and
the management board of Porsche Beteiligung GmbH**

on the Domination and Profit and Loss Transfer Agreement

of 13 March 2013

between

Porsche Automobil Holding SE

and

Porsche 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 Beteiligung GmbH ("POB"), Porsche SE's executive board and POB's management board render the following report pursuant to § 293a German Stock Corporation Act (AktG) on the Domination and Profit and Loss Transfer Agreement between Porsche SE and POB ("Agreement").

I.

Conclusion of Agreement; effective date

The Agreement between Porsche SE and POB was signed on 13 March 2013.

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 POB's shareholder meeting and, pursuant to Art. 9 (1) (c) (ii) SE-Regulation in conjunction with § 293 para. (2) AktG *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 30 April 2013 and the shareholder meeting of POB 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 POB'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.

POB was founded on 7 September 2012 and was entered in the commercial register under HRB 742511 at Stuttgart local court on 18 September 2012. The share capital amounts to EUR 25,000. Sole shareholder of POB 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. POB currently does not carry out any business operations. It is supposed to serve in the future, if applicable, for the purpose of acquiring strategic participations with an emphasis in the automobile value creation chain. The assets of POB currently consist exclusively of the contributed share capital. In light of this POB expects no economically material loss for the current fiscal year.

III. **Legal Explanation of the Agreement**

The Domination and Profit and Loss Transfer Agreement concluded between Porsche SE and POB 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)

POB 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 POB's executives concerning the management of the company. This right to issue instructions does not affect the fact that POB continues to be a legally independent entity with its own corporate bodies. Consequently, POB's executives will continue to be responsible for the management and representation of the company. If no instructions are issued, POB's executives may, and are obliged to, manage the company at their own responsibility and in the best interest of POB.

The extent of the right to issue instructions is defined pursuant to § 308 AktG. POB's management is obliged to follow permissible instructions. Pursuant to § 308 AktG, it is permissible to issue instructions that are detrimental to POB if they serve the interests of Porsche SE or any companies affiliated to it and POB. 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 POB's articles of association or cause damage to POB 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)

POB 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). POB 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 used to offset any net loss for the year or 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 *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, to the extent that said losses are not offset by amounts from the free reserves that are set up during the term of the Agreement. In application of § 302 para. (3) AktG *mutatis mutandis*, POB 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 Agreement expressly provides that § 302 AktG applies in its respectively current version. This dynamic reference to § 302 AktG meets the new statutory requirements under the German Corporate Income Tax Act (*Körperschaftsteuergesetz*) which must be complied with since enactment of the German Act amending and simplifying Corporate Taxation and the Tax Law on Travel Expenses (*Gesetz zur Änderung und Vereinfachung der Unternehmensbesteuerung und des steuerlichen Reisekostenrechts*). Without such a dynamic reference, the consolidation for tax purposes would no longer be recognized in the future.

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 POB'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 HGB). 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 POB's registered offices and is effective – with the exception of the right to issue instructions – retroactively for the period from the beginning of POB's fiscal year in which the Agreement is registered. The Agreement may be terminated with six months' notice to the end of any given fiscal year, but not before the end of that fiscal year of POB ending five calendar years following the beginning of the fiscal year in which the Agreement becomes effective. 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 shareholding in POB or in the event of a merger, division or liquidation of POB or Porsche SE.

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) 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 POB.

Since Porsche SE holds all shares in POB, 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.
Economic explanation and purpose of the Agreement**

Among other things, the Agreement serves to create fiscal unity between Porsche SE and POB 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 POB (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 POB and ensures that the

best use can be made of POB's profits or losses for tax purposes. Fiscal unity does not mean that the general fiscal law obligations incumbent upon POB no longer apply. POB has to determine its earnings for tax purposes according to general provisions and separately from Porsche SE. POB'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 POB. In this context, the domination agreement ensures that Porsche SE is able to issue instructions to POB's executives in accordance with the Agreement with regard to the management of the company. While the GmbHG grants POB'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 POB. 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 POB. The domination agreement creates the necessary legal clarity in this respect.

V.

Decision to conclude the Agreement

1. No alternatives to concluding the Agreement

There was no economically rational alternative to concluding the agreement between Porsche SE and POB 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 POB.

There are also no alternatives under corporate law. An integration (*Eingliederung*) of POB in Porsche SE within the meaning of §§ 319 et seq. AktG is not possible because such provisions on integration are not applicable to a GmbH. A merger (*Verschmelzung*) of POB into Porsche SE under the German Transformation Act (*Umwandlungsgesetz*) would result in POB ceasing to exist and, thus, eliminate the independence of POB as a subsidiary of Porsche SE which was specifically intended.

2. Consideration of the benefits and disadvantages

The reasons set forth in section IV in support of concluding the agreement are to be compared to the disadvantage of the duty of Porsche SE to absorb

losses. However, such disadvantage is limited because POB currently has no business operations of its own.

After weighing all of the stated benefits and disadvantages as well as after taking into account potential alternatives, the executive board of Porsche SE and the management board of POB are of the opinion that the conclusion of the agreement is beneficial both for Porsche SE and POB.

**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, POB's annual financial statements for the first short fiscal year ending 31 December 2012 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 POB was first established in September 2012, there are no annual financial statements for it other than the financial statements for the first short fiscal year as of 31 December 2012.

13 March 2013

Porsche Automobil Holding SE

The Executive Board

Prof. Dr. Martin Winterkorn (Chairman)

Matthias Müller

Hans Dieter Pötsch

Philipp von Hagen

Porsche Beteiligung GmbH

The Management Board

Christian Nicklis

Guido Peters