

**Joint report of the Board of Management of DEUTZ AG and the senior management of Deutz Sicherheit Gesellschaft für Industrieservice mbH pursuant to section 293a German Stock Corporation Act (AktG) on the termination of the existing control and profit transfer agreement and the conclusion of a new control and profit transfer agreement between DEUTZ AG and DEUTZ Sicherheit Gesellschaft für Industrieservice mbH**

**1. Introduction**

With the agreement dated 17 December 2014, DEUTZ AG and DEUTZ Sicherheit Gesellschaft für Industrieservice mbH ('Subsidiary') terminated the existing control and profit transfer agreement dated 14 October 1988 with effect from midnight at the end of 31 December 2014, and entered into a new control and profit transfer agreement.

As required by section 293a German Stock Corporation Act, the Board of Management of DEUTZ AG and the senior management of the Subsidiary have prepared the following joint report explaining the reasons for the termination of the old agreement and the conclusion of the new control and profit-and-loss transfer agreement between DEUTZ AG and the Subsidiary.

**2. Parties to the Agreement**

The parties to the Agreement are DEUTZ AG and the Subsidiary.

**2.1 DEUTZ AG**

DEUTZ AG, entered in the commercial register of the local court of Cologne under HR B 281, is an exchange-traded public limited company with its registered office in Cologne and is the parent company of the DEUTZ Group. Its financial year is the calendar year.

According to the objects clause in the Company's memorandum of association, DEUTZ AG heads and manages a group of companies and investments in companies which operate in the area of development, manufacture and selling of machinery, particularly diesel engines marketed under the DEUTZ brand, as well as in the distribution and service sectors. The Company itself may also operate within the aforementioned business areas. It is entitled to engage in all activities and take all measures which are directly or indirectly connected with the objects of the Company or would serve to further these objects. It may to this extent also establish, acquire or invest in other companies. It is authorised to bring companies in which it holds an interest under unified management or to restrict itself to the administration of these companies.

The Board of Management of DEUTZ AG comprises Dr Helmut Leube (chairman), Dr Margarete Haase and Mr Wellenzohn.

**2.2 The Subsidiary**

The Subsidiary's registered office is in Cologne and the Company is entered

under no. HRB 24481 in the commercial register at the local court in Cologne. Its financial year is the calendar year.

According to the objects clause in the Company's memorandum of association, DEUTZ Sicherheit Gesellschaft für Industrieservice mbH provides services in the area of industrial safety, plant, industrial and facility protection, the operation and maintenance of surveillance, security and alarm systems, services provided under the German Health & Safety at Work Act, data protection and the supply of contract labour.

The Company is entitled to engage in all activities that directly or indirectly serve to further its objects. It may establish branch offices in Germany or abroad, establish, acquire, integrate or invest in other companies, enter into company contracts and pool interests with other companies.

The sole shareholder of the Subsidiary is DEUTZ AG, which directly owns 100 per cent of its shares.

Mr Werner Becker is the managing director of the Subsidiary and represents the Company in accordance with article 6 (1) of the memorandum and articles of association.

### **3. Legal and commercial reasons for ending the control and profit transfer agreement and entering into a new one**

Concluding a new control and profit transfer agreement will bring the existing control and profit transfer agreement into line with current legislation and take account of the new tax requirements.

As a result of the introduction of the law on amending and simplifying business taxation and the tax treatment of travel expenses, section 17 sentence 2 no. 2 of the Corporation Tax Act (KStG) has been amended to the effect that profit-and-loss transfer agreements, including those with private limited companies (those with the legal form GmbH), must now include a reference to the prevailing version of section 302 AktG, in order to meet the requirements governing tax-sharing agreements.

Along with the aforementioned amendment, which was the reason for concluding a new control and profit-and-loss transfer agreement, further changes were made to the old agreement in order to harmonise a number of different control and profit-and-loss transfer agreements.

### **4. Content of the new control and profit transfer agreement**

The amended control and profit transfer agreement is worded as follows:

#### **"Introduction**

- (1) The public limited company trading as DEUTZ Aktiengesellschaft with registered office in Cologne is entered in the commercial register at the local court of Cologne under HR B 281 (**'CONTROLLING COMPANY'**).
- (2) The private limited company trading as DEUTZ Sicherheit Gesellschaft für Industrieservice mbH with registered office in Cologne is entered in the commercial register at the local court of Cologne under HR B 24481 (**'CONTROLLED COMPANY'**).
- (3) The CONTROLLING COMPANY holds all the shares in the CONTROLLED COMPANY, with a total nominal value of DM 50,000.00. This represents the whole of the voting nominal capital in the CONTROLLED COMPANY (financial integration). This financial integration of the CONTROLLED COMPANY in the CONTROLLING COMPANY has continued without interruption since the start of the CONTROLLED COMPANY's current financial year.
- (4) There has been a control and profit transfer agreement in place between the CONTROLLED COMPANY and the CONTROLLING COMPANY since 14 October 1988. This agreement will be terminated on 31 December 2014. The parties intend to enter into a new control and profit transfer agreement.

This being the case, the parties agree the following:

#### **1 Management authority**

- (1) The CONTROLLED COMPANY agrees to allow the CONTROLLING COMPANY to manage its business.
- (2) The CONTROLLING COMPANY will issue to the management of the CONTROLLED COMPANY all instructions concerning organisational, commercial, technical, financial and personnel matters that it deems necessary. Such instructions will be issued through its representative bodies or through persons authorised to issue such instructions. Instructions may be issued generally or on a case-by-case basis and must be in text form (as defined in section 126b German Civil Code). If instructions are issued orally, they must be confirmed in text form without undue delay.
- (3) The CONTROLLED COMPANY is obliged to comply with the instructions of the CONTROLLING COMPANY in every respect, provided such instructions do not conflict with mandatory provisions of company, commercial or accounting law. The right to issue instructions does not include the right to amend, maintain or terminate this Agreement.
- (4) The CONTROLLING COMPANY must be kept informed of all material affairs of the CONTROLLED COMPANY and its business performance. The CONTROLLED COMPANY is obliged to provide the representative

bodies of the CONTROLLING COMPANY and its authorised persons with comprehensive information and to allow them to inspect the books and other records of the company, to a degree that extends beyond the usual membership rights.

## **2 Profit transfer**

- (1) The CONTROLLED COMPANY undertakes to transfer its entire profit to the CONTROLLING COMPANY, starting from the beginning of the financial year in which this Agreement is entered into the commercial register. The provisions of the prevailing version of section 301 German Stock Corporation Act (AktG) apply.
- (2) The CONTROLLED COMPANY may, with the consent of the CONTROLLING COMPANY, transfer amounts from the net income to retained earnings (section 272 (3) German Commercial Code (HGB)), provided this is permitted under commercial law and is justified in accordance with prudent business practice.
- (3) Any other retained earnings recognised under section 272 (3) HGB during the term of this Agreement may – so far as is legally permissible – be reversed at the request of the CONTROLLING COMPANY and transferred as profit. Other reserves and any profit carried forward or retained earnings originating from the period before this Agreement came into effect must not be transferred to the CONTROLLING COMPANY. The same applies to additional paid-in capital irrespective of whether this was recognised before or after this Agreement came into effect.
- (4) The right to demand transfer of profits arises at the end of the CONTROLLED COMPANY's financial year. The amount must be credited to the account of the CONTROLLING COMPANY on that date.

## **3 Transfer of losses**

The provisions of the prevailing version of section 302 AktG apply *mutatis mutandis*.

## **4 Term and end date of the Agreement**

- (1) This Agreement is subject to the consent of the Annual General Meeting of the CONTROLLING COMPANY and the shareholders' meeting of the CONTROLLED COMPANY. It takes effect upon being entered in the commercial register of the CONTROLLED COMPANY and, in respect of the profit transfer, applies from the beginning of the CONTROLLED COMPANY's financial year in which this Agreement is entered in the commercial register. In other respects it applies from the date of entry into the commercial register.

- (2) The Agreement is concluded for an indefinite period. It may be terminated with six months' notice to the end of the CONTROLLED COMPANY's financial year, but not before the end of the financial year in which the tax group to be netted for the purposes of corporation tax and trade tax, established under this Agreement, has fulfilled its minimum term as required under tax law (the 'minimum term'). (Under current law this period is five years; section 14 (1) sentence 1 no. 3 in conjunction with section 17 German Corporation Tax Act (KStG), section 2 (2) sentence 2 German Trade Tax Act (GewStG)).
- (3) Both parties are entitled to terminate this Agreement for cause, in particular if,
- (a) as the result of a disposal of shares or for other reasons the conditions required for a financial integration of the CONTROLLED COMPANY in the CONTROLLING COMPANY under tax law will no longer exist once the measure concerned has been carried out;
  - (b) the CONTROLLING COMPANY moves its investment in the CONTROLLED COMPANY to a different company; or
  - (c) the CONTROLLING COMPANY or the CONTROLLED COMPANY is merged, split or liquidated.
- (4) If the validity of this Agreement or its due and proper implementation is not recognised or is not fully recognised under tax law, the parties agree that the minimum term will not commence until the first day of the CONTROLLED COMPANY's financial year in which the conditions required for the Agreement or its due and proper implementation to be recognised under tax law are in place for the first time, or are first met again.

## **5 Termination of the previous agreement by mutual consent**

The control and profit transfer agreement entered into between the CONTROLLED COMPANY and the CONTROLLING COMPANY on 14 October 1988 is ended by mutual agreement with effect from 24.00 hours on 31 December 2014, along with all rights and obligations thereunder, and replaced with this Agreement.

## **6 Concluding provisions**

- (1) Amendments and additions to this Agreement require the consent of the Annual General Meeting of the CONTROLLING COMPANY and the shareholders' meeting of the CONTROLLED COMPANY. The consent of the CONTROLLED COMPANY must be unanimous and must be entered in the commercial register of the CONTROLLED COMPANY.

- (2) Amendments and additions to this Agreement must further be made in writing, unless recording by a notary is stipulated. This also applies to the revocation of this requirement for the written form.
- (3) Should any provision of this Agreement be or become invalid, impracticable or unenforceable wholly or in part, or should the Agreement prove to contain an omission, this will not affect the validity and enforceability of the remaining provisions. The parties undertake to replace the invalid, impracticable or unenforceable provision with one that is valid, practicable and enforceable and which most closely approximates the economic purpose pursued by the parties when they agreed the invalid, impracticable or unenforceable provision."

#### **5. Scrutiny, compensation, settlement**

As DEUTZ AG owns all the shares in the Subsidiary, there is no need for the control and profit-and-loss transfer agreement to be scrutinised, nor is there any need for an audit report or for any provisions governing compensation payments or a settlement for external shareholders.

Cologne, 12 March 2015

The Board of Management of DEUTZ AG

Dr Helmut Leube

Dr Margarete Haase

Michael Wellenzohn

The Managing Director of DEUTZ Sicherheit Gesellschaft für Industrieservice mbH

Werner Becker