

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

Currently existing Profit and Loss Transfer Agreement  
between BMW AG and BMW M GmbH Gesellschaft für  
individuelle Automobile in the revised version of  
15 March 2010

## Profit and Loss Transfer Agreement

between

**Bayerische Motoren Werke Aktiengesellschaft** with its registered office in Munich and entered in the Commercial Register of Munich District Court under HRB 42243,

– hereinafter referred to as the “Controlling Entity” –

and

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

– hereinafter referred to as the “Controlled Entity” –

– Controlling Entity and Controlled Entity hereinafter also referred to individually as “**Party**” or collectively as “**Parties**” –

### Preamble

The Controlling Entity is the sole shareholder of the Controlled Entity. In continuation of an existing fiscal unity with-in the meaning of §§ 14, 17 KStG (Corporation Taxes Act) between the Controlled Entity and the Controlling Entity, the previously existing Profit and Loss Transfer Agreement between the Parties shall be amended as a whole.

### 1. Profit transfer

#### 1.1

The Controlled Entity undertakes to transfer its entire profit to the Controlling Entity. The provisions of § 301 of the German Stock Corporation Act (AktG) shall apply in full in their respective valid version.

## **1.2**

Accordingly, subject to the formation or release of reserves pursuant to sections 1.3 and 1.4 below – profit is the total annual net profit arising without the profit transfer, reduced by any loss carried forward from the previous year and reduced by the other deductions listed in § 301 AktG, as amended, insofar as they are relevant to the Controlled Entity.

## **1.3**

The Controlled Entity may only allocate amounts from the annual net profit to revenue reserves (§ 272 para. 3 HGB (German Commercial Code)) – with the exception of statutory reserves, if relevant – (hereinafter “other revenue reserves”) to the extent that this is economically justified based on a reasonable commercial assessment.

## **1.4**

Other revenue reserves formed during the term of the agreement must be dissolved at the request of the Controlling Entity and used to offset a net loss for the year or transferred as profit.

## **1.5**

The claim to profit transfer shall become due with the adoption of the annual financial statements of the Controlled Entity. The Controlling Entity may request an advance transfer of profits if and to the extent that an advance distribution might be paid.

## **2. Loss transfer**

### **2.1**

The provisions § 302 AktG shall apply in full in their respective valid version.

### **2.2**

In particular, the Controlling Entity shall be obliged pursuant to § 302 para. 1 AktG to offset any net loss for the year otherwise arising during the term of the agreement, unless such net loss is offset by withdrawing amounts from the other revenue reserves which were transferred to it during the term of the agreement.

### **2.3**

In particular, the Controlled Entity may, in analogous application of § 302 para. 3 AktG, neither waive nor settle the claim for loss compensation within three years after the day on which the entry of the termination of this agreement in the commercial register is deemed to have been announced within the meaning of § 10 HGB (German Commercial Code). This does not apply if the Controlling Entity is insolvent and settles with its creditors in order to avoid insolvency proceedings or if the obligation to pay compensation is settled in an insolvency plan.

### **2.4**

The claim to loss transfer shall become due with the adoption of the annual financial statements of the Controlled Entity.

## **3. Effective date and duration of the agreement**

### **3.1**

This agreement is concluded subject to the approval of the Annual General Meeting of the Controlling Entity and the approval of the shareholders' meeting of the Controlled Entity. It becomes effective upon entry in the commercial register of the Controlled Entity and applies for the period from the beginning of the financial year of the entry.

The Profit and Loss Transfer Agreement previously existing between the Parties shall be replaced by the present agreement without transition for the time from the beginning of the financial year of registration when the present agreement becomes effective.

### **3.2**

The agreement is concluded for a fixed term until the end of 31 December 2014 (minimum term five years). If the entry in the commercial register of the Controlled Entity is not made by 31 December 2010 at the latest, the minimum term pursuant to sentence 1 shall be extended until the expiry of five years from the beginning of the financial year of the Controlled Entity in which the entry is made in the commercial register of the Controlled Entity.

The agreement shall be extended by one year at a time following the minimum term if it is not terminated by one Party at least six weeks before its expiry by one of the Parties.

### **3.3**

The right of each Party to terminate the Agreement for good cause without notice shall remain unaffected.

#### **4. Final provision**

Should individual provisions of this agreement be or become invalid, or should this agreement contain loopholes, this shall not affect the validity of the remaining provisions.

In such a case, insofar as a supplementary interpretation of the agreement is not possible, the Parties shall agree on the provision which would have been agreed taking into account the purpose of the agreement if the ineffectiveness of the provision or the loophole had been known from the outset.

Munich, 15 March 2010

#### **Bayerische Motoren Werke Aktiengesellschaft**

[SIGNATURE]

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Dr. Friedrich Eichiner

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ppa Dr. Thomas Wittig

#### **BMW M GmbH Gesellschaft für individuelle Automobile**

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