- Translation for convenience -

Annual General Meeting of Heidelberger Druckmaschinen Aktiengesellschaft on July 25, 2019

Joint report
of the Management Board of Heidelberger Druckmaschinen Aktiengesellschaft
and
the management of Heidelberg Catering Services GmbH
on the amendment agreement dated May 21, 2019 relating to the control and profit transfer agreement dated May 14, 2004

1 Introduction

On May 14, 2004, Heidelberger Druckmaschinen Aktiengesellschaft (hereinafter referred to as "Heidelberg" for short) concluded a control and profit transfer agreement with Heidelberg Catering Services GmbH (hereinafter referred to as the "controlled company" for short) which was approved by the shareholders' meeting of the controlled company on September 6, 2004 and the Annual General Meeting of Heidelberg on July 21, 2004 (hereinafter referred to as the "control and profit transfer agreement" for short). The control and profit transfer agreement became effective with its entry in the commercial register of the controlled company on October 21, 2004. When the control and profit transfer agreement was concluded, the controlled company was still called RCU-VV Vierzigste Vermögensverwaltung GmbH.

Under the control and profit transfer agreement, the controlled company relinquishes the management of its company to Heidelberg. Heidelberg is entitled to issue instructions to the managers of the controlled company regarding the management of the company. Furthermore, the controlled company is obliged to transfer its entire net profit to Heidelberg for as long as the control and profit transfer agreement remains in force. In turn, Heidelberg is obliged to compensate for any net loss incurred by the controlled company for as long as the control and profit transfer agreement remains in force.

The reason for concluding the control and profit transfer agreement was to create a single tax entity for corporation and trade tax purposes. This tax entity represents the financial integration of a corporation into a domestic commercial enterprise (tax group parent) with the result that the income of the controlled company is attributed to the controlling company.

On May 21, 2019, Heidelberg and the controlled company concluded an agreement amending the control and profit transfer agreement concluded between them on May 14, 2004 (hereinafter referred to as the "amendment agreement" for short) as a precautionary measure in light of tax developments relating to the treatment of loss absorption.

The Management Board of Heidelberg and the management of the controlled company have therefore prepared the following report on the amendment agreement dated May 21, 2019 in accordance with section 295 (1) sentence 2 in conjunction with section 293a of the Aktiengesetz (German Stock Corporation Act; hereinafter "AktG" for short):

2 Conclusion and effectiveness of the control and profit transfer agreement and the amendment agreement

On May 20, 2019, the Management Board of Heidelberg and the management of the controlled company each resolved to conclude the amendment agreement. On May 21, 2019, Heidelberg and the controlled company concluded the amendment agreement in written form. The shareholders' meeting of the controlled company approved the conclusion of the amendment agreement in notarized form on May 21, 2019.

The amendment agreement only becomes effective with the approval of the Annual General Meeting of Heidelberg. Accordingly, the Management Board and Supervisory Board of Heidelberg will propose the approval of the amendment agreement to the Annual General Meeting of Heidelberg to be convened for July 25, 2019. If the Annual General Meeting of Heidelberg approves the amendment agreement, it will become effective when the amended control and profit transfer agreement is entered in the commercial register of the controlled company.

3 Parties to the agreement amending the control and profit transfer agreement

3.1 Heidelberger Druckmaschinen Aktiengesellschaft

Heidelberg, domiciled in Heidelberg and entered in the commercial register of the Mannheim Local Court under HRB 330004, is a listed stock corporation under German law with share capital of €779,466,887.68, divided into 304,479,253 no-par value bearer shares. Heidelberg is the parent company of the Heidelberg Group. Heidelberg's financial year begins on April 1 and ends on March 31 of the following calendar year.

The purpose of the company according to its Articles of Association is the manufacture, sale and trade of printing presses and other products in the print media industry and the performance of services and advisory services that relate to this. The purpose of the company also includes other products, services, and advisory services in the area of mechanical engineering, electronics, electrical engineering, and the metal industry. In accordance with its Articles of Association, Heidelberg may undertake any and all transactions and measures that appear necessary or expedient for achieving the company object. In particular, it may establish branch offices domestically and abroad and may form, acquire or acquire interests in companies domestically and abroad.

The members of the Management Board of Heidelberg are Rainer Hundsdörfer (Chairman), Dr Ulrich Hermann, Dirk Kaliebe and Stephan Plenz. In accordance with Article 8 (1) of its Articles of Association, Heidelberg is represented by two Management Board members or by one Management Board member acting jointly with an authorized signatory (Prokurist).

In the 2016/2017 financial year, Heidelberg had an average of 5,382 employees (excluding trainees) and generated net sales of €1,177,749,224.46 and a net profit of €70,743,201.99. Equity amounted to €763,093,721.82 in the 2016/2017 financial year, while total assets amounted to €2,070,320,802.39.

In the 2017/2018 financial year, Heidelberg had an average of 5,440 employees (excluding trainees) and generated net sales of €1,159,878,858.33 and a net loss of €44,530,411.29. Equity amounted to €774,355,595.96 in the 2017/2018 financial year, while total assets amounted to €2,156,646,944.61.

In the 2018/2019 financial year, Heidelberg had an average of 5,463 employees (excluding trainees) and generated net sales of €1,233,319,287.76 and a net loss of €88,309,436.22. Equity amounted to €755,039,482.10 in the 2018/2019 financial year, while total assets amounted to €2,232,418,012.55.

3.2 Heidelberg Catering Services GmbH

The controlled company, domiciled in Wiesloch and entered in the commercial register of the Mannheim Local Court under HRB 352069, looks after employee and event catering for Heidelberg. Heidelberg is the sole shareholder of the controlled company and therefore holds 100% of its share capital in the amount of €25,000. The financial year of the controlled company begins on April 1 and ends on March 31 of the following year.

In accordance with the Articles of Association of the controlled company, the purpose of the company is the provision of services in the area of employee and event catering, particularly workplace catering and gastronomy as well as consulting, planning and organization for corresponding facilities and events. The company may undertake any or all transactions and measures that appear necessary or expedient for achieving its purpose, particularly the performance of catering services for third parties in exchange for payment.

The sole managing director of the controlled company is Tobias Hechler. In accordance with Article 4 of its Articles of Association, the controlled company is represented as follows: if only one managing director is appointed, the controlled company is represented by one managing director; if more than one managing director is appointed, the controlled company is jointly represented by two managing directors or by one managing director jointly with an authorized signatory (Prokurist). Each managing director may be issued sole rights of representation.

In the 2016/2017 financial year, the controlled company had 50 employees and reported a net loss before loss absorption of €2,360,884.08 in its annual financial statements as prepared in accordance with the Handelsgesetzbuch (German Commercial Code; hereinafter “HGB” for short). Its balance sheet as of March 31, 2017 reported total assets of €2,585,042.12 and equity of €385,904.87.

In the 2017/2018 financial year, it had 50 employees and reported a net loss before loss absorption of €2,530,279.85 in its HGB annual financial statements. Its balance sheet as of March 31, 2018 reported total assets of €2,939,265.90 and equity of €385,904.87.

In the 2018/2019 financial year, it had 50 employees and reported a net loss before loss absorption of €2,395,726.37 in its HGB annual financial statements. Its balance sheet as of March 31, 2019 reported total assets of €3,368,009.08 and equity of €385,904.87.

The controlled company refrains from preparing a management report in accordance with the provisions of the HGB.

4 Reasons for the conclusion of the amendment agreement

The Gesetz zur Änderung und Vereinfachung der Unternehmensbesteuerung und des steuerlichen Reisekostenrechts (German Act Amending and Simplifying Company Taxation and the Tax Treatment of Travel Expenses) dated February 20, 2013 (BGBl. I 2013, 285) amended section 17 sentence 2 no. 2 of the Körperschaftssteuergesetz (KStG – German Corporation Tax Act). The new version of the provision requires a “*reference to the provisions of section 302 AktG as currently amended*” (“dynamic reference”) for all profit transfer agreements concluded after the publication date of the legislation in the Federal Law Gazette (BGBl.).

The old version of section 17 sentence 2 no. 2 KStG required loss absorption in accordance with the provisions of section 302 AktG to be agreed in the profit transfer agreement. Based on the ruling of the Bundesfinanzhof (German Federal Fiscal Court; hereinafter “BFH” for short) on May 10, 2017 (I R 93/15), a tax entity for corporation tax purposes in accordance with the old version of section 17 sentence 2 no. 2 KStG expressly requires loss absorption to be agreed in accordance with section 302 AktG “*(in all its parts and in the respective versions)*”. The tax authority responded to this judgment with a letter of the Bundesfinanzministerium (German Federal Ministry of Finance; hereinafter referred to as “BMF” for short) dated April 3, 2019 stating that profit transfer agreements not containing the (dynamic) reference to section 302 AktG required by the BFH do not preclude the recognition of the tax entity providing they are amended to reflect section 17 (1) sentence 2 KStG (dynamic reference) by the end of December 31, 2019.

The previous version of section 3 (4) and (5) of the control and profit transfer agreement already contained an obligation to absorb the losses of the controlled company. The current version of section 3 (4) of the control and profit transfer agreement between Heidelberg and the controlled company has the following wording: "*The provisions of section 302 AktG apply accordingly*". In addition, the current version of section 3 (5) of the control and profit transfer agreement reproduces the wording of section 302 (1) AktG. The parties to the control and profit transfer agreement are of the opinion that the control and profit transfer agreement between them satisfies the requirements of the old and new versions of section 17 (1) sentence 2 no. 2 KStG with respect to a dynamic reference to section 302 AktG. In light of the above judgment by the BFH and the BMF letter, however, the parties to the control and profit transfer agreement have concluded the amendment agreement as a precautionary measure.

5 Discussion of the amendment agreement in detail

The amendment agreement concluded by Heidelberg and the controlled company contains the following amendments:

5.1 Amendment to section 3 (4) and deletion of section 3 (5) of the control and profit transfer agreement

The amendments effected by the amendment agreement relate to section 3 (4) and section 3 (5) of the control and profit transfer agreement. These provisions previously set out Heidelberg's statutory obligation to absorb losses. Loss absorption is the statutory consequence of the control and profit transfer agreement and, to a certain extent, constitutes the "quid pro quo" for the possibility of profit transfer.

For the reasons detailed above, the amendment agreement provides for the following amendments to section 3 (4) and section 3 (5) of the control and profit transfer agreement:

- Section 1 of the amendment agreement amends the existing section 3 (4) of the control and profit transfer agreement to refer to all provisions of section 302 AktG as currently amended. The amended version of section 3 (4) of the control and profit transfer agreement reads as follows:

  "*The provisions of section 302 AktG apply accordingly as currently amended*."

- Section 2 results in the deletion of section 3 (5) of the control and profit transfer agreement, which previously reproduced the wording of section 302 (1) AktG but is rendered unnecessary by the above amendment. As a result, the previous section 3 (6) becomes section 3 (5).

5.2 Other provisions of the amendment agreement

The amendment agreement also states that the above amendment to section 3 of the control and profit transfer agreement applies for tax purposes with retrospective effect from the start of the financial year of the controlled company in which the amendment is entered in the commercial register of the controlled company, and that the other provisions of the control and profit transfer agreement remain unchanged. The amendment agreement therefore constitutes neither a new agreement nor a new version of the control and profit transfer agreement.

6 Economic and legal relevance of the amendment agreement

The planned amendments to the control and profit transfer agreement have no economic or operational consequences for Heidelberg or the controlled company. In light of the tax developments described, they instead serve as a precautionary measure to ensure the continuation of the tax entity substantiated by the control and profit transfer agreement. The established tax entity offers the benefit from a tax perspective that the taxable income or trade earnings of the controlled company are attributed to Heidelberg as its own.

The control and profit transfer agreement is also intended to ensure the continued operational, financial and strategic integration of the controlled company into Heidelberg. The adjustments contained in the amendment agreement do not have any economic or operational consequences for the parties. The fundamentals of the parties' major obligations – profit transfer by the controlled company and loss compensation by Heidelberg – remain unchanged. In detail:

- As previously, the controlled company relinquishes the management of its company to Heidelberg, which is entitled to issue instructions – including disadvantageous instructions – to the managers of the controlled company.

- The controlled company continues to undertake to transfer its entire profit as calculated in accordance with the relevant provisions of German commercial law to Heidelberg subject to the restrictions arising from section 301 AktG. In exchange, Heidelberg continues to undertake to absorb any losses of the controlled company in accordance with section 302 AktG as currently amended.

There is no economically viable alternative to the conclusion of the amendment agreement in order to ensure the established tax entity.

7 No settlement or compensation rights, no review

In line with the applicable provisions of German stock corporation law, the control and profit transfer agreement does not provide for any compensation payments (section 304 AktG) or settlement arrangements (section 305 AktG) for outside shareholders because Heidelberg holds 100% of the shares in the controlled company. There were no outside shareholders at the date on which the Annual General Meeting resolved on the conclusion of the control and profit transfer agreement. The same applies for the date of the Annual General Meeting’s resolution on the conclusion of the amendment agreement. Accordingly, no valuation of the parties to the control and profit transfer agreement was conducted.

A review of the amendment agreement by an expert auditor (contract auditor) in accordance with section 295 (1) sentence 2 in conjunction with section 293b (1) second half of sentence AktG was not required for the same reason; accordingly, an audit report by a contract auditor (section 293e AktG) was also not required.

Heidelberg, June 3, 2019

Heidelberger Druckmaschinen Aktiengesellschaft

Rainer Hundsdörfer	Dr. Ulrich Hermann	Dirk Kaliebe	Stephan Plenz

Wiesloch, June 3, 2019

Heidelberg Catering Services GmbH

Tobias Hechler