

## CONTRACT REPORT

Joint Report  
of the Management of  
Truck & Bus GmbH, Wolfsburg,  
and  
the Executive Board of  
MAN SE, Munich,

pursuant to § 293a German Stock Corporations Act, Art. 9 para. 1 lit. c (ii) Regulation  
on the Statute of the European Company  
concerning the Domination and Profit and Loss Transfer Agreement  
between Truck & Bus GmbH and MAN SE

26 April 2013

## Table of Contents

Section	Page
<b>(A) INTRODUCTION.....</b>	<b>4</b>
<b>(B) THE PARTIES.....</b>	<b>6</b>
<b>1 MAN SE .....</b>	<b>6</b>
1.1 Overview .....	6
1.2 Corporate history and development of MAN SE .....	6
1.3 Legal foundations of MAN SE .....	7
1.4 Capital, trading on the stock exchange, MAN Shareholders .....	7
1.4.1 Share capital .....	7
1.4.2 Authorized Capital.....	7
1.4.3 Conditional capital and authorization to issue convertible bonds and bonds with warrants .....	8
1.4.4 MAN Shares held as treasury shares .....	9
1.4.5 Trading on the stock exchange .....	10
1.4.6 MAN Shareholders.....	10
1.5 Structure of the MAN Group.....	10
1.5.1 Operative and legal structure.....	10
1.5.2 Material participations .....	10
1.5.3 Tax situation of MAN SE .....	11
1.6 Overview of the business activities of the MAN Group.....	11
1.6.1 Commercial Vehicles division .....	11
1.6.2 Power Engineering division .....	12
1.6.3 Other material participations.....	13
1.7 Corporate bodies of MAN SE.....	13
1.7.1 Executive Board.....	13
1.7.2 Supervisory Board .....	14
1.8 Employees and co-determination at MAN SE.....	15
1.8.1 Information of and consultation with the employees of MAN SE.....	15
1.8.2 Co-determination .....	16
1.9 Development of the business, earnings situation and financial position of MAN SE.....	16
1.9.1 Key numbers for the fiscal years 2010 to 2012 .....	17
1.9.2 Development of the business in the fiscal year 2012 .....	17
1.9.3 Development of profit in the individual divisions in the fiscal year 2012.....	19
1.9.4 Outlook.....	20
<b>2 Volkswagen Aktiengesellschaft.....</b>	<b>21</b>
2.1 Overview .....	21
2.2 Corporate history and development of Volkswagen Aktiengesellschaft.....	21
2.3 Legal foundations of Volkswagen Aktiengesellschaft .....	22
2.4 Capital, trading on the stock exchange, shareholders of Volkswagen Aktiengesellschaft ...	22
2.4.1 Share capital .....	22
2.4.2 Authorized capital .....	23
2.4.3 Conditional capital and authorization to issue convertible bonds and bonds with warrants .....	23
2.4.4 Volkswagen treasury shares.....	25
2.4.5 Trading on the stock exchange.....	25

2.4.6	Shareholders.....	25
2.5	Structure of the Volkswagen Group .....	26
2.5.1	Operative and legal structure.....	26
2.5.2	Material participations .....	26
2.5.3	Tax situation of Volkswagen Aktiengesellschaft.....	26
2.6	Overview of the business activity of the Volkswagen Group .....	27
2.7	Corporate bodies of Volkswagen Aktiengesellschaft .....	28
2.7.1	Executive Board.....	28
2.7.2	Supervisory Board .....	28
2.8	Employees and co-determination.....	29
2.9	Development of the business and earnings situation .....	30
<b>3</b>	<b>Truck &amp; Bus GmbH .....</b>	<b>30</b>
3.1	Overview .....	30
3.2	Legal form, registered office, fiscal year and corporate purpose.....	30
3.3	Corporate history and development.....	31
3.3.1	Founding .....	31
3.3.2	Change in name and corporate purpose .....	31
3.4	Capital and shareholders .....	31
3.4.1	Contribution to the capital reserve in February 2013.....	31
3.4.2	Capital increase and contribution of the participation in MAN SE .....	31
3.4.3	Contribution to the capital reserve in April 2013 .....	32
3.4.4	Shareholders.....	32
3.4.5	Domination and profit and loss transfer agreement with Volkswagen Aktiengesellschaft.....	32
3.5	Management and Supervisory Board .....	32
3.6	Business activities and participations .....	33
3.7	Development of the business, earnings situation and financial position of Truck & Bus GmbH.....	33
3.7.1	Assets (main line items).....	34
3.7.2	Equity and liabilities (main line items).....	34
3.8	Employees and representative bodies of the employees .....	34
3.9	Finances of Truck & Bus GmbH.....	34
<b>4</b>	<b>Mandatory Offer of Volkswagen Aktiengesellschaft, further purchases of shares, transfer of the participation to Truck &amp; Bus GmbH.....</b>	<b>36</b>
4.1	Mandatory Offer and additional purchases of shares .....	36
4.2	Transfer of the participation in MAN SE to Truck & Bus GmbH.....	36
4.3	Potential purchases outside of the offer for Compensation .....	37
<b>(C)</b>	<b>DOMINATION AND PROFIT AND LOSS TRANSFER AGREEMENT .....</b>	<b>37</b>
<b>1</b>	<b>Reasons for the conclusion of the Domination and Profit and Loss Transfer Agreement.....</b>	<b>37</b>
1.1	Economic, legal and tax reasons .....	37
1.1.1	Economic and legal reasons.....	37
1.1.2	Tax reasons.....	42
1.2	Alternatives to concluding the Domination and Profit and Loss Transfer Agreement.....	43
1.2.1	Conclusion of only a domination agreement or only a profit and loss transfer agreement.....	44

1.2.2	Exclusion of the minority shareholders (squeeze-out).....	45
1.2.3	Absorption or Merger .....	46
1.2.4	Change of corporate form .....	46
1.2.5	Conclusion .....	47
1.3	Costs of the Domination and Profit and Loss Transfer Agreement.....	47
<b>2</b>	<b>Content and effects of the Domination and Profit and Loss Transfer Agreement.....</b>	<b>47</b>
2.1	Explanation of the content of the contract.....	47
2.1.1	Management control and instructions (clause 1 of the Domination and Profit and Loss Transfer Agreement).....	47
2.1.2	Transfer of profit (clause 2 of the Domination and Profit and Loss Transfer Agreement) .....	49
2.1.3	Assumption of losses (clause 3 of the Domination and Profit and Loss Transfer Agreement) .....	51
2.1.4	Guaranteed Dividend and Recurring Compensation Payment (clause 4 of the Domination and Profit and Loss Transfer Agreement).....	52
2.1.5	Compensation (clause 5 of the Domination and Profit and Loss Transfer Agreement) .....	60
2.1.6	Coming into effect and term of the contract (clause 6 of the Domination and Profit and Loss Transfer Agreement).....	64
2.1.7	Final provisions of the contract (clause 8 of the Domination and Profit and Loss Transfer Agreement) .....	68
2.1.8	Letter of Affiliation and Comfort by Volkswagen Aktiengesellschaft .....	68
2.2	Technical processing of the Domination and Profit and Loss Transfer Agreement by the banks.....	69
2.3	Explanation of the effects of the Domination and Profit and Loss Transfer Agreement .....	69
2.3.1	Effects for the outside MAN Shareholders under corporate law.....	69
2.3.2	Protection of the outside MAN Shareholders.....	73
2.3.3	Tax effects for MAN Shareholders in Germany .....	76
2.3.4	Tax effects on MAN SE .....	85
<b>3</b>	<b>Type and amount of the Guaranteed Dividend, the Recurring Compensation Payment and the Compensation under §§ 304, 305 AktG.....</b>	<b>85</b>
3.1	Overview .....	85
3.2	Determination and setting of the amount of the reasonable Guaranteed Dividend and the reasonable Recurring Compensation Payment under § 304 AktG .....	90
3.3	Determination and setting of the amount of the reasonable Compensation under § 305 AktG.....	90
3.4	Contract examination .....	91

The Executive Board of MAN SE ("**MAN SE**") and the Managing Directors of Truck & Bus GmbH ("**Truck & Bus GmbH**") are jointly issuing the following report (the "**Contract Report**") pursuant to § 293a German Stock Corporations Act (*Aktiengesetz*, "**AktG**") concerning the Domination and Profit and Loss Transfer Agreement dated 26 April 2013 (the "**Domination and Profit and Loss Transfer Agreement**") between MAN SE as the controlled company and Truck & Bus GmbH as the controlling company (together, also the "**Parties**").

## (A) INTRODUCTION

Truck & Bus GmbH is a 100% subsidiary of Volkswagen Aktiengesellschaft ("**Volkswagen Aktiengesellschaft**") and together with its consolidated subsidiaries, the "**Volkswagen Group**"). Volkswagen Aktiengesellschaft submitted a mandatory offer on 31 May 2011 (the "**Mandatory Offer**") to all shareholders of MAN SE (the "**MAN Shareholders**") for the acquisition of their bearer common stock in MAN SE (the "**MAN Common Shares**") and their bearer preferred stock in MAN SE (the "**MAN Preferred Shares**", the MAN Common Shares and the MAN Preferred Shares together also the "**MAN Shares**"). The Mandatory Offer was accepted for approximately 25.4% of the MAN Common Shares and 2.7% of the MAN Preferred Shares by the expiration of the acceptance deadline on 29 June 2011 at 24:00 hours and was closed on 9 November 2011. After the closing of the Mandatory Offer Volkswagen Aktiengesellschaft held 55.90% of the voting rights and 53.71% of the share capital in MAN SE. Volkswagen Aktiengesellschaft acquired additional MAN Common Shares and MAN Preferred Shares on the stock exchange after the closing of the Mandatory Offer and held 75.03% of the voting rights in MAN SE as of 6 June 2012. The shareholding of Volkswagen Aktiengesellschaft in the share capital of MAN SE as of 31 December 2012 was 73.72%.

Volkswagen Aktiengesellschaft contributed its entire shareholding in MAN SE in the amount of 105,769,788 MAN Common shares and 2,626,244 MAN Preferred Shares to the capital reserve of Truck & Bus GmbH pursuant to § 272 para. 2 no. 4 German Commercial Code (*Handelsgesetzbuch*, "**HGB**") on 16 April 2013 on the basis of a resolution of the shareholders' meeting of Truck & Bus GmbH dated 16 April 2013.

As of the date of signing this Contract Report, Truck & Bus GmbH holds 105,769,788 MAN Common Shares and 2,626,244 MAN Preferred Shares. This corresponds to a portion of 75.03% of the voting rights and 73.72% of the share capital in MAN SE.

Volkswagen Aktiengesellschaft approached the Executive Board of MAN SE on 9 January 2013 in order to initiate discussions about concluding the Domination and Profit and Loss Transfer Agreement. MAN SE publically announced this in an *ad hoc* notification on 9 January 2013.

In response to identical requests of MAN SE and Truck & Bus GmbH (under the name it still had at that time of "Volkswagen Coaching Gesellschaft mbH") dated 16 January 2013, the District Court (*Landgericht*) Munich I selected and appointed Rölfs RP AG, Wirtschaftsprüfungsgesellschaft, Düsseldorf, as the contract examiner (the "**Contract Examiner**") in an order dated 17 January 2013.

The Parties concluded the Domination and Profit and Loss Transfer Agreement on 26 April 2013. The Supervisory Board of MAN SE had approved the conclusion of the Domination and Profit and Loss Transfer Agreement in its meeting on 22 April 2013. At the time of adopting the resolution, the Supervisory Board had the final draft of the Domination and Profit and Loss Transfer Agreement, a final draft of this Contract Report and the

signed version of the joint expert opinion (the "**Valuation Report**") of PricewaterhouseCoopers Aktiengesellschaft Wirtschaftsprüfungsgesellschaft ("**PwC**") and KPMG AG Wirtschaftsprüfungsgesellschaft ("**KPMG**"; PwC and KPMG together, the "**Valuation Experts**") dated 18 April 2013 as well as the final draft of the report by the Contract Examiner about the examination of the Domination and Profit and Loss Transfer Agreement dated 25 April 2013 (the "**Examination Report**").

The Domination and Profit and Loss Transfer Agreement requires the approval of the general shareholders' meeting of MAN SE in accordance with § 293 para. 1 AktG, Art. 52 sentence 2 of the Regulation (EC) No. 2157/2001 of the Council on the statute of the European Company (SE) (the "**SE Regulation**") as well as the approval of the shareholders' meeting of Truck & Bus GmbH in accordance with § 293 para. 2 AktG. The shareholders' meeting of Truck & Bus GmbH issued its approval for the Domination and Profit and Loss Transfer Agreement on 25 April 2013. The approving resolution of the general shareholders' meeting of MAN SE, in which the holders of MAN Common Shares are entitled to vote, shall be adopted at the ordinary general shareholders' meeting of MAN SE on 6 June 2013. The Domination and Profit and Loss Transfer Agreement will take effect upon registration in the commercial register at the registered office of MAN SE.

## **(B) THE PARTIES**

### **1 MAN SE**

#### **1.1 Overview**

MAN SE is the parent company of the MAN Group (the "**MAN Group**") and, through the main four companies of the MAN Group, MAN Truck & Bus AG ("**MAN Truck & Bus AG**"), MAN Latin America Indústria e Comércio de Veículos Ltda. ("**MAN Latin America**"), MAN Diesel & Turbo SE ("**MAN Diesel & Turbo**") and Renk Aktiengesellschaft ("**Renk**"), is one of the worldwide leading suppliers of commercial vehicles and transport solutions as well as diesel engines, turbine machinery and high-end special gear units. The companies of the MAN Group have leading market positions and are among the top three suppliers in their respective markets. The MAN Group is active in more than 150 countries with approximately 54,300 employees (including temporary workers).

MAN Truck & Bus AG is one of the leading suppliers of commercial vehicles and transport solutions and is expanding from the core market in Western Europe into the growth markets in Eastern Europe and Asia. MAN Latin America, according to its own estimate, is the largest truck manufacturer in Latin America, the market leader for trucks in Brazil and a leading supplier of commercial vehicles as well as bus chassis for growth markets. MAN Diesel & Turbo has a leading position worldwide for large ship diesel engines and stationary engines and is also one of the leading suppliers of turbine machinery in the world market. Renk is a worldwide recognized manufacturer of high-end special gear units, propulsion components as well as testing systems.

Pursuant to § 315a para. 1 HGB, Art. 61 SE Regulation, the consolidated financial statements of MAN SE for the fiscal year 2012 that ended on 31 December 2012 were prepared as in previous years in accordance with the International Financial Reporting Standards of the International Accounting Standards Board as they must be applied pursuant to the regulation No. 1606/2002 of the European Parliament and the Council on the application of International Accounting Standards in the European Union ("**IFRS**") and show revenue in the amount of EUR 15,772 million, earnings before interest and taxes (EBIT) in the amount of EUR 623 million and earnings after tax in the amount of EUR 189 million.

The website of MAN SE can be accessed at <http://www.man.eu>.

#### **1.2 Corporate history and development of MAN SE**

MAN SE has two roots: in the first place, Eisenhütte St. Antony, Oberhausen, which commenced operations in 1758 and from which Gutehoffnungshütte Aktienverein Aktiengesellschaft ("**GHH**") originated and, in the second place, Vereinigte Maschinenfabrik Augsburg and Maschinenbaugesellschaft Nürnberg A.-G., Augsburg, which had its origins in the year 1898 in the merger of Sander'sche Maschinenfabrik, Augsburg and Klett & Comp., Nürnberg, established in the years 1840 and 1841, and has had the name Maschinenfabrik Augsburg-Nürnberg Aktiengesellschaft (M.A.N.) starting in the year 1908. In the year 1986, M.A.N. was merged into GHH and the later company was renamed to MAN Aktiengesellschaft. MAN Aktiengesellschaft was transformed into a European Company (*Societas Europaea*) in the year 2009 and now has the name MAN SE.

### 1.3 Legal foundations of MAN SE

MAN SE is a European Company with its registered office in Munich and is registered in the commercial register at the Local Court (*Amtsgericht*) Munich under the commercial register number HRB 179426. The business address of MAN SE is Ungererstr. 69, 80805 Munich.

The purpose of the company is the participation in enterprises of all kinds, especially in the fields of mechanical and plant engineering, motor vehicle and engine manufacturing and trading, and also the manufacture of such products as well as the processing of materials of all kinds. MAN SE is entitled to engage in all transactions and take all measures which appear necessary or beneficial for achieving the corporate purpose.

The fiscal year of MAN SE corresponds to the calendar year.

As a European Company, MAN SE is subject to the provisions of the SE Regulation as well as the provisions of German law, which apply due to the references in the SE Regulation, in particular Art. 9 para. 1 lit. c SE Regulation, or due to the applicable rules on conflicts of laws. Especially the provisions in §§ 291 through 310 AktG concerning domination and profit and loss transfer agreements apply to MAN SE.

### 1.4 Capital, trading on the stock exchange, MAN Shareholders

#### 1.4.1 Share capital

The share capital of MAN SE is currently EUR 376,422,400 and is divided into a total of 147,040,000 no-par bearer shares, each representing a proportionate amount of EUR 2.56 in the share capital, of which 140,974,350 are MAN Common Shares and 6,065,650 are non-voting MAN Preferred Shares.

#### 1.4.2 Authorized Capital

§ 4 para. 4 of the articles of association of MAN SE (the "**MAN Articles of Association**") provides for an authorized capital. The Executive Board is authorized to increase the share capital until 31 March 2015, with approval of the Supervisory Board, by a total of up to EUR 188,211,200 by issuing on one or on multiple occasions bearer common shares in MAN SE in exchange for cash contributions and/or contributions in kind (the "**Authorized Capital 2010**").

In the event of capital increases in exchange for cash contributions, MAN Shareholders must generally be granted a subscription right. However, the Executive Board is authorized to exclude this subscription right with the approval of the Supervisory Board

- to the extent necessary to grant holders of convertible bonds or bonds with warrants that are or will be issued by the company or its group companies a right to subscribe for new shares in the amount to which they would be entitled after exercising their conversion rights or options or fulfilling their conversion obligations (anti-dilution provision), and/or
- if the issue price of the new shares is not more than 5% lower than the quoted market price and the shares issued in accordance with § 186 para. 3 sentence 4 AktG, Art. 5 SE Regulation do not in the aggregate exceed 10% of the share capital. Shares issued or sold during the term of the authorization under direct or corresponding application of this provision



on basis of other authorizations until the time of the exercise of the authorization count towards this limit. Shares issued or issuable by virtue of convertible bonds or bonds with warrants or with conversion obligations issued at the time of the exercise of the authorization in accordance with this provision also count towards the aforementioned 10% limit, and/or

- to realize any fractions needed to round the share capital, and/or
- to issue new shares in exchange for cash contributions to employees with managerial responsibility (managers) of the company and/or group companies for up to EUR 4,000,000 of the Authorized Capital 2010. The provision can also be made that the contributions to be rendered are covered in accordance with § 204 para. 3 AktG, Art. 5 SE Regulation.

The Executive Board is also authorized, with the approval of the Supervisory Board, to exclude the subscription right of MAN Shareholders in the case of issuing shares in exchange for contributions in kind for the purpose of acquiring enterprises, participating in enterprises or acquiring assets from enterprises.

Furthermore, the Executive Board is authorized, with the approval of the Supervisory Board, to determine the further details on implementing capital increases using the Authorized Capital 2010.

The authorization is limited to the extent that after the exercise of the authorization the total of the MAN Shares issued under exclusion of the subscription right under the Authorized Capital 2010 and/or the Conditional Capital 2010 (see section B.1.4.3) may not exceed 20% of the existing share capital at the time the authorization takes effect or, if such value is lower, the share capital existing at the time of exercising the authorization, without taking into account the issuance of MAN Shares under exclusion of the subscription right to employees with managerial responsibility.

#### 1.4.3 **Conditional capital and authorization to issue convertible bonds and bonds with warrants**

The share capital of MAN SE is conditionally increased pursuant to § 4 para. 5 of the MAN Articles of Association by up to EUR 76,800,000 divided into up to 30,000,000 bearer MAN Common Shares. The conditional capital increase will only be implemented to the extent that the holders of bonds with conversion rights or warrants or obligations to convert which MAN SE or its group companies have issued on the basis of the authorizing resolution of the general shareholders' meeting on 1 April 2010 make use of their conversion rights or warrants or fulfill the obligation to convert and to the extent that other forms of performance to provide the shares are not used. The new MAN Shares are entitled to participate in dividends for the first time for the fiscal year in which they are issued (the "**Conditional Capital 2010**").

The Executive Board was authorized by a resolution of the ordinary general shareholders' meeting of MAN SE on 1 April 2010 to issue, with the approval of the Supervisory Board, on one or on multiple occasions convertible bonds and/or bonds with warrants of MAN SE (together, the "**MAN Bonds**") in a total amount of up to EUR 2.5 billion until 31 March 2015. The holders of the MAN Bonds can be granted warrants or conversion rights or conversion obligations can be established

for them for new MAN Common Shares representing a proportionate amount of up to EUR 76,800,000. The authorization also includes the possibility of assuming the guarantee for bonds issued by other group companies and granting MAN Shares in order to fulfill conversion rights or warrants or obligations to convert established with these bonds.

The MAN Shareholders must generally be granted a subscription right when issuing such bonds, even if the bonds are issued by other group companies of MAN SE. However, the Executive Board is authorized to exclude this subscription right with the approval of the Supervisory Board under certain circumstances specified in the authorization. The authorization to issue bonds subject to exclusion of the subscription right is limited as described in more detail in section B.1.4.2.

The Executive Board is authorized, with the approval of the Supervisory Board, to set the further terms and conditions for MAN Bonds. Furthermore, the Executive Board is authorized to exclude the subscription right for the convertible bonds and bonds with warrants with the approval of the Supervisory Board in accordance with the further details in the authorizing resolution of the general shareholders' meeting of 1 April 2010 if

- the issuing price of the MAN Bonds is not below the theoretical market value determined under recognized financial mathematical methods; or
- the exclusion of the subscription rights is necessary in order to compensate for remainder amounts; or
- the exclusion of the subscription right is necessary to avoid dilution of the economic value of the MAN Bonds.

In addition, the exclusion of the subscription right within the meaning of § 186 para. 3 sentence 4 AktG, Art. 5 SE Regulation applies only for bonds with rights to MAN shares representing a total proportionate amount of the share capital of no more than 10% of the share capital.

No MAN Bonds with conversion rights and/or warrants or with obligations to convert and/or exercise warrants have been issued as of the time of signing this Contract Report.

#### **1.4.4 MAN Shares held as treasury shares**

By resolution of the ordinary general shareholders' meeting of 1 April 2010, the Executive Board has been authorized to acquire MAN Common Shares and/or MAN Preferred Shares representing up to a maximum proportionate amount of 10% of the respective share capital with the approval of the Supervisory Board until 31 March 2015. The MAN Shares acquired on the basis of this authorization together with other MAN Shares that are held by MAN SE as treasury shares or are attributable to MAN SE in accordance with § 71d AktG, Art. 5 SE Regulation and § 71e AktG, Art. 5 SE Regulation may at no time represent more than 10% of the share capital. The acquisition can also be carried out by other group companies and/or third parties for the account of MAN SE or for the account of other group companies. The further details of the authorization to purchase back shares are set forth in the resolution of the general shareholders' meeting of 1 April 2010.

The authorization to purchase back shares has not been exercised as of the time of signing this Contract Report.

#### **1.4.5 Trading on the stock exchange**

The MAN Common Shares (ISIN DE0005937007) and the MAN Preferred Shares (ISIN DE0005937031) are admitted to trading in the regulated market of the Frankfurt Stock Exchange (Prime Standard) and the stock exchanges in Berlin, Düsseldorf, Hamburg, Hannover, Munich and Stuttgart. The MAN Common Shares and the MAN Preferred Shares are included in various stock indices, especially in the MDAX stock exchange index.

#### **1.4.6 MAN Shareholders**

As of the time of signing this Contract Report, Truck & Bus GmbH directly holds a total of 105,769,788 MAN Common Shares and 2,626,244 MAN Preferred Shares corresponding to 75.03% of the voting rights and 73.72% of the share capital.

MAN SE has no knowledge that any shareholder directly or indirectly holds 3% or more of the voting rights in MAN SE, aside from Truck & Bus GmbH and its directly and indirectly controlling shareholders.

### **1.5 Structure of the MAN Group**

#### **1.5.1 Operative and legal structure**

The companies of the MAN Group are among the leading suppliers in their respective most important markets. The business activities of the MAN Group are divided into the two divisions "Commercial Vehicles" and "Power Engineering".

MAN SE is active in the Commercial Vehicles division with the companies MAN Truck & Bus AG and MAN Latin America.

The companies MAN Diesel & Turbo and Renk belong to the Power Engineering division.

MAN SE also holds participations in the companies Scania AB, Södertälje, Sweden ("**Scania**") (13.35% of the capital and 17.37% of the voting rights) and Sinotruk Limited, Hong Kong, China ("**Sinotruk**") (25.00% of the capital plus one share and corresponding voting rights).

The MAN Group is active worldwide in more than 150 countries and had a total of 54,283 employees (including temporary workers) as of 31 December 2012. MAN SE, as the parent company of the MAN Group, serves as the group headquarters.

The process of focusing on the divisions Commercial Vehicles and Power Engineering was completed by the acquisition of MAN Latin America and the complete sale of Ferrostaal AG.

#### **1.5.2 Material participations**

MAN SE had 215 direct and indirect corporate participations in Germany and foreign countries as of 31 December 2012. 136 companies (including MAN SE) were fully consolidated in the consolidated financial statements 2012.

A list of the participations of MAN SE as of 31 December 2012 pursuant to § 285 no. 11 und no. 11a HGB is attached as ANNEX 1 to this Contract Report.

### 1.5.3 Tax situation of MAN SE

MAN SE generally has the policy of establishing a consolidated tax group (*Organschaft*) for income tax purposes with MAN SE as the parent company (*Organträgerin*) and with all of its domestic corporations in which it directly holds a participation of 100%. The domestic corporations MAN Truck & Bus AG, MAN Diesel & Turbo and MAN Finance International GmbH, in which MAN SE holds participations of 100%, in turn, function as intermediate parent companies (*Zwischenorganträgerinnen*) for almost all of their respective domestic 100% subsidiaries. MAN SE is the ultimate parent company of the consolidated tax group. As the parent company of the consolidated tax group, generally all profits are attributable to MAN SE for purposes of income tax in Germany and are subject to corporate income tax and trade tax at the level of MAN SE.

The foreign companies in the MAN Group are independent tax subjects under the respective tax law in the relevant country.

## 1.6 Overview of the business activities of the MAN Group

The business activities of the MAN Group are divided into the divisions Commercial Vehicles and Power Engineering.

### 1.6.1 Commercial Vehicles division

MAN SE is active with its companies MAN Truck & Bus AG and MAN Latin America in the Commercial Vehicles division.

#### (i) MAN Truck & Bus AG

MAN Truck & Bus AG is one of the leading manufacturers of commercial vehicles in Europe with production sites in four European countries as well as South Africa and India. The product range includes trucks having a total weight of 7.5 to 44 tons for all uses, special vehicles with up to 250 tons total pulling weight, busses and travel busses as well as diesel and gas engines for on-road and off-road applications. MAN Finance International GmbH, Munich, and the respective foreign companies attributable to it offer financing solutions to customers for commercial vehicles, especially leasing. These activities are supported by an international sales and service network. The revenues of MAN Truck & Bus AG (including MAN Finance International GmbH) amounted to approximately EUR 8.8 billion in the fiscal year 2012; the operating profit was EUR 225 million.

A domination and profit and loss transfer agreement exists between MAN Truck & Bus AG and MAN SE under which MAN SE is the controlling company and MAN Truck & Bus AG is the controlled company.

#### (ii) MAN Latin America

According to its own information, MAN Latin America is the largest truck producer in Brazil and the local market leader for trucks having a licensed total weight of more than 5 tons. MAN Latin America produces trucks and busses in Resende, Brazil, and in Querétaro, Mexico. The vehicles are

especially sold in Latin America and Africa. 56,305 trucks and busses were delivered in the fiscal year 2012. The company has a comprehensive sales and service network in Brazil and neighboring countries. MAN Latin America employees and suppliers work together at the plant in Resende in a cooperative and collaborative manner in a modular production group. The revenues amounted to approximately EUR 2.9 billion in the year 2012; the operating profit was EUR 229 million.

#### 1.6.2 Power Engineering division

MAN SE is active in the Power Engineering division with the companies MAN Diesel & Turbo and Renk.

(i) MAN Diesel & Turbo

MAN Turbo AG was merged into MAN Diesel SE in the first half of the year 2010 in order to realize additional potential for growth with new product packages in the field of energy production. The joint enterprise MAN Diesel & Turbo is one of the worldwide leading developers and producers of large diesel engines, turbo compressors, industrial turbines and chemical reactor systems. MAN Diesel & Turbo has a strong position in the market for the development of two-stroke diesel engines for drive systems in large ships, the development and production of four-stroke diesel engines which are used to propel smaller ships as well as two and four-stroke engines which are used in power plants for the production of energy. While the two-stroke engines are manufactured by licensees, MAN Diesel & Turbo produces a large portion of its four-stroke engines at locations in Germany, France and India. The company also offers a broad range of turbine machinery for various branches of industry, for example, the oil and gas industry, refineries, the chemical industry as well as for the production of industrial gases and electric power. In addition, there is a comprehensive service business.

The revenues of MAN Diesel & Turbo in the year 2012 amounted to approximately EUR 3.8 billion; the operating profit of MAN Diesel & Turbo was EUR 437 million.

A domination and profit and loss transfer agreement exists between MAN Diesel & Turbo and MAN SE under which MAN Diesel & Turbo is the controlled company and MAN SE is the controlling company.

(ii) Renk

Renk is a listed subsidiary of MAN SE and is active worldwide in the manufacture of special gear units, propulsion components and testing systems. MAN SE has a participation of 76% in the share capital of Renk. According to its own estimate, Renk is the market leader for gear units for track vehicles in the mid-size and heavy weight classes as well as for plain bearings for electrical machinery. According to its own estimate, Renk also has leading positions in the areas of special gear units for ships and industrial applications. The product portfolio of Renk covers full automatic gear units for track vehicles, industrial gear units, ship gear units, plain bearings, couplings and testing systems for the fields of development,

production and quality assurance in the automobile, railway and aviation industries.

The revenue of Renk amounted to approximately EUR 0.5 billion in the year 2012; the operating profit was EUR 66 million.

### 1.6.3 Other material participations

In addition to the activities in the divisions of Commercial Vehicles and Power Engineering, MAN SE holds material participations in Scania and Sinotruk.

(i) Scania

MAN SE has a participation of approximately 17.37% of the voting rights and approximately 13.35% of the share capital in Scania. According to its own estimate, Scania is one of the leading manufacturers of heavy trucks, transit and travel busses as well as industrial engines and engines for ships. In addition, Scania offers a broad range of services and financing services. Scania is active in more than 100 countries and had 38,597 employees as of 31 December 2012. The sales revenues of Scania were SEK 79,603 million (approximately EUR 9 billion) in the year 2012; the operating profit was SEK 8,300 million (approximately EUR 963 million).

(ii) Sinotruk

MAN SE has a participation of 25% plus one share in Sinotruk as a strategic investor through its 100% subsidiary MAN Finance & Holding S.à.r.l., Luxembourg since the second half of 2009 and has concluded an agreement for a long-term strategic partnership with Sinotruk. The partnership combines the advanced technology and the know-how of MAN Truck & Bus AG with the production locations, the local expertise and the far-reaching distribution network of Sinotruk in China. As part of the agreement, MAN Truck & Bus AG licenses to Sinotruk the TGA truck technology, including engines, vehicle frames and axles, as a basis for the production of a new heavy truck series. The revenue of Sinotruk amounted to approximately EUR 4 billion in the year 2011; the operating profit was EUR 226 million.

## 1.7 Corporate bodies of MAN SE

### 1.7.1 Executive Board

Pursuant to § 5 para. 1 of the MAN Articles of Association, the Executive Board of MAN SE consists of at least two persons. Aside from this, the Supervisory Board determines the number of members of the Executive Board. As of the date of signing this Contract Report, the Executive Board of MAN SE consists of the following persons:

- Dr.-Ing. Georg Pachta-Reyhofen – Chairman of the Executive Board and Chief Financial Officer of MAN SE
- Ulf Berkenhagen – member of the Executive Board for procurement at MAN SE as well as MAN Truck & Bus AG

- Jochen Schumm – human resources officer at MAN SE and MAN Truck & Bus AG
- Dr.-Ing. René Umlauf – member of the Executive Board of MAN SE and chairman of the executive board of MAN Diesel & Turbo

MAN SE is represented by two members of the Executive Board or one member of the Executive Board acting jointly with a holder of registered signing authority (*Prokurist*) pursuant to § 6 of the MAN Articles of Association. The Supervisory Board can determine that one member of the Executive Board is authorized to represent the company separately.

MAN SE also has a Management Board which consists of all members of the Executive Board of MAN SE as well as the managing director of MAN Latin America, Mr. Antonio Roberto Cortes and the chairman of the executive board of MAN Truck & Bus AG, Mr. Anders Nielsen.

#### 1.7.2 Supervisory Board

Pursuant to Art. 40 paras. 2 and 3 SE Regulation, § 17 of the Implementation Act regarding Regulation (EC) No. 2157/2001 of the Council on the statute of the European Company (SE) (SE Implementation Act) (*SE-Ausführungsgesetz*), § 21 para. 3 of the Act on the Participation of Employees in a European Company (*Gesetz über die Beteiligung der Arbeitnehmer in einer Europäischen Gesellschaft*, "**SEBG**"), § 15.1 of the Agreement on the Participation of Employees in MAN SE dated 18 February 2009 (the "**Participation Agreement**") as well as § 7 para. 1 of the MAN Articles of Association, the Supervisory Board has 16 members consisting of eight representatives of the shareholders and eight representatives of the employees. The eight representatives of the shareholders on the Supervisory Board are elected by the general shareholders' meeting pursuant to § 7 para. 3 sentence 1 of the MAN Articles of Association. The eight representatives of the employees on the Supervisory Board are appointed to the Supervisory Board pursuant to the provisions of the Participation Agreement in accordance with § 7 para. 3 sentence 2 of the MAN Articles of Association (for further details see section B.1.8.2 below). As of the date of signing this Contract Report, the Supervisory Board of MAN SE consists of the following persons:

- Hon.-Prof. Dr. techn. h.c. Dipl.-Ing. ETH Ferdinand K. Piëch, chairman of the supervisory board of Volkswagen Aktiengesellschaft, representative of the shareholders - Chairman
- Thomas Otto, representative of the employees – Vice-Chairman
- Prof. Dr.-Ing. Dr.-Ing. E.h. Dr. h.c. Ekkehard D. Schulz, representative of the shareholders – Vice-Chairman
- Michael Behrendt, representative of the shareholders
- Marek Berdychowski, representative of the employees
- Detlef Dirks, representative of the employees
- Jürgen Dorn, representative of the employees
- Jürgen Kerner, representative of the employees

- Gerhard Kreutzer, representative of the employees
- Nicola Lopopolo, representative of the employees
- Dr. h.c. Leif Östling, member of the executive board of Volkswagen Aktiengesellschaft for the division commercial vehicles, representative of the shareholders
- Angelika Pohlenz, representative of the shareholders
- Hans Dieter Pötsch, member of the executive board of Volkswagen Aktiengesellschaft for the division finance and controlling, chief financial officer of Porsche Automobil Holding SE, representative of the shareholders
- Erich Schwarz, representative of the employees
- Prof. Rupert Stadler, member of the executive board of Volkswagen Aktiengesellschaft, chairman of the executive board of AUDI Aktiengesellschaft, representative of the shareholders
- Prof. Dr. Dr. h.c. mult. Martin Winterkorn, chairman of the executive board of Volkswagen Aktiengesellschaft and member of the executive board for the division research and development, chairman of the executive board of Porsche Automobil Holding SE, representative of the shareholders

## **1.8 Employees and co-determination at MAN SE**

The MAN Group had 54,283 employees worldwide (including temporary workers) as of 31 December 2012 with 30,513 employees in Germany and 16,864 in the rest of Europe.

The Participation Agreement secures and regulates the co-determination at the plant level and the corporate level, including the rights of the employees for information and consultation in MAN SE, its relevant subsidiaries and relevant plants that fall within the scope of the Participation Agreement, i.e. in the Member States of the European Union and in the countries in the European Economic Area (the "**Member States**"). The rights for the employees to participate under the respective national provisions and the established co-determined supervisory boards or works councils are not affected and continue to exist in accordance with § 47 SEBG, except for co-determination in the corporate bodies of MAN SE and under the Act on European Works Councils (*Europäisches Betriebsräte-Gesetz*).

### **1.8.1 Information of and consultation with the employees of MAN SE**

In order to secure the rights of the employees for information and consultation in MAN SE, a works council is established at MAN SE (the "**MAN Works Council**"). The MAN Works Council currently has 26 members.

The Participation Agreement establishes in § 11 the subject matter and the process for regular and extraordinary information and consultation by the Executive Board of MAN SE. The subject matter for information of and consultation with the MAN Works Council are reports about the development of the business and the perspectives of MAN SE. The Executive Board of MAN SE informs the MAN Works Council in writing and hears the MAN Works Council in a timely fashion in accordance with § 11.2 of the Participation Agreement with regard to extraordinary circumstances which have material effects on the interests of the employees in the



MAN Group covered by the scope of the Participation Agreement. Extraordinary circumstances include, for example, shutting down, moving and shifting companies, plants or material parts of plants.

#### **1.8.2 Co-determination**

The provisions of the German Co-Determination Act (*Mitbestimmungsgesetz*, "**MitbestG**") concerning the representation of employees on the supervisory board of MAN Aktiengesellschaft that applied until the transformation of MAN Aktiengesellschaft into a European Company (SE) took effect were replaced by the provisions of the SEBG and the Participation Agreement. Co-determination of employees in the MAN Group within the Member States is ensured by means of the Supervisory Board of MAN SE. Co-determination pursuant to §§ 1.2, 15 et seq. of the Participation Agreement in conjunction with § 2 para. 12 SEBG means that the employees exercise influence on the affairs of a company by (i) using the right to elect or appoint some of the members on the supervisory or management body of the company, or (ii) exercising the right to recommend or reject the appointment of some or all members of the supervisory or management body of a company.

The Supervisory Board has 16 members appointed on the basis of parity pursuant to § 15 of the Participation Agreement. Six of the eight seats of the employee representatives are allocated to representatives from within the company and two are allocated to unions that are represented within the companies of the MAN Group. § 16.2 of the Participation Agreement provides that the representatives from within the company delegated to the Supervisory Board of MAN SE are determined by the MAN Works Council. The respective representative bodies of the employees at a lower level have a right to suggest nominees to the respective highest representative bodies for employees in the company.

### **1.9 Development of the business, earnings situation and financial position of MAN SE**

The revenues of the MAN Group amounted to EUR 15,772 million in the fiscal year 2012 and the operating profit was EUR 964 million.

The following table provides an overview of the main financial numbers for the fiscal year 2010, 2011 and 2012 in the MAN Group. The financial information for the fiscal years 2010, 2011 and 2012 has been taken from the audited consolidated financial statements of MAN SE for the respective fiscal years ending 31 December 2010, 2011 and 2012. These consolidated financial statements were prepared in accordance with IFRS pursuant to § 315a para. 1 HGB, Art. 61 SE Regulation.

Unless stated otherwise, the values have been rounded in accordance with commercial principles.

### 1.9.1 Key numbers for the fiscal years 2010 to 2012

MAN Group in EUR million	2010	2011	2012
Order intake.....	15,072	17,145	15,889
Order backlog.....	7,025	6,640	6,094
Revenue.....	14,675	16,472	15,772
Gross margin.....	3,275	3,681	3,273
Operating profit.....	1,035	1,483	964
Earnings before tax (EBT).....	1,125	1,122	311
Net income.....	722	247	189
Earnings before interest and taxes (EBIT).....	1,283	1,256	623
Earnings before interest, taxes, depreciation, and amortization (EBITDA).....	1,393	2,360	1,329
ROS.....	7.1%	9.0%	6.1%
ROCE.....	17.4%	24.4%	13.9%
Total dividend paid.....	294	338	147
Dividend per share in EUR.....	2.00	2.30	1.00
Total assets.....	17,431	18,670	19,918
Total equity.....	5,990	5,590	5,619
Equity ratio.....	34.4%	29.9%	28.2%
Net financial debt.....	-1,778	-2,212	-3,928
Payments to acquire property, plant, and equipment, investment property, and intangible assets.....	391	601	754
Research and development expenditures.....	626	740	830
Free cash flow.....	1,053	-119	-1,317
Headcount including subcontracted employees at December 31 (no.).....	47,669	52,542	54,283

### 1.9.2 Development of the business in the fiscal year 2012

#### (i) Earnings position

MAN Group in EUR million	2011	2012	Change
Order intake.....	17,145	15,889	-7.3%
Revenue.....	16,472	15,772	-4.2%
EBIT.....	1,256	623	-50.4%
EBITDA.....	2,360	1,329	-43.7%
ROS.....	9.0%	6.1%	

*Order intake:* The new orders in the MAN Group decreased in the fiscal year 2012 by 7.3% to EUR 15,889 million (2011: EUR 17,145 million).

*Revenue:* The group revenue decreased in the fiscal year 2012 by 4.2% to EUR 15,772 million (2011: EUR 16,472 million). The revenue of

MAN Truck & Bus AG decreased by 1.8% to EUR 8,822 million (2011: EUR 8,984 million) and decreased for MAN Latin America by 19.8% to EUR 2,870 million (2011: EUR 3,579 million). MAN Diesel & Turbo increased its revenue by 4.7% to EUR 3,780 million (2011: EUR 3,610 million), while Renk increased its revenue by 22.4% to EUR 476 million (2011: EUR 389 million).

In the year 2012, EUR 12,602 million of the revenues in the MAN Group were generated outside of Germany (2011: EUR 12,957 million).

*Gross margin:* The cost of goods sold and services rendered in the fiscal year 2012 was EUR -12,499 million and led to a gross margin of EUR 3,273 million (2011: EUR -12,791 million and EUR 3,681 million).

*Development of profit:* The EBIT (earnings before interest and taxes) decreased in the fiscal year 2012 to EUR 623 million (2011: EUR 1,256 million).

The selling expenses increased in the fiscal year 2012 compared to the previous year by 0.7% to EUR -1,181 million (2011: EUR -1,173 million).

The general and administrative expenses increased by 11.2% to EUR -950 million (2011: EUR -854 million), primarily due to increased expenses for personnel.

The other operating expenses decreased in the fiscal year 2012 compared to the previous year by 10.4% to EUR -877 million (2011: EUR -979 million).

*Net interest expense:* In the fiscal year 2012, the net interest expense was EUR -312 million (2011: EUR -134 million).

(ii) Financial position

(a) Assets (main line items)

MAN Group in EUR million	31 Dec. 2011	31 Dec. 2012
Noncurrent assets.....	10,623	11,752
Inventories .....	3,513	3,373
Other current assets .....	596	652
Marketable securities and cash and cash equivalents.....	958	1,367
<b>Total assets .....</b>	<b>18,670</b>	<b>19,918</b>

(b) Equity and Liabilities (main line items)

<b>MAN Group in EUR million</b>	<b>31 Dec. 2011</b>	<b>31 Dec. 2012</b>
Total equity.....	5,590	5,619
Pensions obligations (and similar obligations).....	378	591
Financial liabilities (noncurrent and current).....	3,170	5,299
Prepayments received.....	823	908
Other liabilities and provisions.....	8,709	7,501
<b>Total equity and liabilities .....</b>	<b>18,670</b>	<b>19,918</b>

The total assets/total equity and liabilities as of 31 December 2012 increased by 6.7% compared to the balance sheet date of the previous year.

**1.9.3 Development of profit in the individual divisions in the fiscal year 2012**

(i) Commercial Vehicles

(a) MAN Truck & Bus AG

<b>In EUR million</b>	<b>2011</b>	<b>2012</b>	<b>Change in % / EUR million</b>
Order intake .....	9,514	9,150	-3.8%
Revenue.....	8,984	8,822	-1.8%
Operating profit .....	565	225	-340
<b>ROS .....</b>	<b>6.3%</b>	<b>2.6%</b>	

(b) MAN Latin America

<b>In EUR million</b>	<b>2011</b>	<b>2012</b>	<b>Change in % / EUR million</b>
Order intake .....	3,579	2,870	-19.8%
Revenue.....	3,579	2,870	-19.8%
Operating profit .....	400	229	-171
<b>ROS .....</b>	<b>11.2%</b>	<b>8.0%</b>	

(ii) Power Engineering

(a) MAN Diesel & Turbo

In EUR million	2011	2012	Change in % / EUR million
Order intake.....	3,692	3,510	-4.9%
Revenue.....	3,610	3,780	4.7%
Operating profit.....	460	437	-23
<b>ROS.....</b>	<b>12.7%</b>	<b>11.6%</b>	

(b) Renk

In EUR million	2011	2012	Change in % / EUR million
Order intake.....	456	525	15.1%
Revenue.....	389	476	22.4%
Operating profit.....	53	66	13
<b>ROS.....</b>	<b>13.6%</b>	<b>13.8%</b>	

#### 1.9.4 Outlook

The MAN Group believes that there will be a downturn in the commercial vehicles business in Europe in the fiscal year 2013, especially in the first half of the year. However, the Executive Board expects that there will again be an increase in sales in the important Brazilian market. The revenue in the Commercial Vehicles division will most likely be at the level of the previous year with the return on sales (ROS) remaining constant. After a weaker order intake in the fiscal year 2012, revenue and return on sales in the Power Engineering division will decrease. This will most likely result in revenues at the level of the previous year and substantially lower operating profit for the MAN Group for the fiscal year 2013. These statements are based on the assumption that the European government debt crisis will not become any worse and that economic impulses in emerging countries will start to be felt.

MAN SE has a broad, innovative product portfolio which is exactly tailored to the needs of the costumers both in the areas of commercial vehicles and construction of machinery. For example, MAN SE introduced the new TG family at the IAA Commercial Vehicles 2012 which does not require any more fuel than the very fuel-efficient models in the Euro V series despite a refined Euro VI series technology. MAN SE is one of the leaders in technology in the Power Engineering division. New products such as the gas engines and turbines introduced in 2012 today belong to the most efficient products in their class.

In light of the generally difficult economic conditions for the commercial vehicle industry, the Executive Board of MAN SE has initiated corresponding measures. The focus is placed on reducing costs and increasing efficiency both in production as well as in administration, sales and development. In addition, an increase of

flexibility of production makes it possible to adapt to lower sales volumes. Planned investments are examined critically and can be stretched over a longer period of time if needed. MAN SE also sees potential in a new organization of procurement, especially in bundling procurement in a centralized procurement organization.

MAN SE plans an increase of revenues by around 40% for the period up to 2017 compared to 2012. The largest growth is supposed to occur in MAN Latin America as a result of continuous growth in the Brazilian commercial vehicles market. The operating profit of the MAN Group is supposed to continuously improve at a disproportionately high rate from 2014 to 2017. The target is to have a return on sales of 10% in 2017.

Whether these described goals can be achieved depends primarily on the currently unforeseeable development in the worldwide economy and especially in the specific industry. Furthermore, the planned savings in costs must be implemented.

## **2 Volkswagen Aktiengesellschaft**

### **2.1 Overview**

The Volkswagen Group is one of the worldwide leading multi-brand corporate groups in the automobile industry. The business activity of the Volkswagen Group includes the areas of automobiles and financial services. The automobiles division includes the development, production and distribution of passenger cars, motorcycles, light commercial vehicles, trucks and busses as well as business with original parts, large diesel engines, turbine machinery, special gear units, components for drive technology and testing systems. The portfolio of brands includes, in addition to the brand of Volkswagen for passenger cars, the brands Audi, ŠKODA, SEAT, Volkswagen Commercial Vehicles, Porsche, Bentley, Lamborghini, Bugatti and Ducati. In addition to the brand MAN, the Volkswagen Group is also active in the area of heavy commercial vehicles under the Scania brand (trucks with a licensed total weight in excess of 6 tons, busses and special vehicles). The Volkswagen Group delivered a total of around 9.3 million vehicles in the fiscal year 2012 to its customers (passenger cars, light commercial vehicles, trucks and busses).

The financial services division in the Volkswagen Group includes customer and dealer financing, leasing, banking and insurance, fleet management as well as mobility.

The Volkswagen Group operates 100 production locations worldwide (including the joint ventures in China), of which 67 are in Europe. Additional locations are in North and South America as well as in Asia and Africa; vehicles are manufactured at 58 of these locations. The Volkswagen Group had a total of 549,763 employees worldwide on 31 December 2012 (including the joint ventures in China) and offers its vehicles in 153 countries.

The consolidated financial statements prepared on the basis of IFRS for the Volkswagen Group for the fiscal year 2012 that ended on 31 December 2012 showed revenues of EUR 192,676 million and an EBIT of EUR 11,510 million.

The websites of Volkswagen Aktiengesellschaft can be accessed at <http://www.volkswagen.de> and <http://www.volkswagenag.de>.

### **2.2 Corporate history and development of Volkswagen Aktiengesellschaft**

The legal relationships and ownership of the company were established primarily by an agreement concluded on 11 and 12 November 1959 between the Federal Republic of

Germany and the State of Lower Saxony, the "Act on the Regulation of the Legal Relationships at Volkswagen Gesellschaft mit beschränkter Haftung" (*Gesetz über die Regelung der Rechtsverhältnisse bei der Volkswagenwerk Gesellschaft mit beschränkter Haftung*) of 9 May 1960 and the "Act on the Privatization of the Ownership Rights in Volkswagenwerk Gesellschaft mit beschränkter Haftung" of 21 July 1960 (*Gesetz über die Überführung der Anteilsrechte an der Volkswagenwerk Gesellschaft mit beschränkter Haftung in private Hand*) (the "**VW Act**"), the Introductory Act to the Stock Corporations Act (*Einführungsgesetz zum Aktiengesetz*) of 6 September 1965, the Amending Act to the VW Act of 2 August 1966, the Second Amending Act to the VW Act of 31 July 1970, the Introductory Act to the Stock Corporations Act of 31 July 1970, the Amending Act to the VW Act of 8 December 2008 and by Art. 14c of the Act on the Implementation of the Directive on Shareholders Rights (*Gesetz zur Umsetzung der Aktionärsrechterichtlinie*) of 30 July 2009.

The conversion of the company into a stock corporation (*Aktiengesellschaft*) was registered in the commercial register at the Local Court Wolfsburg on 22 August 1960. The name of the company was initially "Volkswagenwerk Aktiengesellschaft" and was changed to "Volkswagen Aktiengesellschaft" by a resolution of the general shareholders' meeting of the company on 4 July 1985.

Volkswagen Aktiengesellschaft increased its subscribed capital by way of a capital increase and issued 64,904,498 non-voting preferred shares (the "**Volkswagen Preferred Shares**") on 16 April 2010. As a result of the capital increase, the number of Volkswagen Preferred Shares increased from 105,238,280 to 170,142,778. Volkswagen Aktiengesellschaft realized net proceeds from the capital increase in the amount of EUR 4.1 billion.

### **2.3 Legal foundations of Volkswagen Aktiengesellschaft**

Volkswagen Aktiengesellschaft is a German stock corporation with its registered office in Wolfsburg and is registered in the commercial register at the Local Court Braunschweig under the commercial register number HRB 100484. The purpose of the business of Volkswagen Aktiengesellschaft is the production and distribution of vehicles and engines of all kinds, their accessories as well as all equipment, facilities, tools and other technical products. Volkswagen Aktiengesellschaft is entitled to engage in all transactions and take all measures which relate to the purpose of the company or appear to directly or indirectly promote the purpose. Volkswagen Aktiengesellschaft can establish branches in Germany and foreign countries for this purpose and establish, acquire or participate in other companies. The fiscal year of Volkswagen Aktiengesellschaft corresponds to the calendar year.

### **2.4 Capital, trading on the stock exchange, shareholders of Volkswagen Aktiengesellschaft**

#### **2.4.1 Share capital**

The share capital of Volkswagen Aktiengesellschaft on 31 December 2012 was EUR 1,190,995,445.76 and was divided into 465,232,596 bearer shares, each representing a proportionate amount of EUR 2.56 in the share capital, of which 295,089,818 were common shares with voting rights (the "**Volkswagen Common Shares**") and 170,142,778 were Volkswagen Preferred Shares (the Volkswagen Common Shares and the Volkswagen Preferred Shares together the "**Volkswagen Shares**").

#### 2.4.2 Authorized capital

§ 4 para. 4 of the articles of association of Volkswagen Aktiengesellschaft (the "**Volkswagen Articles of Association**") provides for an authorized capital as follows:

The Executive Board is authorized to increase the share capital with the approval of the supervisory board until 2 December 2014 in a total amount of up to EUR 179,444,485.12 by issuing new bearer non-voting preferred shares on one or multiple occasions in exchange for cash contributions which will have the same rights under the articles of association as the preferred shares described in § 23 and § 27 para. 2 of the Volkswagen Articles of Association. The shareholders must be granted a subscription right. The Executive Board decides about the further content of the rights attributed to the shares and the terms and conditions of issuing the shares with the approval of the supervisory board.

§ 4 para. 5 of the Volkswagen Articles of Association provides for an authorized capital and reads as follows:

The Executive Board is authorized, with the consent of the Supervisory Board, to increase the share capital until 18 April 2017 by issuing new ordinary bearer shares and/or new non-voting preferred bearer shares on one or several occasions for cash contributions and/or contributions in kind up to a total of EUR 109,999,997.44. The shareholders have subscription rights to the new shares. However, the Executive Board is authorized with the consent of the Supervisory Board, to exclude the shareholders' subscription rights to the extent necessary to avoid any fractions that would otherwise arise, in order to issue the new shares against contributions in kind, to grant subscription rights for new shares to holders of warrants and convertible bonds in the amount to which they would be entitled following the exercise of their options or conversion rights, and/or if the issue price of the new shares in the case of capital increases against cash contributions is not materially lower than the quoted market price of existing listed shares, and if the total issued shares do not exceed 10% of share capital either at the time when this authorization becomes effective or at the time when it is exercised. This limit includes any shares that are or will be sold or issued subject to exclusion of the subscription rights for the shareholders during the authorization period until the time when this authorization is exercised under direct or corresponding application of § 186 para. 3 sentence 4 AktG. The Executive Board, with the consent of the Supervisory Board, will decide about the further details of the rights attaching to the shares and the terms and conditions applicable to the issuance of the shares.

#### 2.4.3 Conditional capital and authorization to issue convertible bonds and bonds with warrants

§ 4 para. 6 of the Volkswagen Articles of Association relates to the conditional capital:

The share capital is contingently increased by up to EUR 102,400,000 by issuing new bearer non-voting preferred shares. The contingent capital increase shall only be implemented to the extent that

- the holders or creditors of conversion rights or warrants attached to convertible bonds or bonds with warrants to be issued until 21 April 2015 by



Volkswagen Aktiengesellschaft or companies in which it holds a direct or indirect majority interest exercise their conversion rights or options, or

- the holders or creditors of convertible bonds with a conversion obligation to be issued until 21 April 2015 by Volkswagen Aktiengesellschaft or companies in which it holds a direct or indirect majority interest fulfill their conversion obligation.

The new shares shall carry dividend rights from the beginning of the fiscal year in which they are created through the exercise of conversion rights or options or the fulfillment of conversion obligations.

Pursuant to the resolution of the ordinary general shareholders' meeting of Volkswagen Aktiengesellschaft on 22 April 2010, the Executive Board is authorized to issue bearer bonds with warrants and/or convertible bonds at one time or on multiple occasions until 21 April 2015 in a total amount of up to EUR 5 billion having a term of no longer than 20 years and to grant warrants to holders or creditors of bonds with warrants and conversion rights to holders or creditors of convertible bonds for new bearer non-voting Volkswagen preferred shares up to a proportionate amount in the share capital of EUR 102,400,000 in accordance with the further details in the authorizing resolution of the general shareholders' meeting. The Executive Board is authorized to provide in the terms and conditions of convertible bonds that Volkswagen Aktiengesellschaft does not grant Volkswagen Shares to the beneficiaries of the conversion right in the case of conversion, but that the value will be paid in money instead. The Executive Board is authorized, with the approval of the supervisory board, to set the additional terms and conditions of issuing the bonds with warrants and/or the convertible bonds and the rights attributed to them. The Executive Board of Volkswagen Aktiengesellschaft is authorized, with the approval of the supervisory board of Volkswagen Aktiengesellschaft, to exclude the subscription right of the Volkswagen shareholders if the issuing price of the convertible bonds or the bonds with warrants does not materially fall below the theoretical market value of the convertible bonds or bonds with warrants based on recognized financial mathematical methods. The Executive Board is also authorized, with the approval of the supervisory board, to exclude remainder amounts that result due to the subscription ratio from the subscription right of the Volkswagen shareholders and to also preclude the subscription right to the extent necessary in order to grant the holders/creditors of the convertible bonds or bonds with warrants or the holders/creditors of convertible bonds having subscription obligations a subscription right to the extent they would have such a right after exercising the conversion rights or warrants or after fulfilling obligations to convert.

The authorization to issue convertible bonds and bonds with warrants and the conditional capital was partially exercised in November 2012 by issuing a convertible bond with an obligation to convert in the amount of EUR 2.5 billion (the "**Mandatory Conversion Bond**"). The subscription right of existing Volkswagen shareholders was excluded in this case. The Mandatory Conversion Bond was issued at 100% of its nominal value and has a coupon of 5.50%. A minimum conversion price of EUR 154.50 and a maximum conversion price of EUR 185.40 were established with regard to the conditions for conversion. This corresponds to a maximum conversion premium of 20%. The Mandatory Conversion Bond entitles

the holders of the conversion bonds to subscribe to a maximum of 16,181,229 and a minimum of 13,484,358 non-voting, no-par Volkswagen Preferred Shares with regard to the mentioned conversion prices.

#### **2.4.4 Volkswagen treasury shares**

Based on the resolution of the ordinary general shareholders' meeting of Volkswagen Aktiengesellschaft on 19 April 2012, the Executive Board is authorized, with the approval of the Supervisory Board, to acquire Volkswagen Common Shares or Volkswagen Preferred Shares once or in several tranches up to a maximum portion of 10% of the share capital, i.e. up to a share capital of EUR 119,099,544.32, over the stock exchange or by means of a public purchase offer addressed to all shareholders or by means of derivatives in the form of put or call options or in a combination of these two methods by using other equity capital derivatives in accordance with the further details in the resolution of the general shareholders' meeting of 19 April 2012. The authorization is valid until 18 April 2017.

Volkswagen Aktiengesellschaft has not made any use of this authorization by the time of signing this Report.

#### **2.4.5 Trading on the stock exchange**

The Volkswagen Common Shares (ISIN DE0007664005) and the Volkswagen Preferred Shares (ISIN DE0007664039) are admitted to trading in the regulated market of the Frankfurt Stock Exchange (Prime Standard) and the stock exchanges in Berlin, Düsseldorf, Hamburg, Hanover, Munich and Stuttgart. In addition, the Volkswagen Common Shares and the Volkswagen Preferred Shares are listed on the following foreign stock exchanges: Luxembourg, London and SIX Swiss Exchange. The Volkswagen Common Shares and the Volkswagen Preferred Shares are included in various stock indices, and the Volkswagen Preferred Shares are especially included in the DAX and EURO STOXX 50 indices.

Volkswagen Preferred Shares that came into existence in the year 2013 as a result of conversion of the Mandatory Conversion Bond or which come into existence until 25 April 2013 will be carried under a separate securities identification number (ISIN DE000A1R1C65) because the Volkswagen Preferred Shares are not entitled to a dividend for the year 2012. This securities identification number will expire on 26 April 2013, the day after the general shareholders' meeting of Volkswagen Aktiengesellschaft, and the relevant preferred shares of Volkswagen Aktiengesellschaft will subsequently be traded under the regular securities identification number for the Volkswagen Preferred Shares (ISIN DE0007664039).

#### **2.4.6 Shareholders**

The largest shareholder in Volkswagen Aktiengesellschaft is Porsche Automobil Holding SE, Stuttgart, with a participation in Volkswagen Aktiengesellschaft of approximately 50.73% of the Volkswagen Common Shares. The second largest shareholder is the State of Lower Saxony with a participation of approximately 20% of the Volkswagen Common Shares. Qatar Holding Germany GmbH, an indirect subsidiary of the nation of Qatar, holds a participation of approximately 17% of the Volkswagen Common Shares.

The rest of the Volkswagen Common Shares are held in free float.

90% of the common shares with voting rights belonging to Porsche Automobil Holding SE are held by various group companies in the legal form of a company with limited liability (*Gesellschaft mit beschränkter Haftung*) which, in turn, are indirectly held by members of the Porsche family and members of the Piëch family.

## **2.5 Structure of the Volkswagen Group**

### **2.5.1 Operative and legal structure**

In addition to its participation in MAN SE, Volkswagen Aktiengesellschaft, in its function as the parent company of the Volkswagen Group, indirectly and directly holds participations in AUDI Aktiengesellschaft, SEAT S.A., ŠKODA Auto a.s., Scania AB, Dr. Ing. h.c. F. Porsche AG, Volkswagen Financial Services AG and numerous other companies in Germany and foreign countries.

The Volkswagen Group is organized into two group-wide divisions, Automobiles and Financial Services. The Automobiles division consists of the two areas "Passenger Cars and Light Commercial Vehicles" as well as "Trucks and Buses, Power Engineering". The activities of the group's Automobiles division include the development of vehicles and engines, the production and distribution of passenger cars, motorcycles, light commercial vehicles, trucks and busses as well as the business with original parts, large diesel engines, turbine machinery, special gear units, components in drive train technology and testing systems. The group division Financial Services bundles the financing for dealers and customers, leasing, the banking and insurance business, fleet management as well as mobility.

### **2.5.2 Material participations**

Volkswagen Aktiengesellschaft fully consolidated a total of 981 participations in Germany and foreign countries in its consolidated financial statements as of 31 December 2012. Aside from this, reference is made to the list of shareholdings of Volkswagen Aktiengesellschaft as of 31 December 2012 contained in the financial report of Volkswagen Aktiengesellschaft for the fiscal year 2012.

Volkswagen Aktiengesellschaft has a participation of 19.89% of the share capital in Suzuki Motor Corporation.

### **2.5.3 Tax situation of Volkswagen Aktiengesellschaft**

Volkswagen Aktiengesellschaft generally has the policy of establishing a consolidated tax group for income tax purposes with all of its domestic corporations in which it holds a participation of 100% with Volkswagen Aktiengesellschaft being the parent company of the group. Within this consolidated tax group, individual subsidiaries of Volkswagen Aktiengesellschaft, for example AUDI Aktiengesellschaft, function as intermediate parent companies for consolidated tax groups for income tax purposes with their domestic 100% subsidiaries. These intermediate parent companies are, in turn, subordinate companies (*Organgesellschaften*) in the consolidated tax group of Volkswagen Aktiengesellschaft. All profits are attributed to Volkswagen Aktiengesellschaft for income tax purposes in Germany as the parent company in the group and are subject to corporate income tax and trade tax at this level.

The foreign companies in the Volkswagen Group are independent tax subjects under the respective tax law of the relevant country.

## **2.6 Overview of the business activity of the Volkswagen Group**

The business activity of the Volkswagen Group includes the group divisions Automobiles and Financial Services. The Volkswagen Group develops motor vehicles and engines in the group division Automobiles and produces and distributes passenger cars, motorcycles, light commercial vehicles, trucks and busses and conducts the business with original parts, large diesel engines, turbo machinery, special gear units, components for drive train technology and testing systems. The group division Financial Services in the Volkswagen Group covers financing for customers and dealers, leasing, direct banking and insurance businesses, fleet management as well as mobility and primarily serves sales promotion and customer loyalty in the automobile division.

The main emphasis of the activity of the Volkswagen Group lies in the group division Automobiles with the development, production and distribution of passenger cars, motorcycles, light commercial vehicles, trucks and busses. In the fiscal year 2012, the Volkswagen Group delivered a total of approximately 9.3 million vehicles to its customers worldwide (passenger cars, light commercial vehicles, trucks and busses). The product range of the Volkswagen Group includes approximately 280 models of passenger cars, commercial vehicles and motorcycles, including further developments based on these models, so-called derivatives. With this range of vehicles offered, the Volkswagen Group covers all main segments and forms of vehicle bodies from small cars up to super sports cars in the passenger car field, from pick-ups up to heavy trucks and busses in the commercial vehicle sector and motorcycles. Volkswagen Aktiengesellschaft is accordingly one of the leading automobile manufacturers worldwide and the largest automobile manufacturer in Europe based on sales volumes according to its own estimate (i.e. the number of the vehicles delivered to dealers).

As a result of the different brands in the group including Volkswagen Passenger Cars, Audi, ŠKODA, SEAT and Volkswagen Commercial Vehicles, Volkswagen Aktiengesellschaft appeals to commercial and private customers in the various customer segments and in a large number of regional markets in the so-called volume business (i.e. the production and sale of vehicles with large number of units for each model). Volkswagen is represented in the sports car segment with the brand Porsche and the variety of brands in the group is completed by the brands Lamborghini, Bentley and Bugatti in the luxury class. The Volkswagen Group has expanded its activities into motorcycles with Ducati. The Volkswagen Group is active in the field of heavy commercial vehicles (trucks with a licensed total weight in excess of 6 tons, busses and special vehicles) under the brands Scania and MAN.

The Volkswagen Group operates 100 production locations worldwide (including the joint ventures in China), of which 67 are in Europe. Additional locations are in North and South America as well as in Asia and Africa; vehicles are produced at 58 of these locations. The Volkswagen Group had a total of 549,763 employees worldwide on 31 December 2012 and offers its vehicles in 153 countries.

## 2.7 Corporate bodies of Volkswagen Aktiengesellschaft

### 2.7.1 Executive Board

The Executive Board of Volkswagen Aktiengesellschaft consists of at least three persons pursuant to § 6 para. 1 of the Volkswagen Articles of Association. Aside from this, the Supervisory Board determines the number of members of the Executive Board. At the time of signing this Contract Report, the Executive Board of Volkswagen Aktiengesellschaft consists of the following persons:

- Prof. Dr. Dr. h.c. mult. Martin Winterkorn – Chairman of the Executive Board of Volkswagen Aktiengesellschaft and member of the Executive Board for research and development, chairman of the executive board of Porsche Automobil Holding SE
- Dr. rer. pol. h.c. Francisco Javier Garcia Sanz – member of the Executive Board for procurement
- Prof. Dr. rer. pol. Dr.-Ing. E.h. Jochem Heizmann – member of the Executive Board for the China business
- Christian Klingler – member of the Executive Board for of sales and marketing
- Dr.-Ing. E.h. Michael Macht – member of the Executive Board for group-wide production
- Prof. Dr. rer. pol. Horst Neumann – member of the Executive Board for human resources and organization
- Dr. h.c. Leif Östling – member of the Executive Board for the commercial vehicles division
- Hans Dieter Pötsch – member of the Executive Board for financing and controlling, chief financial officer of Porsche Automobil Holding SE
- Prof. Rupert Stadler – chairman of the executive board of AUDI Aktiengesellschaft

The members of the Executive Board have additional responsibilities in group companies and companies in which major participations are held in connection with their responsibilities for managing and supervising the group.

Volkswagen Aktiengesellschaft is represented by two members of the Executive Board or by a member of the Executive Board and a holder of registered signing authority in accordance with § 7 of the Volkswagen Articles of Association.

### 2.7.2 Supervisory Board

The Supervisory Board of Volkswagen Aktiengesellschaft consists of 20 members in accordance with § 11 para. 1 of the Volkswagen Articles of Association. One half of the members of the Supervisory Board are employee representatives which must be determined in accordance with the provisions of the Co-Determination Act (MitbestG). The State of Lower Saxony is entitled under § 11 para. 1 of the Volkswagen Articles of Association to delegate two members to the Supervisory Board so long as the State of Lower Saxony directly or indirectly holds at least

15 % of the common shares in the company. At the time of signing this Contract Report, the Supervisory Board of Volkswagen Aktiengesellschaft consists of the following persons:

- Hon.-Prof. Dr. techn. h.c. Dipl.-Ing. ETH Ferdinand K. Piëch, representative of the shareholders – Chairman
- Berthold Huber, representative of the employees – Vice-Chairman
- Dr. Hussain Ali Al-Abdulla, representative of the shareholders
- Khalifa Jassim Al-Kuwari, representative of the shareholders
- Jürgen Dorn, representative of the employees
- Annika Falkengren, representative of the shareholders
- Dr. jur. Hans-Peter Fischer, representative of the employees
- Uwe Fritsch, representative of the employees
- Babette Fröhlich, representative of the employees
- Olaf Lies, representative of the shareholders
- Hartmut Meine, representative of the employees
- Peter Mosch, representative of the employees
- Bernd Osterloh, representative of the employees
- Dr. jur. Hans Michel Piëch, representative of the shareholders
- Ursula Piëch, representative of the shareholders
- Dr. jur. Ferdinand Oliver Porsche, representative of the shareholders
- Dr. rer. comm. Wolfgang Porsche, representative of the shareholders
- Stephan Weil, representative of the shareholders
- Stephan Wolf, representative of the employees
- Thomas Zwiebler, representative of the employees

## **2.8 Employees and co-determination**

The Volkswagen Group had 549,763 employees worldwide as of 31 December 2012 of which 249,470 were in Germany and 300,293 were in foreign countries.

The corporate co-determination for the employees in Germany is ensured by means of the Supervisory Board of Volkswagen Aktiengesellschaft. One half of the members of the Supervisory Board are representatives of the employees who are determined in accordance with the Co-Determination Act (MitbestG). A total of seven of these employee representatives are employees of the company elected by the employees, and the other three employees representatives are representatives of the union elected by the employees.

Aside from this, the employees of the Volkswagen Group in Germany are represented by employee representative bodies under the laws on work councils (*betriebsverfassungsrechtliche Arbeitnehmervertretungen*).

## 2.9 Development of the business and earnings situation

The following financial information is taken from the audited group financial statements of Volkswagen Aktiengesellschaft for the fiscal years ending on 31 December 2010, 2011 and 2012. These financial statements were prepared in accordance with IFRS. Unless stated otherwise, the values have been rounded in accordance with commercial principles.

### Key numbers for the fiscal years 2010 to 2012

<u>Volkswagen Group (IFRS) in EUR million</u>	<u>2010</u>	<u>2011</u>	<u>2012</u>
Sales revenue.....	126,875	159,337	192,676
Operating profit.....	7,141	11,271	11,510
Profit before tax.....	8,994	18,926	25,492
Return on sales before tax.....	7.1%	11.9%	13.2%
Profit after tax.....	7,226	15,799	21,884
Cash flows from operating activities.....	11,455	8,500	7,209
Cash flows from investing activities attributable to operating activities.....	9,278	16,002	16,840
Total assets.....	199,393	253,769	309,644
Equity.....	48,712	63,354	81,825
Equity ratio.....	24.4%	25.0%	26.4%
Dividend per common share (in EUR).....	2.20	3.00	3.50
Dividend per preferred share (in EUR).....	2.26	3.06	3.56
Employees (number as of 31 December).....	399,381	501,956	549,763

Aside from this, reference is made to the information on the development of the business and the earnings situation described in the published annual reports of Volkswagen Aktiengesellschaft for the fiscal years 2010, 2011 and 2012.

## 3 Truck & Bus GmbH

### 3.1 Overview

Truck & Bus GmbH is the other contracting party to the Domination and Profit and Loss Transfer Agreement with MAN SE. Truck & Bus GmbH is a 100 % subsidiary of Volkswagen Aktiengesellschaft and part of the Volkswagen Group.

### 3.2 Legal form, registered office, fiscal year and corporate purpose

Truck & Bus GmbH is a company with limited liability under German law with its registered office in Wolfsburg and is registered in the commercial register at the Local Court Braunschweig under the commercial register number HRB 100261.

The fiscal year of Truck & Bus GmbH is the calendar year.

The corporate purpose established in the articles of association is participating in companies with the business purpose of production and distribution of vehicles and engines of all kinds, their accessories as well as all equipment, machinery, tools and other technical products. The company is entitled to engage in all transactions and take all measures which relate to the purpose of the company or appear to directly or indirectly support the purpose. The company can also establish branches in Germany and foreign countries, establish and acquire other companies or participate in them.

### **3.3 Corporate history and development**

#### **3.3.1 Founding**

Truck & Bus GmbH was established on 8 December 1994 under the name Volkswagen Coaching Gesellschaft mbH with its registered office in Wolfsburg and a stated capital of DEM 10,000,000 and was registered on 30 December 1994 in the commercial register at the Local Court Braunschweig under commercial register number HRB 100261. Truck & Bus GmbH was active until the end of 2012 in the area of planning, procurement, carrying out and marketing qualification services, especially for employees of plants or individual persons. The previous responsibilities of Truck & Bus GmbH have been carried out by Volkswagen Aktiengesellschaft since the beginning of the year.

#### **3.3.2 Change in name and corporate purpose**

The shareholders' meeting of Truck & Bus GmbH on 26 February 2013 resolved to change the company name under § 1 of the Articles of Association from "Volkswagen Coaching Gesellschaft mbH" to "Truck & Bus GmbH".

The shareholders' meeting of Truck & Bus GmbH on 26 February 2013 also resolved to change the corporate purpose under § 2 of the Articles of Association (see section B.3.2).

The change in name and corporate purpose was registered in the commercial register on 5 March 2013.

### **3.4 Capital and shareholders**

#### **3.4.1 Contribution to the capital reserve in February 2013**

Volkswagen Aktiengesellschaft made a cash contribution in the amount of EUR 10,000,000 to the capital reserve of Truck & Bus GmbH in accordance with § 272 para. 2 no. 4 HGB in February 2013 in connection with the change in company name and corporate purpose.

#### **3.4.2 Capital increase and contribution of the participation in MAN SE**

On the basis of a shareholder resolution of 16 April 2013, the stated capital of Truck & Bus GmbH was increased from EUR 5,115,000 by EUR 4,885,000 to EUR 10,000,000 in exchange for a cash contribution of EUR 4,885,000, and the entire participation of Volkswagen Aktiengesellschaft in MAN SE in the amount of 105,769,788 MAN Common Shares and 2,626,244 MAN Preferred Shares were contributed to the capital reserve of Truck & Bus GmbH in accordance with § 272 para. 2 no. 4 HGB. The capital increase was registered in the commercial register on 16 April 2013. The stated capital has been EUR 10,000,000 since that time.



#### **3.4.3 Contribution to the capital reserve in April 2013**

Volkswagen Aktiengesellschaft made a further cash contribution in the amount of EUR 3.25 billion to the capital reserve of Truck & Bus GmbH in accordance with § 272 para. 2 no. 4 HGB on 25 April 2013.

#### **3.4.4 Shareholders**

The sole shareholder of Truck & Bus GmbH is Volkswagen Aktiengesellschaft with a share in the nominal amount of EUR 10,000,000.

#### **3.4.5 Domination and profit and loss transfer agreement with Volkswagen Aktiengesellschaft**

A domination and profit and loss transfer agreement was concluded on 3 February 2004 between Truck & Bus GmbH as the controlled company and Volkswagen Aktiengesellschaft as the controlling company. This domination and profit and loss transfer agreement took effect upon registration in the commercial register on 4 August 2004. Truck & Bus GmbH is subject to management control of Volkswagen Aktiengesellschaft as a result of the domination and profit and loss transfer agreement, and Truck & Bus GmbH is required to comply with the instructions from Volkswagen Aktiengesellschaft and to transfer its entire profit to Volkswagen Aktiengesellschaft. In exchange, Volkswagen Aktiengesellschaft is required to compensate for any annual losses of Truck & Bus GmbH which would have resulted without the domination and profit and loss transfer agreement during the term of the contract. The domination and profit and loss transfer agreement was concluded for an initial fixed term of ten years which will expire on 31 December 2013. The domination and profit and loss transfer agreement subsequently extends for further periods of one year each unless it has been terminated in writing as of the end of a calendar year by complying with a notice period of 3 months. Upon termination of the domination and profit and loss transfer agreement between Truck & Bus GmbH and Volkswagen Aktiengesellschaft, Volkswagen Aktiengesellschaft would have to provide security to the creditors of Truck & Bus GmbH pursuant to § 303 AktG.

### **3.5 Management and Supervisory Board**

Truck & Bus GmbH has one or more managing directors in accordance with § 5 of its Articles of Association. There are two Managing Directors at the present time:

- Dr. h.c. Leif Östling
- Hans Dieter Pötsch

The company is represented under § 5 para. 2 of its Articles of Association by two Managing Directors acting jointly or by one Managing Director acting jointly with a holder of registered signing authority.

The two Managing Directors of Truck & Bus GmbH are also members of the Executive Board of Volkswagen Aktiengesellschaft.

There is no Supervisory Board at Truck & Bus GmbH at the present time.

### **3.6 Business activities and participations**

After the sale of the qualification business to Volkswagen Aktiengesellschaft, the legal, commercial and purely factual integration and group management responsibilities in connection with MAN SE have been located in Truck & Bus GmbH as a legally and organizationally independent unit. At the time of signing this Contract Report, Truck & Bus GmbH directly holds 105,769,788 MAN Common Shares and 2,626,244 MAN Preferred Shares and, thus, around 75.03% of the voting rights and 73.72% of the share capital in MAN SE and all shares in Volkswagen Qualifizierungsgesellschaft mbH with its registered office in Wolfsburg and registered in the commercial register at the Local Court of Braunschweig under the commercial register number HRB 200246. A domination and transfer of profit and loss agreement exists between Truck & Bus GmbH as the controlling company and Volkswagen Qualifizierungsgesellschaft mbH as the controlled company. The Executive Board and the Supervisory Board of Volkswagen Aktiengesellschaft also resolved to shortly transfer to Truck & Bus GmbH all shares in Volkswagen Gebrauchtfahrzeughandels und Service GmbH, a 100% subsidiary of Volkswagen Aktiengesellschaft which belongs to the Commercial Vehicles division, has its registered office in Langenhagen and is registered in the commercial register at the Local Court of Hannover under the commercial register number HRB 60340. Truck & Bus GmbH does not have any other participations.

### **3.7 Development of the business, earnings situation and financial position of Truck & Bus GmbH**

The revenue increased in the fiscal year 2012 by 3.0% to EUR 139.6 million (2011: EUR 135.5 million). The profit from the normal course of business increased by 63.1% to EUR 6.2 million (2011: EUR 3.8 million). The budget set anew each year and provided by Volkswagen Aktiengesellschaft for training measures for the employees of Volkswagen Aktiengesellschaft decreased in the fiscal year 2012 by 0.1% to EUR 39.6 million (2011: 39.7 million). As a result of the new direction of Truck & Bus GmbH for the fiscal year 2013, no contract budget was provided any longer by Volkswagen Aktiengesellschaft. Sales to third parties (outside of the contract budget) with Volkswagen Aktiengesellschaft increased in the fiscal year 2012 by 5.1% to EUR 87.3 million. Overall, a sales volume of EUR 126.9 million (2011: EUR 122.7 million) was attributable to Volkswagen Aktiengesellschaft; this corresponds to 90.9% (2011: 90.5%) of the total sales. The generated annual profit of EUR 5.8 million (2011: EUR 2.5 million) was transferred to the shareholder Volkswagen Aktiengesellschaft under the domination and profit and loss transfer agreement.

After complete implementation of the redirection of Truck & Bus GmbH, it will generate revenues and earnings primarily from distributions of profit and transfers of profit from its subsidiaries.

The financial position of Truck & Bus GmbH was as follows as of 31 December 2011 and 31 December 2012:

### 3.7.1 Assets (main line items)

in EUR thousand	31 Dec. 2011	31 Dec. 2012
Other equipment, operating and office equipment.....	596	0
Long-term financial assets.....	268	268
Inventories .....	254	141
Receivables and other assets.....	22,114	11,367
<b>Total assets .....</b>	<b>23,252</b>	<b>11,811</b>

### 3.7.2 Equity and liabilities (main line items)

in EUR thousand	31 Dec. 2011	31 Dec. 2012
Equity .....	5,369	5,369
(Other) provisions.....	15,837	4,155
Liabilities .....	1,310	1,647
<b>Total equity and liabilities .....</b>	<b>23,252</b>	<b>11,811</b>

The financial position of Truck & Bus GmbH changed substantially after 31 December 2012 (see the discussion in section B.3.9) as a result of a transfer of the qualification business to Volkswagen Aktiengesellschaft (see section B.3.3.1) and the contribution of the participation of Volkswagen Aktiengesellschaft in MAN SE to Truck & Bus GmbH and the related capital measures (see section B.3.4).

### 3.8 Employees and representative bodies of the employees

Truck & Bus GmbH has no employees.

There are no employee representative bodies.

### 3.9 Finances of Truck & Bus GmbH

Prior to the conclusion of the Domination and Profit and Loss Transfer Agreement, the Executive Board of MAN SE and the Managing Directors of Truck & Bus GmbH examined whether Truck & Bus GmbH would be able to fulfill its payment obligations under the Domination and Profit and Loss Transfer Agreement. Based on the current economic, financial and contractual situation at Truck & Bus GmbH, the Executive Board of MAN SE and the Managing Directors of Truck & Bus GmbH have concluded that Truck & Bus GmbH will be able to fulfill its obligations resulting under the Domination and Profit and Loss Transfer Agreement.

The Executive Board of MAN SE and the Managing Directors of Truck & Bus GmbH have based this conclusion on the following aspects:

The current level of equity capital of Truck & Bus GmbH includes stated capital of EUR 10.0 million and capital reserves in the amount of EUR 12,319 million; the equity capital ratio is just around 100%. In addition to the current funds, the profit of MAN SE will be available for the future payment obligations of Truck & Bus GmbH after the obligation to transfer profits under the Domination and Profit and Loss Transfer Agreement takes effect (see on this point, section C.2.1.2), whereas Truck & Bus GmbH will be required under § 302 AktG to compensate for any annual loss of MAN SE arising during the term of the

contract. There are no indications for any threatening loss situation at MAN SE. MAN SE generated annual surpluses of EUR 521 million (2010), EUR 372 million (2011) and EUR 242 million (2012) in the last three fiscal years. The forecast profits of MAN SE also permit the expectation of a positive development in the profit.

Finally, Truck & Bus GmbH as the controlled company concluded a domination and profit and loss transfer agreement with Volkswagen Aktiengesellschaft as the controlling company on 3 February 2004, as a result of which Volkswagen Aktiengesellschaft is required under § 302 AktG to compensate for any annual loss of Truck & Bus GmbH occurring during the term of the contract. Since the minimum term of the domination and profit and loss transfer agreement will expire on 31 December 2013, it could be terminated by either of the parties by regular notice of termination as of the end of the fiscal year of Truck & Bus GmbH which is at the end of the calendar year. Furthermore, the domination and profit and loss transfer agreement could be terminated by extraordinary notice of termination by one party if the required reasons justifying such termination exist, or the parties could agree to cancel the domination and profit and loss transfer agreement. However, according to statements by Truck & Bus GmbH and Volkswagen Aktiengesellschaft, this is currently not intended, and this has been confirmed by Volkswagen Aktiengesellschaft in the Letter of Affiliation and Comfort dated 26 April 2013 (see the immediately below, as well as section C.2.1.8). Furthermore, both the outside MAN Shareholders as well as MAN SE would be protected by the provisions on the termination of corporate group contracts in the case of any termination of the domination and profit and loss transfer agreement between Volkswagen Aktiengesellschaft and Truck & Bus GmbH during the term of the Domination and Profit and Loss Transfer Agreement between Truck & Bus GmbH and MAN SE. Volkswagen Aktiengesellschaft would have to provide security to the outside MAN Shareholders and MAN SE for their claims for the Compensation and the Recurring Compensation as well as the Guaranteed Dividend and the claim for compensation for losses in the case of termination of the domination and profit and loss transfer agreement between Volkswagen Aktiengesellschaft and Truck & Bus GmbH in accordance with the detailed provisions in § 303 AktG (see also the next to the last paragraph in section C.2.1.6(iii)).

Furthermore, without joining the Domination and Profit and Loss Transfer Agreement as a contracting party, Volkswagen Aktiengesellschaft has issued a Letter of Affiliation and Comfort to MAN SE which is attached together with the Domination and Profit and Loss Transfer Agreement to this Report as ANNEX 2. Volkswagen Aktiengesellschaft undertakes in the Letter of Affiliation and Comfort to inform MAN SE in such timely manner about any termination of the domination and profit and loss transfer agreement existing between Volkswagen Aktiengesellschaft and Truck & Bus GmbH that MAN SE and the outside MAN Shareholders who have claims against Truck & Bus GmbH on the basis of the Domination and Profit and Loss Transfer Agreement between Truck & Bus GmbH and MAN SE can assert their claim for security under § 303 AktG in a timely manner. Furthermore, Volkswagen Aktiengesellschaft has undertaken to ensure that Truck & Bus GmbH will inform MAN SE without undue delay about any material deterioration in the assets or financial position of Truck & Bus GmbH, especially about the occurrence of any reasons for opening of insolvency proceedings within the meaning of §§ 17 to 19 German Insolvency Code (*Insolvenzordnung*) and has undertaken to waive the defense of requiring that a complaint first be filed against the primary obligor in the case of posting security by means of a surety pursuant to § 303 para. 3 AktG. Volkswagen Aktiengesellschaft has also undertaken in the Letter of Affiliation and Comfort to ensure that Truck & Bus GmbH is

managed and financed in such a manner that Truck & Bus GmbH will be able to fulfill its liabilities under clause 5 of the Domination and Profit and Loss Transfer Agreement between Truck & Bus GmbH and MAN SE in a timely manner (see section C.2.1.8 with regard to the Letter of Affiliation and Comfort).

#### **4 Mandatory Offer of Volkswagen Aktiengesellschaft, further purchases of shares, transfer of the participation to Truck & Bus GmbH**

##### **4.1 Mandatory Offer and additional purchases of shares**

Volkswagen Aktiengesellschaft increased its shareholding of MAN Common Shares from 29.9% to 30.47% on 6 and 9 May 2011 and was accordingly required to submit a Mandatory Offer to the MAN Shareholders for the purchase of their MAN Common Shares and MAN Preferred Shares. Volkswagen Aktiengesellschaft published its Mandatory Offer to the MAN Shareholders for the acquisition of the MAN Common Shares and MAN Preferred Shares for an offer price of EUR 95.00 for each MAN Common Share and EUR 59.90 for each MAN Preferred Share on 31 May 2011. The deadline for acceptance (§ 16 para. 1 sentence 1 of the German Securities Acquisition and Takeover Act (*Wertpapiererwerbs- und Übernahmegesetz*, "WpÜG")) for the Mandatory Offer ended on 29 June 2011 at 24:00 hours. The Mandatory Offer was accepted prior to expiration of the acceptance deadline for a total of 35,857,607 MAN Common Shares and 164,613 MAN Preferred Shares corresponding to 25.44% of the voting rights and 24.50% of the share capital in MAN SE. Volkswagen Aktiengesellschaft announced on 4 July 2011 pursuant to § 23 para. 1 sentence 1 no. 2 WpÜG that the total participation of Volkswagen Aktiengesellschaft in MAN SE, including the MAN Shares for which the Mandatory Offer had been accepted was 78,805,649 MAN Common Shares and 164,613 MAN Preferred Shares corresponding to 55.90% of the voting rights and 53.71% of the share capital in MAN SE. Volkswagen Aktiengesellschaft acquired no MAN Shares outside of the Mandatory Offer from the beginning of the acceptance deadline until the closing of the Mandatory Offer. The Mandatory Offer was closed on 9 November 2011.

Volkswagen Aktiengesellschaft acquired additional MAN Common Shares and MAN Preferred Shares over the stock exchange after the closing of the Mandatory Offer and further increased its participation in MAN SE through June 2012. Volkswagen Aktiengesellschaft notified MAN SE and the Federal Financial Supervisory Authority (*Bundesanstalt für Finanzdienstleistungsaufsicht*, "BaFin") on 6 June 2012 pursuant to § 21 para. 1 German Securities Trading Act (*Wertpapierhandelsgesetz*, "WpHG") that the participation of Volkswagen Aktiengesellschaft in MAN SE had crossed the threshold of 75% of the voting rights in MAN SE and was 75.03% of the voting rights on that date corresponding to 105,769,788 of the voting rights in MAN SE.

##### **4.2 Transfer of the participation in MAN SE to Truck & Bus GmbH**

On 16 April 2013, Volkswagen Aktiengesellschaft transferred the participation in MAN SE to Truck & Bus GmbH. On 18 April 2013, Truck & Bus GmbH notified MAN SE and BaFin in accordance with § 21 para. 1 sentence 1 WpHG that its participation in MAN SE had crossed the thresholds of 3%, 5%, 10%, 15%, 20%, 25%, 30%, 50% and 75% of the voting rights in MAN SE and was 75.03% of the voting rights corresponding to 105,769,788 of the voting rights in MAN SE on 16 April 2013. Since this transfer constituted an internal structuring within the corporate group, Truck & Bus GmbH requested from BaFin to be exempt from the duty to submit a Mandatory Offer.

At the time of signing this Contract Report, Truck & Bus GmbH holds a total of 105,769,788 MAN Common Shares and 2,626,244 MAN Preferred Shares corresponding to a participation of 75.03% of the voting rights and 73.72% of the share capital in MAN SE.

According to the German Transformation Tax Act (*Umwandlungssteuergesetz*) and the Transformation Tax Directive of the Federal Ministry of Finance (*Umwandlungssteuererlass des Bundesfinanzministeriums*), the requirements for a tax neutral exchange of shares are satisfied if the contributing shareholder (in this case: Volkswagen Aktiengesellschaft), in addition to making a cash contribution in exchange for the grant of new shares in the acquiring company (in this case: Truck & Bus GmbH), also enters into an obligation to contribute as a premium (*Aufgeld*) a so-called participation providing a majority (*mehrheitsvermittelnde Beteiligung*) (see § 21 para. 1 sentence 2 German Transformation Tax Act; no. E20.09 in conjunction with no. 01.44 of the Transformation Tax Directive of the Federal Ministry of Finance dated 11 November 2011, IV C 2 - S 1978 - b/08/10001, BStBl. I 2011, 1314). A participation providing a majority is a participation which gives the acquiring company (in this case: Truck & Bus GmbH) the majority of the voting rights in the contributed participation (in this case: MAN SE) (see no. 21.09 of the above-mentioned Directive of the Federal Ministry of Finance). Since Truck & Bus GmbH received more than 50 % of the voting rights in MAN SE, this constitutes a participation providing a majority. Therefore, the exchange of shares is tax neutral regarding income taxes (*ertragsteuerneutral*) in the present case. As far as procedure is concerned, it is necessary for the acquiring company to submit a corresponding request.

#### **4.3 Potential purchases outside of the offer for Compensation**

Truck & Bus GmbH reserves the right to purchase at any time additional MAN Common Shares or MAN Preferred Shares directly or indirectly over the stock exchange outside of the offer for Compensation under clause 5 of the Domination and Profit and Loss Transfer Agreement within the scope permitted by law.

### **(C) DOMINATION AND PROFIT AND LOSS TRANSFER AGREEMENT**

#### **1 Reasons for the conclusion of the Domination and Profit and Loss Transfer Agreement**

##### **1.1 Economic, legal and tax reasons**

###### **1.1.1 Economic and legal reasons**

- (i) Goal of creating an integrated commercial vehicle group

MAN SE and Truck & Bus GmbH, together with Volkswagen Aktiengesellschaft, are taking a further step on the path towards creating an integrated commercial vehicle group consisting of the companies MAN SE and other companies in the Volkswagen Group by concluding the Domination and Profit and Loss Transfer Agreement. The goal of this step is to enable closer cooperation of all involved companies.

The successful conclusion of the Mandatory Offer of Volkswagen Aktiengesellschaft to the MAN Shareholders was an important milestone on the way to this strategic cooperation. By increasing the participation of the Volkswagen Group in MAN SE after corresponding merger control

clearances and other regulatory approvals and the related elimination of antitrust restrictions, synergies can be realized, especially initial synergies in the area of procurement of specific products related primarily to commercial vehicles but also in the area of products related to non-commercial vehicles. The involved companies are convinced that additional substantial synergies can also be generated in the areas of research, development and production. The new corporate group created upon the closing of the Mandatory Offer also possesses leading technological competency as well as production and systems possibilities in order to be able to offer customer oriented product solutions in the target markets. In order to jointly develop these integrated product solutions, the best possible use shall be made of the competency of MAN SE and the Volkswagen Group in the areas of technology, service, systems integration and management expertise. As a result of the stronger worldwide presence and cooperation of the involved companies, each of the involved companies shall gain better access to potential customers and have a broader regional presence. These goals can in part only be achieved on a long-term basis and require, in any event, a unified management approach. The necessary integration of MAN SE into the management and organizational structure of the Volkswagen Group in the area of commercial vehicles for better management and coordination of the activities and resources required to achieve the above-mentioned goals and realize the related synergies, however, are subject to narrow limits prior to a domination and profit and loss transfer agreement taking effect.

Synergies can also be generated by jointly using IP rights, for example, in time consuming and cost intensive basic research and development of new materials required for lightweight constructions, or in the area of improvement of efficiency in the combustion and exhaust processes for both traditional as well as alternative fuels such as natural gas or bio-fuels. Joint potential can also be realized with regard to the large variety of different customer requirements in the mobility sector in the worldwide markets and in the area of alternative drive systems, hybrid technologies and battery development. Economies of scale can also be achieved in the area of electronic systems development such as, for example, in driver assistance technologies or telematics. The joint results in basic areas must then be applied on the basis of the requirements in the mobility sector for the respective, individual use by customers. However, in order to realize these potentials, a very open, intense and effective cooperation of the involved companies is required.

In the current situation, it has been extremely difficult to analyze joint projects in depth, in a timely fashion and, thus, effectively due to the restrictions on the exchange of information in a *de facto* corporate group (see further, section C.1.1.1(ii)). Since the exchange of confidential data is normally necessary for such project analysis, the implementation of feasibility studies was often hindered by the fact that the confidential information required for the analysis could only be disclosed under difficult preconditions. Without disclosing certain bases of the calculation, it has been extremely difficult for the involved companies so far, to assess

whether a joint project would eventually prove to be beneficial for all parties. The different product as well as IT structures in processes both in the analysis as well as in the exchange of information also had an inhibiting effect on efficient cooperation. Finally, this was one of the reasons, among others, why no positive conceptual decisions could be made in a number of projects.

(ii) Limits and restrictions on cooperation in the current *de facto* corporate group

Due to the majority participation of Truck & Bus GmbH, a so-called *de facto* corporate group exists between MAN SE and Truck & Bus GmbH at the present time. This also applies indirectly with regard to the relationship of MAN SE to Volkswagen Aktiengesellschaft because Volkswagen Aktiengesellschaft holds a participation of 100% of the shares in Truck & Bus GmbH and a domination and profit and loss transfer agreement also exists between Volkswagen Aktiengesellschaft and Truck & Bus GmbH under which Volkswagen Aktiengesellschaft has management control rights and rights to issue instructions to Truck & Bus GmbH. In this *de facto* corporate group, Truck & Bus GmbH and Volkswagen Aktiengesellschaft can exercise factual controlling influence over MAN SE. However, the Executive Board of MAN SE continues to be under an obligation to manage the company on its own responsibility in accordance with Art. 39 para. 1 SE Regulation. The Executive Board must examine in each individual case all measures or transactions taken or omitted on the initiative or in the interest of Truck & Bus GmbH or one of its affiliated companies in the Volkswagen Group with regard to whether it has adverse effects for MAN SE. If such transactions or measures are adverse, they may only be implemented if the adverse effect linked to the relevant transaction or measure is compensated. The compensation for the adverse effect must either actually occur by the end of the fiscal year in which the adverse effect is incurred, i.e. in a short period of time, or the compensation must occur by granting a corresponding legal claim (§ 311 para. 2 AktG). Due to this legal situation all measures and transactions of MAN SE taken or omitted on the initiative or in the interest of Truck & Bus GmbH or one of its affiliated companies in the Volkswagen Group must be examined in the individual case with regard to their exact effects on MAN SE and any harm incurred and with regard to the duty to compensate.

Furthermore, all measures and transactions in a *de facto* corporate group which are taken on the initiative or in the interest of the controlling company or one of its affiliates must be documented in detail. Such measures and transactions must especially be reported on annually in a so-called control report (*Abhängigkeitsbericht*) by the executive board of the controlled company and the adverse effects must be quantified (§ 312 AktG). The control report must be examined both by the supervisory board as well as by the auditor of the controlled company (§§ 313, 314 AktG).

These principles applicable to the *de facto* corporate group lead to a substantial expenditure of time and resources, especially on the side of the factually controlled company. Both the Executive Board as well as other



departments in MAN SE (e.g. the legal department and the finance and accounting department) must be involved in every measure and every transaction of MAN SE taken or omitted on the initiative or in the interest of Truck & Bus GmbH or one of its affiliated companies in the Volkswagen Group, regardless of whether the respective transaction is with Truck & Bus GmbH or with a third party, in order to assure compliance with the rules applicable to a *de facto* corporate group. This not only ties up resources on the side of MAN SE as the controlled company, but also leads to substantial delays in the intended cooperation between the MAN Group and the rest of the Volkswagen Group. As a result, the fast and efficient implementation of management decisions that are in the common interest is impeded.

In addition, the quantification and compensation of any adverse effect to the controlled company results in great difficulties in *de facto* corporate groups. Such difficulties arise regularly in the context of transactions and measures which go beyond the mere exchange of performance and consideration (e.g. purchasing goods or rendering services) or for which a market price cannot be determined. Such measures can, for example, involve the exchange of know-how and business information in the context of jointly developing products and integrated systems solutions. In practice it is difficult in these situations, if not often impossible, to quantify and compensate any adverse effects or corresponding benefits of the controlled company. The consequence is that such measures are not possible with sufficient legal certainty in a *de facto* corporate group and can only be carried out with a substantial effort for the examination and documentation or may have to be avoided completely.

The implementation of extensive cooperation and an intensive exchange of information, however, is necessary in order to realize the intended benefits from further cooperation in the activities of MAN SE and the rest of the Volkswagen Group described in section C.1.1.1(i). These benefits can only be inadequately realized or can only be realized under great difficulties without concluding a domination and profit and loss transfer agreement.

(iii) Creation of a contractual corporate group by concluding the Domination and Profit and Loss Transfer Agreement

These difficulties existing in a *de facto* corporate group are avoided if there is a domination and profit and loss transfer agreement because this creates a contractual basis for the intended close cooperation. In a contractual corporate group, the provisions about specific compensation for adverse transactions and measures initiated by the controlling company or one of its affiliated enterprises or taken or omitted in their interest do not apply. The controlling party to the contract especially has the right under the domination agreement to directly issue instructions to the Executive Board of the controlled company to take measures or engage in transactions in the interest of the controlling party to the contract or one of its affiliated companies even if they might be adverse for the controlled company when viewed on a stand-alone basis (§ 308 AktG), and if these adverse effect cannot be compensated within the same fiscal year or if an exact

quantification of the adverse effect is not possible. This makes it possible to use resources more efficiently and also to implement those measures for cooperation for which the quantification of any adverse effect and any corresponding benefit is not possible with legal certainty. Measures by management can accordingly be focused towards the common interest of the affiliated enterprises without great effort being required to control every measure and its effects on the controlled company. In addition, the expense for preparing and auditing the control report is avoided because such a report does not have to be prepared in a contractual corporate group.

The Domination and Profit and Loss Transfer Agreement enables Truck & Bus GmbH and Volkswagen Aktiengesellschaft to better control the intended cooperation with the MAN Group in the common interest of the entire corporate group. A domination agreement will also facilitate the unhindered exchange of information with regard to best practice policies between MAN SE and the rest of the Volkswagen Group.

The conclusion of a domination agreement accordingly is the appropriate legal means to implement the intended comprehensive cooperation of the involved companies and is also used by other companies in comparable cases and is specifically intended by the law to be used for this purpose.

As a result of the combination of the domination agreement with a profit and loss transfer agreement, Truck & Bus GmbH also obtains a claim for transfer of profit against MAN SE starting on 1 January 2014. MAN SE receives in exchange a claim for assumption of losses under the Domination and Profit and Loss Transfer Agreement which already begins at the point in time when solely the domination part of the Domination and Profit and Loss Transfer Agreement takes effect in the event that an annual loss of MAN SE arises during the term of the contract. Contrary to the situation in a merely *de facto* corporate group, after the conclusion of the Domination and Profit and Loss Transfer Agreement MAN SE is no longer forced to rely on individual compensation for potentially adverse impact suffered as a result of the exercise of influence and instead receives by force of law a claim for full compensation of losses from Truck & Bus GmbH regardless of the issue of the exercise of influence or other factors (see § 302 AktG).

The interests of MAN SE are also protected after conclusion of the Domination and Profit and Loss Transfer Agreement by the fact that the right to issue instructions does not exist without any limitation (see also below on this point, section C.2.1.1). MAN SE especially may not be deprived of the ability to continue to exist as a result of adverse instructions because the statutory provisions are based on the assumption of a continuing existence of the controlled company, also for the time after any termination of a domination agreement. Adverse instructions are also impermissible and do not trigger any duty to comply with them if they obviously do not serve the interests of the controlling company or an companies affiliated with the controlling company or the controlled company.

The Domination and Profit and Loss Transfer Agreement establishes special protective mechanisms for outside MAN Shareholders which are not available in a *de facto* corporate group. They receive a claim against Truck & Bus GmbH for a reasonable Guaranteed Dividend and a reasonable annual Recurring Compensation Payment (see for further detail, section C.2.1.4) or they can transfer their shares to Truck & Bus GmbH and cease to be shareholders in MAN SE in exchange for payment of a reasonable Compensation if they want to dispose of their MAN Common Shares or MAN Preferred Shares in light of the Domination and Profit and Loss Transfer Agreement (see on this point, the explanations in section C.2.1.5).

These claims of the outside MAN Shareholders are secured indirectly by the duties of Volkswagen Aktiengesellschaft resulting from the domination and profit and loss transfer agreement with Truck & Bus GmbH, especially the duty to compensate for any annual losses of Truck & Bus GmbH (§ 302 AktG) and the posting of security for the benefit of the creditors of Truck & Bus GmbH in the case of any termination of the domination and profit and loss transfer agreement between Volkswagen Aktiengesellschaft and Truck & Bus GmbH (§ 303 AktG) (see on this point, section B.3.4.5). Additional security results from the Letter of Affiliation and Comfort which Volkswagen Aktiengesellschaft has issued to MAN SE (see on this point, section C.2.1.8).

(iv) Conclusion

MAN SE and Truck & Bus GmbH are of the opinion that a close cooperation of the involved companies after the Domination and Profit and Loss Transfer Agreement takes effect will be able to expand the market leadership position in the present product areas and that substantial synergies can be generated.

Overall, it is apparent that the creation of a contractual corporate group by means of the Domination and Profit and Loss Transfer Agreement expands and reinforces the possibilities for cooperation. Cost savings, namely, by eliminating the duties for examination and documentation in the context of the current *de facto* corporate group, and greater flexibility and more rapid and efficient decision making processes are additional consequences.

**1.1.2 Tax reasons**

The conclusion of a profit and loss transfer agreement within the meaning of § 291 AktG is a prerequisite for establishing a consolidated tax group for purposes of corporate income tax and trade tax (consolidated tax group for purposes of income tax) between Truck & Bus GmbH (as the parent company) and MAN SE (as the subordinate company). The consolidated tax group for purposes of income tax also requires that the parent company has a participation from the beginning of its fiscal year without interruption in such an extent that it has the majority of the voting rights under the shares in the subordinate company (§ 14 para. 1 sentence 1 no. 1 sentence 1 German Corporate Income Tax Act (*Körperschaftsteuergesetz*, "KStG")) and that the participation is attributable to a domestic permanent establishment of the parent company in the group without interruption for the entire

duration of the consolidated tax group (§ 14 para. 1 sentence 1 no. 2 sentence 2 KStG). The validity of the consolidated tax group for purposes of income tax also requires that the profit and loss transfer agreement is concluded for a period of at least five years (60 months) (§ 14 para. 1 sentence 1 no. 3 sentence 1 KStG) and is actually implemented during the entire term of its validity.

The consolidated tax group for purposes of income tax will exist starting on 1 January 2014 if the Domination and Profit and Loss Transfer Agreement is registered in the commercial register of MAN SE during the course of the fiscal year 2013 or prior to the end of the fiscal year 2014. If the Domination and Profit and Loss Transfer Agreement is only registered at a subsequent point in time, the consolidated tax group for purposes of income tax will only be established as of the beginning of that fiscal year in which the registration takes place.

The consolidation does not have the effect that the general tax obligations of MAN SE are eliminated. MAN SE must determine its taxable profit under the general provisions separately from Truck & Bus GmbH as in the past. For purposes of corporate income tax, the income of MAN SE will be separately and uniformly determined with binding effect for Truck & Bus GmbH and MAN SE. As a consequence of the creation of the consolidated tax group for purposes of income tax, however, the entire taxable income of MAN SE – taking into account certain restrictions in the law – will be attributed to Truck & Bus GmbH and will be taxed at the level of Volkswagen Aktiengesellschaft due to the consolidated tax group for income tax purposes existing between Truck & Bus GmbH and Volkswagen Aktiengesellschaft. Despite this, MAN SE must still pay taxes starting in that fiscal year in which the tax consolidation first exists on currently 20/17 of the payments rendered to the outside MAN Shareholders as the own income of MAN SE (§ 16 KStG).

The establishment of the consolidated tax group for purposes of income tax has a positive liquidity effect for Truck & Bus GmbH because transfers of profit of MAN SE to Truck & Bus GmbH are not subject to withholding tax on investment income plus the solidarity surcharge contrary to distributions of profit. If no profit and loss transfer agreement were concluded and the profit were distributed in the form of dividends, a crediting or reimbursement of the withholding tax on investment income plus the solidarity surcharge would generally only result in the context of the assessment of corporate income tax after filing the tax declaration for the tax period in which the dividend was received. Furthermore, a transfer of profit under commercial law, contrary to distribution of a dividend, does not result in a deemed 5% prohibition on deducting operating expenses under § 8b para. 5 KStG.

The above tax effects do not apply for excess transfers which have their basis in the time prior to the consolidated tax group (§ 14 para. 3 KStG).

## **1.2 Alternatives to concluding the Domination and Profit and Loss Transfer Agreement**

The Managing Directors of Truck & Bus GmbH and the Executive Board of MAN SE have examined alternatives to concluding the Domination and Profit and Loss Transfer Agreement. They have concluded that none of the examined alternatives has the same capacity for achieving the above described goals. The purpose for transferring the

participation of Volkswagen Aktiengesellschaft in MAN SE to Truck & Bus GmbH was to more efficiently structure the economic, legal and purely factual tasks for integration and group management. These tasks are separated from the operational business of Volkswagen Aktiengesellschaft and transferred to a legally and organizationally separate entity which can concentrate on attending to these tasks. Truck & Bus GmbH also creates the flexibility of including additional companies in the tasks of integration and group management. These benefits are not offset by any disadvantages so that the considerations about the alternatives to the Domination and Profit and Loss Transfer Agreement must include in each case Truck & Bus GmbH. Especially the following other possibilities were examined in the light of this.

#### **1.2.1 Conclusion of only a domination agreement or only a profit and loss transfer agreement**

The conclusion of only a domination agreement is legally permissible, but no consolidated tax group for corporate income tax and trade tax (consolidated tax group for purposes of income tax) can be established on the basis of only a domination agreement.

The intended tax benefits would accordingly not be achievable with just a domination agreement.

The conclusion of only a domination agreement is intended in the present case for just the fiscal year 2013 if the Domination and Profit and Loss Transfer Agreement is registered in the fiscal year 2013. The Domination and Profit and Loss Transfer Agreement determines in this regard that the obligation to transfer profit under clause 2 of the Domination and Profit and Loss Transfer Agreement shall apply at the earliest for the fiscal year 2014. The rights of management control and to issue instructions and the obligation to transfer profit under the Domination and Profit and Loss Transfer Agreement accordingly take effect at different points in time if the Domination and Profit and Loss Transfer Agreement takes effect in the fiscal year 2013 as a result of approval by the general shareholders' meeting of MAN SE and the shareholders' meeting of Truck & Bus GmbH and registration in the commercial register. The provision on the time-delayed start, at the earliest on 1 January 2014, of the obligation to transfer profit under clause 2 of the Domination and Profit and Loss Transfer Agreement was necessary because the participation in MAN SE was transferred from Volkswagen Aktiengesellschaft to Truck & Bus GmbH only during the course of the fiscal year 2013. A consolidated tax group for purposes of corporate income tax and trade tax requires under § 14 para. 1 sentence 1 no. 1 KStG, however, that the parent company has a direct or indirect participation in the subordinate company starting at the beginning of its fiscal year without any interruption and that the parent company has the majority of voting rights under the shares in the subordinate company. In the view of the tax administration, it is not sufficient for the participation to be held by the shareholders of the parent company. The circumstance that the MAN Shares transferred by Volkswagen Aktiengesellschaft to Truck & Bus GmbH in the fiscal year 2013 were held by Volkswagen Aktiengesellschaft from the beginning of this fiscal year until the transfer took effect, therefore, is not sufficient under this view to establish the status of a consolidated tax group for purposes of corporate income tax and trade tax already in the fiscal year 2013. The earliest possible point in time for establishing the status of a consolidated tax group between Truck & Bus GmbH

and MAN SE for purposes of corporate income tax and trade tax is, therefore, the fiscal year 2014. The right of management control and the right of Truck & Bus GmbH to issue instructions, on the other hand, is supposed to take effect prior to that point in time if the Domination and Profit and Loss Transfer Agreement is registered in the fiscal year 2013 of MAN SE.

The conclusion of just a profit and loss transfer agreement would also be legally permissible. However, this would not be a sufficient legal basis for the intended comprehensive cooperation between MAN SE, Truck & Bus GmbH and Volkswagen Aktiengesellschaft. As has been described, close cooperation in a legally safe manner is only possible if the existing *de facto* corporate group is placed on a contractual basis by means of a domination agreement (see above, section C.1.1.1). An optimized structure of the corporate group can only be achieved in light of the tax situation and the control structures when both elements are combined.

#### **1.2.2 Exclusion of the minority shareholders (squeeze-out)**

Excluding the minority shareholders of MAN SE under §§ 327a et seq. AktG (so-called squeeze-out under the law on stock corporations) would not be possible at the present time because the participation of Truck & Bus GmbH and MAN SE does not reach the required level under the law of at least 95% of the share capital.

This applies correspondingly to excluding minority shareholders under § 62 para. 5 German Transformation Act (*Umwandlungsgesetz*) in conjunction with §§ 327a et seq. AktG after a merger (so-called squeeze-out under the law on corporate transformation) which would require a participation of 90% of the share capital. Furthermore, Truck & Bus GmbH would also not have the legal form of a stock corporation required for a squeeze-out under the law on corporate transformation and would initially have to be transformed into a stock corporation. Finally, the merger (*Verschmelzung*) of MAN SE into Truck & Bus GmbH is also not an appropriate alternative as such (see below, section C.1.2.4).

A so-called squeeze-out under the law on takeovers pursuant to §§ 39a et seq. WpÜG would also require a participation of Truck & Bus GmbH in the amount of 95% of the share capital in MAN SE and is also precluded because such a squeeze-out can only be implemented within three months after expiration of the deadline for accepting a takeover offer or a mandatory offer (§ 39a para. 4 sentence 1 WpÜG). This deadline has already passed in the present case because the deadline for accepting the Mandatory Offer of Volkswagen Aktiengesellschaft ended on 29 June 2011.

Furthermore, the legal restrictions described in section C.1.1.1(ii) resulting from a *de facto* corporate group would also exist in the case of a 100% shareholding of Truck & Bus GmbH in MAN SE without the Domination and Profit and Loss Transfer Agreement so long as MAN SE has the legal form of a European Company (or a stock corporation). A consolidated tax group for purposes of corporate income tax and trade tax could also not be established without concluding a profit and loss transfer agreement.

### 1.2.3 Absorption or Merger

Integration into a corporate group by way of absorption (§§ 319 et seq. AktG) (*Eingliederung*) is precluded in the present case. Although, §§ 319 et seq. AktG also apply to MAN SE as a European Company, Truck & Bus GmbH does not have the level of the shareholding required for an absorption of at least 95% of the share capital in MAN SE (§ 320 para. 1 sentence 1 AktG). Such absorption would also require that the two involved legal entities are stock corporations or corporations in the legal form of an European Company, while Truck & Bus GmbH, contrary to MAN SE, is neither a stock corporation nor a European Company. An absorption of MAN SE into Truck & Bus GmbH, therefore, would not be possible without transforming Truck & Bus GmbH into a stock corporation or a European Company.

A merger of Truck & Bus GmbH into MAN SE (so-called "**downstream merger**") is also precluded as an alternative structure, just as a merger of MAN SE into Truck & Bus GmbH ("**upstream merger**") is precluded.

The downstream merger of Truck & Bus GmbH into MAN SE is an inappropriate alternative because Truck & Bus GmbH would cease to exist as a separate legal entity. Such a measure would also not change the requirement for a domination and profit and loss transfer agreement in order to implement the desired integration of MAN SE into the Volkswagen Group. MAN SE would then have to conclude a domination and profit and loss transfer agreement with Volkswagen Aktiengesellschaft. The domination and profit and loss transfer agreement existing between Volkswagen Aktiengesellschaft and Truck & Bus GmbH would cease to exist as a result of a downstream merger and would not be continued as a domination and profit and loss transfer agreement between Volkswagen Aktiengesellschaft and MAN SE.

An upstream merger is also not an appropriate alternative. In this situation, the outside MAN Shareholders would obtain a participation in Truck & Bus GmbH. Since a transformation of Truck & Bus GmbH into a stock corporation with a subsequent listing on the stock exchange is not intended, this would result in the loss of the listing of the MAN Common Shares and the MAN Preferred Shares on the stock exchange which would substantially adversely affect the ability to trade the MAN Common shares and the MAN Preferred Shares and, thus, harm the interests of the MAN Shareholders.

### 1.2.4 Change of corporate form

A transformation of MAN SE into a different corporate form or a partnership is also not an appropriate alternative because the corporate constitution of MAN SE as a European Company shall be maintained.

A change in corporate form would not help to establish the desired consolidated tax group (see section C.1.1.2). A transformation into a stock corporation or a limited partnership based on shares (*Kommanditgesellschaft auf Aktien*) would also not affect the applicability of the rules about the *de facto* corporate group and accordingly not change the disadvantages existing compared to a situation with a domination and profit and loss transfer agreement (see sections C.1.1.1(ii) and C.1.1.1(iii)). After a transformation into a company with limited liability or a partnership, instructions in the interest of the corporate group would still have to be examined in the individual case with regard to whether they have an adverse

impact on MAN SE as described in section C.1.1.1(ii). The fiduciary duty of the controlling company existing as a result of membership would also have to be observed in the relationship to a company with limited liability or a partnership so that the implementation of adverse measures would be problematic.

A transformation into a GmbH or a partnership would also result in the loss the listing of the MAN Shares on the stock exchange which would substantially affect the ability to trade the MAN Shares and, thus, the interests of the outside MAN Shareholders.

Furthermore, a change in corporate form would involve additional expense and delay. A legal obligation to change corporate form in connection with the conclusion of a domination and profit and loss transfer agreement does not exist.

#### **1.2.5 Conclusion**

In light of the above, only concluding a domination and profit and loss transfer agreement provides a sufficient legal basis for the intended integration of MAN SE into the Volkswagen Group. The restrictions of a *de facto* corporate group can only be overcome (see section C.1.1.1) and the status of a consolidated tax group for purposes of corporate income tax and trade tax can only be established (see section C.1.1.2) by concluding a domination and profit and loss transfer agreement.

### **1.3 Costs of the Domination and Profit and Loss Transfer Agreement**

The conclusion of the Domination and Profit and Loss Transfer Agreement caused one-time costs. These costs were especially caused by mandating the Valuation Experts (see on this point, section C.3.1), the issuance of the Examination Report by the court appointed Contract Examiner, Rölfs RP AG, Wirtschaftsprüfungsgesellschaft, Düsseldorf (see on this point, section C.2.3.2(ii) and section C.3.4), as well as by legal advice. Each party to the contract bears the costs of the respective Valuation Expert retained by that party with regard to preparing the Valuation Report as well as the other costs, including the costs for its external advisors. Truck & Bus GmbH and MAN SE each bear one half of the costs for the Examination Report. External costs to be borne by MAN SE in a range of approximately EUR 2.0 million are expected overall.

## **2 Content and effects of the Domination and Profit and Loss Transfer Agreement**

### **2.1 Explanation of the content of the contract**

Individual provisions in the Domination and Profit and Loss Transfer Agreement are explained below.

#### **2.1.1 Management control and instructions (clause 1 of the Domination and Profit and Loss Transfer Agreement)**

Clause 1 of the Domination and Profit and Loss Transfer Agreement contains the constitutive provision for a domination agreement under which MAN SE, as the controlled company, submits the management of its company to Truck & Bus GmbH as the controlling company. Truck & Bus GmbH is accordingly entitled to issue instructions to the Executive Board of MAN SE with regard to the



management of the company (clause 1.1 of the Domination and Profit and Loss Transfer Agreement). Notwithstanding this right of management control and right to issue instructions, MAN SE will continue to be a legally independent company with its own corporate bodies. The Executive Board of MAN SE accordingly continues to be responsible for the management and the representation of the company. Unless any instructions are issued, the Executive Board of MAN SE is entitled to and must manage the company on its own responsibility.

The scope of the right of management control and the right to issue instructions is governed primarily by § 308 AktG. The Executive Board of MAN SE is required to comply with the permissible instructions of Truck & Bus GmbH (clause 1.1 sentence 2 of the Domination and Profit and Loss Transfer Agreement). Pursuant to § 308 para. 1 sentence 2 AktG, instructions which are disadvantageous for MAN SE can also be issued if they serve the interests of Truck & Bus GmbH or the companies affiliated with Truck & Bus GmbH and MAN SE in the corporate group. The Executive Board of MAN SE is not entitled to refuse to comply with an instruction unless the instruction obviously does not serve these interests. The Executive Board does not have to follow any impermissible instructions, e.g. instructions which would violate statutory provisions or provisions in the articles of association of MAN SE. Instructions which endanger the existence of MAN SE are impermissible, in any event. A controlled company is also not required to comply with instructions if and so long as the controlling company does not fulfill its obligations under the domination and profit and loss transfer agreement, especially the obligations to assume losses and to pay the guaranteed dividend and the recurring compensation payment as well as the cash compensation to the outside shareholders (§§ 304, 305 AktG) or to the extent that the controlling company will most likely not be able to comply with these obligations (see with regard to the right of the controlled company to terminate, section C.2.1.6(iii)). Furthermore, instructions to amend, maintain or terminate the domination and profit and loss transfer agreement also cannot be issued pursuant to § 299 AktG (clause 1.2 of the Domination and Profit and Loss Transfer Agreement).

The right of management control and the right to issue instructions exist only towards the Executive Board but not towards the Supervisory Board, the shareholders' meeting or employees of MAN SE and also not towards corporate bodies and employees of any subsidiary of MAN SE. If the Executive Board of MAN SE is instructed to engage in a transaction which requires the consent of the Supervisory Board of MAN SE and if the Supervisory Board does not consent or if the consent is not issued within a reasonable period of time, the consent of the Supervisory Board can be substituted in accordance with § 308 para. 3 AktG by repeating the instruction. The participation rights of the general shareholders' meeting of MAN SE are not affected by the Domination and Profit and Loss Transfer Agreement.

Any instruction to the Executive Board of MAN SE must be issued in the form of text (§ 126b German Civil Code (*Bürgerliches Gesetzbuch*), e.g. by telefax or email; an oral instruction must be confirmed in the form of text without undue delay (clause 1.3 Domination and Profit and Loss Transfer Agreement).

The right of Truck & Bus GmbH to issue instructions and the corresponding duty of MAN SE to comply under clause 1 of the Domination and Profit and Loss Transfer

Agreement exist pursuant to § 294 para. 2 AktG, clause 6.1 of the Domination and Profit and Loss Transfer Agreement only after the point in time when the Domination and Profit and Loss Transfer Agreement takes effect as a result of registration in the commercial register of MAN SE (see on this point, section C.2.1.6(i)(a)).

#### **2.1.2 Transfer of profit (clause 2 of the Domination and Profit and Loss Transfer Agreement)**

Clause 2 of the Domination and Profit and Loss Transfer Agreement contains the constitutive provision for a profit and loss transfer agreement under which MAN SE is required to transfer its entire profit to Truck & Bus GmbH during the term of the contract (clause 2.1 of the Domination and Profit and Loss Transfer Agreement). Reference is made to the statutory provision in § 301 AktG in its respectively valid version with regard to the scope of the profit to be transferred under clause 2.1 of the Domination and Profit and Loss Transfer Agreement, subject to establishing or dissolving reserves under clause 2.2 and clause 2.3 of the Domination and Profit and Loss Transfer Agreement. Based on the current version of § 301 AktG, that profit must be transferred which would arise as annual profit without the transfer, as reduced by any loss carry forward from the previous year and by the amount which must be allocated to the statutory reserve under § 300 AktG, Art. 61 SE Regulation and the amount which is blocked from distribution under § 268 para. 8 HGB, Art. 61 SE Regulation.

The amount which must be allocated to the statutory reserve is assessed in accordance with § 300 no. 1 AktG, Art. 61 SE Regulation and depends on the amount of the share capital, the annual profit and the amount already allocated to the statutory reserve. At the present time, the statutory reserve of MAN SE has been established in the full amount. The allocation of additional amounts under § 300 no. 1 AktG, Art. 61 SE Regulation is not required when the statutory reserve has been fully established.

The block on distribution pursuant to § 268 para. 8 sentence 1 HGB, Art. 61 SE Regulation applies if intangible assets created by the company itself are capitalized as the fixed assets in the balance sheet (§ 248 para. 2 sentence 1 HGB, Art. 61 SE Regulation). In this event, profits can only be distributed to the extent that freely available reserves plus a profit carry forward and minus any loss carry forward remain after the distribution in an amount which corresponds at least to the total capitalized amounts minus the deferred tax liabilities established for this purpose. If deferred tax assets are capitalized in the balance sheet (§ 274 para. 1 sentence 2 HGB, Art. 61 SE Regulation), the block on distribution exists to the extent that these deferred tax assets exceed the deferred tax liabilities (§ 268 para. 8 sentence 2 HGB, Art. 61 SE Regulation). Furthermore, the block on distribution applies in the case of assets which cannot be accessed by any creditor and which serve exclusively to fulfill pension obligations or comparable long-term due obligations (§ 246 para. 2 sentence 2 HGB, Art. 61 SE Regulation). In this event, the block on distribution exists pursuant to § 268 para. 8 sentence 3 HGB, Art. 61 SE Regulation in the amount of the difference between the total of the present value (*Zeitwerte*) for these assets shown in the balance sheet minus the deferred tax liabilities established therefor and the procurement costs of these assets. The term "freely available reserves" includes both profit reserves as well as

capital reserves. Profit reserves which can be distributed without any statutory provisions or provisions in the articles of association withstanding such distribution as well as the freely available capital reserve under § 272 para. 2 no. 4 HGB, Art. 61 SE Regulation must be taken into account accordingly when determining the maximum amount that can be distributed. The block on distribution above all serves to protect creditors. Its purpose is to ensure that no higher distributions of profits are permissible beyond those which would be possible without capitalizing the line items designated in § 268 para. 8 HGB, Art. 61 SE Regulation.

The amount to be transferred as profit under clause 2.1 of the Domination and Profit and Loss Transfer Agreement is reduced under clause 2.2 of the Domination and Profit and Loss Transfer Agreement if MAN SE, with the approval of Truck & Bus GmbH, allocates amounts from the annual profit without the transfer of profit to other profit reserves (§ 272 para. 3 sentence 2 HGB, Art. 61 SE Regulation). An allocation to these other profit reserves, however, is only permissible under tax law in the context of the recognition as a consolidated tax group for income tax purposes (see section C.1.1.2) to the extent that there is economic justification for this under a reasonable commercial assessment (§ 14 para. 1 sentence 1 no. 4 KStG). Clause 2.2 of the Domination and Profit and Loss Transfer Agreement takes this standard into account.

Truck & Bus GmbH can demand (in writing) under clause 2.3 sentence 1 of the Domination and Profit and Loss Transfer Agreement that other profit reserves established during the term of the Domination and Profit and Loss Transfer Agreement (§ 272 para. 3 sentence 2 HGB, Art. 61 SE Regulation) are again dissolved and transferred as profit (§ 301 sentence 2 AktG) or are used to offset any annual loss (§ 302 para. 1 AktG).

Clause 2.3 sentence 2 of the Domination and Profit and Loss Transfer Agreement provides that other reserves or a profit carry forward resulting from the time prior to the beginning of the Domination and Profit and Loss Transfer Agreement cannot be transferred or used to offset any annual loss. This provision corresponds with the requirements of § 301 AktG and the decisions of the highest courts on the use of reserves in the context of a domination and profit and loss transfer agreement. The term "other reserves" includes all reserves under § 272 HGB, Art. 61 SE Regulation, except for the other profit reserves established during the term of the contract. Therefore, the statutory reserve, reserves in accordance with the articles of association as well as the capital reserves are excluded from transfer without regard to the point in time when they were established. Furthermore, the other profit reserves within the meaning of § 272 para. 3 sentence 2 HGB, Art. 61 SE Regulation that have been established in the time prior to the beginning of the Domination and Profit and Loss Transfer Agreement are excluded from transfer.

The obligation to transfer profit applies for the first time for the entire profit in the fiscal year beginning on 1 January 2014 or a subsequent fiscal year in which the Domination and Profit and Loss Transfer Agreement takes effect pursuant to clause 6.1 sentence 2 (clause 2.4 sentence 1 of the Domination and Profit and Loss Transfer Agreement).

The Domination and Profit and Loss Transfer Agreement will take effect upon registration in the commercial register of MAN SE after approval by the general shareholders' meeting of MAN SE and the shareholders' meeting of Truck & Bus

GmbH (§ 294 para. 2 AktG, clause 6.1 of the Domination and Profit and Loss Transfer Agreement). The obligation to transfer profit under clause 2 of the Domination and Profit and Loss Transfer Agreement, however, takes effect pursuant to clause 2.4 at the earliest for the fiscal year 2014 without regard to whether the Domination and Profit and Loss Transfer Agreement is already registered in the commercial register of MAN SE in the fiscal year 2013 and otherwise generally takes effect. The profit for the fiscal year 2013, therefore, is not included in the obligation to transfer profit. If the Domination and Profit and Loss Transfer Agreement takes effect in the fiscal year 2014 as a result of registration in the commercial register of MAN SE, the obligation to transfer profit applies for the entire profit in the fiscal year 2014. If the registration and therefore the coming into effect of the Domination and Profit and Loss Transfer Agreement take place in a subsequent year after the fiscal year 2014, the obligation to transfer profit applies for the first time for the entire profit for this subsequent fiscal year.

The claim of Truck & Bus GmbH for transfer of profit is due at the end of the last day of a fiscal year of MAN SE for which the respective claim exists. The claim must be fulfilled within four weeks after the assessment of the annual financial statements of MAN SE for the relevant fiscal year. Interest in the respective statutory amount is owed for the period of time between the due date and actually fulfilling the claim for transfer of profit, i.e. in the amount of the statutory rate of interest that applies between commercial parties (currently 5% annually, § 352 para. 1 sentence 1 HGB). This provision corresponds with the statutory requirements and the requirements under the case law of the highest courts.

Claims resulting from any default in payment are not affected under clause 2.4 of the Domination and Profit and Loss Transfer Agreement. The relevant claims accordingly exist in accordance with the statutory provisions; especially the legally established default interest rate applies.

### **2.1.3 Assumption of losses (clause 3 of the Domination and Profit and Loss Transfer Agreement)**

Clause 3.1 of the Domination and Profit and Loss Transfer Agreement regulates the obligation of Truck & Bus GmbH to assume the losses of MAN SE pursuant to § 302 AktG in its respectively valid version. This means that Truck & Bus GmbH must compensate for every annual loss that "otherwise" arises during the term of the contract, i.e. if there were no obligation to cover the loss. The obligation to compensate for loss does not exist to the extent that the annual loss is offset by amounts being withdrawn from the other profit reserves (§ 272 para. 3 sentence 2 HGB, Art. 61 SE Regulation) which have been allocated to the profit reserves during the term of the Domination and Profit and Loss Transfer Agreement.

The obligation to compensate for losses assures that the accounted equity capital of MAN SE at the time the contract takes effect is not reduced during the term of the contract. The duty to assume losses serves to secure the financial interests of MAN SE and of the MAN Shareholders and the creditors of MAN SE during the existence of the Domination and Profit and Loss Transfer Agreement.

The obligation to assume the losses applies for the first time under clause 3.2 of the Domination and Profit and Loss Transfer Agreement for the entire fiscal year in which the Domination and Profit and Loss Transfer Agreement takes effect after

registration in the commercial register of MAN SE (see on this point, clause 6.1 sentence 2 of the Domination and Profit and Loss Transfer Agreement). If the Domination and Profit and Loss Transfer Agreement is registered prior to 31 December 2013, the obligation exists for any loss in the entire fiscal year 2013. The obligation to assume losses is due in each case at the end of the last day of a fiscal year of MAN SE. The obligation must be fulfilled within four weeks after the assessment of the annual financial statements of MAN SE for the relevant fiscal year. Interest in the respective statutory amount is owed for the period between the due date and actually fulfilling the claim to compensate for losses, i.e. in the amount of the statutory interest rate applicable between commercial parties (currently 5% annually, § 352 para. 1 sentence 1 HGB). This provision corresponds with the statutory requirements and the requirements under the case law of the highest courts.

Under clause 3.2 of the Domination and Profit and Loss Transfer Agreement, claims resulting from any default in payment are not affected. The relevant claims accordingly exist in accordance with the statutory provisions; especially the legally established default interest rate applies.

**2.1.4 Guaranteed Dividend and Recurring Compensation Payment (clause 4 of the Domination and Profit and Loss Transfer Agreement)**

A duty to compensate the outside MAN Shareholders comes into existence under § 304 para. 1 AktG when the Domination and Profit and Loss Transfer Agreement takes effect. In order to fulfill this duty of compensation, Truck & Bus GmbH undertakes towards the outside MAN Shareholders to pay a guaranteed dividend (the "**Guaranteed Dividend**") or a recurring compensation (the "**Recurring Compensation Payment**"; the Guaranteed Dividend and the Recurring Compensation are together referred to as the "**Recurring Compensation**"). This duty to pay the Recurring Compensation in the form of the obligation to pay a Guaranteed Dividend (see on this point also section C.2.1.4(i)) exists for the period of domination (i.e. the obligation of MAN SE to submit the company to the management control of Truck & Bus GmbH as the controlling company) without an obligation to transfer profit, i.e. for the fiscal year 2013 if the Domination and Profit and Loss Transfer Agreement is registered in 2013. This duty to pay the Recurring Compensation exists in the form of the obligation to pay the Recurring Compensation which replaces the obligation to pay a Guaranteed Dividend (see on this point, section C.2.1.4(ii)) for the fiscal years in which the obligation to transfer profit exists in addition to the domination.

(i) **Guaranteed Dividend (clause 4.1 of the Domination and Profit and Loss Transfer Agreement)**

After the obligation of MAN SE to submit the management control of the company to Truck & Bus GmbH as the controlling company takes effect, the actions of the corporate bodies of MAN SE are governed also by the instructions issued by Truck & Bus GmbH in addition to the interests of the company, even if these instructions prove to be harmful to MAN SE. As compensation for the obligation to submit the management control of the company to Truck & Bus GmbH as the controlling company and act in accordance with the instructions of Truck & Bus GmbH, Truck & Bus GmbH undertakes in clause 4.1 of the Domination and Profit and Loss Transfer

Agreement to pay a reasonable Guaranteed Dividend to the outside MAN Shareholders. Truck & Bus GmbH guarantees in this regard the payment of a certain annual share in the profit by MAN SE to the outside MAN Shareholders for the fiscal year 2013. This Guaranteed Dividend is granted if the Domination and Profit and Loss Transfer Agreement takes effect in the year 2013. To the extent that the dividend paid by MAN SE for the fiscal year 2013 (including any payments on account) for each MAN Share falls short of the Guaranteed Dividend, Truck & Bus GmbH will pay to each outside MAN Shareholder the corresponding difference for each MAN Share. Any required payment of the difference is due on the first banking day after the ordinary general shareholders' meeting of MAN SE for the fiscal year 2013.

(ii) Recurring Compensation Payment (clause 4.2 of the Domination and Profit and Loss Transfer Agreement)

After the obligation to transfer profit under clause 2 of the Domination and Profit and Loss Transfer Agreement takes effect, i.e. for the first time for the fiscal year of MAN SE beginning on 1 January 2014 or any subsequent fiscal year in which the Domination and Profit and Loss Transfer Agreement is registered in the commercial register of MAN SE, MAN SE will generally no longer show any balance sheet profit for the corresponding fiscal year and subsequent fiscal years. The right of the MAN Shareholders to decide about the use of any balance sheet profit normally ceases to exist as of that point in time. As compensation for the loss of the claim for a dividend, the obligation of Truck & Bus GmbH to pay a reasonable Recurring Compensation Payment is granted to the outside MAN Shareholders as established under clause 4.2 of the Domination and Profit and Loss Transfer Agreement. This Recurring Compensation Payment exists as of the fiscal year of MAN for which the claim of Truck & Bus GmbH under clause 2 for the transfer of profit takes effect for the duration of the Domination and Profit and Loss Transfer Agreement. The Recurring Compensation Payment is due on the first banking day after the ordinary general shareholders' meeting of MAN SE for the previous fiscal year, but at the latest eight months after expiration of that fiscal year of MAN SE.

(iii) Type and amount of the Recurring Compensation

The following applies to the reasonable, respective Recurring Compensation:

(a) Legal bases

A domination and profit and loss transfer agreement must provide for a reasonable recurring compensation for the outside shareholders of the controlled company, in this case MAN SE (§ 304 para. 1 sentence 1 and sentence 2 AktG). If there is only a domination agreement, such agreement must guarantee a reasonable guaranteed dividend to the outside shareholders (§ 304 para. 1 sentence 2 AktG). The recurring compensation must consist of a recurring payment of money to the outside shareholders for each share (§ 304 para. 1 sentence 1 and sentence 2 AktG). The Stock

Corporations Act differentiates between two types of recurring compensation (see below in section C.2.1.4(iii)(b) and C.2.1.4(iii)(c)).

(b) Fixed recurring compensation

Annually recurring payments of a fixed amount of money can be warranted as recurring compensation in any event. If the domination and profit and loss transfer agreement provides for a fixed recurring compensation, the guaranteed dividend or the recurring compensation payment corresponds to the amount which could most likely be allocated to the individual share as an average share in the profits, i.e. as profit able to be distributed under commercial law, based on the previous earnings position of the controlled company and its future prospects for earnings, taking into account reasonable depreciation and value adjustments, but without establishing other profit reserves (§ 304 para. 2 sentence 1 AktG).

(c) Variable recurring compensation

If the other contracting party, i.e. the controlling company, is a European Company, a stock corporation or a limited partnership based on shares, recurring compensation can alternatively be promised which is variable and is based on the profit of the other contracting party. The variable recurring compensation must correspond to the amount which accrues to shares of the controlling company as a share in the profit upon establishing a reasonable conversion ratio (§ 304 para. 2 sentences 2 and 3 AktG).

Even if a variable recurring compensation was legally possible in general in the specific case, the domination and profit and loss transfer agreement does not have to provide for a fixed recurring compensation and in the alternative an additional variable recurring compensation. The contracting parties can instead decide for one or the other type of recurring compensation in this situation.

(d) Reasons for determining a fixed Recurring Compensation

The Domination and Profit and Loss Transfer Agreement between Truck & Bus GmbH and MAN SE provides for a fixed annual Recurring Compensation. The reasons for this are primarily as follows:

Truck & Bus GmbH is neither a stock corporation nor a European Company nor a limited partnership based on shares but is instead a company with limited liability. A variable recurring compensation based on the profit of Truck & Bus GmbH, therefore, is legally not possible without first converting the company into a stock corporation, a European Company or a limited partnership based on shares.

A variable recurring compensation based on the profit of the shareholder of Truck & Bus GmbH, Volkswagen Aktiengesellschaft as the parent company of the group, is also not possible in the present case. Such a determination of the recurring compensation is

not expressly contemplated under the Stock Corporations Act. Thus, it is doubtful whether a variable recurring compensation based on the profit of Volkswagen Aktiengesellschaft would even be legally permissible. The amount of the recurring compensation would also then, in the final analysis, depend on the decisions of the shareholders of Volkswagen Aktiengesellschaft about the use of profits. The outside MAN Shareholders, however, have no influence whatsoever on the decisions of the Volkswagen shareholders about the use of profits and would, therefore, have absolutely no influence on the amount of their respective recurring compensation.

Aside from this, the determination of a variable guaranteed dividend based on the profits of Volkswagen Aktiengesellschaft or a variable recurring compensation based on the profits of Volkswagen Aktiengesellschaft would have required a valuation both of Volkswagen Aktiengesellschaft as well as of all enterprises affiliated with Volkswagen Aktiengesellschaft. This would have led to a substantial additional expense and a substantial delay in preparing the Domination and Profit and Loss Transfer Agreement.

- (e) Determination of the Recurring Compensation as gross payment, amount of the Recurring Compensation

Pursuant to clause 4 of the Domination and Profit and Loss Transfer Agreement, Truck & Bus GmbH grants to the outside MAN Shareholders an annual Guaranteed Dividend for the fiscal year 2013 if the Domination and Profit and Loss Transfer Agreement already takes effect in the fiscal year 2013 and an annual Recurring Compensation Payment for the following fiscal years in which the Domination and Profit and Loss Transfer Agreement is in effect. The amount as well as the determination of the reasonable Guaranteed Dividend and Recurring Compensation Payment and the reasons for them are explained in more detail below as well as in section C.3.2.

- (l) Amount of the Recurring Compensation

The Domination and Profit and Loss Transfer Agreement provides for a Guaranteed Dividend in the amount of EUR 3.07 (corresponding to the amount of EUR 3.30 before current corporate income tax and the solidarity surcharge) per MAN Share for the outside MAN Shareholders for the fiscal year 2013 if the Domination and Profit and Loss Transfer Agreement already takes effect in the fiscal year 2013. To the extent that the dividend distributed by MAN SE to the outside MAN Shareholders for the fiscal year 2013 falls short of the amount of the Guaranteed Dividend, Truck & Bus GmbH will pay the difference between the actual dividend distributed for the fiscal year 2013 and the promised amount of the Guaranteed Dividend to the outside MAN Shareholders.



Furthermore, the Domination and Profit and Loss Transfer Agreement provides for payment of an annual Recurring Compensation Payment in the amount of EUR 3.07 (corresponding to an amount of EUR 3.30 before current corporate income tax and the solidarity surcharge) per MAN Share for the outside MAN Shareholders after the obligation to transfer profit under clause 2 of the Domination and Profit and Loss Transfer Agreement takes effect, i.e. for the first time for the fiscal year of MAN beginning on 1 January 2014 or starting with the subsequent fiscal year in which the Domination and Profit and Loss Transfer Agreement takes effect. This amount will be due in full annually because no balance sheet profit will be shown any longer after the obligation to transfer profit takes effect, and the right of the MAN Shareholders to decide about the use of the balance sheet profit will no longer exist.

The contracting parties consider equal treatment of the MAN Common Shares and the MAN Preferred Shares to be appropriate on the basis of the determinations of the Valuation Experts in the present case (see for further detail, section F.II. of the Valuation Report).

(II) Adjustment mechanism for the Recurring Compensation

When determining the Recurring Compensation, the contracting parties took into account the case law of the Federal Supreme Court of Justice (*Bundesgerichtshof*, "BGH") (order of 21 July 2003, case no. II ZB 17/01 – "Ytong"). The BGH decided in this order that the outside shareholders must be granted a recurring compensation for purposes of § 304 para. 1 sentence 1 and sentence 2, para. 2 sentence 1 AktG which corresponds to the gross share in the profit per share which will most likely be able to be distributed when viewed at the starting point and from which the burden of corporate income tax in the respective statutory amount must be deducted. This shall ensure that a decrease in the corporate income tax rate compared to the rate at the time of the effective date of the valuation will not lead to an unjustified benefit of the other contracting party at the expense of the outside shareholders. On the other hand, the situation under which the provision on the recurring compensation leads to an unjustified benefit for the outside shareholders at the expense of the other contracting party in the case of an increase in tax is also supposed to be avoided. These principles are also applicable accordingly to the solidarity surcharge levied as a surtax on the corporate income tax.

Based on the case law of the BGH described above, an average share in the gross profit per MAN Share that will

most likely arise must be established as a fixed Recurring Compensation in the form of the Guaranteed Dividend or the Recurring Compensation Payment, and the corporate income tax and the solidarity surcharge must be deducted at the respective rates that are applicable for the fiscal year for which a Recurring Compensation is paid. This ensures that any change in the corporate income tax rate or the solidarity surcharge will result in a corresponding adjustment of the net Recurring Compensation. The provision made in clause 4.3 of the Domination and Profit and Loss Transfer Agreement accordingly contains a variable provision with regard to corporate income tax and the solidarity surcharge.

The profits of MAN SE are only partially subject to German corporate income tax. Therefore, the variable aspect relates only to those parts of the Recurring Compensation in the amount of EUR 1.43 contained in the gross amount which result from profits subject to German corporate income tax based on the enterprise valuation.

Based on the circumstances at the time of signing the Domination and Profit and Loss Transfer Agreement and this Contract Report, a total of EUR 0.23 per MAN Share must be deducted from the Recurring Compensation in the form of the Guaranteed Dividend or in the form of the Recurring Compensation Payment which corresponds to the 15.0% corporate income tax plus 5.5% solidarity surcharge with which the profit in the amount of EUR 1.43 per MAN Share is burdened with German corporate income tax. Together with the other proportionate Recurring Compensation of EUR 1.87 per MAN Share from profits which are not burdened with German corporate income tax, a Guaranteed Dividend or a Recurring Compensation Payment in the net amount of EUR 3.07 per MAN Share for each full fiscal year results based on the circumstances existing at the time of signing the Domination and Profit and Loss Transfer Agreement and this Contract Report.

The mechanism for the potential adjustment of the Recurring Compensation in the form of a Guaranteed Dividend or the Recurring Compensation Payment in the case of future changes of the tax rate will be explained using the following example: If the corporate income tax, for example, decreases by one percentage point (from 15.0% to 14.0%), the provision in clause 4.3 of the Domination and Profit and Loss Transfer Agreement has the effect that the deduction of currently EUR 0.23 for corporate income tax and the solidarity surcharge will be reduced by an amount of around EUR 0.02 (1.0% plus 5.5% solidarity surcharge and together 1.055% of the amount of the Recurring Compensation of EUR 1.43 resulting from income subject to corporate income

tax). This increases the net Recurring Compensation which each outside MAN shareholder receives in the form of the Guaranteed Dividend or in the form of the Recurring Compensation Payment in the amount of EUR 3.07 by an amount of EUR 0.02 to EUR 3.09. On the other hand, an increase in the corporate income tax by one percentage point would lead to a reduction of the net compensation from EUR 3.07 to EUR 3.05.

(iv) Additional explanations on clause 4 of the Domination and Profit and Loss Transfer Agreement

The Guaranteed Dividend is granted for the entire fiscal year 2013 of MAN SE if the Domination and Profit and Loss Transfer Agreement takes effect in the year 2013 (clause 4.4 sentence 1 of the Domination and Profit and Loss Transfer Agreement). The Guaranteed Dividend applies only for the fiscal year 2013.

The Recurring Compensation Payment is granted for the first time for the entire fiscal year of MAN SE for which the obligation to transfer profit to Truck & Bus GmbH takes effect pursuant to clause 2 of the Domination and Profit and Loss Transfer Agreement (clause 4.4 sentence 2 of the Domination and Profit and Loss Transfer Agreement). This is the case for the first time under clause 2.4 of the Domination and Profit and Loss Transfer Agreement for the entire profit for the fiscal year of MAN beginning on 1 January 2014 or a subsequent fiscal year of MAN SE in which the Domination and Profit and Loss Transfer Agreement takes effect. If the Domination and Profit and Loss Transfer Agreement takes effect prior to 31 December 2013, the obligation to transfer profit exists starting 1 January 2014 for the fiscal year 2014. If the Domination and Profit and Loss Transfer Agreement takes effect during the fiscal year 2014, the obligation to transfer profit also applies starting with the fiscal year 2014. If the Domination and Profit and Loss Transfer Agreement takes effect only in a subsequent fiscal year, the obligation to transfer profit applies only as of the start of the relevant, subsequent fiscal year.

After the part of the Domination and Profit and Loss Transfer Agreement regarding the transfer of profit takes effect, the outside MAN Shareholders have no claim for a dividend unless a balance sheet profit exists resulting from reserves or a profit carry forward from the time prior to the beginning of the Domination and Profit and Loss Transfer Agreement and the general shareholders' meeting resolves a distribution of such balance sheet profit.

If the Domination and Profit and Loss Transfer Agreement ends during the course of a fiscal year of MAN or a Recurring Compensation must be paid for a partial fiscal year that lasts for less than twelve months, the Recurring Compensation for this fiscal year is reduced proportionately according to time (clause 4.5 of the Domination and Profit and Loss Transfer Agreement). This takes into account the circumstance that the fixed amount of the Recurring Compensation is assessed on the basis of a period of twelve months, i.e. a full fiscal year.

Clause 4.1 sentence 3 of the Domination and Profit and Loss Transfer Agreement regulates the due date for the Guaranteed Dividend. The Guaranteed Dividend to be paid by Truck & Bus GmbH is due in each case on the first banking day after the ordinary general shareholders' meeting of MAN SE for the respectively previous fiscal year.

Clause 4.2 sentence 2 of the Domination and Profit and Loss Transfer Agreement regulates the due date for the Recurring Compensation Payment. The Recurring Compensation Payment to be made by Truck & Bus GmbH is due on the first banking day after the ordinary general shareholders' meeting of MAN SE for the respectively previous fiscal year, but at the latest eight months after the end of the fiscal year.

Clause 4.6 of the Domination and Profit and Loss Transfer Agreement regulates the adjustment of the Recurring Compensation in the case of a capital increase using corporate funds. If new MAN Shares are issued on the occasion of a capital increase using corporate funds, the Recurring Compensation per MAN Share is reduced to such an extent that the total amount of the Recurring Compensation remains the same. The change in the number of MAN Shares held by an outside MAN Shareholder resulting from a capital increase using corporate funds, therefore, does not affect the total amount of the Recurring Compensation to which this MAN shareholder is entitled. This is appropriate because a capital increase using corporate funds, i.e. the conversion of profit or certain capital reserves into share capital, does not influence the value and the earnings power of the company, and because the new MAN Shares resulting from the capital increase using corporate funds are issued to the MAN Shareholders without consideration. This also corresponds to the statutory provision in § 216 para. 3 AktG under which the economic content of contractual relationships of the company to third parties is not affected by a capital increase using corporate funds. If no new MAN Shares are issued in the context of the capital increase using corporate funds, an adjustment of the Recurring Compensation is not required.

If the share capital of MAN SE is increased by issuing new MAN Shares in exchange for cash contributions or contributions in kind with a subscription right being granted to the outside MAN Shareholders, the claim of the outside MAN Shareholders to the Guaranteed Dividend or the Recurring Compensation Payment also extends to the newly created MAN Shares resulting from the capital increase. Clause 4.6 of the Domination and Profit and Loss Transfer Agreement makes sure that not only the claims to Recurring Compensation of the previous outside MAN Shareholders remain the same but that also new outside MAN Shareholders are treated equally in the case of such increases in the share capital of MAN SE.

Clause 4.7 of the Domination and Profit and Loss Transfer Agreement serves to protect the non-discriminatory treatment of all outside MAN Shareholders. If an MAN Shareholder claims that the offered Recurring Compensation is set too low, the shareholder can request from the court in special court proceedings (*Spruchverfahren*) under §§ 1 et seq. German Act on Special Court Proceedings (*Spruchverfahrensgesetz*, "**SpruchG**"),

which also applies in the case of domination and profit and loss transfer agreements with a controlled European Company, that the court determines the reasonable guaranteed dividend or the reasonable recurring compensation payment. The provision in clause 4.7 of the Domination and Profit and Loss Transfer Agreement grants to all outside MAN Shareholders a claim for an increase in the Guaranteed Dividend or the Recurring Compensation Payment in the case of any special court proceedings if the court sets a higher Guaranteed Dividend or a higher Recurring Compensation Payment in an order which can no longer be appealed (*rechtskräftig*). This also applies if Truck & Bus GmbH undertakes towards an MAN shareholder to pay a higher Guaranteed Dividend or a higher Recurring Compensation Payment in a settlement concluded in order to avoid or end proceedings under §§ 1 et seq. SpruchG. These claims also exist for those MAN Shareholders who have accepted the compensation offer under clause 5 of the Domination and Profit and Loss Transfer Agreement in the meantime (see below on clause 5.5 of the Domination and Profit and Loss Transfer Agreement). These claims also exist without regard to whether the MAN shareholder was involved in any special court proceedings (see § 13 sentence 2 SpruchG).

#### 2.1.5 Compensation (clause 5 of the Domination and Profit and Loss Transfer Agreement)

(i) Type of compensation

In addition to the obligation to pay a Recurring Compensation in the form of the Guaranteed Dividend or the Recurring Compensation Payment under § 304 AktG, the Domination and Profit and Loss Transfer Agreement must contain an obligation of Truck & Bus GmbH to purchase the MAN Shares upon request of an outside MAN Shareholder in exchange for the reasonable compensation determined in the Domination and Profit and Loss Transfer Agreement (§ 305 para. 1 AktG). Truck & Bus GmbH offers to the outside MAN Shareholders who would like to leave the company due to the Domination and Profit and Loss Transfer Agreement a cash compensation (the "**Compensation**") within the meaning of § 305 para. 2 no. 3 AktG in the amount of EUR 80.89 per MAN Common Share and in the amount of EUR 80.89 per MAN Preferred Share in accordance with § 305 para. 1 AktG (clause 5.1 of the Domination and Profit and Loss Transfer Agreement).

(ii) Alternative types of compensation compared to cash compensation

There were primarily the following reasons for granting a cash compensation:

Truck & Bus GmbH is neither a stock corporation nor a European Company nor a limited partnership based on shares so that § 305 para. 2 no. 1 AktG and § 305 para. 2 no. 2 AktG do not apply. Accordingly, a cash compensation must be granted pursuant to § 305 para. 2 no. 3 AktG. It is not possible for the parties to provide for compensation in shares of Truck & Bus GmbH, Volkswagen Aktiengesellschaft or any other company controlling Truck & Bus GmbH.

The Compensation would also be a cash compensation if § 305 para. 2 no. 2 AktG were applicable to a GmbH as the other contracting party, although the language in these provisions is limited to a stock corporation, a European Company and a limited partnership based on shares. § 305 para. 2 no. 2 AktG entitles the contracting parties to freely choose between a compensation in shares and a cash compensation. The parties would have exercised this right of election in favor of a cash compensation. However, the parties are not convinced that § 305 para. 2 no. 2 AktG applies by analogy to companies in the form of a GmbH because § 305 para. 2 no. 3 AktG covers all cases which do not fulfill the elements of § 305 para. 2 no. 1 or 2 AktG. § 305 para. 2 no. 3 AktG provides exclusively for a cash compensation. The application of § 305 para. 2 no. 2 AktG and a compensation in shares of a controlling company or a company which has a majority participation in the other contracting party would accordingly only be conceivable after converting Truck & Bus GmbH into a stock corporation, a European Company or a limited partnership based on shares. However, such a conversion would have resulted in additional effort and delay. Furthermore, there is no legal obligation to convert a company in connection with the conclusion of a domination and profit and loss transfer agreement. Finally, a valuation of this company would have been required for compensation in shares of a controlling company or a company with a majority participation in the other contracting party. This would have led to a substantial additional effort in the preparation and to a further delay in concluding the Domination and Profit and Loss Transfer Agreement.

As a result of the above reasons, the Domination and Profit and Loss Transfer Agreement provides for an offer of a cash compensation.

(iii) Amount of the Compensation

Truck & Bus GmbH is offering a cash compensation within the meaning of § 305 para. 2 no. 3 AktG in an amount of EUR 80.89 per MAN Common Share and in the amount of EUR 80.89 per MAN Preferred Share to the outside MAN Shareholders who would like to leave the company due to the Domination and Profit and Loss Transfer Agreement in accordance with § 305 para. 1 AktG (clause 5.1 of the Domination and Profit and Loss Transfer Agreement). The details about the amount and determination of the reasonable cash compensation are explained in section C.3.3.

(iv) Other explanations on clause 5 of the Domination and Profit and Loss Transfer Agreement

The obligation of Truck & Bus GmbH to purchase the MAN Common Shares and MAN Preferred Shares of the outside MAN Shareholders in exchange for the Compensation is limited by time according to clause 5.2 of the Domination and Profit and Loss Transfer Agreement. The deadline ends two months after the date on which the registration of the existence of the Domination and Profit and Loss Transfer Agreement in the commercial register of MAN SE is publicly announced pursuant to § 10 HGB. The time limit on the offer for the Compensation is common and is permitted under § 305 para. 4 AktG. The provision of a two month deadline (clause 5.2 of

the Domination and Profit and Loss Transfer Agreement) corresponds to the statutory provision in § 305 para. 4 sentence 2 AktG.

Under § 4 para. 1 no. 1 SpruchG, outside MAN Shareholders can file a request for a court decision about the Compensation to be granted within three months after the date on which the registration of the existence of the Domination and Profit and Loss Transfer Agreement in the commercial register of MAN SE has been publicly announced pursuant to § 10 HGB. § 305 para. 4 sentence 3 AktG provides that the deadline for accepting the offer for transfer of the shares to the controlling company in exchange for payment of a reasonable compensation ends in the case of an application to the court to determine the recurring compensation or the compensation at the earliest two days after the date on which the decision about the most recently decided request of a shareholder has been published in the Federal Gazette (*Bundesanzeiger*). Clause 5.2 of the Domination and Profit and Loss Transfer Agreement clarifies that this statutory provision applies without any restriction. If special court proceedings are initiated, the deadline for accepting the offer ends accordingly two months after the date on which the decision about the most recently decided request of an MAN shareholder has been published in the Federal Gazette.

The declaration of the outside MAN Shareholders that they want to accept the offer for the Compensation from Truck & Bus GmbH must be received within the deadline that is determined as explained above. After expiration of the deadline, an acceptance of the offer for the Compensation is no longer possible.

The outside MAN Shareholders can decide to leave the company after registration of the existence of the Domination and Profit and Loss Transfer Agreement in the commercial register and receive the offered Compensation or they can instead decide to remain MAN Shareholders and receive the Guaranteed Dividend and the Recurring Compensation Payment offered in clause 4 of the Domination and Profit and Loss Transfer Agreement.

Accepting the offer for the Compensation is free of costs for the outside MAN Shareholders under clause 5.3 of the Domination and Profit and Loss Transfer Agreement. This assures that the outside MAN Shareholders are not burdened with fees, commissions or other processing fees of the banks and that they receive the Compensation without any reduction. Taxes which accrue on any capital gain for an outside MAN Shareholder are not affected by this. The respective MAN Shareholder must bear these taxes himself. Reference is made to section C.2.3.3 with regard to the tax effects for the outside MAN Shareholders.

Clause 5.4 of the Domination and Profit and Loss Transfer Agreement takes into account the principles already explained above with regard to clause 4.6 of the Domination and Profit and Loss Transfer Agreement in the event of an increase of the share capital using corporate funds or for contributions. Reference is made to the corresponding explanations (above, section C.2.1.4(iv)).

Clause 5.5 of the Domination and Profit and Loss Transfer Agreement, in turn, serves the purpose of protecting and treating all outside MAN Shareholders equally. The provision grants to all outside MAN Shareholders a claim for an additional payment to the Compensation in the event of any special court proceedings under §§ 1 et seq. SpruchG if the court sets a higher compensation in an order which can no longer be appealed or if Truck & Bus GmbH undertakes to pay a higher compensation to an outside MAN Shareholder in a settlement concluded in order to avoid or end proceedings under the Act on Special Court Proceedings. This claim also exists if the outside MAN Shareholder has already received the Compensation without regard to whether the outside MAN Shareholder participated in any special court proceedings.

The Domination and Profit and Loss Transfer Agreement can be terminated by either party in accordance with clauses 6.2 and 6.3. If the termination occurs at a time when the deadline for accepting the offer for the Compensation under clause 5.2 of the Domination and Profit and Loss Transfer Agreement has already expired, every outside MAN Shareholder at that time is granted the right under clause 5.6 of the Domination and Profit and Loss Transfer Agreement to sell the MAN Shares held by that shareholder at the time of termination to Truck & Bus GmbH for an amount of EUR 80.89. This amount corresponds to the amount of the Compensation set in clause 5.1 of the Domination and Profit and Loss Transfer Agreement. If this amount of the Compensation is increased by a decision in special court proceedings which can no longer be appealed or in a settlement concluded in order to avoid or end special court proceedings, the outside MAN Shareholders are entitled to exercise the right to sell for the corresponding increased amount.

The outside MAN Shareholders who have initially decided not to accept the offer for the Compensation from Truck & Bus GmbH and to instead remain MAN Shareholders and receive the Recurring Compensation are granted additional protection with this right to sell. A statutory obligation for such a renewed offer to sell in the case of termination of a domination and profit and loss transfer agreement does not exist.

This renewed right to sell is also limited by time. It can be exercised within two months after the date on which the registration of the termination of the Domination and Profit and Loss Transfer Agreement in the commercial register of MAN SE has been publicly announced pursuant to § 10 HGB. The sale of MAN Shares under clause 5.6 of the Domination and Profit and Loss Transfer Agreement is also free of costs for the outside MAN Shareholders. The corresponding application of clause 5.4 of the Domination and Profit and Loss Transfer Agreement takes into account potential increases in the share capital of MAN SE using corporate funds or in exchange for contributions (see on this point above, section C.2.1.4(iv)).

The above-mentioned right to sell applies both in the case of a termination by Truck & Bus GmbH as well as in the case of termination by MAN SE. It should be noted that a regular notice of termination of the Domination and Profit and Loss Transfer Agreement during the fixed term of the contract is



precluded under clause 6.2 of the Domination and Profit and Loss Transfer Agreement (see on this point immediately below, section C.2.1.6(iii)).

Interest on the amount to be paid under clause 5.6 of the Domination and Profit and Loss Transfer Agreement is not provided by corresponding application of § 305 para. 3 sentence 3 AktG.

#### **2.1.6 Coming into effect and term of the contract (clause 6 of the Domination and Profit and Loss Transfer Agreement)**

##### **(i) Coming into effect**

In accordance with the statutory requirements for approval under § 293 AktG, Art. 52 para. 2 SE Regulation, clause 6.1 sentence 1 of the Domination and Profit and Loss Transfer Agreement provides that the Domination and Profit and Loss Transfer Agreement requires the consent of the shareholders' meeting of Truck & Bus GmbH as well as of the general shareholders' meeting of MAN SE in order to be valid. The shareholders' meeting of Truck & Bus GmbH is supposed to issue its approval for the Domination and Profit and Loss Transfer Agreement in a timely manner, but at the latest before the date of the ordinary general shareholders' meeting of MAN SE. The general shareholders' meeting of MAN SE is supposed to adopt the resolution about the consent to the Domination and Profit and Loss Transfer Agreement on 6 June 2013.

Due to the statutory provision in § 294 para. 2 AktG, it is also provided that the Domination and Profit and Loss Transfer Agreement only takes effect when it is registered in the commercial register at the registered office of MAN SE (Clause 6.1 sentence 2 of the Domination and Profit and Loss Transfer Agreement).

##### **(a) Coming into effect of the right of management control and the right to issue instructions under clause 1 of the Domination and Profit and Loss Transfer Agreement**

The right of management control and the right to issue instructions under clause 1 of the Domination and Profit and Loss Transfer Agreement applies when the Domination and Profit and Loss Transfer Agreement takes effect. This requires the approval of the general shareholders' meeting of MAN SE as well as the approval of the shareholders' meeting of Truck & Bus GmbH and takes effect when the Domination and Profit and Loss Transfer Agreement is subsequently registered in the commercial register of MAN SE.

##### **(b) Coming into effect of the obligation to transfer profit under clause 2 of the Domination and Profit and Loss Transfer Agreement**

The obligation to transfer profit under clause 2 of the Domination and Profit and Loss Transfer Agreement applies for the first time for the entire profit of the fiscal year of MAN SE beginning on 1 January 2014 or the subsequent fiscal year of MAN SE in which the Domination and Profit and Loss Transfer Agreement takes effect. If the Domination and Profit and Loss Transfer Agreement takes effect

as a result of registration in the commercial register of MAN SE in the fiscal year 2013 of MAN SE, the right of management control for Truck & Bus GmbH and its right to issue instructions under clause 1 of the Domination and Profit and Loss Transfer Agreement applies already as of the date of registration, while the obligation to transfer profit first applies for the fiscal year beginning on 1 January 2014. If the Domination and Profit and Loss Transfer Agreement takes effect only during the fiscal year 2014 or later, the obligation to transfer profit applies accordingly only as of the beginning of the fiscal year 2014 or the subsequent fiscal year in which the Domination and Profit and Loss Transfer Agreement takes effect.

- (c) Coming into effect of the obligation to assume losses under clause 3 of the Domination and Profit and Loss Transfer Agreement

Pursuant to clause 3.2 of the Domination and Profit and Loss Transfer Agreement, the obligation to assume losses applies for the first time for the entire fiscal year of MAN SE in which the Domination and Profit and Loss Transfer Agreement takes effect. This requires the approval of the general shareholders' meeting of MAN SE as well as the approval of the shareholders' meeting of Truck & Bus GmbH and the subsequent registration of the Domination and Profit and Loss Transfer Agreement in the commercial register of MAN SE. If the approval of the general shareholders' meeting of MAN SE and the shareholders' meeting of Truck & Bus GmbH as well as the registration of the Domination and Profit and Loss Transfer Agreement in the commercial register of MAN occur during the fiscal year 2013, the obligation to assume losses already exists for the entire fiscal year 2013 of MAN SE.

- (ii) Duration of the Domination and Profit and Loss Transfer Agreement, minimum term

The Domination and Profit and Loss Transfer Agreement is concluded for an indefinite period of time (clause 6.2 sentence 1 of the Domination and Profit and Loss Transfer Agreement). According to clause 6.2, the Domination and Profit and Loss Transfer Agreement has a fixed minimum term of five successive years as of the beginning of the fiscal year in which the obligation to transfer profit under clause 2 of the Domination and Profit and Loss Transfer Agreement takes effect. In the event that the Domination and Profit and Loss Transfer Agreement has been registered in the commercial register prior to 31 December 2014, the obligation to transfer profit under clause 2 of the Domination and Profit and Loss Transfer Agreement begins (if applicable, retroactively) on 1 January 2014. The contractual minimum term accordingly lasts until 31 December 2018. This fixed minimum term is required under § 14 para. 1 sentence 1 no. 3 KStG in order to be able to establish the consolidation group for purposes of corporate income tax and trade tax between Truck & Bus GmbH and MAN SE intended with the Domination and Profit and Loss Transfer Agreement.

(iii) Termination of the Domination and Profit and Loss Transfer Agreement

During the fixed minimum term of five consecutive years as of the beginning of the fiscal year in which the obligation to transfer profit under clause 2 of the Domination and Profit and Loss Transfer Agreement takes effect established in clause 6.2 of the Domination and Profit and Loss Transfer Agreement, the right to give regular notice of termination is excluded. The domination and profit and loss transfer agreement can accordingly be terminated for the first time by giving six months' notice as of the end of the last fiscal year of the minimum term and it can subsequently be terminated by regular notice of termination in accordance with this notice period in each case as of the end of a fiscal year (clause 6.2 of the Domination and Profit and Loss Transfer Agreement). The notice of termination must be given in writing (clause 6.4 of the Domination and Profit and Loss Transfer Agreement).

In accordance with clause 6.3 of the Domination and Profit and Loss Transfer Agreement, this provision does not affect the right of the contracting parties to terminate the Domination and Profit and Loss Transfer Agreement in the case of just cause (*wichtiger Grund*) without compliance with a notice period. The right of termination for just cause exists by force of law and cannot be excluded by contract. Just cause for termination exists if a continuation of the contractual relationship can no longer be expected of the party giving notice of termination after weighing all circumstances. For example, a deterioration in the financial or earning position of the controlled company can entitle the controlling company to give notice of termination if the risks for the controlling company are no longer acceptable and the controlling company is not responsible for this situation. The controlled company can, in turn, give notice of termination, for example, if the controlling company will most likely not be able to fulfill its obligations existing under the domination and profit and loss transfer agreement (assumption of losses, recurring compensation and compensation).

Pursuant to clause 6.3 sentence 3 of the Domination and Profit and Loss Transfer Agreement, both parties are especially entitled to give notice of termination for just cause if Truck & Bus GmbH no longer directly or indirectly holds the majority of the voting rights under the MAN Shares or if Truck & Bus GmbH has undertaken by contract to transfer the MAN Shares to a third party so that Truck & Bus GmbH will no longer directly or indirectly have the majority of the voting rights under the MAN Shares under the pending closing of the relevant contract which might still depend on external conditions (e.g. approval by a public authority). Furthermore, according to clause 6.3 sentence 3 of the Domination and Profit and Loss Transfer Agreement, notice of termination for just cause is also possible in the case of a merger, spin-off or liquidation of Truck & Bus GmbH or MAN SE.

The provision in clause 6.3 sentence 3 of the Domination and Profit and Loss Transfer Agreement must be seen in light of applicable tax law. The conclusion of a profit transfer agreement is necessary in order to be able to

establish the indented status of a consolidated tax group between Truck & Bus GmbH and MAN SE for purposes of corporate income tax and trade tax. The prerequisite for this status of a consolidated tax group for purposes of corporate income tax and trade tax, in addition to the minimum term of the contract under § 14 para. 1 sentence 1 no. 3 KStG is, among others, that MAN SE, as the controlled company, is financially integrated into Truck & Bus GmbH as the controlling company in such a manner that the controlling company has the majority of the voting rights in the controlled company. Furthermore, the profit and loss transfer agreement must actually be performed during its term. A notice of termination of the profit and loss transfer agreement prior to the expiration of the minimum term leads generally to the non-recognition of the status of a consolidated tax group from the very beginning for tax purposes in accordance with § 14 para. 1 sentence 1 no. 3 KStG. Only a notice of termination for just cause generally does not affect the status of a consolidated tax group for fiscal years that have already been completed if the notice of termination occurs within the minimum term of the profit and loss transfer agreement established under tax law to the extent that the just cause is recognized for tax purposes.

Tax law recognizes that the loss of the participation can generally constitute just cause within the meaning of § 14 para. 1 no. 3 KStG for early termination of a domination and profit and loss transfer agreement by the controlling company which does not affect the recognition of the status of a consolidated tax group. This applies accordingly for the stated instances of a merger, spin-off or liquidation of one of the two contracting parties. Clause 6.3 sentence 2 of the Domination and Profit and Loss Transfer Agreement is accordingly supposed to make it possible to give notice of termination for just cause under corporate law in the case of one of the instances of termination for just cause recognized under tax law. The provision in clause 6.3 sentence 2 of the Domination and Profit and Loss Transfer Agreement would be applicable, for example, in the event that Truck & Bus GmbH transfers its direct participation in MAN SE with the result that Truck & Bus GmbH no longer directly or indirectly holds the majority of the voting rights in MAN SE. Thus, Truck & Bus GmbH can trigger just cause for notice of termination of the Domination and Profit and Loss Transfer Agreement by transferring shares unless this constitutes an abuse of right.

In the case of a termination of the Domination and Profit and Loss Transfer Agreement, the statutory provision in § 303 AktG also applies. If a domination agreement or a profit and loss transfer agreement ends, the controlling company must provide security to the creditors of the controlled company if they make a corresponding request for this purpose to the controlling company within six months after the publication of the registration. This obligation exists under § 303 para. 1 and 2 AktG, however, only with regard to those creditors whose claims were established before the registration of the end of a domination or a profit and loss transfer agreement in the commercial register has been publically announced pursuant to § 10 HGB and if these creditors would not have a right for preferred satisfaction from an insolvency estate in the case of

insolvency proceedings which is established and publicly monitored for the protection of such preferred creditors under the law. The controlling company can issue a surety for the claim instead of posting security, whereby § 349 HGB concerning the exclusion of the defense of requiring that a complaint first be filed against the primary obligor does not apply in this situation (§ 303 para. 3 AktG).

If the Domination and Profit and Loss Transfer Agreement is terminated by one of the contracting parties after expiration of the deadline for the Compensation offer under clause 5.2 of the Domination and Profit and Loss Transfer Agreement, the outside MAN Shareholders again have the right under clause 5.6 of the Domination and Profit and Loss Transfer Agreement to sell their MAN Shares to Truck & Bus GmbH (see the explanations in section C.2.1.5(iv)).

#### **2.1.7 Final provisions of the contract (clause 8 of the Domination and Profit and Loss Transfer Agreement)**

Clause 8.2 of the Domination and Profit and Loss Transfer Agreement (severability clause) shall secure the survival of the main content of the Domination and Profit and Loss Transfer Agreement if individual contractual provisions turn out to be completely or partially invalid, unenforceable or if there are gaps, contrary to expectations. This is a typical provision contained in domination and profit and loss transfer agreements.

#### **2.1.8 Letter of Affiliation and Comfort by Volkswagen Aktiengesellschaft**

Clause 7 of the Domination and Profit and Loss Transfer Agreement refers to the fact that Volkswagen Aktiengesellschaft, although not a party to the Domination and Profit and Loss Transfer Agreement, has issued a Letter of Affiliation and Comfort to MAN SE in a separate declaration. The Letter of Affiliation and Comfort is attached as ANNEX 2 to this Report together with the Domination and Profit and Loss Transfer Agreement.

Volkswagen Aktiengesellschaft confirms in the Letter of Affiliation and Comfort that it does not intend to terminate the domination and profit and loss transfer agreement between Volkswagen Aktiengesellschaft and Truck & Bus GmbH. Furthermore, Volkswagen Aktiengesellschaft has undertaken in the Letter of Affiliation and Comfort to inform MAN SE about any termination of the domination and profit and loss transfer agreement existing between Volkswagen Aktiengesellschaft and Truck & Bus GmbH in such timely a manner that MAN SE and the outside MAN Shareholders who have claims against Truck & Bus GmbH under the Domination and Profit and Loss Transfer Agreement between Truck & Bus GmbH and MAN SE can assert their claim for security pursuant to § 303 AktG in a timely manner. Furthermore, Volkswagen Aktiengesellschaft has undertaken to ensure that Truck & Bus GmbH will inform MAN SE without undue delay about any material deterioration in the assets or financial situation of Truck & Bus GmbH, especially about the occurrence of any reason for commencing insolvency proceedings within the meaning of §§ 17 to 19 German Insolvency Code and that Truck & Bus GmbH will waive the defense of requiring that a complaint first be filed against the original obligor in the case of security being provided by surety in accordance with § 303 para. 3 AktG in the interest of MAN SE and the outside

MAN Shareholders who have claims Truck & Bus GmbH based on the Domination and Profit and Loss Transfer Agreement between Truck & Bus GmbH and MAN SE. The above-mentioned duties to provide information shall ensure that MAN SE is informed about circumstances which can affect the ability of Truck & Bus GmbH to comply with its obligations under the Domination and Profit and Loss Transfer Agreement, especially the duty to assume losses under § 302 AktG as well as the payment of the Guaranteed Dividend and the Recurring Compensation Payment and the Compensation under §§ 304, 305 AktG.

Furthermore, Volkswagen Aktiengesellschaft has undertaken in the Letter of Affiliation and Comfort to ensure that Truck & Bus GmbH is managed and financed in such a manner that Truck & Bus GmbH is able to fulfill its liabilities under clause 5 of the Domination and Profit and Loss Transfer Agreement between Truck & Bus GmbH and MAN SE in a timely manner (see with regard to the capital of Truck & Bus GmbH, sections B.3.4 and B.3.9). This obligation shall additionally increase the ability of Truck & Bus GmbH with regard to any claims of the outside MAN Shareholders for the Compensation who accept an offer for the Compensation under clause 5 of the Domination and Profit and Loss Transfer Agreement in addition to the claims existing under the domination and profit and loss transfer agreement between Truck & Bus GmbH and Volkswagen Aktiengesellschaft.

## **2.2 Technical processing of the Domination and Profit and Loss Transfer Agreement by the banks**

Truck & Bus GmbH will mandate B. Metzler seel. Sohn & Co. KGaA, Frankfurt am Main as the central processor for the technical handling of the payment of the Compensation under clause 5 of the Domination and Profit and Loss Transfer Agreement. The MAN Shareholders who want to make use of the offer for the Compensation must instruct their securities account bank to make available their MAN Shares to the central processor via the collective custody system for the purpose of receiving the Compensation. Simultaneously upon proper transfer of the MAN Shares, the cash compensation will then be paid out. The processing of the cash compensation is free of any commissions and fees for the MAN Shareholders (see on this point, section C.2.1.5(iv)). The Compensation will be offered to all outside MAN Shareholders. Details about the processing will be announced without undue delay after registration of the Domination and Profit and Loss Transfer Agreement in the commercial register.

The payments in the form of the Guaranteed Dividend or the Recurring Compensation under clause 4 of the Domination and Profit and Loss Transfer Agreement will be processed in the same manner as dividend payments.

## **2.3 Explanation of the effects of the Domination and Profit and Loss Transfer Agreement**

### **2.3.1 Effects for the outside MAN Shareholders under corporate law**

Upon the right of management control for Truck & Bus GmbH and the right to issue instructions to MAN SE under clause 1 of the Domination and Profit and Loss Transfer Agreement taking effect, i.e. upon registration of the Domination and Profit and Loss Transfer Agreement in the commercial register of MAN SE after the approval of the general shareholders' meeting of MAN SE and the shareholders' meeting of Truck & Bus GmbH, MAN SE will submit the management control of its

company to Truck & Bus GmbH and Truck & Bus GmbH will obtain the right to issue instructions to the Executive Board of MAN SE with regard to the management of MAN SE. The Executive Board of MAN SE is required to comply with the instructions of Truck & Bus GmbH. Truck & Bus GmbH can also issue disadvantageous instructions to the MAN Executive Board if these instructions serve the interest of Truck & Bus GmbH or Volkswagen Aktiengesellschaft including the affiliated companies of Volkswagen Aktiengesellschaft. Such disadvantageous instructions can have substantial negative effects on the financial situation and earnings position of MAN SE despite the duty of Truck & Bus GmbH to assume the losses and these effects can also continue to exist after the end of the Domination and Profit and Loss Transfer Agreement. Upon the end of the Domination and Profit and Loss Transfer Agreement based on a notice of termination by Truck & Bus GmbH or MAN SE, the outside MAN Shareholders obtain the right under clause 5.6 of the Domination and Profit and Loss Transfer Agreement, explained in more detail in section C.2.1.5(iv), to sell the MAN Shares they hold at the time of the termination of the Domination and Profit and Loss Transfer Agreement to Truck & Bus GmbH.

The outside MAN Shareholders will be adversely affected in their control rights and possibly in their financial rights as a result of the right of management control of Truck & Bus GmbH and the right to issue instructions to MAN SE agreed upon in the Domination and Profit and Loss Transfer Agreement. In exchange for these adverse effects, the outside MAN Shareholders are compensated by the obligation of Truck & Bus GmbH to pay a Guaranteed Dividend for the fiscal year in which only the right of management control and the right to issue instructions under clause 1 of the Domination and Profit and Loss Transfer Agreement but not the obligation to transfer profit under clause 2 of the Domination and Profit and Loss Transfer Agreement takes effect, i.e. for the fiscal year 2013 of MAN SE if the Domination and Profit and Loss Transfer Agreement takes effect during the course of the fiscal year 2013 by registration in the commercial register or by the obligation to pay an annual Recurring Compensation Payment for fiscal years for which the obligation to transfer profit under clause 2 of the Domination and Profit and Loss Transfer Agreement also exists.

After the contractually provided obligation to transfer profit under clause 2 of the Domination and Profit and Loss Transfer Agreement takes effect, i.e. at the earliest as of the fiscal year 2014 if the Domination and Profit and Loss Transfer Agreement is registered in the commercial register of MAN SE by the end of the fiscal year 2014 or in a relevant subsequent fiscal year if the registration occurs only in a subsequent fiscal year (see on this point, the explanations above in section C.2.1.6), MAN SE will not show any annual profit and also no balance sheet profit, aside from any earnings resulting from dissolving reserves which are not subject to transfer of profit under the contract or a balance sheet profit resulting from any profit carry forward from the time before the contract. This means that the outside MAN Shareholders will generally not receive any dividends after the obligation to transfer profit takes effect. Their right to decide about the use of any balance sheet profit arising after that point in time will generally cease to exist.

Instead, there is a claim of the outside MAN Shareholders against Truck & Bus GmbH for an annual Recurring Compensation Payment under § 304 AktG. The annual Recurring Compensation Payment to be paid in accordance with clause 4

of the Domination and Profit and Loss Transfer Agreement will be paid to the outside MAN Shareholders without undue delay after the due date established in clause 4.2 sentence 2 of the Domination and Profit and Loss Transfer Agreement. The technical processing of the payment will be through the respective securities account banks just as in the case of a Guaranteed Dividend payment (see on this point, section C.2.2).

As an alternative to receiving the Guaranteed Dividend and the annual Recurring Compensation Payment, the outside MAN Shareholders can make use of the offer for the Compensation by Truck & Bus GmbH under § 305 AktG and leave MAN SE as shareholders in exchange for the Compensation set in clause 5.1 of the Domination and Profit and Loss Transfer Agreement. Reference is made to the explanations above in sections C.2.1.4 and C.2.1.5 concerning clauses 4 and 5 of the Domination and Profit and Loss Transfer Agreement with regard to the details about the Recurring Compensation and the offer for the Compensation.

The outside MAN Shareholders do not lose the right to the Compensation as a result of the fact that they have already received Recurring Compensation. If the offer for the Compensation is only accepted after Recurring Compensation has been paid, which can be the case especially in the case of acceptance of the offer for the Compensation during or after conclusion of special court proceedings (see § 305 para. 4 sentence 3 AktG and clause 5.2 of the Domination and Profit and Loss Transfer Agreement), Recurring Compensation that has already been received will be credited against the claim for interest on the Compensation under § 305 para. 3 sentence 3 AktG. This crediting will be in accordance with reference periods, normally fiscal years, whereby the MAN shareholder entitled to the Compensation is entitled to the corresponding difference between the Recurring Compensation and the interest on the Compensation for the respective reference period if the payment of Recurring Compensation that has been received is lower than the interest on the Compensation and also if the interest for the Compensation in the reference period falls short of the higher payment of the Recurring Compensation. The crediting of the Recurring Compensation with the interest on the Compensation to be paid only occurs with regard to the Recurring Compensation which relates to the period of time after registration of the Domination and Profit and Loss Transfer Agreement in the commercial register. Recurring Compensation that has already been received will not be credited against the payment of the Compensation itself. This corresponds to the statutory provisions, taking into account the case law of the BGH (judgment dated 16 September 2002, case no. II ZR 284/01 – "Rütgers"; judgment dated 2 June 2003 case no. II ZR 85/02; judgment dated 10 December 2007, case no. II ZR 199/06).

Upon the Domination and Profit and Loss Transfer Agreement taking effect, the obligation of Truck & Bus GmbH to purchase the MAN Shares of the outside MAN Shareholders in exchange for payment of the Compensation set in clause 5.1 of the Domination and Profit and Loss Transfer Agreement comes into existence. As of that point in time, the outside MAN Shareholders can make use of their right to transfer their MAN Shares to Truck & Bus GmbH in exchange for payment of the Compensation set in the Domination and Profit and Loss Transfer Agreement by declaration to Truck & Bus GmbH or to their respective securities account bank. Those MAN Shareholders who do not make use of their right to transfer their MAN



Shares to Truck & Bus GmbH continue to be MAN Shareholders and receive the Guaranteed Dividend or the annual Recurring Compensation Payment.

Immediately after registration of the Domination and Profit and Loss Transfer Agreement in the commercial register of MAN, the further details about the procedure will be published in the Federal Gazette and will be communicated to the outside MAN Shareholders via the respective securities account banks. The processing of the transfer of the MAN Shares to Truck & Bus GmbH as a result of accepting the offer for Compensation will be free of charge for the MAN Shareholders (clause 5.3 of the Domination and Profit and Loss Transfer Agreement).

The obligation of Truck & Bus GmbH to acquire MAN Shares of the outside MAN Shareholders in exchange for payment of the Compensation is subject to a time limit pursuant to clause 5.2 of the Domination and Profit and Loss Transfer Agreement. The declaration of the outside MAN Shareholders who want to accept the offer of Truck & Bus GmbH for the Compensation must be received by Truck & Bus GmbH within this deadline (see the explanation above in section C.2.1.5(iv) concerning the details of the time limit on the obligation of Truck & Bus GmbH). After expiration of the deadline established in clause 5.2 of the Domination and Profit and Loss Transfer Agreement, it is no longer possible to accept the original offer for the Compensation.

If the deadline for accepting the offer for the Compensation is extended due to special court proceedings in accordance with § 305 para. 4 sentence 3 AktG and outside MAN Shareholders accept the offer for Compensation after they have already received Recurring Compensation under clause 4 of this Domination and Profit and Loss Transfer Agreement, the received payments of Recurring Compensation will be credited against the claim for interest on the Compensation under § 305 para. 3 sentence 3 AktG (see above in this section).

If the Domination and Profit and Loss Transfer Agreement is terminated by one of the contracting parties, however, the outside MAN Shareholders existing at the time of the termination are entitled to sell their MAN Shares to Truck & Bus GmbH within a period of two months after the date on which the registration of the end of the Domination and Profit and Loss Transfer Agreement in the commercial register of MAN SE has been publically announced pursuant to § 10 HGB (see section C.2.1.5(iv)).

Aside from this, the conclusion of the Domination and Profit and Loss Transfer Agreement has no legal effects on the shareholdings of the outside MAN Shareholders. The voting rights and other participation rights linked to their MAN Shares continue to be governed by the articles of association of MAN SE and the statutory provisions after the registration of the Domination and Profit and Loss Transfer Agreement in the commercial register. However, Truck & Bus GmbH can also issue adverse instructions to the Executive Board of MAN SE under the Domination and Profit and Loss Transfer Agreement. Such adverse instructions can have substantial negative effects on the financial situation and earnings position of MAN SE despite the duty of Truck & Bus GmbH to assume losses, and these adverse effects may also continue to exist after any end of the Domination and Profit and Loss Transfer Agreement.

The stock exchange listing of the MAN Shares will not be affected by the registration of the Domination and Profit and Loss Transfer Agreement in the commercial register. However, the possibility cannot be excluded that a large portion of the outside MAN Shareholders will accept the offer for the Compensation and that the number of the MAN Shares held in free float will decrease further. This can have the consequence that a normal trading of MAN Shares on the stock exchange is no longer assured. The resulting further reduction of the liquidity of the MAN stock could lead to greater fluctuations in the price of the MAN stock than in the past under certain circumstances.

The number of the MAN Shares held in free float will decrease to the extent in which the offer for the Compensation under the Domination and Profit and Loss Transfer Agreement is accepted. As a result, MAN SE might no longer fulfill the respective criteria for remaining in stock exchange indices currently containing the MAN Shares. This applies especially for the MAN Common Shares remaining in the MDAX, an index calculated by Deutsche Börse AG which consists of 50 of the companies traded on the Frankfurt Stock Exchange. A removal from a stock exchange index can have the consequence, among others, that institutional investors which reflect the relevant index in their portfolio will dispose of MAN Shares and refrain from any future purchases of MAN Shares. An increased offer of MAN Shares combined with a lower demand for MAN Shares can adversely influence the stock exchange price for the MAN Shares.

### **2.3.2 Protection of the outside MAN Shareholders**

Protection of the interests of the outside MAN Shareholders in connection with the conclusion of the Domination and Profit and Loss Transfer Agreement, as is described below, is secured by granting a Guaranteed Dividend, Compensation and a Recurring Compensation Payment, the reasonableness of which is examined by the court appointed Contract Examiner. If outside MAN Shareholders are of the opinion that the Compensation and/or the Recurring Compensation established in the Domination and Profit and Loss Transfer Agreement are not reasonable, they can have the reasonableness examined in special court proceedings.

#### **(i) Guaranteed Dividend, Recurring Compensation Payment and Compensation**

The interests of the outside MAN Shareholders are reflected in the statutory provisions on payment of a recurring compensation and the offer to purchase their MAN Shares in exchange for payment of a reasonable compensation as these have been implemented in the Domination and Profit and Loss Transfer Agreement in the form of the Guaranteed Dividend, the Recurring Compensation Payment and the Compensation.

The outside MAN Shareholders receive full economic compensation for the restriction on their control rights caused by the coming into force of the right of management control and right to issue instructions under clause 1 of the Domination and Profit and Loss Transfer Agreement for the fiscal year 2013 by the obligation of Truck & Bus GmbH to pay a Guaranteed Dividend under clause 4.1 of the Domination and Profit and Loss Transfer

Agreement in conjunction with § 304 AktG if the Domination and Profit and Loss Transfer Agreement takes effect in the fiscal year 2013.

In subsequent fiscal years for which MAN SE is also required to transfer profit under clause 2 of the Domination and Profit and Loss Transfer Agreement, the outside MAN Shareholders receive full economic compensation by the obligation of Truck & Bus GmbH to pay an annual Recurring Compensation Payment under clause 4.2 of the Domination and Profit and Loss Transfer Agreement in conjunction with § 304 AktG.

The contracting parties have set a fixed Guaranteed Dividend and an annual fixed Recurring Compensation Payment in a gross amount of EUR 3.30 on the basis of the Valuation Report. Corporate income taxes as well as the solidarity surcharge must be deducted from this amount, whereby this deduction is only taken into account on the proportionate Guaranteed Dividend or the proportionate Recurring Compensation Payment of EUR 1.43 per MAN Share resulting from profits that are charged with German corporate income tax. According to the situation at the time of conclusion of the contract, 15% corporate income tax plus 5.5% solidarity surcharge for a total of EUR 0.23 will be deducted from the proportionate Guaranteed Dividend or the proportionate Recurring Compensation Payment in the amount of EUR 1.43 per MAN Share from profits charged with German corporate income tax. Together with the other proportionate Guaranteed Dividend and the other proportionate Recurring Compensation Payment of EUR 1.87 per MAN Share from profits which are not charged with German corporate income tax, this results in a Guaranteed Dividend and a Recurring Compensation Payment in the amount of EUR 3.07 per MAN Share for each full fiscal year (see with regard to the legal basis of the Guaranteed Dividend and the Recurring Compensation Payment, section C.2.3.2(i), and on the calculation of the Guaranteed Dividend and the Recurring Compensation Payment, sections C.3.1 and C.3.2).

In the alternative, the outside MAN Shareholders have the right to transfer the MAN Shares they hold to Truck & Bus GmbH in exchange for the grant of a reasonable Compensation after registration of the existence of the Domination and Profit and Loss Transfer Agreement. The situation of MAN SE existing at the time of adopting the resolution in the planned general shareholders' meeting of MAN SE on 6 June 2013 constitute the basis for assessing the Compensation in the amount of EUR 80.89 per MAN Common Share and EUR 80.89 per MAN Preferred Share set in clause 5.1 of the Domination and Profit and Loss Transfer Agreement (see the comprehensive discussion and the reasons for the reasonableness of the cash compensation in section C.3.3).

(ii) Contract examination by the Contract Examiner

In response to identical requests from the Executive Board of MAN SE and the Managing Directors of Truck & Bus GmbH dated 16 January 2013, the District Court Munich I selected and appointed Rölfs RP AG, Wirtschaftsprüfungsgesellschaft, Düsseldorf, as the Contract Examiner for purposes of § 293b para. 1 AktG in an order issued pursuant to § 293c

para. 1 AktG on 17 January 2013. The Contract Examiner examines the Domination and Profit and Loss Transfer Agreement and especially the reasonableness of the annual Guaranteed Dividend and the Recurring Compensation Payment as well as the Compensation and prepares a separate report about this pursuant to § 293e AktG. The Contract Examiner's report will be available in the offices of MAN SE together with the documents set forth in § 293f para. 1 AktG, Art. 54 para. 2 SE Regulation from the date on which the ordinary general shareholders' meeting of MAN SE that shall take place on 6 June 2013 is called and on the internet page of MAN SE at <http://www.man.eu/agm>. The report will also be available during the general shareholders' meeting of MAN SE on 6 June 2013.

(iii) Special court proceedings

If MAN Shareholders are of the opinion that the amount of the annual Guaranteed Dividend or the Recurring Compensation Payment set pursuant to clause 4.3 of the Domination and Profit and Loss Transfer Agreement in accordance with § 304 AktG is too low, they can have the reasonableness of the Guaranteed Dividend and the Recurring Compensation Payment examined by a court in special court proceedings pursuant to § 304 para. 3 sentence 3 AktG in conjunction with § 1 no. 1 SpruchG after the Domination and Profit and Loss Transfer Agreement takes effect. The right to make a motion for the initiation of special court proceedings does not depend on having declared an objection to the minutes recorded by the officiating notary against the resolution of the general shareholders' meeting about the Domination and Profit and Loss Transfer Agreement in the general shareholders' meeting. The court examination of the Guaranteed Dividend and the Recurring Compensation Payment in special proceedings under § 304 para. 3 sentence 3 AktG in conjunction with § 1 no. 1 SpruchG can be requested within three months after the date on which the registration of the existence of the Domination and Profit and Loss Transfer Agreement in the commercial register of MAN SE has been publically announced pursuant to § 10 HGB. The request must be supported with reasons in accordance with § 4 para. 2 SpruchG within the above stated deadline of three months. If a higher annual Guaranteed Dividend or a higher annual Recurring Compensation Payment is set by the court having jurisdiction in the special court proceedings in an order which can no longer be appealed, all outside MAN Shareholders can assert a claim against Truck & Bus GmbH for the Guaranteed Dividend and the Recurring Compensation Payment as increased by the court (§ 13 SpruchG). The controlling company can terminate the Domination and Profit and Loss Transfer Agreement in this event within two months after the court decision has become non-appealable without complying with any notice period (§ 304 para. 4 AktG). If special court proceedings are ended by an amicable agreement, the rights of all outside MAN Shareholders are protected by the fact that such an end of proceedings under § 11 para. 2 SpruchG is only possible with the consent of the joined representative of the outside MAN Shareholders and any agreement about an increased Guaranteed Dividend, an increased

Recurring Compensation Payment or any increased Compensation agreed in order to end the proceedings applies for the benefit of all outside MAN Shareholders without regard to whether they were themselves involved in the special court proceedings.

If outside MAN Shareholders are of the view that the Compensation set in clause 5.1 of the Domination and Profit and Loss Transfer Agreement is set too low, they can also have the reasonableness of the Compensation examined by a court in special court proceedings pursuant to § 305 para. 5 sentence 2 AktG in conjunction with § 1 no. 1 SpruchG. The discussion in the above paragraph concerning the Guaranteed Dividend and the Recurring Compensation Payment applies accordingly with regard to the deadline for submitting the request, the submission of reasons for the request, the effect of the court decision in such special court proceedings, a right of termination for the controlling company after any determination of the compensation by the court as well as ending such proceedings by an amicable agreement and the effect of a settlement in an amicable agreement for the benefit of the outside MAN Shareholders who were not parties to the special court proceedings.

### **2.3.3 Tax effects for MAN Shareholders in Germany**

#### **(i) Introduction**

The following discussion contains a brief summary of some important German tax principles which can be relevant in connection with the conclusion of the Domination and Profit and Loss Transfer Agreement for the outside MAN Shareholders who are subject to full taxation in Germany.

Tax effects for MAN Shareholders who are not fully subject to taxation in Germany are not explained below. These tax effects depend, among other aspects, on special provisions in German tax law, the tax law in the country in which the respective MAN shareholder is domiciled as well as on provisions in any existing treaty for the avoidance of double taxation (double taxation treaty).

The description relates in general only to corporate income tax, income tax, withholding tax on investment income and trade tax as well as the solidarity surcharge which accrue in Germany and deals only with some of the aspects of these types of taxes. For example, the situation in which amounts used for payments of the Recurring Compensation are deemed to have been used from the tax-specific contribution account of MAN SE is not explained. The description also does not address the specific aspects with regard to MAN Shares which were acquired as consideration for a tax benefited contribution under the German Transformation Tax Act (in its version applicable prior to 7 December 2006 (so-called original shares upon contribution) or in its version applicable since that time (so-called lock-up shares)) as well as special provisions for certain companies in the financial and insurance industry. Only the currently applicable legal situation is used as a basis. This situation can change, potentially also with retroactive effect. No liability is assumed for the completeness and accuracy of this description. The recommendation is made to MAN

Shareholders to consult with their tax advisors. Only the tax advisors are able to reasonably take into account the specific tax circumstances of the individual MAN shareholder.

- (ii) Taxation of a difference to be paid as a result of the Guaranteed Dividend at the level of the MAN Shareholders

The difference between the dividend paid by MAN SE and the Guaranteed Dividend paid by Truck & Bus GmbH for the fiscal year 2013 which might have to be paid pursuant to clause 4.1 of the Domination and Profit and Loss Transfer Agreement is subject to the general rules on taxation of dividends at the level of the affected MAN Shareholders. The following discussion on the taxation of the Recurring Compensation Payment under (iii) applies in the same manner for the payment of this difference.

- (iii) Taxation of the Recurring Compensation Payment at the level of the MAN Shareholders

The Recurring Compensation Payment to be paid pursuant to clause 4.2 of the Domination and Profit and Loss Transfer Agreement is subject to the general rules on taxation of dividends at the level of the affected MAN Shareholders.

- (a) Withholding tax on investment income

Withholding tax on investment income (*Kapitalertragsteuer*) in the amount of 25% (plus the solidarity surcharge in the amount of 5.5%, in aggregate 26.375%, and, if applicable, church tax on this amount for natural persons) will generally be withheld from the Recurring Compensation Payment for the account of the MAN Shareholder and passed on to the tax office. The withholding tax on investment income will be withheld and passed on by the domestic payment office (credit institution, financial services institution, securities trading company or securities trading bank) which holds in custody or administers the MAN Shares or by the collective custody bank for securities which has been entrusted with collective custody of the shares if this bank pays out the investment income to a foreign party. The withholding tax on investment income is generally withheld and passed on without regard to which amount the payment is actually subject to taxation at the level of the MAN Shareholders.

The treatment of the withheld and passed on withholding tax on investment income at the level of the MAN Shareholder depends on whether the MAN Shares are allocated to private assets or business assets of the relevant MAN Shareholder.

- (b) MAN Shares in private assets

The Recurring Compensation Payments for MAN Shares held as private assets of natural persons are subject to income tax as income from capital assets. The income tax on the Recurring Compensation Payments is generally settled by the deduction of the withholding tax on investment income (the so-called flat tax on investment income (*Abgeltungsteuer*)). The Recurring Compensation

Payment must, therefore, no longer be declared in the annual tax declaration of the MAN Shareholder as a general rule. Income-related expenses actually incurred which have an economic connection to the Recurring Compensation Payments are not deductible. Only the deduction of the saver's (tax-free) allowance of currently EUR 801 (EUR 1,602 in the case of jointly taxed spouses) is granted on all private investment income. In certain situations (for example, in the case of the existence of a non-assessment certificate of the tax authorities or in the case of an exemption order in a sufficient volume), the Recurring Compensation Payment can be paid out to the MAN Shareholder without deducting withholding tax on investment income, the solidarity surcharge or any applicable church tax.

Upon the request of the MAN Shareholder, the respective Recurring Compensation Payments can be made subject to the standard income tax instead of taxation with the rate of the flat tax on investment income of 25% if this leads to a lower tax burden for the MAN Shareholder (most-favorable-tax-treatment test (*Günstigerprüfung*)). Also in this event, the investment income minus saver's (tax-free) allowance of EUR 801 (EUR 1,602 in the case of jointly assessed spouses) is determinative for the taxation and a deduction of the actual income-related expenses is excluded. The withholding tax on investment income which is withheld and passed on is credited against the levied income tax and any excess amount will be reimbursed.

(c) MAN Shares held as business assets

In the case of MAN Shares held as business assets, the withholding tax on investment income which is withheld and passed on does not have any conclusive effect. The MAN Shareholder must state the Recurring Compensation Payments in the tax declaration. The withholding tax on investment income which is withheld and passed on is credited against the levied income tax or corporate income tax and any excess amount will be reimbursed. Aside from this, the taxation of the Recurring Compensation Payment depends on whether the MAN Shareholder is a corporation, an individual business person or a partnership (co-entrepreneur):

(l) Corporations

After a reform of the rules on the taxation of dividends paid on shares that are held in free float, Recurring Compensation Payments to a corporation are subject to corporate income tax in the full amount (plus the solidarity surcharge) if the corporation has a direct participation of less than 10% in the share capital of MAN SE (free-float participation) at the beginning of the calendar year.

If a corporation holds at least 10% of the share capital of MAN SE at the beginning of the calendar year or if the

corporation initially acquires a participation of at least 10% or does so by additional purchases during the course of the calendar year, the Recurring Compensation Payment is generally exempt from corporate income tax. However, 5% of these revenues are deemed to be expenses which may not be deducted as operating expenses and, thus, are subject to taxation with corporate income tax (plus the solidarity surcharge in the amount of 5.5% hereon). In exchange, operating expenses which have actually been incurred that have an economic connection to the Recurring Compensation Payments can generally be fully deducted (subject to other limits on deduction).

In both cases, the Recurring Compensation Payments are also subject in full to trade tax unless the MAN Shareholder has a participation of at least 15% in the share capital of MAN SE (intercompany participation) at the beginning of the relevant tax period. In the latter case, the exemption of 95% of the Recurring Compensation Payments from corporate income tax applies accordingly for purposes of trade tax.

(II) Individual business person

In the case of individual business persons (natural persons), 60% of the payment of the Recurring Compensation is subject to the individual income tax rate (plus the solidarity surcharge as well as any church tax). Expenses related economically to the payments of the Recurring Compensation are accordingly only deductible in an amount of 60% (subject to other limits on deduction).

If the MAN Shares belong to the assets of a permanent establishment of a commercial business of the MAN Shareholder located in Germany, the Recurring Compensation Payments are fully subject to trade tax if the MAN Shareholder does not have a participation of at least 15% of the share capital of the company at the beginning of the relevant tax period. The trade tax incurred on the Recurring Compensation Payments, however, can be fully or partially credited against the income tax of the MAN Shareholder by means of a flat sum procedure. If the MAN Shareholder holds at least 15% of the share capital of MAN SE at the beginning of the tax period, the Recurring Compensation Payments are fully exempt from trade tax.

(III) Partnerships

If the MAN Shares are held by a partnership that is commercially active or has commercial qualifications (co-entrepreneur), the income tax or corporate income tax (in each case plus the solidarity surcharge as well as any church tax in the case of natural persons) is only assessed at the



level of the respective partner. Accordingly, the taxation is generally determined pursuant to the rules which would apply if the partner were a direct MAN Shareholder (see above in section C.2.3.3(iv)(c)(I) and section C.2.3.3(iii)(c)(II)). The participation in the share capital of MAN SE will be proportionately attributed as a direct participation to any corporation which is a partner in a partnership with regard to the 10% participation threshold for free float participations (see above, section C.2.3.3(iii)(c)(I)).

The Recurring Compensation Payment is subject to trade tax at the level of the partnership if the partnership does not have a participation of at least 15% in the share capital of MAN SE at the beginning of the relevant tax period. If the partnership holds at least 15% of the share capital of MAN SE at the beginning of the tax period, the Recurring Compensation Payment is generally not subject to trade tax. The situation should be different to the extent that one or more corporations have participations in the partnership. In this event, 5% of the Recurring Compensation Payments are subject to trade tax to the extent that they are attributable to the corporation according to the share of the corporation(s) in the profit of the partnership. Whether and to which extent the new law on taxation of free float dividends (see above, section C.2.3.3(iii)(c)(I)) will result in changes has not yet been finally clarified. In the case of an interpretation according to the specific wording of the provisions, there is certain support for the view that the above described taxation of 5% of the Recurring Compensation Payments will not apply to the extent that the corporation indirectly has a participation of less than 10% in the share capital of MAN SE through its participation in the partnership. To the extent that the Recurring Compensation Payment is subject to trade tax at the level of the partnership, this will completely or partially be credited against the income tax by means of the flat sum procedure in the case of natural persons who have a participation in the partnership.

(iv) Taxation of the Compensation at the level of MAN Shareholders

Pursuant to clause 5.1 of the Domination and Profit and Loss Transfer Agreement, Truck & Bus GmbH undertakes towards MAN Shareholders who want to leave MAN SE due to the conclusion of the Domination and Profit and Loss Transfer Agreement to purchase their MAN Shares in exchange for a reasonable Compensation in the amount of EUR 80.89 for each MAN Common Share and EUR 80.89 for each MAN Preferred Share. The transfer of the MAN Shares to Truck & Bus GmbH in exchange for the Compensation constitutes a sale of the MAN Shares for the MAN Shareholders. A capital gain is realized if the Compensation minus any related costs of sale exceeds the procurement costs for tax purposes or the book value for tax purposes for the relevant MAN Shares at the respective

MAN Shareholder. If the Compensation minus any costs of sale is less than the acquisition costs or the book value of the MAN Shares at the MAN Shareholder, a capital loss is incurred.

(a) Withholding tax on investment income

If a domestic paying office (credit institution, financial services institution, securities trading company or securities trading bank) holds the MAN Shares in custody or administers them or carries out the sale and pays out or issues a credit for the investment income ("**Domestic Paying Office**"), it must generally withhold and pass on from the capital gain the withholding tax on investment income in the amount of 25% (plus the solidarity surcharge in the amount of 5.5%, in aggregate 26.375%, and any church tax in the case of natural persons) for the account of the MAN Shareholder.

The Compensation for MAN Shares held as private assets which were acquired prior to 1 January 2009 or for MAN Shares which are held by fully taxable corporations is generally not subject to deduction of the withholding tax on investment income. The withholding of tax on investment income also does not occur in the case of capital gains which belong to business revenues of a domestic business if this is declared to the Domestic Paying Office using the officially required form.

Aside from this, the tax treatment of any capital gain or loss and the issue of whether the withheld tax on investment income has conclusive effect or whether it will be credited to the income tax or corporate income tax obligation of the MAN Shareholder in the tax assessment and, if applicable, reimbursed in the amount of any excess, depends on whether the MAN Shares are attributable to the private assets or business assets of the relevant MAN Shareholder:

(b) MAN Shares held as private assets

The taxation of the Compensation payments for MAN Shares held by the MAN shareholder in the private assets depends on whether the MAN shareholder acquired the MAN Shares prior to 1 January 2009 or after 31 December 2008:

(I) Acquisition prior to 1 January 2009

In the case of MAN Shares acquired prior to 1 January 2009, any capital gain resulting from the Compensation is only subject to income tax if the MAN Shareholder had a direct or indirect participation of at least 1% in the share capital of MAN SE at any time in the last five years prior to the transfer (a "**Material Participation**"). If the MAN shareholder acquired the MAN Shares from a third party without consideration within the last five years, any capital gain resulting from the Compensation is also subject to income tax if a predecessor in right or, in the case of multiple, successive transfers without consideration, one of the

predecessors in right had a Material Participation within the last five years prior to the transfer. Only 60% of capital gains are subject to income tax at the individual income tax rate in the case of a Material Participation (plus the solidarity surcharge as well as any applicable church tax thereon). Any capital losses and expenses directly economically related to the transfer are accordingly only deductible in an amount of 60%.

A gain or loss from the sale of MAN Shares acquired prior to 1 January 2009 is not relevant for tax purposes for MAN Shareholders who did not have a Material Participation.

(II) Acquisition after 31 December 2008

Profits from the sale of the MAN Shares which were acquired after 31 December 2008 are generally subject to income tax without regard to the amount of the participation. However, profits (and losses) are treated differently depending on whether or not the MAN Shareholder has a Material Participation.

The income tax on the capital gain for MAN Shareholders who do not have a Material Participation is settled with the deduction of the withholding tax on investment income by the Domestic Paying Office, and the capital gain no longer has to be declared in the income tax statement of the MAN Shareholder. Capital losses can only be offset against profits from the sale of shares in the current year or in a later year (but not with other income from investments or other types of income).

In certain cases (for example, if a non-assessment certificate from the tax authorities or up to the amount of any issued exemption order), MAN Shareholders can be paid the Compensation without deduction of withholding tax on investment income and the solidarity surcharge (as well as any church tax).

If the deduction of withholding tax on investment income does not occur other than in these situations (e.g. due to lack of a Domestic Paying Office), the MAN Shareholder must state the capital gain in the shareholder's income tax declaration. However, the capital gain in these situations will not be subject to the individual income tax rate of the MAN Shareholder; instead, the assessment of the capital gain will be at the rate for the flat tax on investment income of 25% (plus the solidarity surcharge in the amount of 5.5%, in aggregate 26.375%, and any church tax thereon). Also in this case, the investment income minus the saver's (tax-free) allowance of EUR 801 (EUR 1,602 in the case of jointly assessed spouses) is determinative for the taxation, and a

deduction of any actually incurred income-related expenses is excluded.

Upon the request of the MAN Shareholder, the capital gain can be subject to the income tax rate instead of taxation at the rate of 25% for final tax on investment income if this leads to a lower tax burden for the shareholder (most-favorable-tax-treatment test). In this case, tax on investment income that has been withheld and passed on will be credited against the levied income tax and will be reimbursed in the amount of any excess. When determining the income from investments, only a saver's (tax-free) allowance of EUR 801 (or EUR 1,602 in the case of jointly assessed spouses) can be deducted as income-related expenses. A deduction of the actual income-related expenses is excluded.

The deduction of withholding tax on investment income has no conclusive effect if the MAN Shareholder has a Material Participation. The gain from the sale of a Material Participation is also not subject to the rate of 25% for the flat tax on investment income. The partial income procedure (*Teileinkünfteverfahren*) applies instead. According to this procedure, only 60% of the capital gain is subject to income tax at the individual income tax rate (plus the solidarity surcharge and any church tax thereon). The withheld tax on investment income that has been passed on will be credited against the levied income tax and any excess will be reimbursed. Only 60% of any capital losses and expenses in connection with the sale can be claimed for tax purposes.

(c) MAN Shares held as business assets

If MAN Shares are held as business assets, the withholding tax on capital income that has been passed on does not have any conclusive effect. The MAN Shareholder must state the capital gain from the sale of the MAN Shares in the shareholder's tax declaration; any initial withholding of tax on investment income will be credited against the shareholder's levied income tax or corporate income tax obligation and any excess will be reimbursed. Aside from this, the taxation of the capital gain depends on whether the MAN Shareholder is a corporation, an individual business person or a partnership (co-entrepreneur):

(I) Corporations

Profits from the sale of MAN Shares are generally exempt from corporate income tax and trade tax for corporations. However, 5% of the capital gain is deemed to be expenses which cannot be deducted as business expenses for tax purposes so that they are subject to corporate income tax (plus the solidarity surcharge thereon) and trade tax. As a result, a capital gain is generally 95% tax exempt. Capital losses and other reductions in the profit economically related

to the sold MAN Shares cannot be taken into account for tax purposes.

(II) Individual business person

To the extent that MAN Shares are part of the business assets of an individual business person, 60% of the profit is subject to taxation at the individual income tax rate (plus the solidarity surcharge in the amount of 5.5% as well as any church tax thereon). Accordingly, only 60% of the business expenses economically related to the capital gains as well as only 60% of any capital losses can be taken into account for tax purposes.

If the MAN Shares belong to the domestic business assets of a business of the MAN Shareholder, the capital gain is generally also subject to trade tax, but only in an amount of 60%. The trade tax is completely or partially credited against the income tax of the investor by way of a flat rate procedure.

(III) Partnerships

If the MAN Shares are held by a partnership that is commercially active or has commercial qualifications (co-entrepreneur), the income tax or corporate income tax (in each case plus the solidarity surcharge as well as, in the case of natural persons, any church tax thereon) is only assessed at the level of the respective partner. Accordingly, the taxation is generally in accordance with the rules which would apply if the partner were a direct MAN Shareholder (see above in section C.2.3.3(iv)(c)(I) and section C.2.3.3(iv)(c)(II)).

If the MAN Shares are attributed to a permanent establishment located in Germany of a commercial business of the partnership, the capital gain is generally also subject to trade tax at the level of the partnership, generally in an amount of 60%, to the extent that the capital gain is included in the share of a natural person in the profit as a partner in the partnership. To the extent that the capital gain are contained in the share of the profit for a corporation as a partner in the partnership, 5% of the capital gain is subject to trade tax. Capital losses and other reductions in profit related to the sold MAN Shares are not taken into account for purposes of trade tax if they are attributable to the share of a corporation in the profit, or 60% of these losses and reductions are taken into account if they are attributable to the profit share of a natural person. To the extent that natural persons have a participation in the partnership, however, the trade tax is completely or partially credited against their income tax by way of a flat rate procedure.

#### **2.3.4 Tax effects on MAN SE**

The Domination and Profit and Loss Transfer Agreement between Truck & Bus GmbH and MAN SE has the consequence that the income of MAN SE (prior to the transfer of profit) is generally no longer subject to corporate income tax and trade tax at MAN SE, but, provided that the other legal requirements for a consolidated tax group for purposes of corporate income tax and trade tax are fulfilled and at the earliest starting on 1 January 2014, is instead attributed to Truck & Bus GmbH and ultimately taxed at the level of Volkswagen Aktiengesellschaft because a consolidated tax group for purposes of tax on income also exists in the relationship of Truck & Bus GmbH to Volkswagen Aktiengesellschaft. When determining the income attributable for tax purposes under § 14 KStG, the profit prior to the transfer of profit is used as the basis. MAN SE owes corporate income tax pursuant to § 16 KStG on the payments of the Recurring Compensation to be made to the outside shareholders (plus the solidarity surcharge thereon), despite the fact that Truck & Bus GmbH and not MAN SE owes the Recurring Compensation and without regard to whether the income of MAN SE attributable to Truck & Bus GmbH is positive or negative. The basis for assessing corporate income tax (plus the solidarity surcharge) is currently 20/17 of the payments of Recurring Compensation in accordance with § 16 KStG. For purposes of trade tax, and contrary to the situation with respect to corporate income tax, the payment of Recurring Compensation is in any event assessed at the level of Truck & Bus GmbH as the parent company of the consolidation tax group. § 16 KStG does not apply to the Guaranteed Dividend for the fiscal year 2013 because no tax consolidation for purposes of tax on income exists in the fiscal year 2013. Thus, the general provisions on investments and distributions of profit apply.

As a result of the consolidation for tax purposes, MAN SE is also liable pursuant to § 73 German General Tax Code (*Abgabenordnung*) for those taxes of Truck & Bus GmbH as the parent company of the consolidated tax group, for which the consolidated tax group between Truck & Bus GmbH and MAN SE for purposes of corporate income tax and trade tax is relevant. Claims for reimbursement of tax credits are treated equally with the taxes in this regard.

During the term of the consolidated tax group, the loss carry forwards of MAN SE for purposes of corporate income tax and trade tax from the time prior to the consolidated tax group cannot be credited against any potential positive income of MAN SE which has to be attributed to the parent company in the consolidated tax group. Furthermore, the loss carry forward of MAN SE for purposes of corporate income tax from the time prior to the consolidated tax group cannot be credited against any taxable income under § 16 KStG. Any loss carry forwards from the time prior to the consolidated tax group remain in place, but cannot be deducted for the duration of the consolidated tax group.

### **3 Type and amount of the Guaranteed Dividend, the Recurring Compensation Payment and the Compensation under §§ 304, 305 AktG**

#### **3.1 Overview**

Pursuant to § 304 AktG, a domination and profit and loss transfer agreement must contain a reasonable compensation for the outside MAN Shareholders by means of a recurring payment of money related to the shares in the share capital. At least the annual payment

of that amount must be guaranteed or promised as compensation under § 304 para. 1 sentence 1 AktG and § 304 para. 2 sentence 1 AktG which could most likely be distributed to the individual share as an average share in the profit according to the earnings position of the company to date and its future prospects for earnings, taking into account reasonable depreciation and adjustments in value but without establishing other profit reserves.

According to § 305 para. 1 AktG, a domination agreement or a domination and profit and loss transfer agreement must also contain the obligation of the controlling company to purchase the MAN Shares of an outside MAN Shareholder upon request in exchange for reasonable compensation determined in the corporate group agreement. The reasonable compensation must take into account the circumstances of the company at the time of adopting the resolution by the general shareholders' meeting of the controlled company about the corporate group agreement in accordance with § 305 para. 3 sentence 2 AktG. This applies accordingly for the Guaranteed Dividend and the Recurring Compensation Payment within the meaning of § 304 AktG. According to the order of the German Constitutional Court (*Bundesverfassungsgericht*) dated 27 April 1999 (case no. 1 BvR 1613/94), an existing stock exchange price cannot be ignored when setting the amount of the compensation under § 305 AktG. The stock exchange price generally represents the lowest amount of the compensation to be paid to the shareholder.

The determinative date for the valuation of the enterprise and the determination of the Guaranteed Dividend, the Recurring Compensation Payment and the Compensation is the date of the general shareholders' meeting of MAN SE which will adopt the resolution about the Domination and Profit and Loss Transfer Agreement, i.e. 6 June 2013. The fact that different stock classes exist must be taken into account when determining the Guaranteed Dividend, the Recurring Compensation Payment and the Compensation, if applicable, and any amount attributable to the individual MAN Common Share or the MAN Preferred Share must be corrected respectively if necessary. However, in the present case the contracting parties consider identical treatment of the MAN Common Shares and the MAN Preferred Shares to be appropriate on the basis of the determinations by the Valuation Experts (see for further details, section F.II. of the Valuation Report).

The Managing Directors of Truck & Bus GmbH have issued a mandate to PwC and the Executive Board of MAN SE has issued a mandate to KPMG, in order to obtain support when setting the Guaranteed Dividend and the Recurring Compensation Payment and the Compensation, to issue a joint expert opinion about the enterprise value of MAN SE as of the date of the general shareholders' meeting on 6 June 2013 and the amount of the reasonable Guaranteed Dividend and the Recurring Compensation Payment pursuant to § 304 AktG and the reasonable Compensation pursuant to § 305 AktG. The Valuation Experts conducted the work required for the Valuation Report from January 2013 to 18 April 2013. The Valuation Experts submitted the Valuation Report on the determination of the enterprise value of MAN SE as of 6 June 2013 and the reasonable Guaranteed Dividend and the reasonable Recurring Compensation Payment (§ 304 AktG) and the reasonable Compensation (§ 305 AktG) on 18 April 2013.

The Valuation Experts, in their function as neutral experts within the meaning of IDW S 1, conclude in their Valuation Report that the objectified enterprise value within the meaning of IDW S 1 for MAN SE as of 6 June 2013 determined using the discounted earnings method is EUR 11,894 million and that the value per share is EUR 80.89 for each MAN

Common Share and each MAN Preferred Share based on 140,974,350 MAN Common Shares and 6,065,650 MAN Preferred Shares.

The Valuation Experts support the identical treatment of the MAN Common Shares and the MAN Preferred Shares with the fact that there are no longer any commercial advantages for the Preferred Shares in the context of the enterprise valuation due to the amount of the planned distributions by MAN SE because the planned distributions of at least approximately EUR 1.25 per share are substantially above the preferred share in the profit of EUR 0.11. There is, in turn, no material legal advantage for the Common Shares with regard to the voting right, considering that Volkswagen Aktiengesellschaft holds more than 75% of the Common Shares in MAN SE, because, for example, decisions of the general shareholders' meetings can be effected solely with the shares of Volkswagen Aktiengesellschaft. The observed differences in the stock exchange prices, on the other hand, are, according to the analysis by the Valuation Experts, above all related to the index listing and the increased liquidity of the Common Shares. Thus, the Valuation Experts see no individual characteristics in the Common Shares and the Preferred Shares that are relevant for the valuation so that the Valuation Experts consider identical treatment of the Common Shares and the Preferred Shares to be appropriate.

The Valuation Experts also conclude that the relevant average stock exchange price is EUR 79.08 for each MAN Common Share and EUR 73.39 for each MAN Preferred Share. This is determined on the basis of a sales weighted average stock exchange price for MAN Shares determined by BaFin for the three months period prior to the announcement on 9 January 2013 of the intent of Truck & Bus GmbH to commence discussions with MAN SE about the conclusion of the Domination and Profit and Loss Transfer Agreement.

Since the enterprise value for each MAN Common Share and each MAN Preferred Share determined on the basis of the discounted earnings method is higher than the respectively relevant average stock exchange price, the enterprise value as determined by using the discounted earnings method has been applied. The Valuation Report by the Valuation Experts accordingly concludes that the reasonable Compensation for purposes of § 305 AktG is EUR 80.89 for each MAN Common Share and each MAN Preferred Share. The reasonable Recurring Compensation within the meaning of § 304 AktG derived from the enterprise value according to the determinations of the Valuation Experts on the basis of the corporate income tax rate applicable at the time of conclusion of the contract, including the solidarity surcharge, is a net amount of EUR 3.07 (EUR 3.30 before current corporate income tax and the solidarity surcharge) for each MAN Common Share and each MAN Preferred Share.

The complete version of the Valuation Report by the Valuation Experts on the determination of the reasonable Compensation (§ 305 AktG) and the reasonable Guaranteed Dividend and the reasonable Recurring Compensation Payment (§ 304 AktG) dated 18 April 2013 is attached as ANNEX 3 to this Contract Report and, thus, constitutes an integral part of this Contract Report. The Executive Board of MAN SE and the Managing Directors of Truck & Bus GmbH have completely incorporated the discussion by the Valuation Experts in the referenced Valuation Report as their own and include it in the substance of this joint Contract Report.

In their own view, the Executive Board of MAN SE and the Managing Directors of Truck & Bus GmbH consider the Compensation for purposes of § 305 AktG in the amount of EUR 80.89 for each MAN Common Share and each MAN Preferred Share as well as a Guaranteed Dividend and a Recurring Compensation Payment for purposes of § 304 AktG



in the present amount of EUR 3.07 (EUR 3.30 before current income tax and solidarity surcharge) for each MAN Common Share and each MAN Preferred Share to be reasonable.

Volkswagen Aktiengesellschaft made a Mandatory Offer to all outstanding shareholders of MAN SE for the purchase of their shares and offered a price of EUR 95.00 for each MAN Common Share and EUR 59.90 for each MAN Preferred Share after crossing the threshold of 30 % of the voting rights of MAN SE on 9 May 2011. The Executive Board and the Supervisory Board of MAN SE notified in their respective response to the Mandatory Offer under § 27 WpÜG that, in their view, based on fairness opinions by the respective supporting investment banks, the above-mentioned offered price for each MAN Common Share and each Preferred Share did not reasonably reflect the enterprise value. The view at that time was based primarily on the expectations with regard to the overall economic development, the forecast for the further development of the fields of business of MAN SE, the stock exchange price at that time and the expected development of the stock exchange price for the MAN Shares as well as the expectations with regard to the realization of potential synergies which were expected upon obtaining control.

The Managing Directors of Truck & Bus GmbH and especially of MAN SE considered it important that the Valuation Experts also analyzed the relevant documents in connection with the Mandatory Offer of Volkswagen Aktiengesellschaft. The Valuation Experts accordingly reviewed the disclosed documents, including the offer document, which contained, among other points, discussion about the future goals of Volkswagen Aktiengesellschaft following the Mandatory Offer, the expected synergies and the pricing as well as the responses of the Executive Board and the Supervisory Board of 7 June 2011, including the attached fairness opinions from the respectively mandated investment banks; the planning and other documents used as the basis for the valuations at that time were provided to the Valuation Experts. The Valuation Experts determined an enterprise value of MAN SE as of the effective date for the MAN Common Shares which lies below the Mandatory Offer. The general economic and specific business parameters have clearly changed since the Mandatory Offer in the year 2011. MAN SE was still able to report in the annual report 2011 about the continuing recovery of the worldwide economy which had again led to two digit rates of growth in the commercial vehicle business after there had already been a massive increase in the year 2010. MAN Latin America showed a sales record for the second time in a row in the year 2011. MAN Diesel & Turbo was also able to increase the return on sales to a high level in 2011. Overall, the MAN Group was able to increase the order intake by 14%, the revenue by 12% and the operating profit disproportionately high by 43%. The return on sales of 9.0% was above the long-target of 8.5%.

The government debt crisis in the Euro region, however, led to substantial uncertainties in the markets that had not been experienced before in this extent in the next fiscal year 2012 and noticeably slowed down the economy. The markets were also experiencing in part a downturn outside of Europe after the disproportionately high growth in the previous years, especially also in the Brazilian market which is important for MAN. These developments affected especially the field of Commercial Vehicles. The order intake for MAN Truck & Bus AG decreased by 16% in the months from July through September 2012. The continuing weakness in the market in the shipping industry led to decrease of the order intake of 9% in the first three quarters of 2012 in the field of Power Engineering. Overall, the earnings before interest and taxes of the MAN Group decreased from EUR 1,256 million for the fiscal year 2011 that ended shortly after the closing of the Mandatory Offer by 50.4 % to

EUR 623 million for the fiscal year 2012. The outlook for 2013 continues to be marked by the low expectations for general economic growth in main markets of the MAN Group and the development of the group assumed for the detailed planning period (*Detailplanungszeitraum*) does not reach the level of the prognosis assumed for the development of the group in 2011. A further aspect in the field of Power Engineering involves continuing burdens from large orders in plant construction so that the MAN Group expects an operating profit that is substantially below the fiscal year 2012. This development has also expressed itself in the stock exchange prices of MAN SE. The stock exchange price for the MAN Common Shares was EUR 97.99 on 9 May 2011 when Volkswagen Aktiengesellschaft crossed the threshold of 30 % of the voting rights. The highest stock exchange price in the 2011 was EUR 98.72. The target prices published by analysts were correspondingly high, with the median target price being higher than EUR 100 for each MAN Common Share in June 2011. The three months average stock exchange price relevant as the minimum price for the offer of the Compensation under the Domination and Profit and Loss Transfer Agreement in the period from 9 October 2012 until 8 January 2013 was EUR 79.08 for each MAN Common Share and EUR 73.39 for each MAN Preferred Share.

The contribution to value from potential synergies between MAN SE and especially Scania AB must also be viewed differently today. The Managing Directors of Truck & Bus GmbH and the management of MAN SE continue to be convinced about the potential of an integrated commercial vehicle group. Amounts realized through synergies of around EUR 200 million annually are expected at the level of the Volkswagen Group, of which around EUR 125 million are attributable annually to the MAN Group in the form of so-called non-genuine synergies. These synergies result primarily from savings on costs of materials and effects resulting from joint procurement. The realization of these synergies was begun after discussions of the relevant departments between the MAN Group and Volkswagen Aktiengesellschaft/Scania AB after the antitrust clearance for the takeover of MAN SE by Volkswagen Aktiengesellschaft but turned out to be more complex than initially hoped for. However, MAN SE continues to believe that the stated ranges can be realized in the mid-term. Accordingly, they are included in the valuation determining the Compensation and the Recurring Compensation.

The Valuation Report by the Valuation Experts, as well as this Contract Report, will be available at the website of MAN SE at <http://www.man.eu/agm>, together with the other documents required by law starting on the date on which the general shareholders' meeting of MAN SE which will resolve about the approval of the Domination and Profit and Loss Transfer Agreement is convened. The documents will also be available in the offices of MAN SE for review by the MAN Shareholders and will also be available during the general shareholders' meeting. Reference is made to the invitation for the general shareholders' meeting of MAN SE that will resolve about the approval of the Domination and Profit and Loss Transfer Agreement with regard to the details.

The Executive Board of MAN SE and the Managing Directors of Truck & Bus GmbH expressly point out for purposes of avoiding the risk of liabilities under foreign legal systems that the planning of MAN SE constituting the basis of the enterprise valuation by the Valuation Experts was prepared to the best of their knowledge but that MAN SE, Truck & Bus GmbH and Volkswagen Aktiengesellschaft cannot assume any liability that the planning will actually be met.

### **3.2 Determination and setting of the amount of the reasonable Guaranteed Dividend and the reasonable Recurring Compensation Payment under § 304 AktG**

Truck & Bus GmbH guarantees to the outside MAN Shareholders a fixed Guaranteed Dividend for the fiscal year 2013 under clause 4.1 of the Domination and Profit and Loss Transfer Agreement if it takes effect in 2013.

The Guaranteed Dividend for holders of MAN Common Shares and holders of MAN Preferred Shares is EUR 3.07 (EUR 3.30 before current corporate income tax and solidarity surcharge) for each MAN Common Share and each MAN Preferred Share.

Under clause 4.2 of the Domination and Profit and Loss Transfer Agreement, Truck & Bus GmbH grants a fixed annual Recurring Compensation Payment to the outside MAN Shareholders starting in the fiscal year of MAN SE for which the obligation to transfer profit under clause 2 of the Domination and Profit and Loss Transfer Agreement takes effect, starting at the earliest as of the fiscal year 2014 and lasting for the duration of the Domination and Profit and Loss Transfer Agreement.

The annual Recurring Compensation Payment for holders of MAN Common Shares and holders of MAN Preferred Shares is EUR 3.07 (EUR 3.30 before current corporate income tax and solidarity surcharge) for each MAN Common Share and each MAN Preferred Share.

The reasons why the contracting parties have agreed on a fixed Guaranteed Dividend and a fixed annual Recurring Compensation Payment were described in section C.2.1.4(iii)(d). The contracting parties have agreed on a gross amount in accordance with the case law of the BGH (order dated 21 July 2003, case no. II ZB 17/01 – "Ytong"). Reference is made on this point to the explanation in section C.2.1.4.

The Executive Board of MAN SE and the Managing Directors of Truck & Bus GmbH have set the amount of the Guaranteed Dividend and the amount of the Recurring Compensation Payment by mutual consent on the basis of the results of the Valuation Report by the Valuation Experts dated 18 April 2013 in which the Valuation Experts also conclude that the reasonable Guaranteed Dividend and the fixed annual Recurring Compensation Payment under § 304 AktG is currently EUR 3.07 (EUR 3.30 before current corporate income tax and solidarity surcharge) for each MAN Common Share and each MAN Preferred Share.

### **3.3 Determination and setting of the amount of the reasonable Compensation under § 305 AktG**

Pursuant to clause 5 of the Domination and Profit and Loss Transfer Agreement, Truck & Bus GmbH is required to purchase the MAN Shares of any outside MAN Shareholder upon request in exchange for the Compensation (§ 305 para. 2 no. 3 AktG).

Each outside MAN Shareholder wanting to make use of the offer for the Compensation receives for each MAN Common Share and each MAN Preferred Share a Compensation in the amount of EUR 80.89 in cash in accordance with clause 5.1 of the Domination and Profit and Loss Transfer Agreement.

The determinative reasons for the agreement about the Compensation in the form of a cash compensation are described in section C.2.1.5(ii)2.1.5(iv).

The Executive Board of MAN SE and the Managing Directors of Truck & Bus GmbH have jointly set the amount of the Compensation payment on the basis of the results of the

Valuation Report by the Valuation Experts dated 18 April 2013 in which the Valuation Experts have assessed as reasonable an amount of EUR 80.89 for each MAN Common Share and an amount of EUR 80.89 for each MAN Preferred Share.

When determining the amount of the Compensation, the Valuation Experts and the contracting parties took into account the stock exchange price for the MAN Common Shares and the MAN Preferred Shares. According to the case law of the German Constitutional Court of 27 April 1999 (case no. 1 BvR 1613/94), the stock exchange price represents the lowest limit for determining the amount of the Compensation to be offered to the outside MAN Shareholders.

The BGH (judgment dated 12 March 2001 – II ZB 15/00) specified the requirements of the German Constitutional Court with regard to the relevance of the stock exchange price for determining the reasonable compensation. In its judgment of 19 July 2010 (case no. ZB II 18/09 – "Stollwerck"), the BGH established additional requirements in this respect and stated in further detail that the relevant stock exchange price must be determined on the basis of a sales weighted average stock exchange price during a three month reference period prior to the announcement of a structural measure.

MAN SE issued an *ad hoc* notification about the intent of Volkswagen to commence discussions with MAN SE about concluding the Domination and Profit and Loss Transfer Agreement on 9 January 2013. The volume weighted stock exchange price of the MAN Common Shares and the MAN Preferred Shares determined by BaFin pursuant to § 5 para. 3 WpÜG Offering Regulation for the three month period prior to the publication of the *ad hoc* notification by MAN SE on 9 January 2013 is EUR 79.08 for MAN Common Shares and EUR 73.39 for MAN Preferred Shares.

The enterprise value of MAN SE determined by the Valuation Experts in their Valuation Report in accordance with the discounted earnings method pursuant to IDW S 1 as of 6 June 2013 is EUR 11,894 million. This results in a proportionate value of EUR 80.89 for each MAN Common Share and EUR 80.89 for each MAN Preferred Share. This value is greater than the above-mentioned volume weighted three month stock exchange price in the amount of EUR 79.08 for MAN Common Shares and EUR 73.39 for MAN Preferred Shares.

The volume weighted stock exchange price does not have to be adjusted and extrapolated to the date of the general shareholders' meeting. According to the Stollwerck decision of the BGH, such adjustment only has to occur if a longer period of time has passed between the public announcement of the structural measure and the date of the general shareholders' meeting and if the development of the stock exchange prices shows that an adjustment is appropriate. An adjustment of the volume weighted three month stock exchange price in the present case, however, is not necessary because a period of only about five months lies between the announcement of the intent to enter into discussions about the conclusion of the Domination and Profit and Loss Transfer Agreement (9 January 2013) and the date on which the general shareholders' meeting takes place (6 June 2013) which will resolve about the approval for the Domination and Profit and Loss Transfer Agreement. This does not constitute a longer period of time under the Stollwerck decision.

### **3.4 Contract examination**

In response to identical requests from the Executive Board of MAN SE and the Managing Directors of Truck & Bus GmbH for the appointment of a contract examiner, the District

Court Munich I selected Rölfs RP AG, Wirtschaftsprüfungsgesellschaft, Düsseldorf, as the Contract Examiner and appointed this firm in an order dated 17 January 2013 (§§ 293b and 293c AktG). The Contract Examiner issues a separate report about the results of its examination. This Examination Report, together with the documents mentioned in § 293f para. 1 AktG, Art. 54 para. 2 SE Regulation will be available on the website of MAN SE at <http://www.man.eu/agm> and in the offices of MAN SE starting on the date on which the general shareholders' meeting that shall take place on 6 June 2013 is convened. The Examination Report will also be available during the general shareholders' meeting of MAN SE on 6 June 2013.

### **Truck & Bus GmbH**

The Managing Directors

Wolfsburg, 26 April 2013

---

Dr. h.c. Leif Östling

---

Hans Dieter Pötsch

### **MAN SE**

The Executive Board

Munich, den 26 April 2013

---

Dr. Georg Pachta-Reyhofen

---

Ulf Berkenhagen

---

Jochen Schumm

---

Dr.-Ing. René Umlauf

- Convenience Translation; in case of inconsistencies, the German original version prevails -

## **Annexes**

- Convenience Translation; in case of inconsistencies, the German original version prevails -

**Annex 1: List of the participations of MAN SE as of 31 December 2012 pursuant to § 285 no. 11 und no. 11a HGB**

- Convenience Translation; in case of inconsistencies, the German original version prevails -

**Note:**

**Annex 1 (the List of Participations of MAN SE) is not attached to this pdf document but is separately accessible under [www.man.eu/agm](http://www.man.eu/agm).**



- Convenience Translation; in case of inconsistencies, the German original version prevails -

**Annex 2: Domination and Profit and Loss Transfer Agreement together with the Letter of Affiliation and Comfort from Volkswagen Aktiengesellschaft dated 26 April 2013**

- Convenience Translation; in case of inconsistencies, the German original version prevails -

**Note:**

**Annex 2 (the Domination and Profit and Loss Transfer Agreement together with the Letter of Affiliation and Comfort) is not attached to this pdf document but is separately accessible under [www.man.eu/agm](http://www.man.eu/agm).**

- Convenience Translation; in case of inconsistencies, the German original version prevails -

**Annex 3: Joint Expert Opinion on the Equity Value of MAN SE by KPMG AG  
Wirtschaftsprüfungsgesellschaft und PricewaterhouseCoopers Aktiengesellschaft  
Wirtschaftsprüfungsgesellschaft**

*- Convenience Translation; in case of inconsistencies, the German original version prevails -*

**Note:**

**Annex 3 (the joint expert opinion on the Equity Value of MAN SE by KPMG AG Wirtschaftsprüfungsgesellschaft and PricewaterhouseCoopers Aktiengesellschaft Wirtschaftsprüfungsgesellschaft) is not attached to this pdf document but is separately accessible under [www.man.eu/agm](http://www.man.eu/agm).**