

## **Joint Report**

**of the Board of Management**

of

**Münchener Rückversicherungs-Gesellschaft  
Aktiengesellschaft in München**

and the

**Directors**

of

**MR Beteiligungen 22. GmbH, Munich**

**pursuant to Section 293a of the German Stock Corporation Act (AktG)**

on the

**Profit and Loss Transfer Agreement dated 2 March 2021**

## I. Introduction

On 2 March 2021, Münchener Rückversicherungs-Gesellschaft (hereinafter referred to as “Munich Reinsurance Company”) and MR Beteiligungen 22. GmbH entered into a profit and loss transfer agreement (“the Agreement”). In entering into the Agreement, MR Beteiligungen 22. GmbH undertakes to transfer its entire profits to Munich Reinsurance Company, and Munich Reinsurance Company in return undertakes to assume any losses incurred by MR Beteiligungen 22. GmbH. The Agreement is to form the basis of the fiscal unity of the two companies pursuant to the German Corporate Income Tax Act (KStG) and the German Trade Tax Act (GewStG).

This report is a joint report by the Board of Management of Munich Reinsurance Company and the Directors of MR Beteiligungen 22. GmbH pursuant to Section 293a of the German Stock Corporation Act, in which they explain in detail the legal and financial justification for the conclusion and the content of the Agreement.

## II. Parties to the Agreement

The parties to the Agreement are Munich Reinsurance Company as controlling company (parent of tax group) and MR Beteiligungen 22. GmbH as profit-transferring company (controlled company).

### 1. Munich Reinsurance Company

Munich Reinsurance Company is a listed company having its registered office in Munich. It is entered in the commercial register of the lower court (Amtsgericht) of Munich under HRB 42039. Its financial year is the calendar year.

The object of the company is the provision of reinsurance in all classes of business. The Company may establish branches in Germany or other countries, may form, acquire or invest in companies of all types, may manage companies or confine itself to managing the shareholdings. It is entitled to carry out all transactions and measures that appear suited to serving the object of the Company.

Munich Reinsurance Company is the ultimate parent company of the Munich Re Group. The Group combines primary insurance and reinsurance under one roof, thereby covering a large part of the value chain in the risk market. The Group’s worldwide investments are primarily managed by MEAG MUNICH ERGO AssetManagement GmbH (“MEAG”) and its subsidiaries.

### 2. MR Beteiligungen 22. GmbH

MR Beteiligungen 22. GmbH is a limited-liability company having its registered office in Munich. It was established by notarised certificate of incorporation dated 18 January 2021 under the name “MR Beteiligungen 22. GmbH” and entered under HRB 263324 in the commercial register of the lower court of Munich (Amtsgericht) on 16 February 2021. Its financial year is the calendar year. Its share capital is €25,000, fully paid up. Munich Reinsurance Company holds all of the shares and is thus the sole shareholder of MR Beteiligungen 22. GmbH.

MR Beteiligungen 22. GmbH currently has two directors. In the event of there being only one director, the Company shall be represented by him/her alone. If there are two or more directors, the Company shall be represented by two directors jointly or by one director together with an employee vested with full commercial power of attorney (“Prokurist”). All current directors are employees of Munich Reinsurance Company.

The object of MR Beteiligungen 22. GmbH is the acquisition and management of its own assets, in particular shares in other companies, and the assumption of personal liability and management at other companies. The object of the Company does not include the transaction of business that requires state approval. The Company may engage in any activity that directly or indirectly promotes the achievement of its object.

MR Beteiligungen 22. GmbH is currently merely a shelf company. It has no operations, and none are as yet planned. The Company currently has no employees.

MR Beteiligungen 22. GmbH was established so that Munich Reinsurance Company may potentially, at a later date, use it for operative business or transfer such business to it. It is planned to use MR Beteiligungen 22. GmbH for business activities that it is useful to keep organisationally, but not economically, separate from Munich Reinsurance Company. For example, new innovative business initiatives could be bundled and expanded in the new company and marketed to improve their external image. The shelf company could also be used to bundle new investments. Holding investments in separate shelf companies facilitates their management and provides greater flexibility at the end of an investment's life cycle.

### **III. Legal and financial reasons for concluding the Agreement and the impact of the Agreement**

The Agreement is an essential requirement for the establishment of fiscal unity for corporation tax and trade tax between Munich Reinsurance Company and MR Beteiligungen 22. GmbH. The fiscal unity enables the taxation of both companies to be optimised. It has the following particular benefits:

- The income earned by MR Beteiligungen 22. GmbH would be directly attributed to Munich Reinsurance Company for tax purposes. Consequently, profits and losses made by Munich Reinsurance Company and MR Beteiligungen 22. GmbH can be directly offset against each other at the level of Munich Reinsurance Company. This avoids tax being payable on profits made by one company while losses arising at the other company may not be tax-deductible or only become tax-deductible at a later date. The ability to offset profits and losses in this way would ultimately result in a decrease in the overall tax burden.
- Without fiscal unity at the level of Munich Reinsurance Company, profits earned by MR Beteiligungen 22. GmbH distributed to Munich Reinsurance Company would be taxable at 5% under current tax rules, which would increase the burden by 1.65%. The Agreement enables any profits made by MR Beteiligungen 22. GmbH to be transferred to Munich Reinsurance Company with no additional tax burden.
- Start-up losses often arise when new business activities are launched. Losses arising before fiscal unity is established are in principle only usable again after dissolution of the unity. This problem can be avoided if fiscal unity already exists when new business activities commence. If a profit transfer agreement is in place, Munich Reinsurance Company is able to transfer operative business to MR Beteiligungen 22. GmbH even during the year at short notice without affecting the deductibility of losses.

Apart from the obligation to assume losses, the Agreement has no negative effects for Munich Reinsurance Company, notably because, as sole shareholder of MR Beteiligungen 22. GmbH, Munich Reinsurance Company does not have to pay compensation of any kind to outside shareholders pursuant to Sections 304 ff. of the German Stock Corporation Act (AktG).

As the precise future activity of MR Beteiligungen 22. GmbH has not yet been defined, it is not currently possible to describe the resultant risk of loss for Munich Reinsurance Company in any more detail. Ultimately, however, the risk of loss is no higher than it would be if future activity were

directly undertaken by Munich Reinsurance Company rather than by MR Beteiligungen 22. GmbH. Indeed, as sole shareholder of MR Beteiligungen 22. GmbH, Munich Reinsurance Company can exercise its rights as shareholder to influence the company's business activity and management. The risk for the shareholders of Munich Reinsurance Company does not, therefore, increase as a result of approval of the Agreement.

Entering into the Agreement is justifiable from a financial perspective, and there is no preferable alternative.

- Though a possible alternative would be for Munich Reinsurance Company to undertake any future activities directly, which would also result in direct consolidation of profits from the activities at Munich Reinsurance Company for tax purposes, the intended independence of the new activity would not be achieved.
- Another alternative would be to conclude a profit and loss transfer agreement after MR Beteiligungen 22. GmbH had taken up an operational activity. However, the fiscal unity would then only become continuously effective after the first start-up losses had been incurred. It would only be possible to offset the start-up losses against Munich Reinsurance Company's taxable profits once the unity had been terminated.

#### **IV. Legal and taxation aspects of the Agreement**

##### **1. General**

The Agreement is an inter-company agreement within the meaning of Section 291 of the German Stock Corporation Act (AktG). It requires both approval by a shareholder meeting of MR Beteiligungen 22. GmbH, which was granted in notarised form on 17 February 2021, and approval by the Annual General Meeting of Munich Reinsurance Company. Once these approvals have been granted, the Agreement must be entered under MR Beteiligungen 22. GmbH in the commercial register. The Agreement will take effect only when it has been entered in the commercial register. As Munich Reinsurance Company is the sole shareholder of MR Beteiligungen 22. GmbH, an audit of the Agreement by a contract auditor pursuant to Section 293b(1) of the German Stock Corporation Act and submission of an audit report pursuant to Section 293e of the German Stock Corporation Act are not required.

##### **2. Specific points**

We comment as follows on specific provisions of the Agreement:

###### Section 1: Profit transfer

Pursuant to Section 1 of the Agreement, MR Beteiligungen 22. GmbH undertakes to transfer its entire profits in accordance with the rule in Section 301 of the German Stock Corporation Act (AktG), as amended from time to time (or corresponding subsequent regulation) to Munich Reinsurance Company. According to that rule, subject to creating or releasing reserves pursuant to Section 1 (2) and (3) of the Agreement, the amount to be transferred is the net profit for the year before profit transfer, less any loss carry-forward from the previous year, any amount required to be transferred to a statutory reserve and the amount excluded from distribution under Section 268(8) of the German Commercial Code (HGB). To the extent legally permissible, Munich Reinsurance Company may require the transfer of profits in advance during the year.

MR Beteiligungen 22. GmbH may, with Munich Reinsurance Company's consent, transfer amounts from the net profit for the year to other revenue reserves (Section 272(3) of the HGB) only insofar as this is permissible under commercial law and economically justifiable

on the basis of sound business judgement. At Munich Reinsurance Company's request, amounts transferred during the term of the Agreement to other revenue reserves in accordance with the currently valid version of Section 301, second sentence, of the German Stock Corporation Act (AktG), as amended from time to time (or corresponding subsequent regulation) may be withdrawn from the other revenue reserves and remitted as profit. The transfer of amounts from the release of other revenue reserves formed prior to inception of the Agreement in accordance with Section 272(3) of the HGB and from profit carry-forwards formed prior to inception of the Agreement is not permitted.

#### Section 2: Assumption of losses

Pursuant to Section 2 of the Agreement, Munich Reinsurance Company undertakes to assume any losses made by MR Beteiligungen 22. GmbH in accordance with the rules in Section 302 of the German Stock Corporation Act as amended from time to time (or corresponding subsequent regulation). Pursuant to those rules, Munich Reinsurance Company shall assume any loss for the year arising during the term of the Agreement to the extent that such loss is not covered by amounts withdrawn from the other revenue reserves that were transferred to such other revenue reserves during the term of the Agreement.

Losses must be compensated in order to render the fiscal unity between MR Beteiligungen 22. GmbH and Munich Reinsurance Company effective. For tax purposes, it is essential for Munich Reinsurance Company, as parent of the tax group, to cover any loss made by MR Beteiligungen 22. GmbH as the controlled company (Section 17 of the German Corporate Income Tax Act, KStG).

#### Section 3: Effective date and term of the Agreement

The Agreement will first take effect for the financial year of MR Beteiligungen 22. GmbH in which the Agreement is entered in the commercial register.

Pursuant to Section 14(1), first sentence, no. 3 in conjunction with Section 17(1) of the German Corporate Income Tax Act (KStG), the Agreement must be concluded for a period of at least five years and actually performed during its entire period of validity for the fiscal unity to be effective. The rules for the term of the Agreement accordingly stipulate that the earliest date on which the Agreement can be ordinarily terminated with the required notice is on expiry of a period of five years from the beginning of the financial year for which the obligation to transfer profits and to cover losses first applies (minimum term). After expiry of the minimum term, the Agreement may be terminated upon three (3) months' written notice prior to the end of any subsequent financial year of MR Beteiligungen 22. GmbH.

The right of extraordinary termination for good cause without notice remains, as with any relationship of continuing obligation, unaffected. The Agreement provides for the following causes constituting justification for premature termination:

- A disposal or transfer of shares in MR Beteiligungen 22. GmbH resulting in Munich Reinsurance Company no longer directly holding all of the shares in MR Beteiligungen 22. GmbH
- An external shareholder acquiring shares for the first time, Section 307 of the German Stock Corporation Act (AktG), as amended from time to time (or corresponding subsequent regulation) applying accordingly
- The merger, division or liquidation of one of the parties
- An application to open insolvency proceedings affecting the assets of one of the parties
- The discontinuation for any other cause of the financial integration of MR Beteiligungen 22. GmbH into Munich Reinsurance Company required for recognition of fiscal unity

Supervisory law also provides for extraordinary termination in the event of a final and binding or immediately enforceable order issued by the German Federal Financial Supervisory Authority (BaFin) to terminate the Agreement.

The above list of “good causes” is not exhaustive for the purposes of civil law.

#### Section 4: Final provisions

The purpose of the Agreement is to establish fiscal unity. Individual provisions of the Agreement are therefore to be interpreted in accordance with the tax provisions in the current version of Sections 14 and 17 of the German Corporate Income Tax Act (KStG), as amended from time to time (or corresponding subsequent regulation).

Termination of the Agreement must be in writing. It may also be transmitted in electronic form.

Section 4(3) of the Agreement includes a customary severability clause, the purpose of which is to ensure that the Agreement remains effective if individual provisions prove to be partly or totally ineffective, unenforceable or incomplete. Thus, should a provision of the Agreement be or become legally invalid or unenforceable in whole or in part or should the Agreement contain gaps or omissions, the effectiveness of the Agreement will not otherwise be affected. Instead of the invalid or unenforceable provision, or in order to remedy any gap or omission, an appropriate provision should apply that, as far as legally possible, comes closest to what the contracting parties intended in economic terms or would have intended, according to the spirit and purpose of the Agreement, if they had been aware of that point when the Agreement was entered into or when a provision was subsequently included.

## **V. Conclusion**

In summary, we conclude that the Agreement is beneficial for both Munich Reinsurance Company and MR Beteiligungen 22. GmbH.

Munich, 2 March 2021

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