

Joint report pursuant to Section 293a AktG
of the Board of Management of **ERWE Immobilien AG, Frankfurt am Main,**

and

of the Management Board of **ERWE Properties GmbH, Frankfurt am
Main,**

to the profit and loss transfer agreement dated 27

October 2020 between the

ERWE Immobilien AG, Frankfurt am Main

and the

ERWE Properties GmbH, Frankfurt am Main

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1 Introduction

ERWE Immobilien AG (hereinafter also referred to as the "**Company**" or the "**Controlling Company**") and ERWE Properties GmbH (hereinafter also referred to as the "**Controlled Company**") concluded a profit and loss transfer agreement (hereinafter also referred to as the "**Agreement**") on 27 October 2020.

The Board of Management of ERWE Immobilien AG previously resolved to conclude the agreement on 27 October 2020. The approval of the Supervisory Board was not required either by law or by the Articles of Association or the rules of procedure of the Board of Management and the Supervisory Board. The shareholders' meeting of the controlled company approved the agreement on 27 October 2020.

Pursuant to Section 293 para. 2 of the German Stock Corporation Act (AktG), the agreement requires an approval resolution of the Annual General Meeting of ERWE Immobilien AG adopted by a majority of at least 75% of the capital represented at the adoption of the resolution in order to become legally effective. The Board of Management and the Supervisory Board will therefore propose to the Extraordinary General Meeting of ERWE Immobilien AG scheduled for 20 November 2020 that the agreement be approved. According to

In accordance with section 294 (2) of the AktG, the agreement only becomes effective once its existence has been entered in the commercial register of the Controlled Company.

For the purpose of informing the shareholders and partners of both companies, the Board of Management of ERWE Immobilien AG and the management of ERWE Properties GmbH report in accordance with

Section 293a of the German Stock Corporation Act (AktG) jointly submit the following report.

2 Contracting Parties

2.1 ERWE Real Estate AG

2.1.1 Overview

ERWE Immobilien AG, together with its subsidiaries (together also the "**ERWE Group**" or "**ERWE**") is active in the acquisition and development of real estate, in particular promising inner-city commercial properties in "A" locations in small and medium-sized cities.

As the holding company of the ERWE Group, ERWE Immobilien AG performs a central management function. The company holds interests in various properties via its direct and indirect subsidiaries. In addition, it is partly linked to the subsidiaries via agency agreements and provides financial resources in the form of loans for the subsidiaries. The shares of ERWE Immobilien AG have been listed on the stock exchange since January 2019.

In the 2019 financial year, ERWE generated income from property management of EUR 3,466,000 and EBIT of EUR 11,540,000. The net asset value (EPRA) amounted to

In the first half of 2020, the ERWE Group generated income from real estate management of EUR 2,224k and EBIT of EUR 5,956k, while the net asset value (EPRA) amounted to EUR 72,830k.

2.1.2 Legal basis and history

ERWE Immobilien AG is a stock corporation under German law with its registered office in Frankfurt am Main. It is entered in the Commercial Register of the District Court of Frankfurt am Main under HRB 113320. The financial year is the calendar year.

In accordance with the Articles of Association, the object of the Company is the acquisition, management and sale of equity interests in medium-sized industrial and commercial companies in Germany and abroad, as well as equity interests in real estate companies and the purchase, sale, holding, leasing, management and exploitation of real estate, land and rights equivalent to real estate and their development, planning, development and construction, as well as the provision of consulting and other services for other companies and the provision of real estate-related services. The Company is entitled to establish, acquire or participate in companies, to conclude inter-company agreements, to form communities of interest, to establish branches in Germany and abroad and to engage in all relevant transactions that are suitable for promoting the Company. The company does not engage in any business requiring a license within the meaning of the German Banking Act.

The controlling company was originally founded on 20 November 2000 as a Vorrats-Aktiengesellschaft under German law with its registered office in Hamburg. Following various name changes and relocations of its registered office, the controlling company now trades under the name ERWE Immobilien AG and has its registered office in Frankfurt am Main.

2.1.3 Share capital

The Company's share capital amounts to EUR 16,562,922.00 and is divided into 16,562,922 no-par value shares. The shares are made out to the bearer.

2.1.4 Stock exchange listing

The shares of the Company (ISIN: DE000A1X3WX6; WKN: A1X3WX) are admitted to trading on the regulated market of the Frankfurt Stock Exchange (General Standard) and are included in over-the-counter trading in Berlin, Düsseldorf and Stuttgart.

2.1.5 Executive bodies

The executive bodies of ERWE Immobilien AG are the Board of Management, the Supervisory Board and the Annual General Meeting.

(a) Board of Directors

Pursuant to Section 6 (1) of the Articles of Association of the Controlling Company, the Executive Board consists of one or more persons. The Supervisory Board determines the number of members of the Executive Board. At the time of the preparation of this report, the Executive Board of the controlling company comprises three members:

- Axel Harloff,
- Rüdiger Weitzel, and
- Christian Hillermann.

Pursuant to Section 7 (1) of the Articles of Association, if there are several members of the Executive Board, the parent company is represented jointly by two members of the Executive Board or by one member of the Executive Board together with an authorized signatory (Prokurist). The Supervisory Board may exempt all or individual members of the Executive Board, either in general or in individual cases, from the restrictions of Section 181 of the German Civil Code (BGB) in the event of multiple representation; Section 112 of the German Stock Corporation Act (AktG) remains unaffected.

(b) Supervisory Board

Pursuant to Section 8 (1) of the Articles of Association, the Supervisory Board of the controlling company consists of three members. At the time this report was prepared, the following members belonged to the Supervisory Board of the controlling company:

- Dr. Olaf Hein (Chairman),
- Dr. Holger Henkel (Deputy Chairman) and
- Garsten Wolff.

(c) Annual General Meeting

The Annual General Meeting passes resolutions in the cases expressly stipulated by law and in the Articles of Association and thus, among other things, on the appointment of the members of the Supervisory Board, insofar as they are not otherwise to be appointed to the Supervisory Board, on the appropriation of the balance sheet profit, on the discharge of the members of the Management Board and the Supervisory Board, on the appointment of the auditor, on any amendments to the Articles of Association, on measures to raise and reduce capital, on the appointment of auditors to audit transactions in the management of the Company or on the dissolution of the Company.

Resolutions of the Annual General Meeting are passed by a simple majority of the votes cast, unless the Articles of Association or statutory provisions stipulate otherwise. Abstentions do not count as votes. In special cases

requires, in addition to the majority of votes, a three-quarters majority of the share capital represented when the resolution is adopted; this includes, for example, capital increases with exclusion of subscription rights, conversion measures or approvals of inter-company agreements.

2.1.6 business overview

ERWE Immobilien AG is the holding company of the ERWE Group and is active in the acquisition and development of real estate. ERWE Immobilien AG concentrates on the development of promising inner-city commercial properties in "A" locations in small and medium-sized towns. This includes office and hotel uses as well as inner-city retail.

2.1.7 Business development, earnings situation and asset position

The consolidated financial statements of the Controlling Company for the financial year 2019 show a consolidated result of TEUR 8,706 (2018: TEUR 4,913) and income from property management of TEUR 3,466 (2018: TEUR 2,752 million). After deduction of expenses from property management, a result of EUR 1,366 thousand (2018: EUR 1,154 thousand) remains.

The annual financial statements of ERWE Immobilien AG for the 2019 financial year show a net loss for the year of EUR 738,216.95, a loss carried forward of EUR 1,832,279.54 and an accumulated loss of EUR 2,570,496.49, with total assets of EUR 41,798,111.80.

2.2 ERWE Properties GmbH

2.2.1 Legal basis and history

ERWE Properties GmbH is a limited liability company under German law with its registered office in Frankfurt am Main. It is entered in the Commercial Register of the Local Court of Frankfurt am Main under HRB 109499. The financial year is the calendar year.

According to the Articles of Association, the business purpose of ERWE Properties GmbH is the acquisition, holding and management of real estate and investments in other companies. The Controlled Company is entitled to undertake all transactions and measures which are useful and conducive to the aforementioned business purpose. It is also entitled to establish, acquire and participate in similar or other companies, to spin off or sell significant parts of its operations and/or business areas, to transfer them to subsidiaries or joint ventures and/or to limit itself to performing the tasks of a (group) holding company and/or financing company. The Controlled Company is entitled to establish representative offices, branches and subsidiaries within the Federal Republic of Germany and abroad.

ERWE Properties GmbH was established on 16 April 2014 under the name HOW Invest GmbH with registered office in Hamburg. Following various changes of name and relocations of the registered office, the subsidiary now trades under the name ERWE Properties GmbH and has its registered office in Frankfurt am Main.

2.2.2 Share capital and shareholder structure

The share capital of ERWE Properties GmbH amounts to EUR 500,000.00. The sole shareholder of ERWE Properties GmbH is the Company.

2.2.3 Organs

The executive bodies of ERWE Properties GmbH are the managing directors and the shareholders' meeting.

2.2.4 Managing Directors

Pursuant to Section 7 (1) of the Articles of Association, ERWE Properties GmbH has one or more managing directors. At the time this report was prepared, the management of the controlled company comprised two members:

- Axel Harloff and
- Rüdiger Weitzel.

Pursuant to Section 7 (2) of the partnership agreement, if several managing directors have been appointed, the controlled company is represented by two managing directors jointly or by one managing director together with an authorised signatory. If only one managing director has been appointed, the Controlled Company is represented by this managing director alone.

The managing directors manage the business of ERWE Properties GmbH. Transactions and measures which go beyond the ordinary course of business may only be taken with the approval of the shareholders' meeting. Pursuant to § 8 para. 1 sentence 2 of the Articles of Association, this includes, for example, the purchase and sale as well as the encumbrance of real estate and rights equivalent to real estate, the making of investments of more than EUR 50,000 in an individual case or the taking out of loans with a commitment value of more than EUR 50,000.

2.2.5 Shareholders' meeting

The shareholders' meeting is primarily responsible for fundamental measures that go beyond the ordinary management of the company. These include, in particular, the adoption of the annual financial statements and the appropriation of the result, the appointment and dismissal of managing directors as well as the discharge of the same, the measures for auditing and monitoring the management as well as the approval of extraordinary transactions and measures and transactions pursuant to § 8 (1) sentence 2 of the partnership agreement.

The shareholders' meeting is also entitled to issue instructions to the managing directors with regard to management measures (Section 37 (1) GmbHG).

2.2.6 business overview

ERWE Properties GmbH is a wholly-owned subsidiary of the Company and, as an intermediate holding company, directly holds the various investments in the Group's property companies in which the individual real estate investments are held, such as the three portfolio properties in Speyer, Lübeck and Krefeld. ERWE Properties GmbH does not carry out any other business activities beyond holding the investments, but fulfils the function of an intermediate holding company.

2.2.7 Business development, earnings situation and asset position

The annual financial statements of the controlled company show a net loss of EUR 285,730.84 as at 31 December 2019 with total assets of EUR 9,558,142.92. The annual financial statements of ERWE Properties GmbH are included in the consolidated financial statements of the company.

3 Reasons for the conclusion of the profit and loss transfer agreement

3.1 Fiscal, economic and legal reasons

The reasons for concluding the profit transfer agreement are of a tax nature. The profit and loss transfer agreement enables ERWE Immobilien AG to optimise its tax situation with regard to corporation and trade tax. The profit and loss transfer agreement is a mandatory legal prerequisite for the establishment of a consolidated tax group for corporation and trade tax purposes pursuant to Sections 14 et seq. KStG, Section 2 para. 2 sentence 2 GewStG between ERWE Immobilien AG as the controlling company and ERWE Properties GmbH as the controlled company. As a result of such a fiscal unity, the income of the controlled company is directly attributed to ERWE Immobilien AG as the controlling company for tax purposes, so that any positive income of one company can be offset against any negative income of the other company (consolidation of results). This can lead to tax advantages depending on the tax result situation of the two companies involved. Without a profit and loss transfer agreement, such a tax offsetting of profits is not possible; profits of the controlled company could at best be distributed to the controlling company by way of a profit distribution. In this case, according to the current legal status, 5% of the profit distribution would be subject to corporate income tax and trade tax at the controlling company.

Legal or economic reasons beyond this do not play any role in the conclusion of the profit and loss transfer agreement. There is no need to transfer the ERWE Properties

GmbH beyond the existing situation as a wholly-owned subsidiary, as would be possible, for example, through a control agreement, nor to achieve synergies through a possible even closer cooperation.

3.2 Alternatives to the conclusion of the profit and loss transfer agreement

The Executive Board of the Company has examined alternatives to the conclusion of a profit and loss transfer agreement. However, there is no economically reasonable alternative to establishing a tax group for corporate income tax and trade tax purposes and thus to concluding the agreement. The objectives pursued with the establishment of the tax group could not be achieved through a different legal or tax arrangement.

3.2.1 Change of legal form

A consolidation of results could only be achieved for corporation tax purposes, but not for trade tax purposes, by a change of legal form of the controlled company into a partnership.

3.2.2 Other types of inter-company agreements

The combined taxation of the two companies could also not have been achieved by concluding a control agreement or another type of inter-company agreement pursuant to Section 292 AktG (e.g. a business lease agreement, business transfer agreement, profit pooling or partial profit transfer agreement) or a business management agreement. This is because the establishment of a consolidated tax group for corporate income tax and trade tax purposes is subject to certain conditions set out in more detail in Sections 14 (1) and 17 of the German Corporation Tax Act (KStG) and provides, inter alia, for the mandatory and exclusive conclusion of a profit and loss transfer agreement.

3.2.3 Merger

A merger of the controlled company with the controlling company is also not an alternative. It is true that a merger would lead to a legal unification of the economic activities at the controlling company, so that income would only be taxed at the level of the controlling company. However, the loss of the legal independence of the controlled company is not desired, so that a merger cannot be considered.

3.2.4 Summary result

In order to achieve the objective of optimising corporation and trade tax while maintaining the legal independence of the controlled company, the conclusion of a profit and loss transfer agreement is the only sensible approach, taking into account all relevant aspects. This is the only way to achieve a consolidated tax group for corporate and trade tax purposes in accordance with §§ 14 et seq. KStG, Section 2 para. 2 sentence 2 GewStG between ERWE Immobilien AG as the

The taxation of ERWE Properties GmbH as the controlling company and ERWE Properties GmbH as the controlling company will be optimised in terms of taxation.

4 Content and effects of the Treaty

The agreement is a profit transfer agreement and thus an inter-company agreement pursuant to section 291 (1) sentence 1 AktG.

The following should be noted with regard to the individual provisions of the contract:

4.1 Explanation of the content of the contract

4.1.1 Transfer of profits (§ 1)

Section 1 of the agreement contains the obligation of one party to the agreement to transfer its entire profit to the other party, which is typical for a profit transfer agreement. Accordingly, subject to the creation and release of reserves in accordance with section 3 of the agreement and section 301 of the German Stock Corporation Act (AktG), as amended from time to time, the net income for the year calculated in accordance with the applicable provisions of commercial law, which would have been generated without the profit transfer, is to be transferred. Section 301 of the German Stock Corporation Act, as amended, provides that the net income for the year arising without the profit transfer, reduced by any loss carried forward from the previous year, by the amount to be allocated to the legal reserves in accordance with Section 300 of the German Stock Corporation Act and the amount blocked from distribution in accordance with Section 268 (8) of the German Commercial Code, is to be transferred. Furthermore, the currently valid version of section 301 AktG provides that if amounts have been transferred to other revenue reserves during the term of the agreement, these amounts may be withdrawn from the other revenue reserves and transferred as profit. Irrespective of this, the agreement provides that the statutory limits on the transfer of profits and the tax regulations for the recognition of a fiscal unity must be complied with.

Pursuant to Section 5 (2) of the Agreement, the obligation to transfer profits shall apply for the first time for the entire fiscal year of the Controlled Company in which the Agreement takes effect, i.e. presumably from January 1, 2020.

4.1.2 Loss absorption (§ 2)

Section 2 contains the obligation of the Controlling Company to assume losses in accordance with Section 302 AktG, as amended. Accordingly, the Controlling Company is obligated to offset any annual loss of the Controlled Company that would otherwise arise during the term of the agreement, to the extent that such loss is not offset by withdrawing amounts from other revenue reserves that were allocated to such reserves during the term of the agreement. Accordingly, the Controlling Company bears the economic risk of the Controlled Company. This obligation to assume losses is a mandatory consequence of a profit and loss transfer agreement.

By reference to Section 302 AktG, the respective applicable statutory provisions also apply. Thus, pursuant to section 302 (3) AktG, the Controlling Company may not waive or settle its claim for loss compensation until three years after the date on which the entry of the termination of the agreement in the commercial register pursuant to section 10 HGB has been announced. However, this does not apply if the controlling company is insolvent and settles with its creditors in order to avoid insolvency proceedings or if the obligation to compensate is regulated in an insolvency plan. Pursuant to section 302 (4) AktG, the claim for loss compensation is subject to a limitation period of ten years from the date on which the entry of the termination of the agreement in the commercial register pursuant to section 10 HGB was announced.

Pursuant to Section 5 (2) of the Agreement, the obligation to assume losses shall apply for the first time for the entire fiscal year of the Controlled Company in which the Agreement becomes effective, i.e. presumably as of January 1, 2020. Any claim to compensation for the net loss for the year shall become due as of the end of the last day of each fiscal year of the Controlled Company.

4.1.3 Creation and release of reserves (§ 3)

Pursuant to section 3 (1) of the Agreement, the Controlled Company may, with the consent of the Controlling Company, allocate amounts from the net income for the year to the revenue reserves pursuant to section 272 (3) HGB only to the extent that this is permissible under company and commercial law and economically justified on the basis of a reasonable commercial assessment. Statutory reserves are excluded from this. At the request of the Controlling Company, other revenue reserves formed during the term of this agreement must be dissolved pursuant to section 3 (2) of the agreement in accordance with section 272 (3) of the HGB and used to offset a net loss for the year or transferred as profit. section 3 (3) of the agreement also clarifies that the transfer of amounts and the offsetting of a net loss for the year from amounts from the dissolution of capital reserves or revenue reserves and profit carried forward which were formed or arose before the agreement came into effect is excluded.

4.1.4 Maturity of the claim to profit transfer (§ 4)

Section 4 of the agreement governs the due date of the claim to transfer of the profit pursuant to Section 1 of the agreement. This is due in each case with the adoption of the annual financial statements for the relevant financial year of the Controlled Company.

4.1.5 Effective date, duration and termination (§ 5)

In accordance with the statutory approval requirements pursuant to Section 293 AktG, Section 5 (1) stipulates that the agreement requires the approval of the Annual General Meeting of the Controlling Company and the approval of the shareholders' meeting of the Controlled Company in order to become effective.

Pursuant to Section 5 (2) of the Agreement, the Agreement becomes effective upon its entry in the commercial register at the registered office of the Controlled Company. This corresponds to the statutory provision in Section 294 (2) AktG. With regard to the transfer of profits and the assumption of losses, the Agreement shall already apply retroactively as of the beginning of the fiscal year of the Controlled Company in which the Agreement is entered in the commercial register at the registered office of the Controlled Company, in accordance with Section 5 (2).

In addition, § 5 of the contract contains provisions on the duration and termination of the contract. Pursuant to Section 5 (3), the agreement has an indefinite term. Pursuant to § 5 para. 4, the Agreement may be terminated by either party by written notice with effect from the end of a fiscal year of the Controlled Company, but for the first time with effect from a date which is at least 6 (six) full calendar years after the beginning of the fiscal year of the Controlled Company in which this Agreement became effective. The possibility to terminate the agreement for the first time with effect from a point in time which is at least 6 (six) full calendar years after the beginning of the Controlled Company's financial year in which this agreement became effective is required by the current legal situation for the establishment of a fiscal unity for income tax purposes (Section 14 (1) sentence 1 no. 3 KStG in conjunction with Section 17 KStG).

Section 5 (5) of the agreement clarifies that the agreement can also be terminated in writing without observing a notice period if there is good cause. Good cause for termination is deemed to be, in particular, the legally binding refusal of the tax recognition of the trade and corporate tax group by tax assessment notice or judgment. The same applies if the refusal of this recognition is threatened on the basis of administrative directives. Other important reasons are, for example, the sale or contribution of shares in the tax group company by the controlling company or the merger, demerger or liquidation of the controlling company or the tax group company. The same applies if the controlling company no longer holds a majority of the voting rights in the controlled company.

Irrespective of this, the consolidated tax group for corporation tax and trade tax purposes shall cease to exist from the beginning of the financial year in which the termination takes effect.

If the agreement ends, the Controlling Company must, pursuant to Section 303 of the German Stock Corporation Act, provide security or guarantee the claim to the creditors of the Controlled Company whose claims have been established before the entry of the termination of the agreement in the commercial register pursuant to Section 10 of the German Commercial Code has been announced, if the creditors contact the Controlling Company within 6 (six) months of the announcement of the entry for this purpose.

4.1.6 Final provisions (§ 6)

Section 6 (1) of the contract contains a so-called severability clause which secures the validity and performance of the contract in the event that one or more of the provisions

of the contract were either already ineffective or unenforceable at the time of conclusion or become so later. In place of the ineffective provision, the effective provision shall be deemed agreed which corresponds to the sense and purpose of the ineffective provision. The same applies in the event of a loophole in the contract.

Section 6 (2) regulates the allocation of costs incurred in connection with the conclusion of the profit and loss transfer agreement.

4.2 Effects of the profit and loss transfer agreement

4.2.1 Effects for ERWE Immobilien AG and its shareholders

From the point of view of the shareholders of ERWE Immobilien AG, the agreement does not have any particular consequences apart from the obligation to assume losses during the term of the agreement already described; in particular, no compensation is owed to or compensation for outside shareholders, as ERWE Immobilien AG is the sole shareholder of the Controlled Company.

Upon termination of the agreement, ERWE Immobilien AG will, pursuant to Section 303 of the German Stock Corporation Act, have to provide security to the creditors of the Controlled Company whose claims have been established before the entry of the termination of the agreement in the Commercial Register pursuant to Section 10 of the German Commercial Code has been announced, or to guarantee the claim if the creditors contact the Controlling Company within 6 (six) months after the announcement of the entry for this purpose.

4.2.2 Effects for the Controlled Company

The Controlled Company is disadvantaged by the agreement in that it is obliged to transfer its entire profit to ERWE Immobilien AG. Moreover, due to the 100% shareholding of ERWE Immobilien AG in the Controlled Company, profits can already be transferred today in the form of profit distributions. However, this is offset by considerable advantages due to the obligation of ERWE Immobilien AG to compensate for any losses incurred by the controlled company during the term of the agreement, which is expected to take effect in the current financial year.

4.2.3 summarised assessment

A summary assessment of the agreement shows that, although it results in individual disadvantages for both ERWE Immobilien AG as the controlling company and ERWE Properties GmbH as the controlled company, these are more than offset by the existing advantages - profit absorption and tax optimisation for ERWE Immobilien AG on the one hand and financial security for ERWE Properties GmbH through ERWE Immobilien AG's loss compensation obligation on the other - in the medium and, above all, long term.

5 No provisions on compensation and settlement in accordance with Sections 304, 305 AktG and no appointment of a contract auditor

Since the Controlling Company is the sole shareholder of the Controlled Company and thus there are no outside shareholders of the Controlled Company, provisions on compensation and settlement for outside shareholders pursuant to Sections 304, 305 AktG are not required in the agreement. For this reason, there is also no need for an audit of the agreement pursuant to § 293b (1) AktG, nor is an audit report required pursuant to § 293e AktG. In the absence of a compensation to be determined pursuant to Section 304 AktG and a compensation pursuant to Section 305 AktG, there is also no need for a valuation of the contracting companies to determine an appropriate compensation and an appropriate compensation.

Frankfurt am Main, 27 October 2020

The Board of Management of ERWE Immobilien AG



Axel Harloff
Vorstandsmitglied



Rüdiger Weitzel
Board member



Christian Hillermann
Vorstandsmitglied

The Management Board of **ERWE** Properties GmbH



Rüdiger Weitzel
Managing Director