

**Report**

on the audit of the domination and  
profit and loss transfer agreement  
pursuant to § 293b AktG between

**Pfeiffer Vacuum Technology AG,  
Aßlar,**

and

**Pangea GmbH,  
Maulburg**

THIS IS AN ENGLISH TRANSLATION OF THE GERMAN TEXT, WHICH IS THE SOLE  
AUTHORITATIVE VERSION. IN CASE OF ANY DISCREPANCY BETWEEN THE  
ENGLISH AND GERMAN VERSIONS; THE GERMAN-LANGUAGE ORIGINAL SHALL  
PREVAIL.

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## LIST OF ABBREVIATIONS

AG	Public limited company
approx.	approximately
AktG	Stock Corporation Act (AktG)
BaFin	Federal Financial Supervisory Authority
BewP	BewertungsPraktiker (magazine)
BGB	Civil Code
BGH	Federal Court of Justice
Busch Services GmbH	Busch Services GmbH, Maulburg
Bush SE	Busch SE, Maulburg
BVerfG	Federal Constitutional Court
cf.	compare
CAPM	Capital Asset Pricing Model
c.p.	ceteris paribus
DCF	Discounted cash flow
e.g.	For example
EBIT	Earnings Before Interest and Taxes
DPLTA	Domination and profit and loss transfer agreement
EBITDA	Earnings Before Interest, Taxes , Depreciation and Amortisation
Ebner Stolz	Ebner Stolz GmbH & Co. KG Wirtschaftsprüfungsgesellschaft Steuerberatungsgesellschaft, Stuttgart
etc.	et cetera
ECB	European Central Bank
€	Euro

FAUB	Technical Committee for Business Valuation and Economics of the IDW
f.	and the following page
ff.	Et seq.
FN-IDW	Professional News of the IDW
GmbH	Limited liability company
HGB	Commercial Code
HRB	Commercial Register Department B
HICP	Harmonised Index of Consumer Prices
IDW	Institute of Public Auditors in Germany
IDW S 1	IDW Standard 1 as amended in 2008
ISIN	International Securities Identification Number
i.S.d.	in the sense of
KSt/KStG	Corporation Tax/ German Corporate Income Tax Act
LG	Regional Court
m.	Million(s)
No.	Number
OLG	Higher Regional Court
p.a.	per annum
Pangea	Pangea GmbH, Maulburg
p.	Page
resp.	respectively
SolZ	Solidarity surcharge
S&P Global Market Tax-CAPM	S&P Global Market Intelligence LLC, New York City/USA Capital Asset Pricing Model (extended to include taxes)
Valuation report	Expert opinion of Ebner Stolz on the calculation of the business value as at 2 May 2023 of Pfeiffer Vacuum Technology AG,
Valuation experts	Ebner Stolz GmbH & Co. KG Wirtschaftsprüfungsgesellschaft

WACC	Weighted Average Cost of Capital
WPg	Die Wirtschaftsprüfung (Journal)
WpÜG	German Securities Acquisition and Takeover Act

## LIST OF APPENDICES

Appendix 1: Brief description of the peer group

Appendix 2: Resolution of the Regional Court of Frankfurt dated 12 December 2022 appointing I-ADVISE AG Wirtschaftsprüfungsgesellschaft, Düsseldorf, as joint contract auditor pursuant to § 293c (1) AktG

Appendix 3: DPLTA between Pfeiffer Vacuum Technology AG and Pangea GmbH

Appendix 4: General Engagement Terms for German Public Auditors and Public Audit Firms as of 1 January 2017.

**Hint:**

Due to technical reasons in calculations, rounding differences in the amount of one unit (€, % etc.) may occur in the tables.

## A. Mandate and conduct of the mandate

### I. Mandate

- 1 Pangea GmbH, Maulburg,<sup>1</sup> as the controlling company and  
**Pfeiffer Vacuum Technology AG, Asslar,<sup>2</sup>**
- 2 as the controlled company, intend to conclude a domination and profit and loss transfer agreement within the meaning of § 291 para. 1 sentence 1 AktG.<sup>3</sup> The effectiveness of the agreement is subject to the approval of the general meeting of PVT AG pursuant to § 293 para. 1 AktG and the approval of the shareholders' meeting of Pangea pursuant to § 293 para. 2 AktG. The agreement shall be submitted for approval to the ordinary general meeting of PVT AG on 2 May 2023 and to the shareholders' meeting of Pangea on 28 April 2023.
- 3 Pursuant to §§ 304, 305 AktG, the minority shareholders of a controlled stock corporation are to be granted, at their option, an appropriate compensation payment or an appropriate settlement. The contract is to be audited by one or more expert auditors, in particular with regard to the appropriateness of compensation and settlement.<sup>4</sup> Accordingly, the subject of our audit is the contract<sup>5</sup> and the appropriateness of the proposed compensation as well as the proposed settlement.<sup>6</sup>
- 4 Upon the joint proposal of Pangea and PVT AG, the Frankfurt Regional Court appointed us, I-ADVISE AG Wirtschaftsprüfungsgesellschaft, Düsseldorf, as joint contract auditor for the intended DPLTA by order dated 12 December 2022.<sup>7</sup> The order of the court contains information on the conduct of the audit and the report on the audit.

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<sup>1</sup> Hereinafter "Pangea" or "Majority Shareholder".

<sup>2</sup> Hereinafter "PVT AG", "Company" or "Valuation Object".

<sup>3</sup> "DPLTA".

<sup>4</sup> §§ 293b (1), 293e (1) sentence 2 AktG.

<sup>5</sup> § 293b para. 1 AktG.

<sup>6</sup> § 293e (1) sentence 2 AktG.

<sup>7</sup> See appendix 3.

- 5 In order to increase the transparency and acceptance of the audit, the following points should be commented on in the audit report:
- At what place, in what manner and at what time the examination took place
  - Comments on the nature of the cooperation with the valuer, discussions on critical issues and any divergent views and corresponding explanations on ultimately more preferable views
  - Indication of the sources of the parameters used for the measurement of the capitalized earnings value as well as explanation of the preferability in the context of the results under consideration.
  - Explanation of any adjustments made to the past and/or corporate planning.
- 6 The determination of compensation and settlement is based on the expert opinion on the objectified business value<sup>8</sup> of Ebner Stolz GmbH & Co. KG Wirtschaftsprüfungsgesellschaft Steuerberatungsgesellschaft,<sup>9</sup> commissioned by the Contracting Parties on the calculation of the business value of PVT AG at 2 May 2023. The valuation report on the value of PVT AG dated 13 March 2023 was prepared by Ebner Stolz in its function as a neutral valuation expert in accordance with IDW standard "Principles for the Performance of Business Valuations" of the Institute of Public Auditors in Germany (Institut der Wirtschaftsprüfer in Deutschland e. V.) as amended in 2008.<sup>10</sup> The contracting parties intend to fully adopt the contents of this valuation report and the explanations contained therein regarding adequate compensation and adequate settlement and to attach them to the joint contract report as appendix 3.

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<sup>8</sup> Hereinafter referred to as "Valuation Report".

<sup>9</sup> Hereinafter "Ebner Stolz" or "Valuation Expert".

<sup>10</sup> Hereinafter "IDW S 1".

## II. Performance of the mandate

- 7 We commenced our audit - following the review of our independence and impartiality and the subsequent acknowledgement of our court appointment - on 2 January 2023 and conducted it primarily in our offices in Düsseldorf and Frankfurt am Main until 17 March 2023. In addition, we held discussions with the representatives of PVT AG, Pangea, Busch SE and Ebner Stolz at the offices of PVT AG and its subsidiaries in Aßlar and in Annecy/France as well as at the premises of Busch SE in Maulburg.
- Discussions with those responsible at PVT AG, including:
    - Dr. Britta Giesen, Chairman of the Board, CEO
    - Mr. Benoît Guillaumin, Chief Financial Officer
    - Ms. Hind Beaujon, Chief Sales Officer
    - Mr. Tobias Stoll, Chief Technology Officer
    - Mr. Björn Nickel, Head of Global Finance
  - Discussions with the following people:
    - Mr. Kaya Busch, Co-Owner Busch Group and Managing Director Pangea
    - Mr. Sami Busch, Co-Owner Busch Group and Managing Director Pangea
    - Mr. Sascha Leyh, Busch Dienste GmbH
    - Mr. Matthias Popp, WP StB Dr. Matthias Popp, Ebner Stolz
    - Mr. WP Dr. Frederik Ruthardt, Ebner Stolz
    - Dr. Fiona Ungemach, Ebner Stolz.
- 8 The appointed persons of PVT AG explained to us the market and competitive environment, the business model and strategy, the historical and current business situation and the business plan. In addition, representatives of the valuation expert explained valuation assumptions to us in video and telephone conferences.

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9 For the purpose of our audit, we had been mainly provided with the following documents, which we obtained through the data room set up by the valuer or directly from the valuer or the responsible lawyers:

- DPLTA between Pangea GmbH and PVT AG dated 14 March 2023.<sup>11</sup>
- Articles of Association (version of 19 May 2022) and extract from the Commercial Register (retrieved on 16 March 2023) of PVT AG.
- Expert opinion on the determination of the business value as at 2 May 2023 of PVT AG, Aßlar, dated 13 March 2023<sup>12</sup>.
- Annual reports of PVT AG for the financial years 2019 to 2022.
- Reports of PricewaterhouseCoopers GmbH Wirtschaftsprüfungsgesellschaft, Frankfurt, on the audit of the annual financial statements and management reports of PVT AG for the financial years 2019, 2020, 2021 and 2022, including the respective unqualified audit opinion.
- Reports of PricewaterhouseCoopers GmbH Wirtschaftsprüfungsgesellschaft, Frankfurt, on the audit of the consolidated financial statements and the combined management and group management reports of Pfeiffer Vacuum Technology AG for the fiscal years, 2019, 2020, 2021 and 2022, including the respective unqualified audit opinion.
- Reports of PricewaterhouseCoopers GmbH Wirtschaftsprüfungsgesellschaft, Frankfurt, on the audit of the report of the Management Board on relationships with affiliated companies (dependency report) of PVT AG for the financial years 2019, 2020, 2021 and 2022.
- Detailed presentation of the profit and loss accounts for the years 2020, 2021 and 2022 at company and account level.
- Consolidated planning statement of PVT AG prepared in accordance with IFRS for the financial years 2023 to 2027.
- Minutes of the Supervisory Board meetings of the past two financial years.
- Internal strategy presentation and explanation of the short-term corporate planning for 2023 (budget).
- Various publications and studies on the market and the industry.

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<sup>11</sup> Final version and draft of 2 February 2023.

<sup>12</sup> This was submitted to us in advance as a draft during the project.

- 10 In addition, we used publicly available information and capital market data for our work. In determining capital market data, we primarily relied on data provided by the financial data provider S&P Global Market Intelligence LLC, New York City/USA, .<sup>13</sup>
- 11 All clarifications and evidence requested by us were provided by the representatives of PVT AG and Pangea as well as the named respondents. As of today's date, the management board of PVT AG has issued a declaration of completeness to the effect that all information and documents relevant for our examination of the appropriateness of the compensation and settlement have been provided to us completely and correctly. The management of Pangea has additionally declared to us in writing on the same date that it is not aware of any facts or circumstances according to which the valuation report and the audit report (draft) contain statements on corporate planning that are materially incorrect.
- 12 In our audit, we adhered to IDW Standard 1 "Principles for the Performance of Business Valuations" in the version of 2 April 2008 of the Institute of Public Auditors in Germany (Institut der Wirtschaftsprüfer in Deutschland e.V.). In addition, we have taken into account IDW Practice Note 2/2017 "Assessment of a business plan in valuations, restructurings, due diligence and fairness opinion".
- 13 We began our audit work prior to the completion of the work of the valuation expert. This procedure is common practice in the context of contract and adequacy audits and is recognised by jurisdiction.<sup>14</sup> It is justified by the need to issue a final audit opinion promptly after completion of the valuation work. There were no diverging opinions between the valuation expert and us. We conducted additional data collection and analyses to derive the beta factor. As a result, our audit is not limited in any respect and fully confirms the adequacy of compensation and settlement.
- 14 The responsibility for the proper content of the Contract Report lies with the management of Pangea and the Management Board of PVT AG.
- 15 We expressly point out that we have not carried out an audit of the accounting, the annual financial statements, the consolidated financial statements or the management of the participating companies. Such audits are not part of an audit of the adequacy of compensation and settlement. Compliance of the submitted audited financial statements

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<sup>13</sup> Hereinafter "S&P Global Market Intelligence".

<sup>14</sup> See BGH, decision of 18 September 2006, II ZR 225/04, BB 2006, p. 2,543 ff.

and dependency reports with the respective legal framework has been confirmed in each case without qualification by the auditor.

- 16 If material changes in the financial position, profit and loss statement or other bases for the determination of the business value of PVT AG should occur during the period between the conclusion of our audit and the date of the resolution of the Annual General Meeting of PVT AG on 2 May 2023 on the conclusion of the Agreement, these shall be taken into account additionally in the assessment of the compensation and settlement. For this purpose, we will obtain reporting date declarations on the day of the Annual General Meeting.
- 17 This report exclusively serves as information and as a basis for decision-making for the parties involved in the conclusion of the DPLTA including their partners/shareholders as well as the court appointing us. This also includes the provision of the report prior to the general meeting of PVT AG resolving on the conclusion of the Agreement and, in case of any court proceedings in connection with the conclusion of the DPLTA, the submission to the respective court.
- 18 Any further disclosure of our audit report may - subject to our written consent - only be made to third parties in full, including a written statement on the purpose of the underlying engagement as well as the disclosure restrictions and liability conditions associated with the engagement, and only if the respective third party has previously agreed in writing to the General Engagement Terms, supplemented by an individual liability agreement, as well as a binding confidentiality obligation.
- 19 For the performance of the engagement and our responsibility - also in relation to third parties - the General Engagement Terms for German Public Auditors and Public Audit Firms (Wirtschaftsprüfer and Wirtschaftsprüfungsgesellschaften) in the version dated 1 January 2017, attached as appendix 4 are authoritative. These General Engagement Terms govern - in addition to the statutory limitation of liability in relation to the contracting parties and shareholders pursuant to § 293d para. 2 AktG and § 323 HGB § - our responsibility towards third parties as well.

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## B. Subject, nature and scope of the audit

- 20 Subject of our audit pursuant to § 293b para. 1 and § 293e para. 1 sentence 2 AktG is the inter-company agreement. Pursuant to § 293e para. 1 sentence 2 AktG, the focus of the audit is the assessment of the appropriateness of compensation<sup>15</sup> and settlement<sup>16</sup>. In this context, the audit report pursuant to § 293e para. 1 sentence 3 AktG must state
- the methods by which compensation and settlement have been determined and the reasons why the application of these methods is appropriate
  - what compensation or settlement would result from the application of different methods, if more than one has been applied; at the same time, it shall set out
  - the weight given to the various methods in determining the proposed compensation and settlement and the values on which they are based; and
  - which particular difficulties arised in the valuation of the contracting companies.
- 21 Accordingly, our audit is divided into a formal and a substantive part. In the formal part of our audit, we examined whether the contract contains the legally required elements completely and correctly and thus complies with the legal requirements. In the substantive part of our audit, we examined whether the proposed compensation and the proposed settlement are to be regarded as appropriate, taking into account the circumstances of PVT AG. Any further legal assessment as well as the examination of the appropriateness of the contract and tax implications are not part of our engagement. Similarly, the completeness and accuracy of the contract report are not subject to audit.
- 22 The adequacy of compensation and settlement can be assessed by analysing the valuation of PVT AG, on which compensation and settlement payments are based. The auditor has to examine whether the valuation corresponds to recognised methods, whether value-relevant factors have been determined objectively and whether the planned results for the future appear reasonable. If stock exchange prices can be determined for the valuation, the derivation of the stock exchange price shall be assessed.

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<sup>15</sup> §304 AktG.

<sup>16</sup> §305 AktG.

## **C. Formal audit of the domination and profit and loss transfer agreement**

23 The minimum content of a DPLTA required by corporate law results from § 291 et seq. AktG. The examination of the completeness and correctness of the contract therefore refers to the general information on the contracting parties, the determination of the subject matter of the contract, the beginning and the duration of the contract as well as the agreements on compensation and settlement.

### **1. Name and registered office of the participating companies**

24 The name and registered office of the participating companies<sup>17</sup> are stated in the contract and correspond to the entries in the commercial registers of Pangea and PVT AG.

### **2. Management**

25 PVT AG submits the management of its company to Pangea from the time the agreement becomes effective.<sup>18</sup> Accordingly, PVT AG is obliged to comply with instructions issued by Pangea in accordance with § 308 AktG.<sup>19</sup> This right does not apply to instructions to amend, maintain or terminate the contract.<sup>20</sup> For reasons of legal certainty, it is contractually agreed that instructions must be given in writing, whereby this form is also complied with by e-mails and fax.<sup>21</sup>

26 The submission of the management of the company is constitutive for a domination agreement. The corresponding provisions of the contract comply with the legal requirements.<sup>22</sup>

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<sup>17</sup> See preamble of the contract.

<sup>18</sup> See section 1.1 in connection with section 6.2 of the agreement and § 294 para. 2 AktG.

<sup>19</sup> See clause 1.1 of the contract.

<sup>20</sup> See clause 1.2 of the contract.

<sup>21</sup> See clause 1.3 of the contract.

<sup>22</sup> §§ 291 (1) sentence 1, 299 and 308 AktG.

### 3. Profit transfer

- 27 PVT AG is obligated to transfer its entire profit to Pangea.<sup>23</sup> This arrangement is constitutive for a profit transfer agreement.<sup>24</sup> The amount to be transferred - conditional on the contractually regulated formation or dissolution of provisions<sup>25</sup> - is the maximum amount permissible pursuant to § 301 AktG, as amended.<sup>26</sup> According to the current legal situation, this is at most the annual net profit arising without the profit transfer, reduced by any loss carried forward from the previous year, the amount to be allocated to the statutory reserves according to § 300 no. 1 AktG and the distribution-restricted amount according to § 268 para. 8 HGB.<sup>27</sup> PVT AG may, with the written consent of Pangea pursuant to § 126b BGB (German Civil Code), allocate amounts from the net income for the year to other revenue reserves, provided this is permissible under commercial law and economically justified on the basis of a reasonable commercial assessment.<sup>28</sup> Reserves formed in this way may be dissolved again at the written request of Pangea in accordance with § 126 BGB and used to offset losses or transferred as profit.<sup>29</sup> Other reserves or profit carried forward from the time before the effectiveness of the contract may not be used to transfer profits or to compensate losses.<sup>30</sup>
- 28 The obligation to transfer profits applies for the first time for the entire profit generated in the fiscal year in which the Agreement is registered in the commercial register of PVT AG.<sup>31</sup> In any case, it shall become due upon adoption of the annual financial statements for the relevant financial year and shall bear interest at a rate of 5 % p.a. from that time onwards.<sup>32</sup>
- 29 The regulations on the profit transfer comply with the legal requirements.<sup>33</sup> By the link to the § 301 AktG as amended, it is ensured that the regulations on the profit transfer are permissible at all times.

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<sup>23</sup> See clause 2.1 of the contract.

<sup>24</sup> §291 para. 1 sentence 1, 2nd alt. AktG.

<sup>25</sup> See clause 2.2 of the contract.

<sup>26</sup> See clause 2.1 of the contract.

<sup>27</sup> §301 sentence 1 AktG.

<sup>28</sup> See clause 2.2 of the contract.

<sup>29</sup> See clause 2.2 of the contract.

<sup>30</sup> See clause 2.2 of the contract.

<sup>31</sup> See section 2.3 in connection with. § 6.2 of the contract.

<sup>32</sup> See clause 2.3 of the contract.

<sup>33</sup> § 300 No. 1 in connection with. §150 para. 2 AktG, § 301 AktG.

#### 4. Assumption of losses

- 30 Pangea is obliged to assume losses of PVT in accordance with § 302 AktG, as amended.<sup>34</sup>
- 31 Under the current legal situation, Pangea is thus required to compensate for any loss for the year otherwise arising during the term of the agreement, insofar as this is not compensated for by withdrawing amounts from the other revenue reserves which have been transferred to them during the term of the agreement.<sup>35</sup>
- 32 The obligation to assume losses applies for the first time for the entire financial year in which the Agreement has become effective. The obligation is due at the end of PVT's financial year and is subject to interest at a rate of 5% p.a. from this date.<sup>36</sup>
- 33 By referencing to the statutory regulations in its current version, it is ensured that the loss transfer regulations are permissible at all times.

#### 5. Compensation payment

- 34 Pangea undertakes to pay the minority shareholders of PVT AG adequate compensation in the form of an annually recurring compensation payment for the duration of the agreement from the financial year for which the claim for profit transfer becomes effective.<sup>37</sup> The gross profit share that is expected to be distributable for each full financial year<sup>38</sup> shall amount to 7,93 € per common share of PVT AG less any amount for corporate tax (KSt) and solidarity surcharge (SolZ) according to the tax rate applicable to these taxes for the respective financial year, whereby this deduction shall only be made on the partial amount of 3,85 € per share which relates to the profits of PVT AG charged with German corporation tax.<sup>39</sup>

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<sup>34</sup> See clause 3.1 of the contract.

<sup>35</sup> §302 (1) AktG.

<sup>36</sup> See Clause 3.2 and Clause 6.2 of the Agreement.

<sup>37</sup> See clause 4.1 of the contract.

<sup>38</sup> Later on also referred to as „gross compensation“. In contrast, “compensation payment” represents the net value after deduction of corporate taxes, please also refer to §304 (2) sentence 1 AktG.

<sup>39</sup> See clause 4.2 of the contract.

- 35 According to the circumstances at the time of the conclusion of the agreement, the deduction for KSt (15.0%) and SolZ (5.5% of KSt) amounts to 0,61 € per share. According to the circumstances at the time of the conclusion of this agreement, this results in a settlement payment in the amount of 7,32 € per share for a full financial year of PVT after rounding to a full cent amount.<sup>40</sup>
- 36 To the extent required by law, any withholding taxes incurred (e.g. capital gains tax plus solidarity surcharge) will be withheld from the net settlement amount in accordance with § 4.2 of the contract.<sup>41</sup>
- 37 The granting of a fixed recurring compensation payment corresponds to the legal regulation.<sup>42</sup>
- 38 The recurring compensation payment is due on the first banking day after the Annual General Meeting of PVT AG for the respective previous financial year, but at the last eight months after the end of the financial year.<sup>43</sup> This regulation is customary and appropriate, as the compensation as a substitute for the previous dividend claim is thereby generally due at the same point in time at which the omitted dividend claim would otherwise also have been due on a regular basis. In the present case, this is a advantageous arrangement for the minority shareholders in comparison to the statutory requirement pursuant to § 58 (4) sentence 2 AktG.
- 39 The recurring compensation payment is granted for the first time for the entire fiscal year of PVT AG in which the agreement is registered in the commercial register and thus becomes effective.<sup>44</sup>
- 40 If this agreement ends during the course of a financial year of PVT AG or PVT AG forms a abbreviated financial year during the term of this agreement, the recurring compensation payment for the financial year concerned shall be reduced pro rata temporis.<sup>45</sup>
- 41 The rules on how to proceed in case of capital increases using company funds or through cash or non-cash contributions<sup>46</sup> are covered by the prevailing view in legal literature.

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<sup>40</sup> See clause 4.2 of the contract.

<sup>41</sup> See clause 4.2 of the contract.

<sup>42</sup> §304 (1) sentence 1, (2) sentence 1 AktG.

<sup>43</sup> See clause 4.2 of the contract.

<sup>44</sup> See clause 4.3 in connection with clause 6.2 of the contract. Clause 6.2 of the Agreement.

<sup>45</sup> See clause 4.3 of the contract.

<sup>46</sup> See clause 4.4 of the contract.

- 42 in the event of a capital increase of PVT AG using company funds in exchange for the issue of new shares, the compensation payments per share shall be reduced to the extent that the total amount of the compensation payments remains unchanged. If the share capital of PVT AG is increased by means of cash and/or non-cash contributions, the rights under this § 4.4 shall also apply to the PVT shares subscribed by minority shareholders from the capital increase. The beginning of the entitlement from the new shares according to this clause 4.4 results from the profit share entitlement determined by PVT AG when the new shares are issued.<sup>47</sup>
- 43 Should the court in appraisal proceedings legally determine a higher compensation, the shareholders already compensated pursuant to clause 5 of the agreement may also demand a corresponding increase in the compensation already received by them, to the extent provided by law.<sup>48</sup> This corresponds to the statutory regulation in § 13 Spruchverfahrensgesetz.

## 6. Settlement payment

- 44 Pangea undertakes, upon demand of each outside shareholder of PVT AG, to purchase any shares in PVT AG in exchange for an appropriate compensation in them amount of 133,07 € per share.<sup>49</sup> Since Pangea is not a company in the legal form of an AG or KGaA, the settlement payment is to be granted as cash settlement.<sup>50</sup>
- 45 The obligation of Pangea to acquire the shares is limited in time. The period ends two months after the day the entry of the existence of this agreement in the commercial register of the registered office of PVT AG has been announced in accordance with § 10 HGB.<sup>51</sup> A time limit is also customary in practice. The regulations in this regard are in line with the legal regulations.<sup>52</sup>
- 46 The rules on how to proceed in case of capital increases using company funds or through cash or non-cash contributions<sup>53</sup> confirms the prevailing position in legal literature.

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<sup>47</sup> See clause 4.4 of the contract.  
<sup>48</sup> See clause 4.5 of the contract.  
<sup>49</sup> See clause 5.1 of the contract.  
<sup>50</sup> §305 (2) no. 3 AktG.  
<sup>51</sup> See clause 5.2 of the contract.  
<sup>52</sup> §305 (4) AktG.  
<sup>53</sup> See clause 5.3 of the contract.

- 47 The transfer of shares in exchange for a settlement is free of charge for the minority shareholders of PVT AG if they are in possession of a domestic securities account.<sup>54</sup> There are no legal requirements in this regard.
- 48 Should the court in appraisal proceedings legally determine a higher settlement, the shareholders already compensated may also demand a corresponding increase to the settlement.<sup>55</sup> This corresponds to the statutory provision in § 13 of the SpruchG.

## 7. Effective date and duration of the contract

- 49 In accordance with the statutory provisions,<sup>56</sup> the contract requires the approval of the general meeting of PVT AG and the approval of the shareholders' meeting of Pangea in order to become effective.<sup>57</sup>
- 50 In accordance with statutory provisions, it is made in written form.<sup>58</sup>
- 51 In accordance with the statutory provisions,<sup>59</sup> the contract shall only become effective after its existence has been entered in the commercial register of the registered office of PVT AG.<sup>60</sup> With regard to the obligation to transfer profits and to assume losses, the contract shall apply for the first time to the entire fiscal year of PVT in which this contract becomes effective.<sup>61</sup>
- 52 The contract is concluded for an indefinite period of time and can be terminated in writing with six months' notice to the end of a financial year of PVT.<sup>62</sup> For tax reasons - based on the current legal situation - a minimum term of five years has been agreed.<sup>63</sup>
- 53 The legal requirements regarding termination for important reasons<sup>64</sup> have been considered.<sup>65</sup>

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<sup>54</sup> See clause 5.4 of the contract.

<sup>55</sup> See clause 5.5 of the contract.

<sup>56</sup> §293 (1) sentence 1 AktG in direct application with regard to the approval of the PVT AG; and § 293 (2) sentence 2 AktG in corresponding application with regard to the approval of the Pangea shareholders' meeting.

<sup>57</sup> See clause 6.1 of the contract.

<sup>58</sup> §293 (3) AktG.

<sup>59</sup> §294 (2) AktG.

<sup>60</sup> See clause 6.2 of the contract.

<sup>61</sup> See Clause 2.3 and Clause 3.2 of the Agreement.

<sup>62</sup> See clause 6.3 of the contract.

<sup>63</sup> See clause 6.3 of the contract.

<sup>64</sup> §297 (1) sentence 1 AktG.

<sup>65</sup> See clause 6.4 of the contract.

## **8. Letter of comfort**

- 54 The domination and profit and loss transfer agreement contains as an appendix a letter of comfort from Busch SE with its registered office in Maulburg, registered in the Commercial Register of the Local Court of Freiburg im Breisgau under HRB 715396. This contains the unrestricted and irrevocable obligation to provide Pangea with sufficient financial resources to be able to meet obligations arising from or in connection with this agreement, in particular compensation payment and settlement payment, in full when they are due.<sup>66</sup>

## **9. Final conclusions**

- 55 The final clauses<sup>67</sup> correspond to usual contractual technique and are not objectionable.
- 56 As a result of our audit of the DPLTA, we notice that the DPLTA completely and correctly contains the components prescribed in §§ 291 ff. AktG and thus complies with legal requirements.

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<sup>66</sup> See clause 7 of the contract.

<sup>67</sup> See clause 8 of the contract.

## **D. Material review of the domination and profit and loss transfer agreement**

### **I. Valuation principles and methods being uses**

#### **1. Methods for determining adequate compensation and settlement payments**

- 57 There is no explicit legal method for determining the compensation payment. According to the findings of business administration, case law<sup>68</sup> and valuation practice, the value of the company is the correct basis for determining the compensation payment pursuant to § 305 AktG. Accordingly, the value of the company as a whole is decisive.
- 58 The shares of PVT AG are listed on the stock exchange. Therefore, the share price may serve as a lower limit when determining the compensation payment. However, it must be examined in each individual case whether the stock exchange price actually reflects the market value.
- 59 Pursuant to § 304, para. 1, sentence 1 AktG, a DPLTA must provide for adequate compensation for the remaining shareholders in the form of a cash payment (compensation payment) based on the shares in the share capital. Pursuant to § 304, para. 2, sentence 1 AktG, the compensation payment must be at least the annual payment of the amount which, according to the company's previous earnings situation and its future earnings prospects, taking into account appropriate depreciation and value adjustments, but without the formation of other revenue reserves, could probably be distributed as an average share of profits to the individual share.
- 60 The wording of the legal regulation is already based on the future earnings value of the company. Accordingly, in valuation practice the compensation is regularly determined by annualization of the capitalised earnings value.<sup>69</sup> This corresponds to the case law of the Federal Supreme Court (BGH)<sup>70</sup>, according to which the compensation by annualisation is derived from the objectified enterprise value.
- 61 The basis for the derivation of compensation and settlement is therefore the derivation of the business value of the controlled company.

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<sup>68</sup> See BGH, decision of 12 March 2001, Ref. II ZB 15/00, ZIP 2001, pp. 734-737.

<sup>69</sup> See also Fleischer/Hüttemann (eds.), *Rechtshandbuch Unternehmensbewertung*, 2nd ed. 2019, para. 12.201.

<sup>70</sup> See BGH, decision of 21 July 2003, file no. II ZB 17/01, ZIP 2003, p. 1,745 ff, "Ytong decision".

## **2. Valuation principles**

- 62 The value of equity of a commercial company is derived from the future cash flows that the equity investor can expect. Such a business value can therefore be calculated as the present value of all future surpluses of income over expenditures of the enterprise.
- 63 The basic principles of how such future-related company valuations are to be carried out are presented in the standard IDW S 1. In order to determine appropriate compensation and adequate settlement, the valuation expert first carried out an income valuation according to IDW S 1. The principles anchored in this standard, in particular the explanation of the capitalised earnings method, correspond to the prevailing opinion in the business management literature and practice of business valuations. The capitalised earnings method is also recognised by courts in Germany. In this respect, we consider the capitalised earnings method applied here to be appropriate. Accordingly, the business value is derived using risk-adequate discounting of future expected distributions of the enterprise to its shareholders.
- 64 As an alternative to the application of the capitalised earnings method, valuations can in principle also be carried out according to the discounted cash flow (DCF) method within the framework of IDW S 1. According to the DCF method in its usual form in practice (so-called gross, entity, enterprise or WACC approach), an business value is first determined for the operating business. The value of the equity is derived from the total capital value by deducting net financial debt. The capitalised earnings method and the DCF method are both based on the net present value calculation and are thus based on the same conceptual foundations. Given the same premises, both methods lead to the same result.
- 65 The present value of the projected cash flows calculated using the capitalised earnings method only includes value-forming factors that can be accurately reflected in terms of value by current cash flows. Value-forming factors that cannot be represented at all or only incompletely have to be valued separately and added to the capitalised earnings value as special value. In particular, these may be assets that are not necessary for operations or special tax circumstances.<sup>71</sup>

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<sup>71</sup> See IDW S 1, para. 59 ff.

### **3. Liquidation value and net asset value**

- 66 In both capitalised earnings method and DCF method, the value of a company is derived from the discounted expected cash surpluses of the continuing company. In contrast, the liquidation value represents the payment surplus from liquidation. According to IDW S 1, this value can be considered as the lower limit of the business value if the cash value of the financial surpluses that would result from liquidation exceeds the capitalised earnings value assuming the continuation of the enterprise.
- 67 The liquidation value is nevertheless relevant for the valuation of the non-operating assets, because non-operating assets including the associated debts are to be valued taking into account their best possible realisation. If the liquidation value of these assets, taking into account the tax effects of a sale, exceeds the cash value of their financial surpluses if they remain in the company, the liquidation, rather than the otherwise assumed continuation of the previous use, represents the more advantageous option.<sup>72</sup>
- 68 The net asset value comprises the sum of the payments that would be required to reproduce the company. The valuation of the substance from a procurement point of view leads to the so-called reconstruction value of the enterprise, which is only a partial reconstruction value because of the regular difficulties in determining intangible assets that are not capable of being reported in the balance sheet. The net asset value basically lacks a direct reference to future financial surpluses. Therefore, it has no significance in the determination of the enterprise value.

### **4. Comparative valuation**

- 69 For plausibility purposes, it is customary to determine indicative company values or value ranges on the basis of a multiple of a profit or stock figure determined by means of a multiplier, which is regarded as customary in the industry. Suitable multiples are derived either from capital market data of listed comparable companies or from comparable transactions. Such valuations require an analysis of the past and expected earnings situation of the valuation object. However, analysts' estimates are usually only available for a limited forecast period. Secondly, the earnings multiples must be derived from an analysis of the valuations of comparable companies. Company-specific earnings and cost structures may not be sufficiently taken into account here. Furthermore, circumstances

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<sup>72</sup> See IDW S 1, para. 60.

that need to be taken into account in particular, such as loss carryforwards, often cannot be adequately taken into account in a multiple valuation. Such multiplier valuations are therefore only simplified, lump-sum valuations. A comprehensive analytical valuation according to the capitalised earnings method - as carried out here - is preferable.

## 5. Prior Purchases and stock exchange prices

- 70 According to IDW S 1 para. 13, prices actually paid for companies and company shares can generally be used as a point of reference for the economic plausibility of company and share values, but do not replace a company valuation. Furthermore, they are also influenced by the subjective decision values of the acquirer, e.g. by synergies or package premiums or control premiums that can only be achieved by him.
- 71 For this reason, it has been established case law since the fundamental decision of the Federal Constitutional Court of 27 April 1999 that pre-acquisition prices have no relevance for the determination of the compensation pursuant to § 305 AktG.<sup>73</sup>

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<sup>73</sup> See valuation report, p. 34 with further references.

## **II. Examination of the determination of the equity value**

### **1. Procedure**

- 72 The subject of the audit was the delimitation of the object of valuation and the procedure for the valuation. As a basis for our analyses, we examined the business model and the economic fundamentals of PVT AG. With recourse to the business reports, audit reports, internal documents as well as publicly available information and capital market data submitted to us, we further looked at the development of past results.
- 73 Taking into account the past figures adjusted for special effects, we carried out an analysis of planning plausibility. In doing so, the planning process was explained to us. We assessed the planning for plausibility, consistency and arithmetical correctness on the basis of the analysis of the market and competitive situation of PVT AG as well as the initiated and planned measures.
- 74 Within the scope of our audit, we examined the valuation method and the valuation parameters defined in detail for their appropriateness. We traced the implementation in the valuation model of the appraiser and built our own valuation model in order to check the correct application of the methods, the processing of the premises and parameters as well as the correctness of the calculations.
- 75 In addition, we carried out our own investigations and calculations, in particular on the components of the capitalisation rate, the share price and the multipliers.
- 76 A separate analysis of the liquidation value was not necessary in the present case, as the company is to be continued indefinitely and there are no indications that the liquidation value could be higher than the determined capitalised earnings value.
- 77 Our audit work also included the comparative market valuation and share price studies performed by the valuation expert.

78 We have determined the focus of the audit to be:

- Plausibility of the representation of the expected business development of PVT AG by the planning calculation
- Appropriate transfer of the planning calculation into the valuation model and derivation of distributable results
- Derivation of sustainable result and sustainable retention
- Appropriateness of the derivation of the capitalisation rate
- Appropriate consideration of any items to be valued separately, e.g. non-operating assets
- Valuation methodology
- Appropriate derivation of the annuity interest rate for the determination of the settlement.

## **2. Valuation object**

### **a) Legal and financial basis**

#### **aa) Legal basis**

79 PVT AG has its registered office in Aßlar and is registered in the commercial register of the local court of Wetzlar under HRB 44. Its business address is: Berliner Straße 43, 35614 Aßlar.

80 The articles of association of the company are available to us in the version dated 19 May 2022. The financial year corresponds to the calendar year.

81 The fully paid-up share capital of PVT AG amounts to € 25,261,207.04 and is divided into a total of 9,867,659 no-par value bearer shares with a notional share in the share capital of € 2.56 per share.

82 By resolution of the Annual General Meeting of 23 May 2018, the Management Board of PVT AG is authorised, with the approval of the Supervisory Board, to increase the share capital by up to €12,630,602.24 by issuing a total of up to 4,933,829 shares against cash and/or non-cash contributions on one occasion or in partial amounts until 23 May 2023 (Authorised Capital 2018). Pursuant to the resolution of the Annual General Meeting of 23 May 2019, the Executive Board is also authorised until 22 May 2024, with the consent of the Supervisory Board, to issue bonds with option or conversion rights or option or

conversion obligations, profit participation rights and participating bonds (or combinations of these instruments) in a total nominal amount of up to €200,000.000.00 and to grant the holders option or conversion rights to up to 2,466,914 shares with a proportionate amount of the share capital of up to € 6,315,299.84 in total; in order to fulfil the company's obligation upon exercise of the option or conversion rights, the Annual General Meeting on 23 May 2019 simultaneously resolved a conditional capital increase (Conditional Capital 2019). At the Annual General Meeting on 20 May 2020, the shareholders authorised the Executive Board to repurchase own shares in accordance with § 71 (1) no. 8 of the AktG. This authorisation extends to a repurchase of a proportionate amount of the share capital of up to €2,526,120.70 (986,766 shares corresponding to 10.0% of the share capital at the time of the resolution), requires the consent of the Supervisory Board to be exercised and is valid until 19 May 2025.

- 83 PVT AG shares are listed on the stock exchange and the company meets the transparency requirements of the Prime Standard. PVT AG shares are admitted to trading on the regulated market of the Frankfurt Stock Exchange under ISIN DE0006916604 / WKN 691660. PVT AG shares are also traded over the counter on the stock exchanges in Berlin, Düsseldorf, Hamburg, Hanover, Stuttgart and via Tradegate Exchange and LS Exchange. In addition, the shares are tradable on the electronic trading systems (Exchange Electronic Trading System) of Deutsche Börse AG, Frankfurt a.M. ("XETRA"), the Munich Stock Exchange ("Gettex") and the Düsseldorf Stock Exchange ("Quotrix").

Through Pangea, Busch Group acquired a 15% share in PVT AG by 2015 and increased this share to around 34% by 2017. As of 31 December 2021, Pangea held 6,118,445 PVT AG shares and Busch SE held 94,637 PVT AG shares. This corresponds to a share of voting rights of approximately 62.96%. As of 31 December 2022, Busch holds - partly via Pangea - 63.66% of shares of PVT AG.<sup>74</sup> The remaining shares are held by the Investmentaktiengesellschaft für langfristige Investoren (TGV) and in free float.

- 84 Busch and PVT AG signed a group coordination agreement on 20 May 2019. This covers increased cooperation in the areas of purchasing, sales and service, research & development and IT.

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<sup>74</sup> See <https://ir.pfeiffer-vacuum.com/German/die-aktie/aktionare/default.aspx> , accessed 3 February 2023.

**ab) Business activity**

- 85 The origins of PVT AG date back to the year in which the AG was founded in Wetzlar in 1890. According to the Articles of Association, the object of the Company is the development, planning, design, manufacture, application as well as the sale and distribution of technical apparatus and systems, in particular with "Pfeiffer Vacuum Technik" under the brand name "Pfeiffer" and the holding of participations in companies in Germany and abroad".
- 86 Today, PVT AG is an internationally active mechanical engineering group specialising in the development, production and sale of vacuum pumps and related components. The product portfolio of PVT AG includes products from the areas of vacuum generation (in particular backing pumps and turbopumps), vacuum measurement and analysis, leak detection, installation elements, vacuum systems and vacuum chambers.
- 87 In principle, PVT AG manages its business operations at the level of the individual companies, which are summarised in the segment reporting in "Germany", "France", "Rest of Europe", "USA", "USA (Production)", "South Korea", "Rest of Asia" and "Others". PVT AG also publishes sales by region ("Asia", "Europe", "North and South America" and "Rest of the World") and markets ("Semiconductors and future technologies" and "Industry, analytics and research & development").
- 88 Within the market segment "Semiconductors and future technologies", PVT AG supplies both end users and original equipment manufacturers ("OEM") with vacuum pumps, leak detectors and contamination control systems. The main customers of the semiconductor business are located in Asia and the USA. The Solar and Flat Panel Display (FPD) sub-segments require vacuum pumps, which are not covered as core technology in PVT AG's current portfolio.
- 89 The "Industry, analytics and research & development" segment aggregates various customers from the manufacturing industry which require vacuum pumps for different process steps. Areas of application include, for example, metallurgy, tube production and air conditioning and refrigeration technology. The market segment "Coating" with customers from the production and tempering of architectural glass and tools has also been allocated to this segment since 2021.
- 90 The "Analytics" sub-segment includes suppliers of industrial systems or analytical instruments that require complex analytical equipment for quality assurance in industry, and in particular customers from the life science, biotechnology, safety, environmental technology and medical technology sectors. The "Research & development" sub-segment

includes laboratories at universities and renowned research institutions that use pumps, mass spectrometers, leak detectors and vacuum solutions from PVT AG.

- 91 In 2022, around 51.4 % of sales revenues were attributable to the "Semiconductor and future technologies" segment. The remaining revenues are distributed among the market segment industry, analytics and research & development.
- 92 In 2022, Europe and the Americas will account for about 75 % of global sales growth. With a 39.1 % share of sales, Asia remains the largest sales region. The second largest sales region in the 2022 financial year was Europe (33.4 %), where the semiconductor industry has shown high growth. The remaining 27.5 % of sales revenue is accounted for by North and South America.

### ac) Results of operations and statement of financial position

- 93 The earnings situation as it results from the audited consolidated financial statements according to IFRS for the financial years 2020 to 2022 is shown in the following table.

HISTORICAL PROFIT AND LOSS STATEMENTS			
	2020	2021	2022
EURm	HIST	HIST	HIST
Sales	618.7	771.4	916.7
Cost of goods sold	-401.7	-491.0	-587.5
<b>Gross profit</b>	<b>217.0</b>	<b>280.4</b>	<b>329.3</b>
Selling & marketing expenses	-70.8	-79.4	-95.1
R&D expenses	-35.1	-34.2	-36.7
G&A expenses	-57.6	-61.4	-80.0
Other operating income / expenses	-8.2	-12.3	1.9
<b>EBIT</b>	<b>45.3</b>	<b>93.1</b>	<b>119.4</b>
Financial result	-0.8	-0.6	-0.5
<b>EBT</b>	<b>44.5</b>	<b>92.5</b>	<b>118.9</b>
Income taxes	-13.0	-30.5	-32.5
<b>Net income</b>	<b>31.6</b>	<b>62.0</b>	<b>86.4</b>
nachrichtlich: EBITDA	80.1	135.6	150.6
<b>KPIs</b>			
Change of sales	-2.2%	24.7%	18.8%
EBITDA margin	12.9%	17.6%	16.4%
EBIT margin	7.3%	12.1%	13.0%

Source: Annual reports, own analyses

- 94 The main developments in PVT AG's earnings situation can be summarised as follows:
- As in the past, PVT AG was able to benefit from the strong demand for semiconductors and the expansion of the production capacities of the semiconductor manufacturers and record substantial growth in sales.
  - The other markets served by PVT AG also showed significant sales growth and were able to contribute to the positive sales development to approximately the same extent.
  - In 2022, revenues increased by 18.8 % compared to the previous year, and the expectation of last year's forecast report was exceeded.<sup>75</sup> However, the last two months of 2022 show a significant decline in order intake compared to the corresponding months of the previous year, due to the current cyclical downturn in the semiconductor market.
  - Overall, the company nevertheless recorded a significant increase in incoming orders. In addition to general growth, the drivers of this development are seen as significantly earlier customer orders, which plan for longer delivery times and want to avoid supply chain problems.<sup>76</sup>
  - The rising costs due to higher raw material prices and increased personnel expenses were offset by economies of scale and efficiency gains from full capacity utilisation and a disproportionate increase in turnover. No impairment losses were recognised as at 31 December 2022. The EBIT margin was thus increased in the period under review.<sup>77</sup>

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<sup>75</sup> See Summarized Management Report 2022.

<sup>76</sup> See Summarized Management Report 2022.

<sup>77</sup> See Summarized Management Report 2022.

95 The balance sheets of the financial years 2020 to 2022 on the basis of the audited IFRS consolidated financial statements are shown in the following table:

BALANCE SHEET			
As of 31 December	2020	2021	2022
EURm	HIST	HIST	HIST
Intangible assets	100.7	91.5	106.5
PP&E	158.2	176.0	226.7
Investment properties	0.4	0.4	0.3
Other financial assets	2.2	2.5	5.0
Other assets	0.8	0.8	0.6
Deferred tax assets	31.3	28.7	23.8
<b>Non-current assets</b>	<b>293.6</b>	<b>299.8</b>	<b>362.9</b>
Inventories	133.3	162.2	249.0
Trade accounts receivable	83.6	119.6	153.2
Contract assets	1.5	1.4	3.5
Income tax receivables	10.8	4.8	3.6
Prepaid expenses	4.3	4.7	10.4
Other financial assets	1.6	0.2	0.3
Other accounts receivable	10.3	15.9	13.1
Cash and cash equivalents	122.9	99.4	67.8
<b>Current assets</b>	<b>368.2</b>	<b>408.1</b>	<b>500.8</b>
<b>TOTAL ASSETS</b>	<b>661.8</b>	<b>707.9</b>	<b>863.7</b>
<b>Equity</b>	<b>391.7</b>	<b>459.4</b>	<b>531.4</b>
Finanzielle Verbindlichkeiten	69.6	13.9	7.9
Provision for pensions	70.3	60.5	36.7
Deferred tax liabilities	4.5	4.4	4.1
Contract liabilities	0.8	1.3	1.5
<b>Long-term liabilities</b>	<b>145.2</b>	<b>80.1</b>	<b>50.1</b>
Trade accounts payable	44.9	58.0	86.2
Contract liabilities	7.3	13.3	28.5
Other accounts payable	21.5	27.7	33.1
Provisions	39.5	48.2	50.7
Income tax liabilities	8.2	16.8	15.5
Financial liabilities	3.5	4.3	68.2
<b>Short-term liabilities</b>	<b>124.9</b>	<b>168.4</b>	<b>282.3</b>
<b>TOTAL EQUITY AND LIABILITIES</b>	<b>661.8</b>	<b>707.9</b>	<b>863.7</b>

Source: Annual reports

96 The developments of the balance sheet situation in the past can be summarized as follows:

- The development of property, plant and equipment in the period under review was characterized by an increased investment volume as a result of the growth of PVT AG in order to be able to achieve the planned sales growth.<sup>78</sup>
- The increase in business volume led to an increase in trade receivables and trade payables during the period under review. The increase in inventories particularly related to increased stock levels as a result of supply chain difficulties.<sup>79</sup>
- Both the increases in retained earnings through reinvestments and the increase in other equity components (primarily due to lower insurance mathematical losses from pension valuation) led to a significant increase in PVT AG's equity in 2021 and 2022. At the same time, rising interest rates lead to a decrease in pension provisions.<sup>80</sup>

**b) Delineation of the valuation object**

97 PVT AG, including its subsidiaries, is correctly considered by the valuation expert to be the object of the valuation.

98 In addition to the parent company Pfeiffer Vacuum Technology AG, five domestic and 26 foreign subsidiaries are included in the consolidated financial statements as of 31 December 2022 on the basis of full consolidation.

99 The valuation of the group can be carried out according to different methods, either step by step by collecting the results in the investment result of the participating company or simultaneously by summation and consolidation as well as by adding the values of each individual group company, taking into account the participation ratios (so-called "sum-of-the-parts"). If applied appropriately, the methods lead to identical results.

100 The valuation expert used the consolidated business plan of the company for his valuation and determined an aggregated value for PVT AG including its subsidiaries.

101 In summary, we consider the valuer's approach to structuring and delineating the valuation object to be appropriate.

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<sup>78</sup> See Summarized Management Report 2022.

<sup>79</sup> See Summarized Management Report 2022.

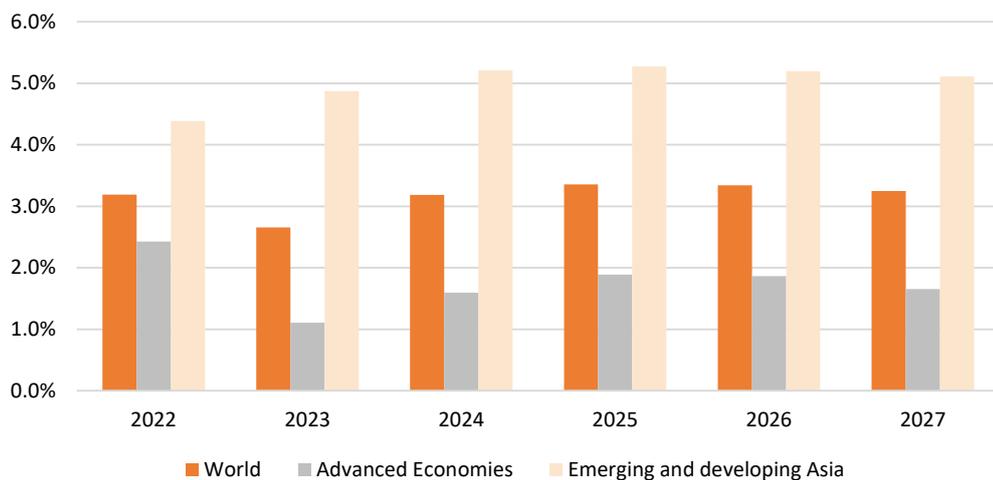
<sup>80</sup> See Summarized Management Report 2022.

### 3. Market and competitive environment

#### Global economy

- 102 According to the International Monetary Fund (IMF), the global economy grew by 2.8% in 2019. While 2020, with a decline of 3.1 %, was still strongly affected by the consequences of the corona-related lockdowns and production restrictions as well as increased uncertainty regarding the further development of the pandemic, a significant improvement was observed in 2021 with a growth of the global economy of 6.0 %.<sup>81</sup>
- 103 This growth, also driven by recovery effects, has weakened to 3.2 % in 2022 according to IMF forecasts. Growth of 2.7 % is expected for 2023. The IMF sees the influence of the Ukraine war and the resulting high inflation, the influence of corona-related restrictions at the time of the forecast, especially in China, and ongoing supply chain problems as the main reasons for the slowdown in growth. In the following years, the IMF expects constant growth rates of over 3.0% (2024: 3.2%; 2025: 3.4%; 2026: 3.3%; 2027: 3.2%).
- 104 Regionally, growth is essentially driven by the Asian countries. Thus, growth of 1.1% is expected for the industrialised nations in 2023, while the IMF expects growth rates of between 1.6% and 1.9% in the long term. As can be seen in the following chart, growth rates of 5.1 % are expected for the Asian emerging and developing countries in the long term, driven in particular by China.

Projected GDP growth acc. to IMF



<sup>81</sup> See IMF, World Economic Outlook, October 2021 and IMF, World Economic Outlook, October 2022.

- 105 The expected growth for Latin America, the Middle East and Central Asia as well as Africa (Sub-Saharan) lies between that of the industrialised countries and the Asian emerging and developing countries.<sup>82</sup>
- 106 According to IMF data, global inflation will rise from 4.7% in 2021 to 8.8% in 2022, with a particularly high increase in inflation expected in the industrialised countries driven by the significant rise in energy prices as a result of the Ukraine war and the expansion of the money supply by central banks. Global inflation is expected to slow to 6.5% and 4.1% in 2023 and 2024, respectively. By 2027, global Inflation is expected to fall to 3.3 %.<sup>83</sup>
- 107 In an abbreviated update of the World Economic Outlook, the IMF expects developments similar to the October publication until 2024. After an increase of 3.4% in 2022, the IMF expects global real GDP growth of 2.9% and 3.1% in 2023 and 2024, respectively. Inflation expectations for 2023 and 2024 are also comparable to those published in October, at 6.6% and 4.3%, respectively.<sup>84</sup>

#### **Euro area**

- 108 Economic developments in the Eurozone in recent years have been primarily affected by the Covid 19 pandemic. According to the European Central Bank (hereinafter "ECB"), real gross domestic product fell by 6.5% year-on-year in 2020, while in 2021 a significant economic recovery was observed with a growth rate of 5.2%. For 2022, the ECB expects real GDP to have grown by 3.4%.
- 109 In the third quarter of 2022, there was a significant decline in real GDP growth, in particular due to the Ukraine war and the significant increase in energy prices, higher inflation, a rise in interest rates and uncertainty among consumers and companies in the euro area. Despite the improving Covid situation, the ECB expects real GDP in the euro area to almost stagnate in 2023 with growth of 0.5%. From the second quarter of 2023, the ECB expects the economy to recover, so that real GDP is expected to increase by 1.9% in 2024 and by 1.8% in 2025.<sup>85</sup>
- 110 Inflation, as measured by the Harmonised Index of Consumer Prices (HICP), is projected by the ECB to rise from 2.6% in 2021 to 8.4% in 2022. For 2023, inflation is expected to fall slightly to 6.3% as a result of the anticipated decline of energy prices. In the long term,

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<sup>82</sup> See IMF, World Economic Outlook, October 2022.

<sup>83</sup> See IMF, World Economic Outlook, October 2022.

<sup>84</sup> See IMF, World Economic Outlook Update, January 2023.

<sup>85</sup> See ECB, Eurosystem staff macroeconomic projections for the euro area, December 2021 and ECB, Eurosystem staff macroeconomic projections for the euro area, December 2022.

the ECB expects inflation rates to fall back to the level before the Ukraine war and supply chain problems (2024: 3.4 %; 2025: 2.3 %).<sup>86</sup>

## Germany

- 111 According to data from the German Bundesbank, the real gross domestic product in Germany increased by 2.6 % in 2021 compared to the previous year. While growth of 1.8 % is still expected for 2022, the Bundesbank anticipates a decline of 0.5 % in 2023, mainly due to the energy crisis as a result of the Ukraine war. In the medium term, the Bundesbank expects the German economy to recover (2024: 1.7 %; 2025: 1.4 %).<sup>87</sup>
- 112 According to the Bundesbank, there are comparable trends in the inflation rate: an increase in the HICP of 8.6 % is estimated for 2022. In 2023, the Bundesbank expects - among other things due to the so-called electricity and gas price limit - a slightly declining inflation rate of 7.2 %. From 2024 onwards, a further decline in the inflation rate to 4.1 % and 2.8 % in 2025 is forecast. Inflation is also strongly driven by the significant increase in energy costs: The inflation rate adjusted for energy costs is expected to be 3.9 % in 2022. As a result of the high inflation rate, the Bundesbank expects private household consumption to decline by mid-2023, which, in addition to weak foreign demand and high energy costs, will have a negative impact on economic development.<sup>88</sup>

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<sup>86</sup> See ECB, Eurosystem staff macroeconomic projections for the euro area, December 2022.  
<sup>87</sup> See Bundesbank, Bundesbank Projections, December 2022.  
<sup>88</sup> See Bundesbank, Bundesbank Projections, December 2022.

### Specific industry

- 113 The Compressors, Compressed Air and Vacuum Technology Association of the German Engineering Federation (Verband Deutscher Maschinen- und Anlagenbau e.V., hereinafter referred to as "VDMA") reports growth in incoming orders of 26 % for 2021. Although this growth still lags behind the mechanical engineering sector as a whole, the sector also suffered significantly less than other areas of mechanical engineering in the crisis year 2020. In particular, the strong growth of the international semiconductor industry and the high demand for vacuum technology in the context of building new production capacities to alleviate the general chip shortage would benefit the member companies in the vacuum technology sector.<sup>89</sup>
- 114 According to the VDMA, on the other hand, a decline in orders of 4 % was observed for the entire mechanical and plant engineering sector in 2022. This decline is primarily due to a weak fourth quarter. At 4 %, the decline in foreign orders was somewhat lower than the decline in domestic orders, which fell by 5 % year-on-year.<sup>90</sup>
- 115 Allied Market Research estimates the global market for vacuum pumps to be worth US\$ 5.4 billion in 2021. The market volume is expected to increase to 9.3 billion US dollars by 2031, which corresponds to an average annual growth rate of 5.5 %. The main reasons for the positive development are the high expected growth in the semiconductor market and the increasing demand from the automotive, healthcare and oil & gas sectors.<sup>91</sup> IMARC Group assumes a comparable market size of 5.5 billion US dollars for 2021 and forecasts average growth of 6.8 % p.a. from 2022 to 2027.<sup>92</sup>

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<sup>89</sup> See VDMA, Pumps and Compressors for the World Market 2022, July 2022.

<sup>90</sup> See VDMA, Order intake in mechanical and plant engineering, February 2023; <https://www.vdma.org/viewer/-/v2article/render/74404624> (last accessed 1.03.2023)

<sup>91</sup> See Allied Market Research, Vacuum Pumps Market Research 2031, July 2022.

<sup>92</sup> See IMARC, Vacuum Pumps Market 2022-2027.

## Sales markets

- 116 The production of semiconductors as well as LEDs, OLEDs, flat screens and solar panels takes place under vacuum conditions. Vacuum pumps and technology are used both in semiconductor factories of the end users and in the form of components in the machines and tools of the original equipment manufacturers (OEMs).<sup>93</sup>
- 117 The World Semiconductor Trade Statistics (hereinafter "WSTS") expects the global semiconductor market to grow by 4.4 % in 2022, followed by a decline of 4.1 % in 2023. From a regional perspective, the decline is primarily related to the Asia-Pacific region.<sup>94</sup> These forecasts are in line with Gartner's expectation of a 3.6% decline in the 2023, following significant growth of 26.3% in 2021 and 4.0% in 2022.<sup>95</sup> In a later study, Gartner corrects the market growth for 2022 downwards to 1.1 %.<sup>96</sup>
- 118 According to McKinsey estimates, the global semiconductor market will develop at an average growth rate of between 6.0 % and 8.0 % p.a. until 2030, which would lead to a market volume of over one trillion US dollars. The main growth drivers are the areas of "computing and data storage", "wireless communication" and "automobiles" (especially through autonomous driving and e-mobility).<sup>97</sup> For the global test, inspection and certification market, Allied Market Research assumes that it will grow at an average annual rate of 5.3 % from 2021 to 2030.<sup>98</sup>
- 119 The market segment "Research & Development" of PVT AG includes laboratories at universities as well as research institutions as customers. The main driver of the development of this segment is therefore the development of public funds for research purposes. With a total volume of € 95.5 billion, the European Union's "Horizon Europe" program is one of the most significant current innovation projects. The budget is spread over the period from 2021 to 2027 and various program areas.<sup>99</sup> It is expected that

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<sup>93</sup> See section D.II.2 a]

<sup>94</sup> See World Semiconductor Trade Statistics, WSTS Semiconductor Market Forecast Fall 2022, November 2022.

<sup>95</sup> See Gartner, Gartner Forecasts Worldwide Semiconductor Revenue Growth to Decline 3.6% in 2023, November 2022.

<sup>96</sup> See Gartner, Gartner Says Worldwide Semiconductor Grew 1.1% in 2022, January 2023.

<sup>97</sup> See McKinsey, The semiconductor decade: A trillion-dollar industry, April 2022.

<sup>98</sup> See Allied Market Research, Testing, Inspection and Certification Market Outlook - 2030, January 2022.

<sup>99</sup> See European Commission, Horizon Europe - The EU Research & Innovation Programme 2021 - 27 March 2021.

PVT AG customers will also be able to use parts of this budget and thus generate new business for PVT AG.

- 120 The Industry segment of PVT AG is broadly diversified and includes a large number of different customer segments, including the mechanical engineering industry. For this reason, an individual analysis of each customer market does not appear to be expedient and we refer to our comments on the general macroeconomic forecasts and the above explanations of the VDMA.

#### 4. Valuation date

- 121 The legal valuation date relevant for the determination of the appropriate compensation results directly from the law. Pursuant to § 305 (3) sentence 2 AktG, the circumstances of the dependent or controlled company<sup>100</sup> at the time of the resolution of its general meeting are to be taken into account.
- 122 The resolution on the DPLTA is planned for the general meeting of PVT AG to be held on 2 May 2023. The relevant legal valuation date is therefore 2 May 2023. To determine the business value of PVT AG, the valuation expert discounted the forecast distributions at the discount rate on the technical valuation date of 1 January 2023 and then appropriately compounded them to 2 May 2023.
- 123 There is no corresponding provision in the law for the determination of the appropriate compensation payment. In literature, jurisprudence and valuation practice, there is, on the one hand, the opinion that the time of the resolution of the general meeting of the dependent company also determines the legal valuation date for the determination of the compensation.<sup>101</sup> On the other hand, there is the opinion that - against the background of the fact that the guaranteed dividend is a substitute for the dividend - the compensation is to be determined from the capitalised earnings value of the business value at the beginning of the year in which the domination and profit and loss transfer agreement is to become effective.<sup>102</sup> In the present case, the point in time at the

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<sup>100</sup> PVT AG.

<sup>101</sup> See Hüttemann/Meyer in Fleischer/Hüttemann (eds.), Rechtshandbuch Unternehmensbewertung, 2nd ed. 2019, para. 14.33.

<sup>102</sup> See IDW, WPH Edition, Valuation and Transaction Advice 2018, Chap. C para. 82.

beginning of the year in which the domination and profit and loss transfer agreement is to become effective was taken as the basis.

- 124 As a result, the approach corresponds to a methodology considered appropriate in literature, case law and valuation practice and is the preferable variant. It is therefore appropriate.

## **5. Valuation method**

- 125 The valuation expert determined the business value of PVT AG according to the capitalised earnings method laid down in IDW S 1. The future earnings value - and thus also the capitalised earnings method as a possible procedure for its determination - is, according to the prevailing opinion in business administration and in the profession of auditors in Germany, the authoritative and recognised method for determining the value of companies where the going-concern value exceeds the liquidation value. The capitalised earnings method is also recognised as standard practice in case law. An alternative valuation using the DCF method could therefore be dispensed with. Nevertheless, we have also determined the business value in parallel using the DCF method and come to the same conclusion.
- 126 In accordance with the prevailing opinion, the valuation expert determined the capitalised earnings value as an objectified enterprise value, i.e. from the point of view of a typified shareholder. This is based on the assumption of a domestic natural person with unlimited tax liability who, due to his small shareholding, can exert neither financial nor corporate policy influence.
- 127 The determination of an objectified business value is to be carried out in accordance with the requirements of IDW S 1 in such a way that synergy effects that could only arise as a result of the conclusion of the DPLTA ("real synergy effects") are not taken into account, while synergy effects that can also be realised without this measure and that are part of the corporate concept documented on the valuation date ("non-genuine synergy effects") are to be taken into account. The existing synergy potentials with Pangea and the Busch Group, which are to be classified as non-genuine synergies in accordance with IDW S 1, are already usable in particular via the group coordination agreement from 2019 and are already included in the current planning. The synergy issue was discussed with the management board of PVT AG as well as with the management of Pangea and the management board of Busch SE. Additional positive synergy potentials from the

connection with Pangea as majority shareholder or its direct and indirect shareholders, which can also be achieved without a DPLTA, are not identifiable.

128 Against this background, the valuation expert did not take into account any further synergy effects. We consider the approach of the valuation expert to be appropriate.

129 Since the shares of PVT AG are listed on the stock exchange, the stock exchange price may serve as a possible lower limit of the settlement according to the case law of the BVerfG.<sup>103</sup> However, under constitutional law, a settlement below the stock exchange price is sufficient in individual cases if the stock exchange price does not reflect the market value of the share.<sup>104</sup> According to the case law of the Federal Supreme Court<sup>105</sup>, this can be the case if there has been practically no trading in shares of the company over a longer period of time and therefore one can speak of an illiquidity of the share or a narrowness of the market or if there are indications of a manipulation of the stock exchange price.

130 In the present case, the valuation expert refrained from deriving the liquidation value, which was justified by the intention to continue the company for an indefinite period of time and the assumption that the liquidation value does not exceed the capitalised earnings value of the company due to the expected costs of a liquidation and is therefore not to be classified as decisive.<sup>106</sup>

131 In order to check the plausibility of the results of the fundamental analytical company valuation on the basis of the capitalised earnings method, the valuation expert carried out a comparative market valuation with stock exchange multiples.<sup>107</sup> We have retraced his calculations and carried out our own plausibility analyses.

132 The legislator does not require an explicit valuation method, so that in principle there is freedom of choosing a method. In the context of structural measures under company law, the capitalised earnings method according to IDW S 1 is regularly used - as in the present case. Other valuation methods, such as the multiplier method, do not cover all expected cash flows or have to be adjusted accordingly. Against this background, we consider the use of the generally accepted capitalised earnings method by the valuation expert to be appropriate, taking into account the plausibility analyses carried out.

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<sup>103</sup> See BVerfG, decision of 27 April 1999, Ref. 1 BvR 1613/94, BVerfGE 100, 289 ff.

<sup>104</sup> "DAT/Altana" - BVerfG, decision of 27 April 1999, Ref. 1 BvR 1613/94, BVerfGE 100, 289 f.

<sup>105</sup> See BGH, decision of 12 March 2001, file no. II ZB 15/00, loc. cit.

<sup>106</sup> See valuation report, p. 30.

<sup>107</sup> So-called. trading multipliers.

133 As a result, we consider the application of the capitalised earnings method to determine the business value of PVT AG as the basis for deriving compensation and settlement to be appropriate.

## **6. Derivation of the net distributions to be capitalised**

### **a) Planning process**

134 The planning of PVT AG is prepared by group management in consultation with the management of the legal entities and approved by the Supervisory Board. Since 2020, a distinction has been made between strategic planning, which covers a period of five years, and annual planning, which includes the budget and medium-term planning.

135 The strategic planning is prepared and validated one year before the start of each planning period. The current strategic plan was developed in 2021 and approved by the Supervisory Board in March 2022. It covers the period 2022 to 2026 and is the result of the strategy development process started in 2021 and continued in spring 2022. It is based on a systematic analysis of the relevant markets, the competitive environment and the respective customer needs as well as internal factors. Based on this strategy development process, focus measures were defined for each market segment and strategies and action plans were developed for the various functional areas in order to realise the company's long-term growth potential.

136 The current annual planning includes the budget year 2023 as well as the medium-term planning for the years 2024 to 2027. It was updated in February 2023 and approved by the Supervisory Board on 3 March 2023.<sup>108</sup> The annual planning generally includes a budgeted income statement as well as a budgeted net working capital and fixed assets.

137 Budget planning starts in June of the preceding year and is based on the production and cost centre plans of the individual group companies, which are prepared on the basis of turnover forecasts and adjusted top-down if necessary. These are discussed and aggregated at various levels between those responsible for planning, the respective management and group management and, if necessary, adjusted "top-down" to current developments and goals.<sup>109</sup>

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<sup>108</sup> See valuation report, p. 49 f.

<sup>109</sup> See valuation report, p. 50.

- 138 The medium-term planning brings together the sales staff's revenue forecasts covering a three-year period, the developments expected in the budget year and the company's strategic plan. In the present planning, the sales revenues of the planning years 2024 and 2025 are based on these detailed sales forecasts. The planning year 2026 is based on the strategic plan and segment-specific strategies and corresponding capacity expansions. The planning year 2027 will be developed on the basis of long-term objectives and the strategic planning.<sup>110</sup>
- 139 The present planning was not prepared on an ad hoc basis; it is an update of the planning prepared as part of the regular process. A business plan update on the valuation date is common practice and generally unobjectionable.
- 140 We understood the planning system and do not see an indication that the planning calculation should not be used for business valuation purposes.

**b) Analysis of the past**

- 141 The analysis of the past forms the starting point for forecasting future developments and plausibility considerations. In order to improve the comparability of the planning periods with the business years of the past under consideration, it is customary in valuation practice to analyse the results of the past with regard to matters of a one-off or non-recurring nature as well as extraordinary items or items not related to the accounting period. Furthermore, these analyses serve to explain plan overruns or underruns due to special circumstances that could not be planned.
- 142 In addition, so-called pro-forma adjustments are useful if the valuation object has changed significantly compared to the past as a result of restructuring, acquisitions or disposals of companies or business divisions. Such adjustments were not necessary for PVT AG.
- 143 On the basis of the submitted business reports, audit reports as well as supplementary statements and information from the valuation expert, we have identified the following facts that should be adjusted in the context of the historical analysis for reasons of comparability with the planning:
- Temporary expense grants
  - Extraordinary impairment losses

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<sup>110</sup> See valuation report, p. 50.

- Gains / losses from exchange rate changes
- Due to a legal dispute with a former CEO, increased consulting expenses (2020 - 2022) as well as a related severance payment and increased pension expenses (2022)
- Income and expenses relating to a property not used for operational purposes (see also chapter "Special values")
- Gains / losses from the disposal of assets
- Adjustments to the inventory of Nor-Cal Products Inc ("NCA")
- Derecognition of a building

144 The valuation expert has considered the aforementioned circumstances within the framework of the historical analysis and has made corresponding adjustments. <sup>111</sup>

145 In summary, the following adjustments can be derived:

ADJUSTMENTS OF HISTORICAL P&L			
	2020	2021	2022
€m	HIST	HIST	HIST
<b>EBIT - before adjustments</b>	<b>45.3</b>	<b>93.1</b>	<b>119.4</b>
Non-recurring grants for expenditures	-1.6	-1.7	-2.3
Extraordinary depreciation	8.8	16.4	0.0
FX gains / losses	3.0	-0.8	0.8
Increased consultancy costs / severance payments	0.2	0.2	1.3
Income / expenses related to non-operating property	0.0	0.0	0.0
Gains / losses from the sale of assets	0.0	0.3	-0.2
Adjustment of inventories NCA		0.4	3.7
Writedown of building			2.5
Sum of adjustments	10.4	14.8	5.8
<b>EBIT - after adjustments</b>	<b>55.7</b>	<b>107.9</b>	<b>125.1</b>

146 Expenditure grants represent non-recurring, extraordinary income, which is to be adjusted accordingly. Exchange rate gains/losses, inventory write-offs, losses from the derecognition of buildings, gains/losses from the disposal of assets and impairment losses are fundamentally part of PVT AG's business and are also expected to occur in the future, but neither their amount nor whether these matters will lead to profits or losses can be predicted and they are therefore not part of the planning presented. For this reason, these matters have to be adjusted for the past. The increased consulting expenses are resulting from a legal dispute with a former CEO, which has been settled in the meantime and is basically a one-time matter. Income and expenses from the unused property are

<sup>111</sup> See valuation report, p. 47 f.

not taken into account in the planning, as the property is valued as a special asset, and must also be adjusted accordingly in the past.

147 We consider the adjustments made by the valuation expert to be appropriate. Based on our own analyses, there are no deviations from the past adjustments made by the valuation expert.

148 The earnings situation after taking into account the adjustments is shown in the following table.

HISTORICAL PROFIT AND LOSS STATEMENTS (ADJUSTED)			
	2020	2021	2022
EURm	HIST	HIST	HIST
Sales	618.6	771.3	916.7
Cost of goods sold	-402.4	-491.2	-583.8
<b>Gross profit</b>	<b>216.2</b>	<b>280.2</b>	<b>332.9</b>
Selling & marketing expenses	-71.1	-79.4	-95.1
R&D expenses	-35.1	-34.2	-36.7
G&A expenses	-57.4	-61.2	-78.7
Other operating income	3.3	3.0	3.8
Other operating expenses	-0.1	-0.5	-1.0
<b>EBIT (adjusted)</b>	<b>55.7</b>	<b>107.9</b>	<b>125.1</b>
Non-operating result	-10.4	-14.8	-5.8
Financial result	-0.8	-0.6	-0.5
<b>EBT</b>	<b>44.5</b>	<b>92.5</b>	<b>118.9</b>

149 In addition to the adjustment of past results, the valuation expert carried out an analysis of the historical planning accuracy with regard to sales revenues and EBIT.<sup>112</sup>

150 The deviations from the business plan identified by the valuation expert are particularly related to effects of the Corona pandemic and the related supply chain situation as well as unplannable exchange rate effects and unscheduled impairments. In addition, the unpredictable expansion in sales volume expansions in 2021 and 2022 led to a positive deviation from plan.

151 We have followed the procedure of the valuation expert and could not identify any indications that would lead to a systematic distortion of the planning results. As a result, we consider the planning to be an appropriate basis for the purposes of the company valuation of PVT AG carried out here.

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<sup>112</sup> See valuation report, p. 52 ff.

c) **Planning Calculation of the operating result**

152 The business plan of PVT AG is shown in the following table:

PROFIT AND LOSS STATEMENTS (PLAN)						
	2022	2023	2024	2025	2026	2027
EURm	HIST	PLAN	PLAN	PLAN	PLAN	PLAN
Semiconductor & Emerging Technologies	471.1	455.9	483.3	524.7	539.5	571.5
Analytics, Industry, Research & Development	445.6	467.5	501.8	536.1	586.9	617.9
Sales	916.7	923.4	985.1	1,060.8	1,126.4	1,189.4
Cost of goods sold	-587.5	-582.5	-619.7	-667.3	-705.2	-741.4
<b>Gross profit</b>	<b>329.3</b>	<b>340.9</b>	<b>365.4</b>	<b>393.5</b>	<b>421.2</b>	<b>448.0</b>
Selling & marketing expenses	-95.1	-98.1	-103.3	-111.8	-119.7	-124.5
R&D expenses	-36.7	-40.2	-45.0	-50.4	-55.1	-59.5
G&A expenses	-80.0	-91.7	-95.1	-99.1	-101.1	-104.3
Other operating income / expenses	1.9	3.3	3.4	3.4	3.4	3.4
<b>EBIT</b>	<b>119.4</b>	<b>114.2</b>	<b>125.4</b>	<b>135.6</b>	<b>148.7</b>	<b>163.1</b>
nachrichtlich: EBITDA	150.6	154.6	170.4	189.8	209.3	225.7
<b>KPIs</b>						
Change of sales	18.8%	0.7%	6.7%	7.7%	6.2%	5.6%
Gross profit (in % of sales)	35.9%	36.9%	37.1%	37.1%	37.4%	37.7%
Selling & marketing expenses (in % of sales)	10.4%	10.6%	10.5%	10.5%	10.6%	10.5%
R&D expenses (in % of sales)	4.0%	4.4%	4.6%	4.8%	4.9%	5.0%
G&A expenses (in % of sales)	8.7%	9.9%	9.7%	9.3%	9.0%	8.8%
Other operating income / expenses (in % of sales)	-0.2%	-0.4%	-0.3%	-0.3%	-0.3%	-0.3%
EBIT margin	13.0%	12.4%	12.7%	12.8%	13.2%	13.7%

153 PVT AG expects a further increase in sales revenues for the planning years 2023 to 2027, which can be observed in all market segments. Although the company expects sales revenues in the "Semiconductor and future technologies" segment to decline slightly in 2023 following significant growth in previous years as a result of the downturn in the semiconductor market, a renewed increase in sales revenues in this segment is forecasted for the planning years from 2024 onwards. The planned increase in revenue is due to the expected upturn in the semiconductor market and goes hand in hand with the capacity expansions of PVT AG (especially in Annecy and Korea).

154 As expected, the "Analytics, Industry and Research & Development" division is recording stable growth in sales revenues throughout the planning period. This is particularly related to the forecast market growth in the Analytics sub-division and the expected increase in market shares in the Analytics and Research & Development sub-divisions. As planned, growth is particularly resulting from the expansion of turbopump sales, for which the corresponding capacities are currently being expanded.

155 Due to the sales growth, a significant increase in the cost of sales can be observed in the planning period. At the same time, the current expansion and the associated

modernisation of production capacities are also reflected in the expected development of the cost of sales ratio, resulting in an improvement of the gross profit margin from 35.9% to 37.7% in the planning period, which results from relocations of some production lines and more efficient cost structures.

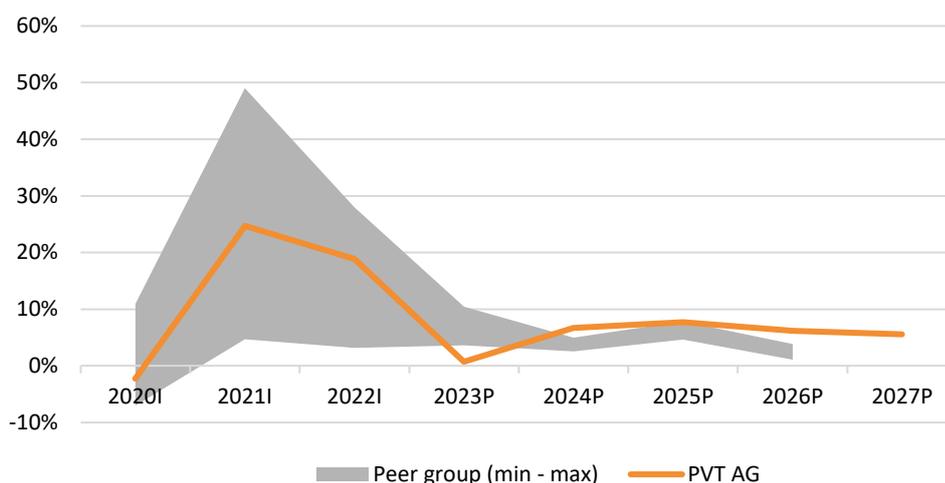
- 156 Sales and marketing costs are expected to remain at a constant level in relation to revenue during the planning period.
- 157 As expected, research and development costs will rise disproportionately due to planned new hires in the R&D area. Furthermore, the planned increase in this cost ratio is due to the first-time capitalisation of research and development expenses in 2021, which affects the cost ratio with a delay. The relatively low cost ratio of 4.0% in 2022 is due to the high growth in turnover in previous years.
- 158 For the administrative and general costs, a significant increase in the cost ratio from 8.7% to 9.9% (2023) and 9.7% (2024) is expected in the first planning years, which is due to planned IT projects. The projects include the standardisation of the software used in the individual companies and the digitalisation strategy of PVT AG and will require new hires in the IT area as planned in the planning period. From 2024 onwards, the ratio is expected to decline to the current level of 8.8% (2027).
- 159 Other operating income consists of expense grants for research and development in France and is of minor importance.

#### **d) Plausibility assessment of the business plan by comparable companies**

- 160 In order to assess the appropriateness of the planning presented to us, we also compared it with the expected development of the group of peer companies.
- 161 For this purpose, we used the consensus estimates provided by the capital market information service provider S&P Global Market Intelligence (S&P Capital IQ), which were further processed within the scope of the comparative analysis.
- 162 As part of our analysis, we analysed the expected revenue growth and the expected development of the EBIT(DA) margins of the valuation expert's peer group and compared them with the forecast development of the corresponding variables of PVT AG.

163 The following chart shows the past and expected development of PVT AG's revenue growth in comparison to the corresponding analyst estimates of the peer group. The range of the peer group shown in grey represents the entire range of the peer group's sales expectations:<sup>113</sup>

**PVT AG - Revenue growth compared to peer group**



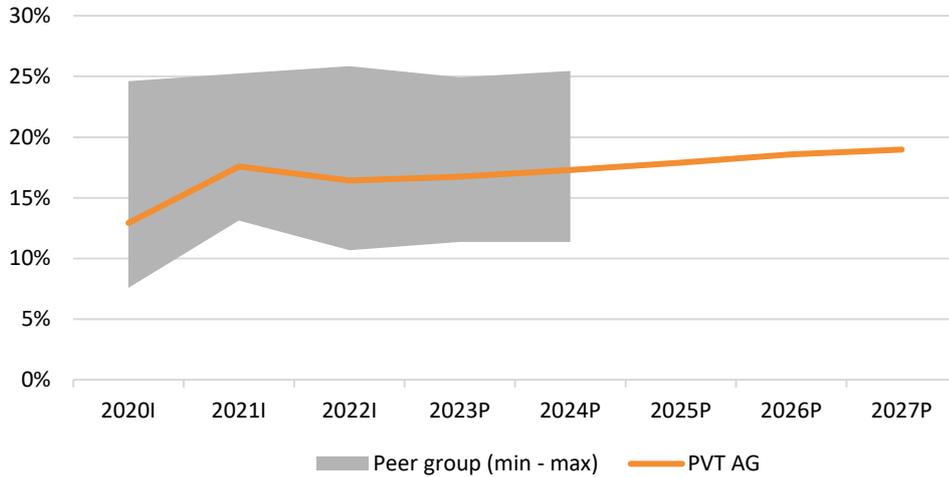
164 In the past, PVT AG's revenue growth rates have been within the range established by the peer group. After a lower forecast revenue growth in 2023, revenue growth rates for PVT AG are expected to be slightly above the peer group from 2024 onwards.

165 The EBITDA margin of PVT AG was 12.9% in 2020. In 2021, a significant increase in the margin to 17.6 % was recorded; in the following years, an increasing margin level is expected.

<sup>113</sup> Peer group range is not presented for the full planning period due to unreliable data.

166 The following chart shows the past and expected development of the EBITDA margin of PVT AG compared to the corresponding analyst estimates of the peer group. The range of the peer group is shown in grey:

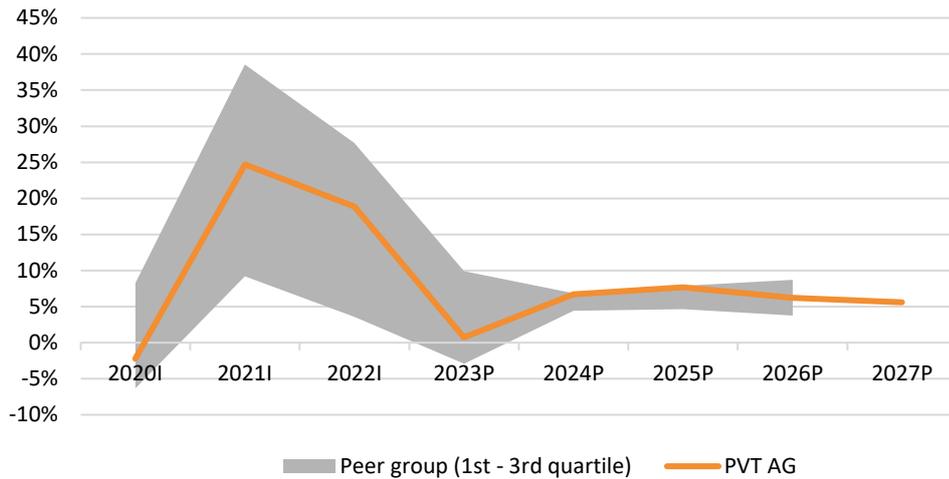
**PVT AG - EBITDA margin compared to peer group**



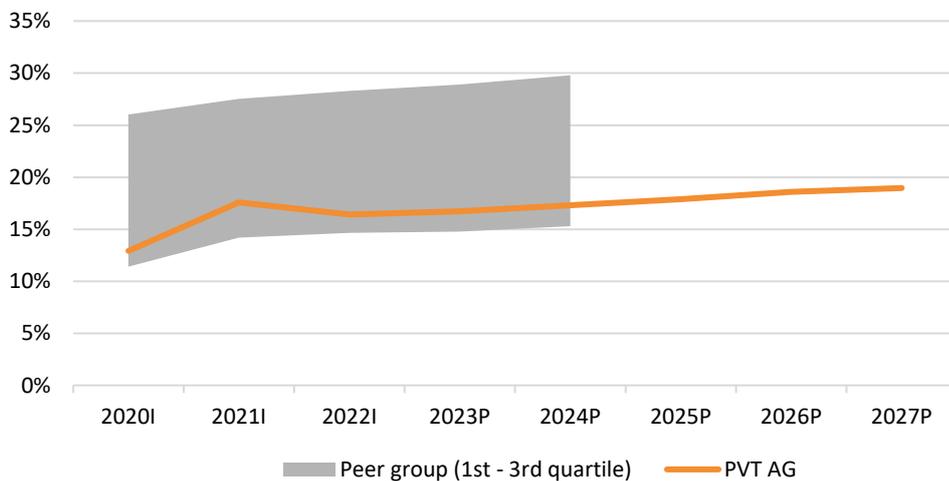
167 The EBITDA margins of PVT AG are within the peer group range. The EBITDA margins of PVT AG are thus comparable with the forecast EBITDA margin development of the peer group. The same can be observed for the EBIT margin.

168 Against the background of the small number of comparable companies, we have additionally carried out the corresponding analyses with an extended peer group<sup>114</sup> consisting of a total of eight companies to validate these results. In order to limit the influence of possible outliers in the data, we did not present the entire range of the peer group, but rather the range from the first to the third quartile:

**PVT AG - Revenue growth compared to extended peer group**



**PVT AG - EBITDA margin compared to extended peer group**



169 As a result, the planning for PVT AG lies within the quartile ranges of the extended peer group.

<sup>114</sup> See section D.II.7.bc) for the extended peer group.

- 170 The planned growth in turnover and the planned change in the EBIT(DA) margins of PVT AG are comparable to the analysts' estimates for the peer group companies.
- 171 Based on the comparison of the expected revenue and margin development of PVT AG with the forecast development of the group, we consider the planning to be rather ambitious, but still plausible.

**e) Sustainable operating result**

- 172 In order to determine the sustainable operating result (EBIT), the valuation expert estimated the future earning power of PVT AG under the assumption of going concern as follows.
- 173 PVT AG's sales markets are characterised by intense competition, which will be intensified by the increasing entry of Asian competitors with price advantages. Within the company, the planned growth is dependent on the successful launch of new products and the planned capacity expansions.
- 174 In accordance with his analyses and the findings obtained in the course of his valuation activities, the Valuation Expert has determined that the sales level and the EBITDA margin of the planned year 2027 represent an appropriate starting point for determining the sustainable result. The Valuation Expert has set the expected sustainable revenue and earnings growth after reaching the steady state at 1.0%.<sup>115</sup>
- 175 The investments required to sustainably maintain this level of revenues were determined on the basis of the company's actual and planned investments. The depreciation and amortisation included in the EBIT correspond to the sustainable amounts. For further depreciation beyond the sustainable level after the planning period, the Valuation Expert applies a corresponding tax advantage in the context of deriving the sustainable tax rate.<sup>116</sup>
- 176 We discussed the assumptions used to derive the sustainable earnings level with the persons responsible for the valuation and PVT AG. We consider the long-term earnings growth of 1,0 % assumed in the company valuation to be appropriate for PVT AG.

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<sup>115</sup> See valuation report, p. 65.

<sup>116</sup> See valuation report, p. 65.

**f) Net distributions after personal income tax**

**fa) Derivation of net distributions after personal income tax**

177 We have reconstructed the derivation of the net distributions after personal taxes in the valuation model of the valuation expert and reviewed the plausibility within the framework of our own valuation model.

178 The derivation is presented comprehensively in the valuation report.<sup>117</sup> We consider the derivation to be appropriate.

**fb) Financial result, corporate taxes and minority interests**

179 The Valuation Expert derived the financial result on the basis of an integrated extrapolation of the balance sheet and financial planning as at 31 December 2022, applying the planned distributions and investments as well as changes in net current assets and provisions. The interest result comprises interest expenses for interest-bearing liabilities.<sup>118</sup>

180 We consider the derivation of the financial result and the procedure to be appropriate. The parameters used correspond to the current and expected financing conditions of the company and are comprehensible.

181 Corporate taxes were determined on the basis of earnings before taxes, taking into account trade tax, corporate income tax and the solidarity surcharge as well as foreign corporate taxes. The loss carryforwards existing as of 31 December 2022 were integrated into the capitalised earnings value.<sup>119</sup> In addition, the Valuation Expert considered a temporary tax advantage from the depreciation still expected to exceed the sustainable level at the end of the planning period when determining the sustainable tax rate. Determination of the sustainable tax rate applied

182 We retraced the determination of corporate taxes in terms of content and calculation and consider it to be derived appropriately.

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<sup>117</sup> See valuation report, p. 68.

<sup>118</sup> See valuation report, p. 62.

<sup>119</sup> See valuation report, p. 63.

**fc) Dividend policy and personal income tax**

- 183 In general, when determining the distributions in the planning period, primarily the corporate planning is to be used and only for the terminal value a dividend policy equivalent to an investment in a share portfolio is to be assumed.
- 184 The valuation expert correctly took into account that the planned distribution for 2022 in the amount of 0.11 € per share, which is to be resolved at the Annual General Meeting of PVT AG, may not be included in the derivation of the business value to increase the value, as this will still accrue proportionately to the minority shareholders.<sup>120</sup>
- 185 According to statements made by the management, the expected payout ratio refers to average values observable on the market and was set at 40 % of the planned net income in the detailed planning period. For the perpetual annuity, the Valuation Expert assumed a typical distribution rate of 40% in relation to the net income. The valuation expert derives this payout ratio from values observable on the market and in consideration of the payout ratios of the peer group.<sup>121</sup>
- 186 According to our analysis, this payout level is within the average payout ratio of the peer group companies we have looked at and also within a range that is regularly observed on the market.
- 187 For the tax treatment at the shareholder level, the valuation expert distinguishes between a value contribution from distribution ("distribution") and a value contribution from retention ("retention"). In deriving the personal income tax on the value contribution from distribution, the income tax rate on dividends including the solidarity surcharge of 26.38% (final withholding tax) was applied.<sup>122</sup>
- 188 With regard to the value contribution from retention, the valuation expert made the simplifying assumption that this directly accrues to shareholders, taking into account the tax consequences at shareholder level. The value added from retention was therefore reduced by the standardised income tax on capital gains and the inflation-related increase in the value of the company. The Valuation Expert applied half of the final withholding tax rate including the solidarity surcharge of 13.18%.<sup>123</sup>

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<sup>120</sup> See valuation report p. 62.

<sup>121</sup> See valuation report p. 68.

<sup>122</sup> See valuation report p. 65.

<sup>123</sup> See valuation report p. 69.

- 189 In the perpetuity, the valuation expert considered a retention amount of around EUR 6.2m to be necessary to finance sustainable growth. This takes into account a growth of the economic equity as at 31 December 2027 in the amount of the sustainably applied growth rate. Since sustainable growth can only be achieved through investments in the broad sense (including changes in working capital, etc.) and the associated financing, we consider this approach to be fundamentally appropriate
- 190 In our opinion, the assumptions made by the valuation expert, the approach adopted to determine the distributions and the allowance for personal tax are appropriate.

## 7. Capitalisation rate

- 191 The capitalised earnings value of a company is determined by discounting the planned future earnings to the valuation date. The capitalisation rate represents the return from an alternative investment that is adequate for the investment in the company to be valued. The cash flow of the alternative investment should be comparable in terms of time structure, risk and taxation to the cash flow to which the shareholders of the company to be valued are entitled.
- 192 In particular, capital market returns for corporate investments can be considered as a starting point for the determination of alternative returns. In principle, these returns can be broken down into a basic interest rate and a risk premium demanded by the shareholders for the entrepreneurial risk.<sup>124</sup> The cost of equity is calculated according to the following formula:

$$r_{EK} = r_f + (r_M \times \beta_{EK})$$

$r_{EK}$  = Cost of equity

$r_f$  = risk-free interest rate (base rate)

$r_M$  = Market risk premium

$\beta_{EK}$  = Beta factor of equity (taking into account the debt)

- 193 Tax effects must be taken into account when determining the base interest rate and risk premium. To capture growth effects in the form of steadily increasing financial surpluses after the end of the detailed planning period, the capitalisation rate is usually reduced by a growth rate (growth discount).

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<sup>124</sup> See IDW S 1, para. 114 f. and para. 92.

**a) Riskfree rate**

- 194 The base rate represents a risk-free and maturity-adequate alternative investment to the investment in the company being valued.
- 195 According to prevailing opinion, the base interest rate is calculated on the basis of the expected yields of fixed-interest securities of the public sector.<sup>125</sup> The interest rate structure data published by Deutsche Bundesbank can be used as a data basis. These values are estimated according to the Svensson method. The interest rate structure curve determined using the Svensson method maps maturity-equivalent base interest rates (so-called spot rates). These can be converted into a uniform base interest rate equivalent to the present value using financial mathematics.
- 196 In order to offset short-term market fluctuations and possible estimation errors, the German Committee on Business Valuation and Economics (FAUB) recommends not using the zero bond yields estimated as of the valuation date, but period specific average yields from the three months preceding the valuation date.<sup>126</sup> Furthermore, the FAUB recommends that for the estimation of zero bond interest rates beyond 30 years, the interest rate determined for a remaining term of 30 years should generally be used as the sustainable estimated value and the uniform base interest rate should be rounded to ¼ percentage point.<sup>127</sup> This approach is recognised in case law.<sup>128</sup> The approach of the FAUB of rounding to tenths of a percentage point rather than to quarter of a percentage point in the case of a base interest rate of less than 1.0% is derived from the interest rate structure data of Deutsche Bundesbank is not relevant in the present case.<sup>129</sup>
- 197 The Valuation Expert bases the determination of the base rate on the estimates of the daily yield curves published by Deutsche Bundesbank for a three-month period from 11. December 2022 to 10. March 2023. On this basis, interest rates were estimated for hypothetical zero bonds with remaining maturities of up to 30 years. For the estimate beyond 30 years, the zero bond interest rates of the longest available remaining terms were extrapolated as a sustainable forecast value.

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<sup>125</sup> See IDW S 1, para. 116.

<sup>126</sup> See FN-IDW 2008, p. 491; agreeing on averaging for many e.g. OLG Düsseldorf, decision of 6 June 2016, I-26 W 4/12 [AktE], AG 2017, p. 487 et seq.; OLG Frankfurt am Main, decision of 20 July 2016, 21 W 21/14, <https://www.lareda.hessenrecht.hessen.de/bshe/document/LARE190018674> (last accessed, 30 November 2021).

<sup>127</sup> See FAUB, FN-IDW 2008, p. 490 f.

<sup>128</sup> E.g. OLG Saarbrücken, decision of 11 June 2014, 1 W 18/13, ZIP 2014, p. 1784 et seq.

<sup>129</sup> See IDW Life 2016, p. 731 f.

- 198 The valuation expert rounded a present value-equivalent, uniform base interest rate before income taxes for all plan years to full 1/4 percentage points and derived a rate of 2.25 %. This rounded basic interest rate before income taxes was converted into an after-tax rate of rounded 1,66 % using a personal income tax rate (final withholding tax including solidarity surcharge) of 26.38 %.<sup>130</sup>
- 199 We have verified the derivation of the base rate and convinced ourselves of its arithmetical correctness.
- 200 When reviewing whether the compensation at the time of the Annual General Meeting on 2 May 2023 corresponds at least to the pro rata enterprise value, it will have to be taken into account that the base interest rate according to the method recommended by the FAUB would, in principle, have to be re-determined taking into account the three-month period. A change in the business value does not necessarily have to be associated with this, as effects on the other valuation parameters would have to be reviewed in the same way.
- 201 The base interest rate used in the valuation of PVT AG of 2.25 % before and 1,66 % after deduction of the income tax rate was determined correctly.

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<sup>130</sup> See valuation report, p. 73.

**b) Risk premium**

**ba) Application of the Tax-CAPM**

- 202 The risk premium serves to compensate for the risk to be accepted when investing in shares of the company to be valued. The assumption is that market participants give higher weight to future risks than to future opportunities (risk aversion).<sup>131</sup> This risk aversion can be taken into account through a deduction from the expected surpluses (safety equivalence method) or through a risk premium on the capitalisation interest rate (risk premium method).<sup>132</sup> Both methods can be converted into each other. In practice, however, risk aversion is almost exclusively taken into account by adding a premium to the interest rate.<sup>133</sup>
- 203 Within the framework of objectified valuations, capital market models such as the Capital Asset Pricing Model (CAPM) and the Tax-CAPM based on it are suitable for deriving the risk premium, because these capital market models indirectly derive risk premiums from observable capital market prices.<sup>134</sup> The prices observable on the capital market are a result of investors' actions. Share prices reflect investors' risk preferences as investors consciously and freely decide to buy or sell certain securities. This market valuation of risks of shares by rational and risk-averse investors is modelled theoretically by the CAPM and the Tax-CAPM. According to the CAPM or Tax-CAPM, the amount of the risk premium is determined as the product of the model parameters market risk premium and beta factor.
- 204 In its standard form, the CAPM represents a capital market model in which the cost of capital and risk premiums are explained without taking into account the effects of personal income taxes. However, since share returns and risk premiums are fundamentally affected by income taxes, a more realistic explanation of empirically observable share returns is provided by the Tax-CAPM, which extends the CAPM by explicitly taking into account the effects of personal income taxes.<sup>135</sup> The different tax treatment of interest income, dividends and price gains is directly captured in the valuation of the Tax-CAPM by loading the base interest rate and market risk premium with the relevant tax rates. The tax CAPM provides a comprehensible, objective

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<sup>131</sup> See IDW S 1, para. 88.

<sup>132</sup> See IDW S 1, para. 89.

<sup>133</sup> See IDW S 1, para. 90.

<sup>134</sup> See IDW S 1, para. 92, 118.

<sup>135</sup> See IDW S 1, para. 119.

explanatory context for the quantification of an appropriate risk premium. This is one of the reasons why the CAPM continues to be the preferred model in valuation practice for deriving the risk premium, despite all the criticism. This view is shared to a large extent in recent case law.<sup>136</sup>

205 The application of the Tax-CAPM by the valuer is therefore appropriate.

**bb) Market risk premium**

206 The market risk premium is the average excess return demanded by investors on equity investments over the return on risk-free securities. The equity market can be represented by a broad equity index, such as CDAX or MSCI World Index. According to the Tax-CAPM, the capitalisation rate consists of the base interest rate reduced by the typified personal income tax and the risk premium after personal income taxes determined on the basis of the Tax-CAPM, which is transformed into an individual company risk premium by means of the company-specific beta factor.<sup>137</sup>

207 The valuation expert has set the market risk premium after personal taxes at 5.75% with reference to the current recommendation of FAUB.<sup>138</sup>

208 FAUB regularly analyses the factors influencing the measurement of the capitalisation rate in business valuations for various reasons. Based on this, it makes quantitative recommendations for the market risk premium before and after personal taxes. In doing so, it follows a pluralistic approach, the elements and calculations of which it has disclosed and explained in detail.<sup>139</sup>

209 At the valuation date, FAUB continued to consider it reasonable to apply a market risk premium after personal tax of between 5.0% and 6.5% for business valuations that take into personal taxes, considering current market conditions and using the Tax-CAPM.<sup>140</sup>

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<sup>136</sup> See OLG Düsseldorf, order of 30 April 2018, ref. 26 W 4/16 [AktE], [https://www.justiz.nrw.de/nrwe/olgs/duesseldorf/j2018/26\\_W\\_4\\_16\\_AktE\\_Beschluss\\_20180430.html](https://www.justiz.nrw.de/nrwe/olgs/duesseldorf/j2018/26_W_4_16_AktE_Beschluss_20180430.html) (retrieved last 6 December 2021); OLG Frankfurt of 17 January 2017, 21 W 37/12, AG 2017, 626 et seq. as well as of 5 February 2016, 21 W 69/14, AG 2016, p. 588 et seq.; OLG Karlsruhe, order of 12 September 2017, 12 W 1/17, para. 76, [http://lrw.juris.de/cgi-bin/laender\\_rechtsprechung/document.py?Gericht=bw&nr=22730](http://lrw.juris.de/cgi-bin/laender_rechtsprechung/document.py?Gericht=bw&nr=22730) (last accessed 30 November 2021) and of 23 July 2015, 12a W 4/15, AG 2016, p. 220 et seq.; OLG Düsseldorf, order of 12. November 2015, I-26 W 9/14, loc. cit.; OLG Munich, order of 18 February 2014, 31 Wx 211/13, OLG Munich, order of 18.02.2014 - 31 Wx 211/2013 - openJur (last accessed 30 November 2021).

<sup>137</sup> See IDW S 1, para. 120.

<sup>138</sup> See valuation report, p. 77.

<sup>139</sup> See Castedello/Jonas/Schieszl/Lenckner, WPg 2018, p. 806 ff.

<sup>140</sup> See IDW (FAUB), Report on the 160th meeting of the FAUB on 22 November 2022..

The mean value of this range is 5.75%. The value of the market risk premium determined by the valuation expert therefore corresponds to the mean value of the proposed range.

- 210 In addition to the considerations and determinations of FAUB, we have prepared our own studies on the implicit market risk premium for various markets.<sup>141</sup> Since the market risk premium should adequately reflect the development of capital markets, not only the historical market risk premiums (excess returns) actually achieved over periods of several decades are relevant for capital market participants, but also the expected implicit market risk premiums from current periods.
- 211 More recent case law of courts also considers it appropriate to follow the recommendations of FAUB, pointing out that FAUB is an expert body of auditors involved in business valuations. In particular, it was not evident that a deviation from these recommendations would lead to "more correct" company values.<sup>142</sup> The OLG Düsseldorf considers the FAUB's pronouncements to be a "recognised expert opinion", which is a source of knowledge for the methodically correct procedure in determining the enterprise value.<sup>143</sup> The Munich Regional Court (LG München I) and the Munich Higher Regional Court (OLG München) also follow the recommendations of FAUB, giving more detailed consideration to the total expected return from the base interest rate and the market risk premium.<sup>144</sup>

Based on the results of our surveys, we consider the determination of the market risk premium after tax at 5.75 % in the middle of the range to be adequate for the purpose of measuring the settlement.

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<sup>141</sup> See Beumer, CF 2015, S. 340 ff., Implizite Marktrisikoprämien – Konsistente Ermittlung und Anwendung; Beumer/Jürgens/Kämmerling, M&A Review 9/2022, S. 376 ff., Negative Entwicklung an den Kapitalmärkten – steigt die Marktrisikoprämie?; Beumer/Jürgens, Implizite Marktrisikoprämien und Marktrenditen von 2008 bis 2018, BewP 2019, S. 71 ff. bzw. Update Marktrisikoprämien von 2008 bis 2019, BewP 2020, S. 9 ff.; Beumer/Jürgens, Optimistische Erwartungen – aber steigende Marktrisikoprämien, in M&A Review 7/8 2020, S. 228-231;

<sup>142</sup> See OLG Frankfurt a.M., decision of 26 January 2017, 21 W 75/15, <https://betriebsberater.ruw.de/bilanzrecht/urteile/Beschluss-vom-26.1.2017-21-W-7515-35929> (last accessed 30 November 2021).

<sup>143</sup> See OLG Düsseldorf, decision of 30 April 2018, 26 W 4/16 [AktE], [https://www.justiz.nrw.de/nrwe/olgs/duesseldorf/j2018/26\\_W\\_4\\_16\\_AktE\\_Beschluss\\_20180430.html](https://www.justiz.nrw.de/nrwe/olgs/duesseldorf/j2018/26_W_4_16_AktE_Beschluss_20180430.html) (last accessed 30 November 2021).

<sup>144</sup> See LG München I, decision of 16 April 2021, 5HK O 5711/19 and OLG München of 12 May 2020, 31 Wx 361/18, <https://openjur.de/u/2275119.html> (accessed 12 November 2021).

**bc) Beta factor**

- 212 According to the CAPM valuation, the beta factor reflects the extent of the systematic risk of a share that cannot be diversified by capital market transactions. The higher the beta factor, the higher the risk premium demanded by capital market participants. The company-specific beta factor is calculated as the covariance between historical stock returns of the company being valued or comparable companies and the historical return of a stock index, divided by the variance of the returns of the stock index.<sup>145</sup> Technically, it is also possible to perform a linear regression of share price returns and index returns to determine the beta factor. The beta factor then corresponds to the slope parameter of the regression equation.
- 213 The shares of PVT AG are listed on a stock exchange. Accordingly, an own historical beta factor can be determined. The determination of a valid beta factor suitable for forecasts requires, among other things, frequent trading of shares. The requirements for liquidity are much higher than for the assessment of whether an average share price should be used as the value threshold for the settlement.
- 214 The average daily trading volume and the average bid-ask spread, i.e. the relative spread between the bid and ask price of the share, are used as common measures of the liquidity of the share under consideration.<sup>146</sup>
- 215 On the basis of his analyses, the Valuation Expert rules out the use of PVT AG's own beta factor for the purpose of determining the objectified company due to the lack of forecasting suitability.<sup>147</sup>
- 216 We were able to understand the statements and explanations of the Valuation Expert and also recognise that, an undistorted price formation of the shares of PVT AG is not ensured.
- 217 In order to validate and check the plausibility of the Valuation Expert's exclusion of the original or the company's own beta factor for the purpose of determining an objectified equity value, we have carried out our own additional analyses to derive and forecast the suitability of PVT AG's own beta factor.
- 218 According to the prevailing opinion, the period after the announcement of the intended corporate contract on 6 November 2022 is generally unsuitable for the derivation of the

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<sup>145</sup> See IDW S 1, para. 121.

<sup>146</sup> See Dörschell/Franken/Schulte, Der Kapitalisierungszinssatz in der Unternehmensbewertung, 2nd edition, p. 167 ff.

<sup>147</sup> See valuation report p. 85.

own beta factor of PVT AG. For this reason, we consider the last trading day before the announcement as the last day of the observation period for determining the company's own beta factor. Since 6 November 2022 is a Sunday, the last trading day before the announcement is 4 November 2022. This procedure is in line with the determination of the average stock market price by BaFin.<sup>148</sup>

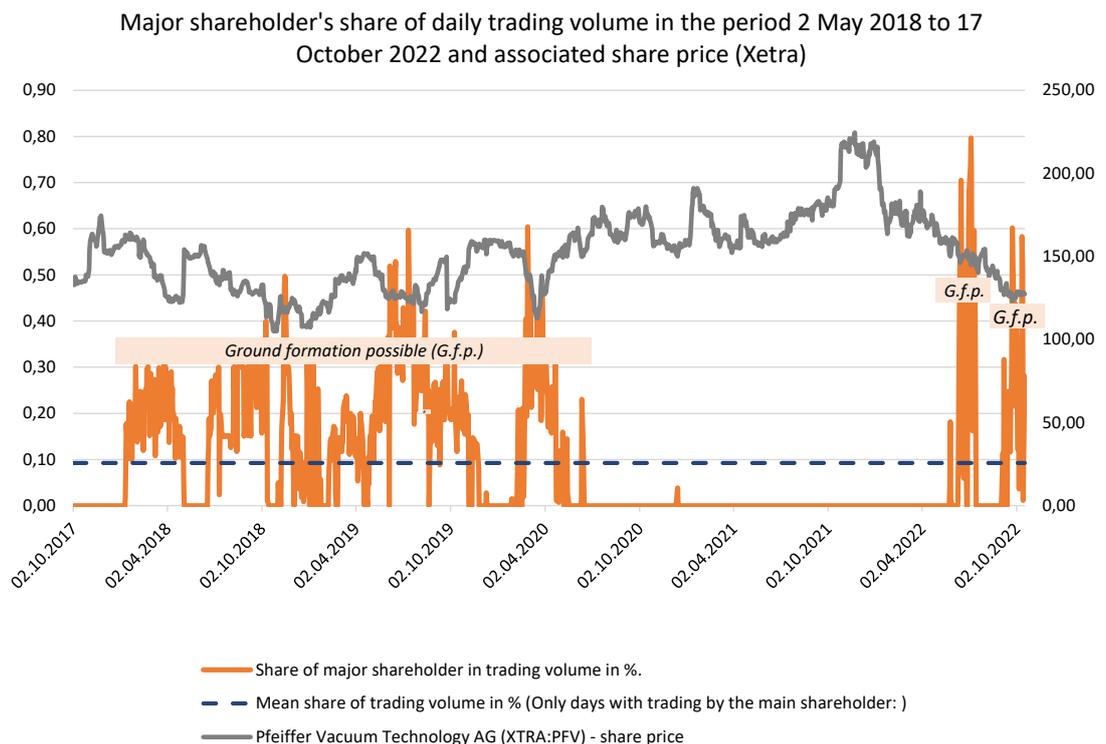
- 219 For this reference date, we performed regression analyses over different observation periods against the global index MSCI All Country World Index (MSCI ACWI) and obtained the corresponding liquidity measures of the average bid-ask spread and the average trading volume.

Own beta factor								
Reference date		04.11.2023						
Reference index		MSCI All-Country World Index						
Analysis Period			Ø Bid/Ask	Ø value traded	Raw Beta	D/E (gross)		Unl. Beta
4.11.21 - 4.11.22,	1 year	weekly returns	0,7%	456.360	0,55	0,06		0,52
4.11.20 - 4.11.22,	2 years	weekly returns	0,6%	526.760	0,66	0,06		0,63
4.11.19 - 4.11.22,	3 years	weekly returns	0,5%	639.450	0,75	0,07		0,71
4.11.18 - 4.11.22,	4 years	weekly returns	0,4%	874.720	0,84	0,07		0,80
4.11.17 - 4.11.22,	5 years	weekly returns	0,3%	1.309.050	0,84	0,08		0,79
<b>Mean</b>			<b>0,5%</b>	<b>761.268</b>	<b>0,73</b>	<b>0,07</b>		<b>0,69</b>
<b>Median</b>			<b>0,5%</b>	<b>639.450</b>	<b>0,75</b>	<b>0,07</b>		<b>0,71</b>
Minimum			0,3%	456.360	0,55	0,06		0,52
Maximum			0,7%	1.309.050	0,84	0,08		0,80

- 220 In literature and jurisprudence, no absolute values are generally recognised with regard to the requirement for the liquidity measures of a share to derive a robust beta factor, so that no clear conclusions can be drawn on the basis of these analyses. The determined liquidity measures are significantly less pronounced compared to shares considered to be safely liquid (e.g. DAX, Dow Jones) and already indicate a possible illiquidity for the purposes of beta factor derivation. In addition, it can be observed that the PVT AG share has shown a significant decline in trading volume and a simultaneous increase in the bid/ask spread over the past five years, and thus liquidity is continuously less pronounced. Based on our analyses, we can also see that the beta factor decreases over time as liquidity becomes less pronounced, thus providing a clear indication that the beta factors determined may be biased downwards due to the changing liquidity measures.

<sup>148</sup> See section D.III.2

- 221 We have undertaken additional analysis to further validate this indication.
- 222 Since 2017, Busch SE made two voluntary takeover offers via Pangea and has continuously increased its stake in PVT AG via share purchases. Against this background, we analysed the share of Pangea's share purchases in relation to the total trading volume of the respective day over the period of share purchases by Busch and compared it with the share price development.
- 223 Based on our analyses, the purchases of Busch SE/Pangea on the days on which stock exchange purchases were carried out represent a not insignificant share of the total trading volume of the respective day. Although according to our findings there was no manipulation of the share price of PVT AG, it cannot be ruled out, taking into account the corresponding share price development, that the share purchases of Busch SE/ Pangea had an influence on the development of the stock exchange prices which cannot be attributed to any fundamental changes at PVT AG. In this case, the PVT AG share price would not be suitable for deriving a risk measure, i.e. for deriving the beta factor.



- 224 In conclusion, we share the assessment of the Valuation Expert and, in consideration of our supplementary analyses, are convinced that it cannot be assumed that the share returns of PVT AG reflect changes in the economic framework conditions in a factually and temporally undistorted manner.<sup>149</sup> PVT AG's own beta factor is therefore not a suitable starting point for determining the risk premium.
- 225 Against this background, the valuation expert determines beta factors on the basis of a group of international listed comparable companies. This is in line with the requirements of IDW S 1.<sup>150</sup>
- 226 Using the beta factors of a peer group has the statistical advantage of a significantly larger number of observations compared to the approach of the beta factor of only one company. By averaging several peer group beta factors, fluctuations and differences in beta factors that cannot be explained by the operating business activity and the capital structure are smoothed, so that the beta factor derived from a suitable peer group is a better future estimate.
- 227 In order to determine a beta factor for PVT AG, the valuation expert analyses a group of a total of four companies that are operating in comparable business areas and have been identified as major competitors:
- Ebara Corp, Japan
  - Shimadzu Corp, Japan
  - LOT Vacuum Co Ltd, South Korea
  - Atlas Copco AB, Sweden.
- 228 We reviewed the selection of peer group companies by the valuation expert and reviewed it on the basis of information provided to us and our own research. The companies used are active in comparable business areas to PVT AG and are therefore fundamentally suitable as peer group companies.<sup>151</sup>

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<sup>149</sup> Vgl. Dörschell/Franken/Schulte, Der Kapitalisierungszinssatz in der Unternehmensbewertung, 2. Aufl. 2012, S. 167.

<sup>150</sup> See IDW S 1, para. 121 and supplementary See IDW, WPH Edition, Bewertung und Transaktionsberatung 2018, Chap. A para. 402 et seq.

<sup>151</sup> See also the company description of the comparable companies in the appendix.

For this peer group, the valuation expert determines unlevered beta factors for a two-year observation period with weekly returns and for a five-year observation period with monthly returns by regressing against both broad local country indices and global MSCI World Total Return Index.

- 229 Unlevered beta factors are calculated taking into account uncertain tax shields and assuming default risk of debt capital (the so-called "debt beta").
- 230 We consider the approach applying different time periods and indices as well as taking into account the debt beta to be appropriate.<sup>152</sup> Even if other possible periods (e.g. 3 years) or other parameters (other index or return intervals) are conceivable, the periods and parameters used are generally recognised in practice and apply to a sufficient selection of possible variants.
- 231 For the valuation of PVT AG, the valuation expert derives an unlevered beta factor in the amount of 0,90 (expert derivation).
- 232 Regardless of this, we carried out our own additional analyses to derive the beta factor on the basis of a group of possible peer group companies in order to check the plausibility of the valuation expert's results. For this purpose, we conducted our own research into mechanical engineering companies with a focus on vacuum technology.
- 233 In the course of our analysis, we have identified four further companies with an operating risk structure comparable to the risk structure of PVT AG (extended peer group).<sup>153</sup>

Peer group company	Peer Group Valuation Expert	Extended Peer Group
Atlas Copco	✓	✓
Ebara Corp.	✓	✓
LOT VACUUM Co., Ltd.	✓	✓
Shimadzu Corporation	✓	✓
Agilent	X	✓
Inficon	X	✓
ULVAC, Inc.	X	✓
VAT Group AG	X	✓

<sup>152</sup> See IDW, WPH Edition, Valuation and Transaction Advice, Chap A, para. 413.

<sup>153</sup> See description of the comparable companies in the appendix.

234 For this extended peer group, we have determined the beta factors shown below over an observation period of five years with weekly return intervals.<sup>154</sup>

Peer group beta factors						
Reference date	10.03.2023					
Analysis Period	5 years					
Sampling interval	Weekly					
Reference index	MSCI All-Country World Index					
Currency	Euro					
Peer Group Company	Country	Ø Bid/Ask	Ø value traded	Raw Beta	Ø D/E	Unl. Beta
Atlas Copco AB	Sweden	0,1%	50.964.380	1,25	0,07	1,18
Ebara Corporation	Japan	0,3%	14.815.870	1,13	0,27	0,92
LOT VACUUM Co., Ltd.	South Korea	0,3%	2.060.430	1,44	0,15	1,28
Shimadzu Corporation	Japan	0,3%	21.507.600	0,84	0,03	0,82
INFICON Holding AG	Switzerland	0,1%	2.252.360	1,17	0,01	1,16
Agilent Technologies, Inc.	United States	0,0%	153.029.475	1,07	0,09	1,00
ULVAC, Inc.	Japan	0,3%	13.541.480	1,38	0,24	1,13
VAT Group AG	Switzerland	0,1%	19.756.600	1,31	0,05	1,26
<b>Mean</b>				<b>1,20</b>		<b>1,09</b>
<b>Median</b>				<b>1,21</b>		<b>1,14</b>
Minimum				0,84		0,82
Maximum				1,44		1,28

235 The unlevered beta factors of this extended peer group lie in a range of 0.82 to 1.28 and the mean values are 1.09 (arithmetic mean) and 1.14 (median). This range corresponds to the range used by the Valuation Expert.

236 The unlevered beta factor of 0.90 applied by the Valuation Expert is thus in the lower range of the unlevered beta factors determined by us. Taking into account the different procedures used to determine the beta factors, we therefore do not find that the beta factor applied was chosen to the detriment of minority shareholders.

237 We consider the (unlevered) risk premium of 5.175% resulting from the applied value of the market risk premium (5.75%) and the unlevered beta factor (0.90) to be adequate.

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<sup>154</sup> In determining the beta factors, we have applied the liquidity of the peer group as necessary for operations in the same way as PVT AG and thus based it on the gross debt ratio.

**c) Growth discount**

- 238 In business valuations, the growth of the expected future business results must also be taken into account.<sup>155</sup> In the detailed planning period, any growth in the items of the profit and loss account and the individual balance sheet items for the individual periods is taken into account in the planning calculation.
- 239 The value contribution of payment surpluses that occur after the detailed planning period is recorded in the valuation as the cash value of a perpetual annuity. The perpetual annuity in the capitalised earnings value formula is initially the expected sustainably achievable result. If it can be assumed that the company to be valued is in a position to sustainably increase its results in the period after the detailed planning period, the corresponding growth in results can be taken into account financially by means of a discount on the capitalisation rate.<sup>156</sup> It should be noted that the value contribution from retained earnings, which is added to the result to be capitalised, already accounts for growth prospects related to expansion investments.
- 240 In order to determine the growth of income statement and balance sheet items for the period after the detailed planning period, an analysis of long-term growth trends and associated investment requirements is necessary.<sup>157</sup>
- 241 The starting point for the determination of sustainable growth by the valuation expert is an analysis of long-term price increases, which are expected to be slightly above the long-term inflation target of 2.0% from 2025 onwards set by ECB.<sup>158</sup> The valuation expert states that PVT AG is in a highly competitive environment in all addressed markets with cyclical correction periods resulting in price declines on the sales side.<sup>159</sup> In his overall assessment, the valuation expert applies a sustainable growth rate of 1.0%.
- 242 The valuation expert has appropriately reflected the specific situation of PVT AG in the valuation report. Based on these considerations, we do not see any indications that justify a growth discount higher than 1.0% and consider the growth discount applied to PVT AG to be appropriate.

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<sup>155</sup> See IDW S 1, para. 94 ff.

<sup>156</sup> See IDW S 1, para. 98.

<sup>157</sup> See IDW S 1, para. 97.

<sup>158</sup> See valuation report p. 92 f.

<sup>159</sup> See valuation report p. 94.

**d) Period-specific capitalisation rates**

243 The derivation of capitalisation rates of PVT AG calculated by the valuation expert for specific periods is shown below:

PERIOD-SPECIFIC COST OF CAPITAL DERIVED BY EBNER STOLZ						
	2023	2024	2025	2026	2027	TV
Risk-free rate before personal taxes	2.25%	2.25%	2.25%	2.25%	2.25%	2.25%
Personal taxes	-0.59%	-0.59%	-0.59%	-0.59%	-0.59%	-0.59%
<b>Risk-free rate after personal taxes</b>	<b>1.66%</b>	<b>1.66%</b>	<b>1.66%</b>	<b>1.66%</b>	<b>1.66%</b>	<b>1.66%</b>
Market risk premium after personal taxes	5.75%	5.75%	5.75%	5.75%	5.75%	5.75%
Unlevered beta	0.90	0.90	0.90	0.90	0.90	0.90
Gearing	8.87%	11.10%	11.82%	11.23%	9.42%	5.55%
Levered beta	0.97	0.98	0.99	0.98	0.97	0.94
<b>Risk surcharge</b>	<b>5.55%</b>	<b>5.65%</b>	<b>5.68%</b>	<b>5.65%</b>	<b>5.58%</b>	<b>5.41%</b>
TV growth rate						-1.00%
<b>Cost of capital</b>	<b>7.21%</b>	<b>7.30%</b>	<b>7.33%</b>	<b>7.31%</b>	<b>7.23%</b>	<b>6.07%</b>

Source: Analysis of Ebner Stolz

244 We regard the underlying period-specific capitalisation rates as appropriate.

**8. Special values**

245 PVT AG has non-operating assets in the form of real estate not used for operations. These are reported in the consolidated financial statements as at 31 December 2022 as financial investments and can, in principle, be sold without affecting the company's operations. For these properties, the valuation expert used the higher of the book value on the balance sheet date and the market value determined by the company on this date. For reasons of materiality, the valuation expert did not take into account the tax burden to be expected upon sale.

246 We have retraced the valuation and consider the amount of EUR 328k as of 31 December 2022 / the compounded value of EUR 336k as of 2 May 2023 to be appropriate.

247 Furthermore, the valuation expert has not identified any assets that are not necessary for operations and no additional assets came to our attention in the course of our audit. As a result, with the exception of the aforementioned properties, there is no need to recognise any special values.<sup>160</sup>

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<sup>160</sup> See valuation report, p. 98 f.

## 9. Business value and value per share

248 The capitalised earnings value of PVT AG's operating business is calculated by discounting the sum of net distributions including the value contributions from retention of profits with the period-specific capitalisation rate. The valuation expert mathematically correctly calculated the capitalised earnings value as of the technical valuation date of 1 January 2023. As of the valuation date 2 May 2023, the equity value and the value per share of PVT AG as derived by the expert are as follows:

PRESENT VALUE DERIVATION PROVIDED BY EBNER STOLZ						
EURm	2023	2024	2025	2026	2027	TV
<b>Net income</b>	<b>81</b>	<b>88</b>	<b>95</b>	<b>105</b>	<b>117</b>	<b>125</b>
Internal financing	-48	-53	-57	-63	-70	0
Retention of profits for growth	0	0	0	0	0	-6
<b>Distribution potential</b>	<b>32</b>	<b>35</b>	<b>38</b>	<b>42</b>	<b>47</b>	<b>119</b>
Value proposition from distribution	32	35	38	42	47	50
Personal tax on dividends	-9	-9	-10	-11	-12	-13
Value proposition from profit accumulation	0	0	0	0	0	69
Personal tax on capital gains	0	0	0	0	0	-11
<b>Net earnings</b>	<b>24</b>	<b>26</b>	<b>28</b>	<b>31</b>	<b>34</b>	<b>95</b>
Capitalisation rate	7.21%	7.30%	7.33%	7.31%	7.23%	6.07%
Discount factor	0.93	0.87	0.81	0.75	0.70	11.60
Present value	22	22	23	23	24	1,097
Special value	0					
<b>Present value as of 1 January 2023</b>	<b>1,212</b>					
Compounding factor	1.024					
<b>Present value as of 2 May 2023</b>	<b>1,240</b>					

Source: Analysis of Ebner Stolz

249 To compound the value from the technical valuation date to the valuation date, the valuation expert used the specific capitalisation rate of the first plan year and compounded the sum of present values as of 1 January 2023 by 122 days to 2 May 2023.

250 We have retraced and methodically verified the derivation of the enterprise value as well as the compensation per share without any objections.

### III. Plausibility check of the equity value

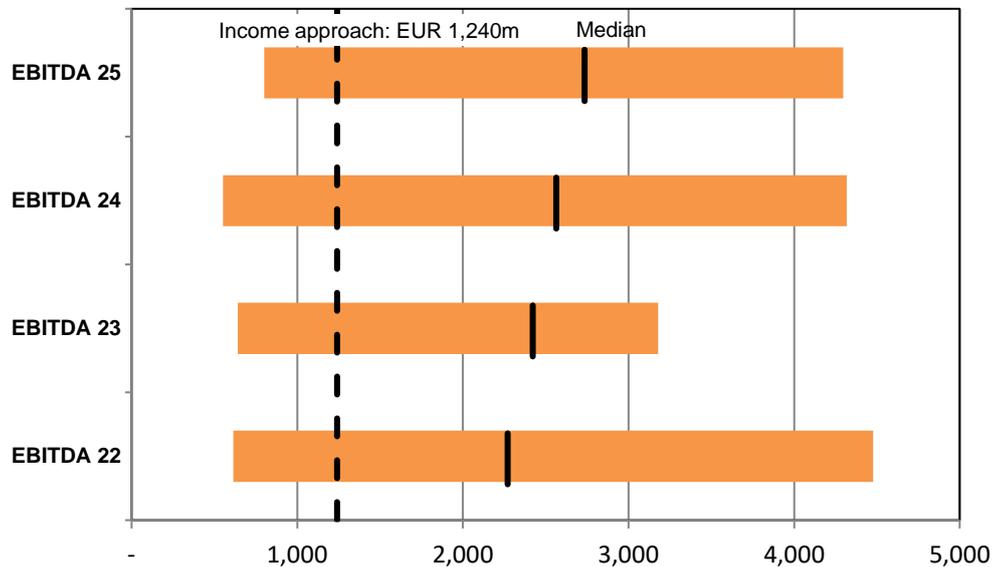
#### 1. Comparative market valuation

- 251 A comparative market valuation can be carried out by determining value ranges on the basis of multiple analyses or industry-specific valuation methods.
- 252 In multiple analyses, the value of the company can be derived as the product of a reference value of the company (often a turnover or profit figure) and the corresponding multiple of reference figure of the company (often a turnover or earnings figure) and the corresponding multiplier of listed peer companies ("trading multiples") or derived from comparable transactions ("transaction multiples").
- 253 Simplified valuation methods, e.g. methods based on earnings or turnover multiples, can be used to can be used as a plausibility check of the equity value determined according to the capitalised earnings method.<sup>161</sup> However, a multiple analysis cannot replace a more detailed business valuation. Nonetheless, it can provide supplementary indications for an assessment of the value determined using the capitalised earnings method.
- 254 The valuation expert has checked the plausibility of the value of PVT AG, which was determined using the capitalised earnings method and thus on the basis of internal information and general principles, by using EBITDA- and EBIT-multiples of the same peer group that was also used to derive the beta factor.
- 255 We have retraced the plausibility of the derivation of multiples using our own analyses, which we conducted on the basis of data from S&P Global Market Intelligence. We did not have any findings different from the findings of the valuation expert.
- 256 In addition to the multiple analyses of the valuation expert, we carried out own analyses based on the extended peer group of eight peer companies. Due to the different accounting regulations of the peer companies, we solely performed the analyses for EBITDA multiples. The bandwidth of the equity value resulting from this analysis is shown in the following chart:

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<sup>161</sup> See IDW S 1, section 8.3.4.

### Market value of equity - EBITDA multiples



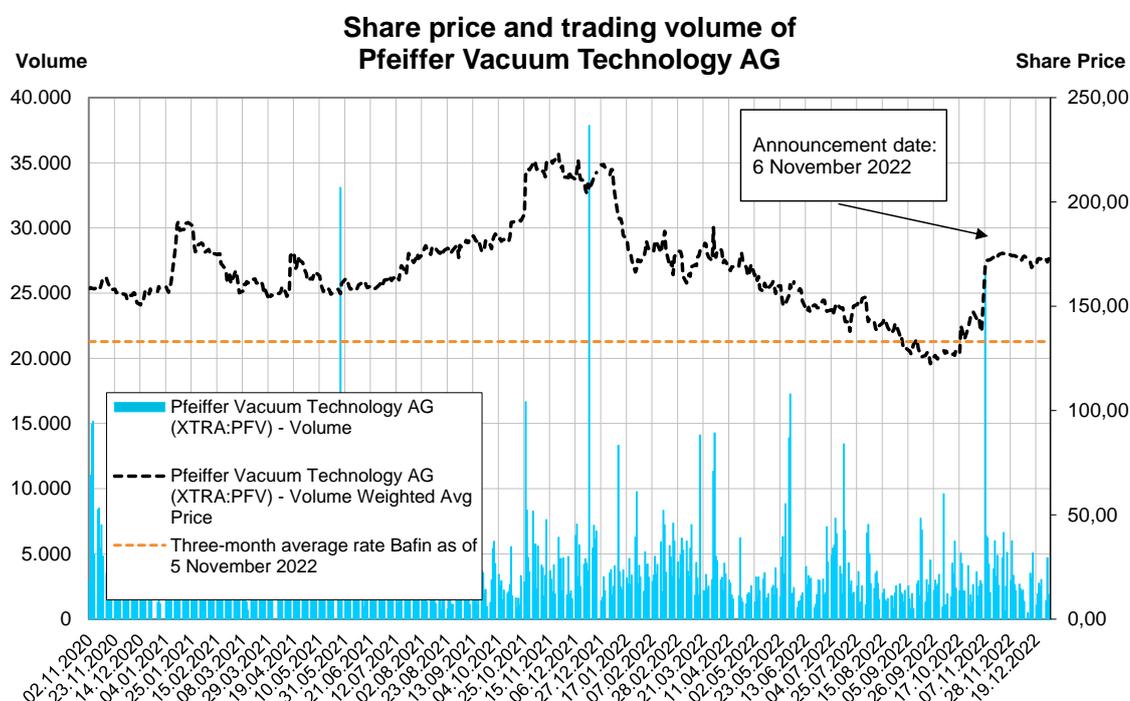
- 257 The bandwidth of equity values ranges from EUR 551m to EUR 4,478m.
- 258 The multiplier valuations show that the capitalised earnings value of €1,240 million determined by the Valuation Expert for both groups of peer group companies is within the range determined by the EBITDA multiplier analysis.
- 259 The results of our analysis are thus comparable with those of the Valuation Expert and, in our view, there are no findings that the capitalised earnings value does not represent a plausible result.
- 260 Due to the comparatively wide range of values for PVT AG, which results from the analysis of the multiples of the peer group companies, we do not attach any significant weight to this method with regard to the assessment of the valuation of PVT AG.
- 261 Overall, we come to the conclusion that the determined enterprise value of PVT AG lies within the value range derived on the basis of the multiples for the market value of PVT AG's equity. The plausibility check therefore does not provide any indications that the equity value of PVT AG determined using the capitalised earnings method is not appropriate.

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## 2. Market capitalisation

262 As the shares of PVT AG are traded on stock exchanges, share prices are available that can generally be used to assess the plausibility of the company value determined by fundamental analysis.<sup>162</sup>

263 However, the share price may be distorted by special influences that may have affected the pricing and, thus, may not reflect the fair value of PVT AG. Therefore, the development has to be analysed over a longer period of time. For this purpose, we determined the share price and trading volume of PVT AG shares for the two-year period prior to 6 November 2022, which is shown in the following graph:



Source: S&P Global Market Intelligence, own analyses.

<sup>162</sup> Legally, only the average price for the three-month period ending before the announcement of the structural measure is relevant.

- 264 It can be seen that the share price of the PVT AG share was significantly above the fundamentally derived value of EUR 125.70 per share until the publication of the ad hoc announcement by PVT AG on 6 November 2022 regarding the conclusion of a domination and profit and loss transfer agreement sought by Pangea and only increased as a result of this announcement. The analysis indicates that the market price of PVT AG since the announcement of 6 November 2022 appears to have been distorted by speculation and consequently no longer reflects the fair value of PVT AG.<sup>163</sup> Against this background, the market capitalisation can only be used to a limited extent to review the plausibility of the determined equity value of PVT AG.
- 265 The minimum price of the shares of PVT AG calculated by BaFin amounts to EUR 133.07 as of 5 November 2022.<sup>164</sup> This results in a market capitalisation of EUR 1,313m, which is above the value of EUR 1,240.35m derived by the valuation specialist

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<sup>163</sup> Please also refer to our comments regarding PVT AG's own beta.

<sup>164</sup> See § 31 para. 7 WpÜG in conjunction with. §5 para. 3 WpÜG-AngVO.

#### IV. Derivation of appropriate settlement and compensation

##### a) Appropriate compensation according to § 305 AktG

- 266 The value per share of PVT AG using the capitalised earnings method on a pro rata basis, i.e. by dividing the resulting equity value by the number of shares<sup>165</sup>, amounts to EUR 125.70.
- 267 The shares of PVT AG are currently traded on stock exchanges.<sup>166</sup> Therefore, case law of the Federal Constitutional Court<sup>167</sup> applies, according to which the share price generally represents the lower limit of compensation for minority shareholders in the case of company agreements and incorporations.
- 268 According to the Federal Supreme Court, the average share price for the three-month period ending prior to the announcement of the structural measure is to be used.<sup>168</sup> If a longer period of time is between the announcement of the structural measure and the day of the general meeting and the development of share prices makes an adjustment appear necessary, the share price is to be extrapolated in accordance with the general or industry-typical development of the value, taking into account the general development of stocks since then.<sup>169</sup> The question of when such a "longer period" exists has not been conclusively clarified in case law. However, a period of up to six months is considered uncritical in literature and case law.<sup>170</sup>
- 269 PVT AG's ad hoc notification of Pangea's intention to conclude a DPLTA with PVT AG was made on 6 November 2022.<sup>171</sup> Thus, there will be approximately six months until the date of the Annual General Meeting to be held on 2 May 2023, which does not represent a longer period of time within the meaning of the case law of BGH.

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<sup>165</sup> 9,867,659 shares.

<sup>166</sup> Cf. D.II.2.a.

<sup>167</sup> Cf. decision of BVerfG, 1 BvR 1613/94 of 27 April 1999, BVerfGE 100, 289.

<sup>168</sup> Cf. BGH, decision of 19 July 2010, AG 2010, p. 629 ff, "Stollwerck".

<sup>169</sup> Cf. BGH, decision of 19 July 2010, AG 2010, p. 629 ff, "Stollwerck", repeated by decision of 28 June 2011, II ZB 2/00, AG 2011, p. 590 f.

<sup>170</sup> Cf. for example Koch in Koch, AktG, 16th ed. 2022, § 305 marginal no. 44 with further references; OLG Stuttgart of 05.06.2013 - 20 W 6/10, para. 250.

<sup>171</sup> Cf. <https://ir.pfeiffer-vacuum.com/English/publications/ir-releases/news-details/default.aspx?newsId=2375463>, same <https://www.boerse.de/nachrichten/EQS-Adhoc-Pfeiffer-Vacuum-Technology-AG-Erhalt-der-Mitteilung-der-Pangea-GmbH-zu-angestrebtem-Abschluss-eines-Beherrschungs-und-Gewinnabfuhrungsvertrags-deutsch/34294916> (retrieved 23.1.2023).

- 270 In determining the reference period, the valuation expert used a reference period ending on 5 November 2022.<sup>172</sup> We consider this approach to be appropriate.<sup>173</sup>
- 271 According to the case-law of the Federal Constitutional Court, the share price cannot be used as a lower limit if the shares of the company are only traded to a small extent or do not reflect the market value of shares due to special influences.<sup>174</sup> This is particularly the case if there has been practically no trading in the company's shares over a longer period of time, if the individual shareholder is not able to sell his shares at the stock exchange price due to a narrow market or if the share price is manipulated.<sup>175</sup>
- 272 As a basis for the assessment of whether a narrow market exists, the requirements of § 5 (4) WpÜG-Angebotsverordnung can be used, according to which a narrow market exists if, during the last three months prior to the publication of the structural measures under company law, share prices were recorded on less than one third of the stock exchange days and several successively determined stock exchange prices deviate from each other by more than 5 %.
- 273 Based on our analyses we also come to the conclusion that there is no narrow market within the meaning of § 5 (4) WpÜG-Angebotsverordnung and the share price can thus be seen as a lower value limit.
- 274 For the three month reference period, the valuation expert calculates an average share price of EUR 133.07, which is equal to the average share price derived from BaFin until (and including) 5 November 2022.<sup>176</sup> This is equal to a total market capitalization of EUR 1,313m. We checked this value by reviewing the comment of BaFin as well as performing an own analysis of share prices.
- 275 The calculated average share price is higher than the proportional value per share determined on the basis of the capitalised earnings method. For this reason, the average share price of the reference period ending on 5 November 2022 of EUR 133.07<sup>177</sup> was used for the determination of the settlement to be granted to the remaining shareholders of PVT AG.
- 276 As a result of our review, we conclude that the settlement offered is reasonable.

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<sup>172</sup> Cf. valuation report, p. 105.

<sup>173</sup> Last day of the reference period is 5 November 2022.

<sup>174</sup> Cf. BVerfG, decision of 27 April 1999, 1 BvR 1613/94, BVerfGE 100, 289.

<sup>175</sup> Cf. BGH, decision of 12 March 2001, II ZB 15/00, loc. cit.

<sup>176</sup> Cf. valuation report, p. 106.

<sup>177</sup> Cf. § 31 para. 7 WpÜG in conjunction with. §5 para. 3 WpÜG-Angebotsverordnung.

277 In the valuation of PVT AG there were no particular difficulties within the meaning of §  
293e para. 1 sentence 3 no. 3 AktG.

278 If material changes in results of operations, cash flow, balance sheet or other bases for  
the determination of the business value of PVT AG should occur between the conclusion  
of our audit on 17 March 2023 and the date of the resolution of the Annual General  
Meeting on the DPLTA on 2 May 2023, these would have to be taken into account in the  
assessment of the settlement.

**b) Appropriate settlement pursuant to § 304 AktG**

279 The basis for the determination of the compensation payment is the equity value of PVT  
AG as at 31 December 2022. In order to determine the compensation payment, the  
valuation expert derived the equity value per share of EUR 122.81 per common share.<sup>178</sup>

280 In case of the annualisation of the equity value, the valuation expert assumed a risk- and  
term-equivalent interest rate, which was determined by considering the specific risk  
situation of the remaining shareholders resulting from the DPLTA.

281 Accordingly, the valuation expert did not use the (full) capitalisation rate used to  
determine the compensation, but instead used the base interest rate plus the average of  
the capitalisation rate used to determine the capitalised earnings value and the base  
interest rate considered to be risk-free when calculating the interest on the value of the  
company.

282 This approach is accepted in case law<sup>179</sup> and common in valuation practice for cases  
where the DPLTA does not contain a clause for the revival of the settlement offer in case  
of termination of the DPLTA.

283 On this basis, the compensation payment after personal tax amounts to EUR 5.39 per  
share. The value before personal tax amounts to EUR 7.32 per share.

284 The gross compensation is equal to the annualisation of the equity value before deduction  
of corporate taxes and amount to EUR 7.93 per share. To derive the compensation  
payment, the amount of corporate taxes incl. solidarity surcharge has to be deducted  
from the gross compensation. During our valuation review, corporate taxes incl. solidarity

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<sup>178</sup> Cf. valuation report p. 119.

<sup>179</sup> See also LG München I, order of 31 July 2015, 5 HKO 16371/13, with reference to further case law,  
BeckRS 2015, 13240.

surcharge amount to 15.825 %, <sup>180</sup> which results in a corporate tax deduction of EUR 0.61 per share.

- 285 The gross compensation was divided in one component that is charged with corporate tax (amounting to EUR 3.85) and one component that is not charged with corporate tax (EUR 4.08).
- 286 If material changes in results of operations, cash flow, balance sheet or other bases for the determination of the business value of PVT AG should occur between the conclusion of our audit on 17 March 2023 and the date of the resolution of the Annual General Meeting on the DPLTA on 2 May 2023, these would have to be taken into account in the assessment of the settlement.

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<sup>180</sup> In the event of a change in KSt/SolZ tax rates, the compensation payment according to KSt/SolZ shall change accordingly in accordance with 4.2 of the DPLTA.

## E. Final declaration

287 Following the final result of our mandatory audit pursuant to §§ 293b para. 1, 293e para. 1 sentence 2 AktG on the basis of the documents and writings submitted to us and the information and evidence provided to us, we declare the following:

288 The domination and profit transfer agreement between Pangea and PVT AG complies with statutory regulations.

289 The calculated settlement of EUR 133.07 per share is appropriate.

290 When deriving the compensation payment, a division into a component charged with corporate tax and a component not charged with corporate tax was done.

291 The appropriate gross compensation pursuant to § 304 AktG amounts to EUR 7.93 per share less an amount to be paid by PVT AG for corporate income tax plus solidarity surcharge, considering the corporate income tax rate applicable for the respective financial year. The corporate tax rate applicable at the time of the conclusion of the agreement (15 % KSt plus 5.5 % SolZ)<sup>181</sup> results in a deduction of EUR 0.61 per share. The compensation payment thus amounts to EUR 7.32 per share of PVT AG.

292 The value per share of PVT AG resulting from the capitalized earnings method, i.e. by dividing the equity value by the number of shares<sup>182</sup>, amounts to EUR 125.70. As the shares are publicly traded, the average share price during the reference period of EUR 133.07 had to be considered.

293 The determination of the settlement and the compensation per share by the valuation expert Ebner Stolz GmbH & Co. KG Wirtschaftsprüfungsgesellschaft Steuerberatungsgesellschaft, Stuttgart, has been carried out appropriately.

294 In the valuation of PVT AG there were no particular difficulties within the meaning of § 293e para. 1 sentence 3 no. 3 AktG.

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<sup>181</sup> In the event of a change in the KSt/SolZ tax rates, the compensation payment according to KSt/SolZ shall change accordingly in accordance with 4.2 of the DPLTA.

<sup>182</sup> 9,867,659 shares.

- 295 We therefore state the concluding declaration pursuant to § 293e AktG as follows:
- 296 "In our opinion, for the reasons set forth above, the proposed settlement of EUR 133.07 per share of Pfeiffer Vacuum Technology AG is appropriate. Likewise, the gross compensation pursuant to § 304 AktG in the amount of EUR 7.93 per share less an amount to be paid by Pfeiffer Vacuum Technology AG for corporate income tax plus solidarity surcharge is appropriate. Given the tax rate of 15.0 % KSt plus 5.5 % SolZ applicable at the time of the conclusion of the agreement, this results in a deduction amount of EUR 0.61 per share. The compensation payment thus amounts to EUR 7.32 per share of Pfeiffer Vacuum Technology AG for a full financial year and is appropriate."

Düsseldorf, 17 March 2023

I-ADVISE AG  
Wirtschaftsprüfungsgesellschaft

Dr. Jochen Beumer  
Wirtschaftsprüfer

Frank Sichau  
Wirtschaftsprüfer

## APPENDICES

## Appendix 1: Brief description of the peer group

The peer group derived by the valuation expert consists of the following companies:

**Atlas Copco AB** is a Swedish-based industrial company. With a total sales share of 71.1 %, a large part of the business is related to "Compressor Technique" and "Vacuum Technique ", where compressors, gas generators, various air compression products, vacuum equipment and vacuum pumps and systems are sold. The remaining sales are made with the segments "Industrial Technique" and "Power Technique ". In 2021, Atlas Copco generated sales of EUR 10.8bn.

**Ebara Corporation** is a Japanese engineering group focusing on various types of pumps (e.g. pumps for dry installation, submersible pumps, submersible pumps and inline and circulating pumps). With a share of 56 %, a large part of the revenue is generated by the fluid machinery and systems business segment, which mainly includes pumps, compressors and turbines for various applications. Other segments are the precision machinery business (32 %) and the segment with environmentally friendly equipment (12 %). A large part of the sales revenue is generated in Japan, China and other Asian countries. In 2021, Ebara had sales of EUR 4.6bn.

**LOT Vacuum Co., Ltd** primarily develops and manufactures dry vacuum pumps for semiconductor, display, solar and industrial segments. In 2021, LOT Vacuum generated sales of EUR 191.6m.

**Shimadzu Corporation** is a Japan-based company that offers a wide range of analytical instruments and measuring instruments for various industries. With a 65% share of sales, the "Measuring Equipment" segment accounts for a major part of the business, followed by Medical Equipment (16%) and Industrial Equipment (13%). In 2022, Shimadzu Corporation had sales of EUR 3.2bn.

In addition to the companies derived by the valuation expert, the extended peer group includes the following companies:

**Agilent Technologies Inc.** is a US-based provider of various analytical and testing instruments with a focus on the medical segment. The company divides its business into the segments "Life Sciences and Applied Markets", "Diagnostics and Genomics" and "Agilent CrossLab". Its products include instruments from the fields of chromatography, spectroscopy and capillary electrophoresis. The company's turnover was EUR 5.5bn in 2021.

**Inficon Holding AG**, based in Switzerland, is a supplier of analysis, measurement and control instruments for gases in the vacuum sector. In 2021, total sales of EUR 453.5m were generated, split between "Semiconductors and Vacuum Coating" (50.7 %), "General Vacuum" (25.9 %), "Refrigeration, Air Conditioning and Automotive" (19.3 %) and "Security and Energy" (4.1 %).

**Ulvac Inc.**, based in Japan, is active in developing, manufacturing and distributing various vacuum products. The company had a turnover of approximately EUR 1.7bn in 2022. 83 % of sales are generated with the "Vacuum Equipment" segment, which offers vacuum products for the production of semiconductors, electronic applications and flat screens, as well as general industrial applications. The remaining 17 % is attributable to "Vacuum Applications".

**VAT Group AG** is a global leader in the field of vacuum valves and is headquartered in Switzerland. With a share of more than 80 %, the majority of sales are generated with the "Valves" segment, which supplies customers with high-precision vacuum valves. The "Global Service" segment includes the company's service and spare parts business. In 2021, VAT had total sales of EUR 869.2m.

## LANDGERICHT FRANKFURT AM MAIN BESCHLUSS

In dem Verfahren

auf Bestellung eines sachverständigen Prüfers nach § 293c Abs. 1 AktG

der

1.) Pfeiffer Vacuum Technology AG, vertr. d.d. Vorstand Dr. Britta Giesen, Wolfgang Ehrk

- Antragstellerin –,

2.) Pangea GmbH, Schauinsland 1, 79689 Maulburg

- Antragstellerin –

Zustellungsbevollmächtigte für die Antragsteller:

Fresfields Bruckhaus Deringer Rechtsanwälte PartG mbB,

zu Hdn. Prof. Dr. Christoph H.Seibt, Hohe Bleichen 7,

20354 Hamburg

Baker McKenzie Rechtsanwaltsgesellschaft mbH

z. Hdn. Dr. Peter Wand, Dr. Katharina Stüber

Bethmannstr. 50-54,

60311 Frankfurt am Main

betreffend eines vorgesehenen Beherrschungs- und Gewinnabführungsvertrages zwischen  
beiden Unternehmen

hat die 5. Kammer für Handelssachen des Landgerichts Frankfurt am Main

durch den Vorsitzenden Richter am Landgericht Dr. M. Müller am 12.12.2022 beschlossen:

Für die Prüfung der des vorgesehenen Beherrschungs- und Gewinnabführungsvertrages  
zwischen den Antragstellern wird die

I-Advise AG Wirtschaftsprüfungsgesellschaft  
Z. Hdn. Dr. Jochen Beumer,  
Klaus Bungert-Str. 5a,  
40468 Düsseldorf  
zur sachverständigen gemeinsamen Prüferin bestellt.

Die Antragstellerinnen haben die Kosten des Bestellungsverfahrens als Gesamtschuldner zu tragen.

Der Geschäftswert wird auf EURO 60.000,-- festgesetzt.

## Gründe

Anhaltspunkte dem Vorschlag der Antragsteller für den Prüfer nicht zu folgen sind nicht ersichtlich, so dass das Gericht bei seiner Auswahl der in Frage kommenden Prüfer auf den gemeinsamen Vorschlag der Antragsteller zurückgreifen kann. Bedenken des Gerichts gegen den nunmehr bestellten Prüfer bestehen nicht. Gesetzliche Hinderungsgründe bestehen nach der Erklärung der benannten Prüferin vom 29.11.2022 nicht.

Im Interesse der Steigerung der Transparenz und Akzeptanz der Prüfung soll die sachverständige Prüferin in dem Prüfungsbericht zu folgenden Punkten Stellung zu nehmen und Ausführungen zu machen:

1.

An welchem Ort, in welcher Weise und zu welcher Zeit ist die Prüfung erfolgt.

2.

Die Prüferin wird ausdrücklich auf die Ansicht des Gerichts hingewiesen, dass die Absicht des Gesetzgebers bei der Vorabestellung von Angemessenheitsprüfern in die Praxis nur umgesetzt werden kann, wenn der Bericht des Prüfers gegenüber dem Vertragsbericht ein eigenständiges Gutachten (vgl. auch BVerfG v. 30.5.2007 – 1 BvR 390/04 – AG 2007, 544 = NZG 2007, 587) darstellt, das die Parteinähe zur Gesellschaft und hier zum Hauptaktionär vermeidet und Distanz zu dessen Bericht zeigt. Dabei ist zu beachten, dass der Prüfer zwar gerichtlich bestellt wird, seinen Prüfungsbericht aber nicht dem Gericht, sondern der Gesellschaft und den Gesellschaftern erstattet.

Wenn auch gegen eine sog. Parallelprüfung grundsätzlich nichts einzuwenden ist, ist es jedoch angebracht, dass der sachverständige Prüfer über die Art der Zusammenarbeit mit einem ggf. von der Gesellschaft beauftragten Bewertungsgutachter, zu Diskussionen über kritische Punkte etc., in seinem Gutachten Ausführungen macht, insbesondere in welchen Punkten divergierende Auffassungen des sachverständigen Prüfers zu denen des sog. Bewertungsgutachters bestanden und es ist auszuführen, weshalb die Auffassung des Prüfers oder des sog. Bewertungsgutachters letztlich vorzugswürdig ist.

3.

Aufzuführen ist, aus welchen Quellen der Prüfer die für die Bemessung des Ertragswertes benutzten Parameter (Basiszins, Wachstumsabschlag, Überrenditen, Risikozuschlag (bei Anwendung der CAPM oder TAX-CAPM: BETA-Faktor, u. U. Zusammensetzung einer "peer-group") abgeleitet hat und warum gerade diese Indizes und/oder gegriffenen Zeitspannen anderen, ebenfalls in Betracht kommenden gegenüber vorzugswürdig sind.

4.

Sofern Vergangenheitsergebnisse um bestimmte außergewöhnliche Aufwendung und Erträge bereinigt werden, sind diese explizit aufzuführen und zu begründen, warum dies geschehen ist

5.

Bei den prognostizierten Unternehmenserträgen gilt zunächst dasselbe wie vorstehend zu Ziffer 4. Außerdem ist darzustellen, aus welchen Quellen etwaige Unternehmensplanungen übernommen wurden.

6.

Der Prüferin wird aufgegeben, ein Exemplar ihres Prüfberichts für das Gericht zu den Akten zu reichen.

7.

Die Prüferin soll bei entsprechender Anforderung durch das Gericht ggf. die Vergütungsvereinbarung mit der Antragstellerin und die endgültige Honorarabrechnung nach Ende ihrer Arbeiten dem Gericht gegenüber offenlegen.

Die Kostenentscheidung ergibt sich aus § 22 GNotKG.

Der Geschäftswert bestimmt sich nach § 67 GNotKG.

Rechtsmittelbelehrung:

Gegen diese Entscheidung ist das Rechtsmittel der Beschwerde gegeben, die binnen eines Monats nach Zustellung beim Landgericht Frankfurt am Main durch Einreichung einer Beschwerdeschrift oder zur Protokoll der Geschäftsstelle einzulegen ist. Die Beschwerde muss die Bezeichnung des angefochtenen Beschlusses, sowie die Erklärung enthalten, dass Beschwerde gegen diesen Beschluss eingelegt wird. Die Beschwerdeschrift ist vom Beschwerdeführer oder seinem Bevollmächtigten zu unterzeichnen.

Dr. M. Müller

Beglaubigt  
Frankfurt am Main, 13. Dezember 2022

Lüdicke, Justizfachangestellte



als Urkundsbeamtin der Geschäftsstelle

# **Beherrschungs- und Gewinnabführungsvertrag**

zwischen

**Pangea GmbH,**  
Schauinslandstraße 1, 79689 Maulburg,  
eingetragen im Handelsregister des Amtsgerichts Freiburg i. Br. (HRB 707745)  
(„**Pangea**“)

und

**Pfeiffer Vacuum Technology AG,**  
Berliner Straße 43, 35614 Aßlar,  
eingetragen im Handelsregister des Amtsgerichts Wetzlar (HRB 44)  
(„**Pfeiffer Vacuum**“)

## **1 Leitung**

- 1.1** Pfeiffer Vacuum unterstellt die Leitung ihrer Gesellschaft Pangea. Demgemäß ist Pangea berechtigt, dem Vorstand von Pfeiffer Vacuum hinsichtlich der Leitung der Gesellschaft Weisungen zu erteilen.
- 1.2** Der Vorstand von Pfeiffer Vacuum ist verpflichtet, die Weisungen der Pangea in Übereinstimmung mit § 308 AktG zu befolgen. Pangea kann dem Vorstand der Pfeiffer Vacuum nicht die Weisung erteilen, diesen Vertrag zu ändern, aufrechtzuerhalten oder zu beenden.
- 1.3** Weisungen müssen schriftlich erteilt werden, wobei diese Form auch durch E-Mail und Fax gewahrt wird. Falls die Weisungen mündlich erteilt werden, sind sie unverzüglich schriftlich nachzureichen, wobei auch hier die Form durch E-Mail und Fax gewahrt wird.

## **2 Gewinnabführung**

- 2.1** Pfeiffer Vacuum verpflichtet sich, ihren ganzen Gewinn an Pangea abzuführen. Abzuführen ist – vorbehaltlich einer Bildung oder Auflösung von Rücklagen nach Ziffer 2.2 dieses Vertrags – der gemäß § 301 AktG in der jeweils geltenden Fassung höchstzulässige Betrag.
- 2.2** Pfeiffer Vacuum kann mit in Textform nach § 126b BGB erfolglicher Zustimmung der Pangea Beträge aus dem Jahresüberschuss in andere Gewinnrücklagen (§ 272 Abs. 3 HGB) einstellen, sofern dies handelsrechtlich zulässig und bei vernünftiger kaufmännischer Beurteilung wirtschaftlich begründet ist. Während der Vertragsdauer gebildete andere Gewinnrücklagen sind auf entsprechendes in Textform nach § 126b BGB erfolgendes Verlangen der Pangea aufzulösen und zum Ausgleich eines Jahresfehlbetrages zu verwenden oder als Gewinn abzuführen. Sonstige Rücklagen oder Gewinnvorträge, die aus der Zeit vor Wirksamwerden dieses Vertrags stammen, dürfen weder als Gewinn abgeführt noch zum Ausgleich eines Jahresfehlbetrags verwendet werden.
- 2.3** Die Verpflichtung zur Gewinnabführung besteht erstmals für das gesamte Geschäftsjahr von Pfeiffer Vacuum, in dem dieser Vertrag nach Ziffer 6.2 wirksam wird. Die Verpflichtung nach Satz 1 wird jeweils mit Feststellung des Jahresabschlusses für das entsprechende Geschäftsjahr fällig und ist ab diesem Zeitpunkt mit einem Zinssatz von 5% p.a. zu verzinsen.

## **3 Verlustübernahme**

- 3.1** Pangea ist gegenüber Pfeiffer Vacuum gemäß den Vorschriften des § 302 AktG in ihrer Gesamtheit und ihrer jeweils geltenden Fassung zur Verlustübernahme verpflichtet.
- 3.2** Die Verpflichtung zum Verlustausgleich besteht erstmals für das gesamte Geschäftsjahr von Pfeiffer Vacuum, in dem dieser Vertrag nach Ziffer 6.2 wirksam wird. Die Verpflichtung wird in jedem Fall zum Ende eines Geschäftsjahres der Pfeiffer Vacuum fällig und ist ab diesem Zeitpunkt mit einem Zinssatz von 5% p.a. zu verzinsen.

## **4 Ausgleichszahlung**

- 4.1** Pangea verpflichtet sich, den außenstehenden Aktionären der Pfeiffer Vacuum ab dem Geschäftsjahr von Pfeiffer Vacuum, für das der Anspruch auf Gewinnabführung der Pangea

gemäß Ziffer 2 wirksam wird, für die Dauer dieses Vertrags eine jährlich wiederkehrende Geldleistung („**Ausgleichszahlung**“) zu zahlen.

- 4.2** Die Ausgleichszahlung beträgt für jedes volle Geschäftsjahr der Pfeiffer Vacuum für jede auf den Inhaber lautende Stückaktie der Pfeiffer Vacuum (Aktien ohne Nennbetrag) (jede einzelne eine „**Pfeiffer Vacuum-Aktie**“ und zusammen die „**Pfeiffer Vacuum-Aktien**“) brutto EUR 7,93 („**Bruttoausgleichsbetrag**“<sup>1</sup>) abzüglich eines von Pfeiffer Vacuum hierauf zu entrichtenden Betrags für die Körperschaftsteuer sowie dem Solidaritätszuschlag nach dem jeweils für diese Steuern für das jeweilige Geschäftsjahr geltenden Steuersatz, wobei dieser Abzug nur auf den in dem Bruttoausgleichsbetrag enthaltenden Teilbetrag von EUR 3,85 je Pfeiffer Vacuum-Aktie vorzunehmen ist, der sich auf die mit deutscher Körperschaftsteuer belasteten Gewinne von Pfeiffer Vacuum bezieht. Nach den Verhältnissen zum Zeitpunkt des Abschlusses dieses Vertrags gelangen auf den anteiligen Bruttoausgleichsbetrag von EUR 3,85 je Pfeiffer Vacuum-Aktie, der sich auf die mit deutscher Körperschaftsteuer belasteten Gewinne der Pfeiffer Vacuum bezieht, 15 % Körperschaftsteuer zzgl. 5,5% Solidaritätszuschlag, d.h. EUR 0,61, zum Abzug. Zusammen mit dem übrigen anteiligen Bruttoausgleichsbetrag von EUR 4,08 je Pfeiffer Vacuum-Aktie, der sich auf die nicht mit deutscher Körperschaftsteuer belasteten Gewinne bezieht, ergibt sich daraus nach den Verhältnissen zum Zeitpunkt des Abschlusses dieses Vertrags eine Ausgleichszahlung in Höhe von EUR 7,32 je Pfeiffer Vacuum-Aktie für ein volles Geschäftsjahr („**Nettoausgleichsbetrag**“<sup>2</sup>). Klarstellend wird vereinbart, dass, soweit gesetzlich vorgeschrieben, anfallende Quellensteuern (etwa Kapitalertragsteuer zuzüglich Solidaritätszuschlag) von dem Nettoausgleichsbetrag einbehalten werden. Die Ausgleichszahlung ist am ersten Bankarbeitstag nach der ordentlichen Hauptversammlung der Pfeiffer Vacuum für das abgelaufene Geschäftsjahr, jedoch spätestens acht Monate nach Ablauf dieses Geschäftsjahres fällig.
- 4.3** Die Ausgleichszahlung wird erstmals für das gesamte Geschäftsjahr gewährt, für das der Anspruch auf Gewinnabführung der Pangea gemäß Ziffer 2 wirksam wird. Sofern der Vertrag während eines Geschäftsjahres der Pfeiffer Vacuum endet oder Pfeiffer Vacuum während des Zeitraums, für den die Verpflichtung zur Gewinnabführung gemäß Ziffer 2 gilt, ein Rumpfgeschäftsjahr bildet, vermindert sich der Ausgleich zeitanteilig.
- 4.4** Im Falle einer Erhöhung des Grundkapitals der Pfeiffer Vacuum aus Gesellschaftsmitteln gegen Ausgabe neuer Aktien vermindert sich die Ausgleichszahlung je Pfeiffer Vacuum-Aktie in dem Maße, dass der Gesamtbetrag der Ausgleichszahlung unverändert bleibt. Wird das Grundkapital der Pfeiffer Vacuum durch Bar- und/oder Sacheinlagen erhöht, gelten die Rechte aus dieser Ziffer 4 auch für die von außenstehenden Aktionären bezogenen Aktien aus der Kapitalerhöhung. Der Beginn der Berechtigung aus den neuen Aktien gemäß dieser Ziffer 4 ergibt sich aus der von Pfeiffer Vacuum bei Ausgabe der neuen Aktien festgesetzten Gewinnanteilsberechtigung.
- 4.5** Falls ein Spruchverfahren nach dem Spruchverfahrensgesetz eingeleitet wird und das Gericht rechtskräftig eine höhere Ausgleichszahlung festsetzt, können auch die bereits nach

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<sup>1</sup> In der gutachtlichen Stellungnahme der Ebner Stolz GmbH & Co. KG, Wirtschaftsprüfungsgesellschaft Steuerberatungsgesellschaft, Stuttgart, vom 13. März 2023 über die Ermittlung des Unternehmenswerts der Pfeiffer Vacuum Technology AG zum Bewertungsstichtag am 2. Mai 2023 als "Bruttogewinnanteil" bezeichnet.

<sup>2</sup> In der gutachtlichen Stellungnahme der Ebner Stolz GmbH & Co. KG, Wirtschaftsprüfungsgesellschaft Steuerberatungsgesellschaft, Stuttgart, vom 13. März 2023 über die Ermittlung des Unternehmenswerts der Pfeiffer Vacuum Technology AG zum Bewertungsstichtag am 2. Mai 2023 als "Ausgleichszahlung" bezeichnet.

Maßgabe der Ziffer 5 abgefundenen Aktionäre eine entsprechende Ergänzung der von ihnen bereits erhaltenen Ausgleichszahlungen verlangen, soweit gesetzlich vorgesehen.

## **5 Abfindung**

- 5.1** Pangea verpflichtet sich, auf Verlangen eines jeden außenstehenden Aktionärs der Pfeiffer Vacuum dessen Pfeiffer Vacuum-Aktien gegen eine Barabfindung („**Abfindung**“) in Höhe von EUR 133,07 je Pfeiffer Vacuum-Aktie zu erwerben.
- 5.2** Die Verpflichtung der Pangea zum Erwerb der Pfeiffer Vacuum-Aktien ist befristet. Die Frist endet zwei Monate nach dem Tag, an dem die Eintragung des Bestehens dieses Vertrags im Handelsregister des Sitzes der Pfeiffer Vacuum nach § 10 HGB bekannt gemacht worden ist. Eine Verlängerung der Frist nach § 305 Abs. 4 Satz 3 AktG wegen eines Antrags auf Bestimmung des Ausgleichs oder der Abfindung durch das in § 2 SpruchG bestimmte Gericht bleibt unberührt. In diesem Fall endet die Frist zwei Monate nach dem Tag, an dem die Entscheidung über den zuletzt beschiedenen Antrag im Bundesanzeiger bekannt gemacht worden ist.
- 5.3** Falls bis zum Ablauf der in Ziffer 5.2 genannten Frist das Grundkapital der Pfeiffer Vacuum aus Gesellschaftsmitteln gegen Ausgabe neuer Aktien erhöht wird, vermindert sich die Abfindung je Aktie in dem Maße, dass der Gesamtbetrag der Abfindung unverändert bleibt. Wird das Grundkapital der Pfeiffer Vacuum bis zum Ablauf der in Ziffer 5.2 genannten Frist durch Bar- und/oder Sacheinlagen erhöht, gelten die Rechte aus dieser Ziffer 5 auch für die von außenstehenden Aktionären bezogenen Aktien aus der Kapitalerhöhung.
- 5.4** Die Übertragung der Pfeiffer Vacuum-Aktien gegen Abfindung ist für die außenstehenden Aktionäre der Pfeiffer Vacuum kostenfrei, sofern sie über ein inländisches Wertpapierdepot verfügen.
- 5.5** Falls ein Spruchverfahren nach dem Spruchverfahrensgesetz eingeleitet wird und das Gericht rechtskräftig eine höhere Abfindung festsetzt, können auch die bereits abgefundenen Aktionäre eine entsprechende Ergänzung der Abfindung verlangen, soweit gesetzlich vorgesehen.

## **6 Wirksamwerden und Dauer des Vertrags**

- 6.1** Dieser Vertrag bedarf zu seiner Wirksamkeit jeweils der Zustimmung der Hauptversammlung der Pfeiffer Vacuum sowie der Zustimmung der Gesellschafterversammlung der Pangea.
- 6.2** Dieser Vertrag wird wirksam, wenn sein Bestehen in das Handelsregister des Sitzes der Pfeiffer Vacuum eingetragen worden ist.
- 6.3** Der Vertrag wird auf unbestimmte Zeit geschlossen. Er kann schriftlich mit einer Frist von sechs Monaten zum Ablauf eines Geschäftsjahres der Pfeiffer Vacuum gekündigt werden. Der Vertrag kann erstmals zum Ende des Geschäftsjahres gekündigt werden, das mindestens fünf Zeitjahre (60 Monate) nach dem Beginn des Geschäftsjahres der Pfeiffer Vacuum endet, in dem dieser Vertrag gemäß Ziffer 6.2 dieses Vertrags wirksam wird.
- 6.4** Jede Partei kann diesen Vertrag schriftlich aus wichtigem Grund ohne Einhaltung einer Kündigungsfrist kündigen. Ein wichtiger Grund liegt insbesondere vor, wenn ein wichtiger Grund im steuerlichen Sinne für die Beendigung dieses Vertrags einschließlich solcher nach R 14.5 (6) KStR (oder einer entsprechenden Nachfolgevorschrift) gegeben ist.

## **7 Patronatserklärung**

Die Busch SE mit Sitz in Maulburg, eingetragen im Handelsregister des Amtsgerichts Freiburg i. Br. unter HRB 715396, („**Busch SE**“) hält 100% der Anteile an Pangea und hat in dieser Eigenschaft als unmittelbare Gesellschafterin, ohne diesem Vertrag als Vertragspartei beizutreten, die diesem Vertrag informationshalber als Anlage beigefügte Patronatserklärung abgegeben. In dieser Patronatserklärung hat Busch SE sich uneingeschränkt und unwiderruflich dazu verpflichtet, dafür Sorge zu tragen, dass Pangea in der Weise finanziell ausgestattet wird, dass Pangea stets in der Lage ist, alle ihre Verbindlichkeiten aus oder im Zusammenhang mit diesem Vertrag vollständig bei deren Fälligkeit zu erfüllen. Dies gilt insbesondere für die Pflicht zum Verlustausgleich nach § 302 AktG. Busch SE steht den außenstehenden Aktionären der Pfeiffer Vacuum gegenüber unwiderruflich und im Grundsatz uneingeschränkt dafür ein, dass Pangea alle ihnen gegenüber bestehenden Verpflichtungen aus oder im Zusammenhang mit diesem Vertrag, insbesondere zur Zahlung von Ausgleich und Abfindung, vollständig bei deren Fälligkeit erfüllt. Insoweit steht den außenstehenden Aktionären der Pfeiffer Vacuum ein eigener Anspruch nach § 328 Abs. 1 BGB gegen die Busch SE gerichtet auf Zahlung an Pangea zu. Dieser Anspruch und eine entsprechende Haftung der Busch SE gegenüber außenstehenden Aktionären der Pfeiffer Vacuum sind aber auf den Fall beschränkt, dass Pangea ihre Verpflichtungen gegenüber außenstehenden Aktionären der Pfeiffer Vacuum aus oder im Zusammenhang mit diesem Vertrag nicht vollständig bei deren Fälligkeit erfüllt und Busch SE ihrer vorstehenden Ausstattungspflicht nicht nachkommt.

## **8 Schlussbestimmungen**

- 8.1** Sollte eine Bestimmung dieses Vertrags oder eine künftig in ihn aufgenommene Bestimmung ganz oder teilweise unwirksam, undurchführbar oder nicht durchsetzbar sein oder werden, ist davon die Gültigkeit, Wirksamkeit und Durchsetzbarkeit der übrigen Bestimmungen nicht berührt. Anstelle der unwirksamen, undurchführbaren oder nicht durchsetzbaren Bestimmung gilt eine wirksame, durchführbare und durchsetzbare Bestimmung, die dem wirtschaftlich Gewollten und dem mit der unwirksamen, undurchführbaren oder nicht durchsetzbaren Bestimmung Bezweckten im Rahmen des rechtlich Zulässigen am nächsten kommt. Entsprechendes gilt für den Fall einer unbeabsichtigten Lücke dieses Vertrags. Die Parteien vereinbaren, dass durch das Vorstehende nicht nur eine Beweislastumkehr eintritt, sondern auch die Anwendbarkeit des § 139 BGB ausgeschlossen ist.
- 8.2** Zur Auslegung dieses Vertrags sind die ertragsteuerlichen Bestimmungen für die Anerkennung einer Organschaft, insbesondere §§ 14-19 KStG in deren jeweils geltender Fassung, zu berücksichtigen.
- 8.3** Die Parteien erklären ausdrücklich, dass dieser Vertrag keine rechtliche Einheit (§ 139 BGB) mit anderen Rechtsgeschäften oder Vereinbarungen, die zwischen den Parteien getätigt oder abgeschlossen wurden oder werden, bildet oder bilden soll.
- 8.4** Änderungen und Ergänzungen dieses Vertrags bedürfen zu ihrer Wirksamkeit der Schriftform. Dies gilt insbesondere auch für diese Schriftformklausel. Im Übrigen gilt § 295 AktG.

**Pangea GmbH**

Die Geschäftsführung

Maulburg, den 14. März 2023



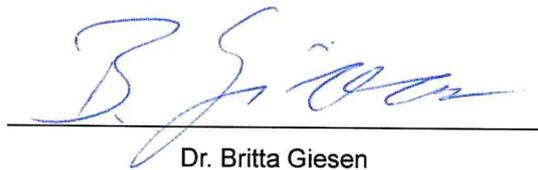
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Kaya Busch  
Geschäftsführer

**Pfeiffer Vacuum Technology AG**

Der Vorstand

Aßlar, den 14. März 2023



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Dr. Britta Giesen

Mitglied des Vorstands, CEO



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Wolfgang Ehrk

Mitglied des Vorstands, COO

**Anlage**  
**Patronatserklärung**  
**der Busch SE**

Busch SE | Schauinslandstraße 1 | 79689 Maulburg

Pfeiffer Vacuum Technology AG  
Berliner Straße 43  
35614 Aßlar

## Patronatserklärung

14. März 2023

Die Pangea GmbH mit Sitz in Maulburg, eingetragen im Handelsregister des Amtsgerichts Freiburg i. Br. unter HRB 707745 („Pangea“), beabsichtigt, einen Beherrschungs- und Gewinnabführungsvertrag („**Vertrag**“) mit der Pfeiffer Vacuum Technology AG mit Sitz in Aßlar, eingetragen im Handelsregister des Amtsgerichts Wetzlar unter HRB 44 („Pfeiffer Vacuum“), abzuschließen, mit Pfeiffer Vacuum als beherrschtem und zur Gewinnabführung verpflichteten Unternehmen. Die Busch SE mit Sitz in Maulburg, eingetragen im Handelsregister des Amtsgerichts Freiburg i. Br. unter HRB 715396, („**Busch SE**“), hält unmittelbar 100% der Anteile an Pangea. Die Busch SE gibt hiermit folgende Erklärungen ab, ohne dem Vertrag als Partei beizutreten:

1. Die Busch SE verpflichtet sich uneingeschränkt und unwiderruflich dafür Sorge zu tragen, dass Pangea in der Weise finanziell ausgestattet wird, dass Pangea stets in der Lage ist, alle ihre Verbindlichkeiten aus oder im Zusammenhang mit dem Vertrag vollständig bei deren Fälligkeit zu erfüllen. Dies gilt insbesondere für die Pflicht zum Verlustausgleich nach § 302 AktG.
2. Die Busch SE steht den außenstehenden Aktionären der Pfeiffer Vacuum gegenüber uneingeschränkt und unwiderruflich dafür ein, dass Pangea alle ihnen gegenüber bestehenden Verpflichtungen aus oder im Zusammenhang mit dem Vertrag, insbesondere zur Zahlung von Ausgleichszahlung und Abfindung, vollständig bei deren Fälligkeit erfüllt. Insoweit steht den außenstehenden Aktionären der Pfeiffer Vacuum ein eigener Anspruch nach § 328 Abs. 1 BGB gegen die Busch SE gerichtet auf Zahlung an Pangea zu. Dieser Anspruch und eine entsprechende Haftung der Busch SE gemäß den beiden vorgenannten Sätzen gilt jedoch nur für den Fall, dass Pangea ihre Verpflichtungen gegenüber den außenstehenden Aktionären der Pfeiffer Vacuum aus oder im Zusammenhang mit dem Vertrag bei deren Fälligkeit nicht vollständig erfüllt und die Busch SE ihrer Ausstattungsverpflichtung nach Ziffer 1 dieser Patronatserklärung nicht nachkommt.
3. Diese Patronatserklärung unterliegt dem Recht der Bundesrepublik Deutschland. Ausschließlicher Gerichtsstand für alle aus oder im Zusammenhang mit dieser Erklärung zwischen den Parteien entstehenden Streitigkeiten ist, soweit gesetzlich zulässig, 79689 Maulburg, Deutschland.



**Kaya Busch** | Mitglied des Vorstands

Busch SE | Schauinslandstraße 1 | 79689 Maulburg | T +49 (0)7622 681-0 | F +49 (0)7622 681-110 | info@busch.de | www.busch.de

Handelsregister AG Freiburg HRB 715396 | USt-IdNr.: DE157434394 | Steuer-Nr. 11088.06394  
Vorstand: Dr.-Ing. Karl Busch, Ayhan Busch, Ayla Busch, Sami Busch, Kaya Busch | Aufsichtsratsvorsitzender: Karl-Heinz Kundlacz  
LBBW Bank Stuttgart | BIC: SOLAEST600 | IBAN: DE49 6005 0101 7435 5009 03  
Deutsche Bank AG Lörrach | BIC: DEUTDE6F683 | IBAN: DE34 6837 0034 0083 2600 00  
UniCredit Bank AG | BIC: HYVEDEMM430 | IBAN: DE48 5032 0191 0031 5716 42  
Volksbank Dreiländereck eG | BIC: VOLODE66 | IBAN: DE31 6839 0000 0006 4597 30

# General Engagement Terms

for  
**Wirtschaftsprüfer und Wirtschaftsprüfungsgesellschaften**  
[German Public Auditors and Public Audit Firms]  
as of January 1, 2017

## 1. Scope of application

(1) These engagement terms apply to contracts between German Public Auditors (*Wirtschaftsprüfer*) or German Public Audit Firms (*Wirtschaftsprüfungsgesellschaften*) – hereinafter collectively referred to as "German Public Auditors" – and their engaging parties for assurance services, tax advisory services, advice on business matters and other engagements except as otherwise agreed in writing or prescribed by a mandatory rule.

(2) Third parties may derive claims from contracts between German Public Auditors and engaging parties only when this is expressly agreed or results from mandatory rules prescribed by law. In relation to such claims, these engagement terms also apply to these third parties.

## 2. Scope and execution of the engagement

(1) Object of the engagement is the agreed service – not a particular economic result. The engagement will be performed in accordance with the German Principles of Proper Professional Conduct (*Grundsätze ordnungsmäßiger Berufsausübung*). The German Public Auditor does not assume any management functions in connection with his services. The German Public Auditor is not responsible for the use or implementation of the results of his services. The German Public Auditor is entitled to make use of competent persons to conduct the engagement.

(2) Except for assurance engagements (*betriebswirtschaftliche Prüfungen*), the consideration of foreign law requires an express written agreement.

(3) If circumstances or the legal situation change subsequent to the release of the final professional statement, the German Public Auditor is not obligated to refer the engaging party to changes or any consequences resulting therefrom.

## 3. The obligations of the engaging party to cooperate

(1) The engaging party shall ensure that all documents and further information necessary for the performance of the engagement are provided to the German Public Auditor on a timely basis, and that he is informed of all events and circumstances that may be of significance to the performance of the engagement. This also applies to those documents and further information, events and circumstances that first become known during the German Public Auditor's work. The engaging party will also designate suitable persons to provide information.

(2) Upon the request of the German Public Auditor, the engaging party shall confirm the completeness of the documents and further information provided as well as the explanations and statements, in a written statement drafted by the German Public Auditor.

## 4. Ensuring independence

(1) The engaging party shall refrain from anything that endangers the independence of the German Public Auditor's staff. This applies throughout the term of the engagement, and in particular to offers of employment or to assume an executive or non-executive role, and to offers to accept engagements on their own behalf.

(2) Were the performance of the engagement to impair the independence of the German Public Auditor, of related firms, firms within his network, or such firms associated with him, to which the independence requirements apply in the same way as to the German Public Auditor in other engagement relationships, the German Public Auditor is entitled to terminate the engagement for good cause.

## 5. Reporting and oral information

To the extent that the German Public Auditor is required to present results in writing as part of the work in executing the engagement, only that written work is authoritative. Drafts are non-binding. Except as otherwise agreed, oral statements and explanations by the German Public Auditor are binding only when they are confirmed in writing. Statements and information of the German Public Auditor outside of the engagement are always non-binding.

## 6. Distribution of a German Public Auditor's professional statement

(1) The distribution to a third party of professional statements of the German Public Auditor (results of work or extracts of the results of work whether in draft or in a final version) or information about the German Public Auditor acting for the engaging party requires the German Public Auditor's written consent, unless the engaging party is obligated to distribute or inform due to law or a regulatory requirement.

(2) The use by the engaging party for promotional purposes of the German Public Auditor's professional statements and of information about the German Public Auditor acting for the engaging party is prohibited.

## 7. Deficiency rectification

(1) In case there are any deficiencies, the engaging party is entitled to specific subsequent performance by the German Public Auditor. The engaging party may reduce the fees or cancel the contract for failure of such subsequent performance, for subsequent non-performance or unjustified refusal to perform subsequently, or for unconscionability or impossibility of subsequent performance. If the engagement was not commissioned by a consumer, the engaging party may only cancel the contract due to a deficiency if the service rendered is not relevant to him due to failure of subsequent performance, to subsequent non-performance, to unconscionability or impossibility of subsequent performance. No. 9 applies to the extent that further claims for damages exist.

(2) The engaging party must assert a claim for the rectification of deficiencies in writing (*Textform*) [Translators Note: *The German term "Textform" means in written form, but without requiring a signature*] without delay. Claims pursuant to paragraph 1 not arising from an intentional act expire after one year subsequent to the commencement of the time limit under the statute of limitations.

(3) Apparent deficiencies, such as clerical errors, arithmetical errors and deficiencies associated with technicalities contained in a German Public Auditor's professional statement (long-form reports, expert opinions etc.) may be corrected – also versus third parties – by the German Public Auditor at any time. Misstatements which may call into question the results contained in a German Public Auditor's professional statement entitle the German Public Auditor to withdraw such statement – also versus third parties. In such cases the German Public Auditor should first hear the engaging party, if practicable.

## 8. Confidentiality towards third parties, and data protection

(1) Pursuant to the law (§ [Article] 323 Abs 1 [paragraph 1] HGB [German Commercial Code: *Handelsgesetzbuch*], § 43 WPO [German Law regulating the Profession of Wirtschaftsprüfer: *Wirtschaftsprüferordnung*], § 203 StGB [German Criminal Code: *Strafgesetzbuch*]) the German Public Auditor is obligated to maintain confidentiality regarding facts and circumstances confided to him or of which he becomes aware in the course of his professional work, unless the engaging party releases him from this confidentiality obligation.

(2) When processing personal data, the German Public Auditor will observe national and European legal provisions on data protection.

## 9. Liability

(1) For legally required services by German Public Auditors, in particular audits, the respective legal limitations of liability, in particular the limitation of liability pursuant to § 323 Abs. 2 HGB, apply.

(2) Insofar neither a statutory limitation of liability is applicable, nor an individual contractual limitation of liability exists, the liability of the German Public Auditor for claims for damages of any other kind, except for damages resulting from injury to life, body or health as well as for damages that constitute a duty of replacement by a producer pursuant to § 1 ProdHaftG [German Product Liability Act: *Produkthaftungsgesetz*], for an individual case of damages caused by negligence is limited to € 4 million pursuant to § 54 a Abs. 1 Nr. 2 WPO.

(3) The German Public Auditor is entitled to invoke demurs and defenses based on the contractual relationship with the engaging party also towards third parties.

(4) When multiple claimants assert a claim for damages arising from an existing contractual relationship with the German Public Auditor due to the German Public Auditor's negligent breach of duty, the maximum amount stipulated in paragraph 2 applies to the respective claims of all claimants collectively.

(5) An individual case of damages within the meaning of paragraph 2 also exists in relation to a uniform damage arising from a number of breaches of duty. The individual case of damages encompasses all consequences from a breach of duty regardless of whether the damages occurred in one year or in a number of successive years. In this case, multiple acts or omissions based on the same source of error or on a source of error of an equivalent nature are deemed to be a single breach of duty if the matters in question are legally or economically connected to one another. In this event the claim against the German Public Auditor is limited to € 5 million. The limitation to the fivefold of the minimum amount insured does not apply to compulsory audits required by law.

(6) A claim for damages expires if a suit is not filed within six months subsequent to the written refusal of acceptance of the indemnity and the engaging party has been informed of this consequence. This does not apply to claims for damages resulting from scienter, a culpable injury to life, body or health as well as for damages that constitute a liability for replacement by a producer pursuant to § 1 ProdHaftG. The right to invoke a plea of the statute of limitations remains unaffected.

#### 10. Supplementary provisions for audit engagements

(1) If the engaging party subsequently amends the financial statements or management report audited by a German Public Auditor and accompanied by an auditor's report, he may no longer use this auditor's report.

If the German Public Auditor has not issued an auditor's report, a reference to the audit conducted by the German Public Auditor in the management report or any other public reference is permitted only with the German Public Auditor's written consent and with a wording authorized by him.

(2) If the German Public Auditor revokes the auditor's report, it may no longer be used. If the engaging party has already made use of the auditor's report, then upon the request of the German Public Auditor he must give notification of the revocation.

(3) The engaging party has a right to five official copies of the report. Additional official copies will be charged separately.

#### 11. Supplementary provisions for assistance in tax matters

(1) When advising on an individual tax issue as well as when providing ongoing tax advice, the German Public Auditor is entitled to use as a correct and complete basis the facts provided by the engaging party – especially numerical disclosures; this also applies to bookkeeping engagements. Nevertheless, he is obligated to indicate to the engaging party any errors he has identified.

(2) The tax advisory engagement does not encompass procedures required to observe deadlines, unless the German Public Auditor has explicitly accepted a corresponding engagement. In this case the engaging party must provide the German Public Auditor with all documents required to observe deadlines – in particular tax assessments – on such a timely basis that the German Public Auditor has an appropriate lead time.

(3) Except as agreed otherwise in writing, ongoing tax advice encompasses the following work during the contract period:

- a) preparation of annual tax returns for income tax, corporate tax and business tax, as well as wealth tax returns, namely on the basis of the annual financial statements, and on other schedules and evidence documents required for the taxation, to be provided by the engaging party
- b) examination of tax assessments in relation to the taxes referred to in (a)
- c) negotiations with tax authorities in connection with the returns and assessments mentioned in (a) and (b)
- d) support in tax audits and evaluation of the results of tax audits with respect to the taxes referred to in (a)
- e) participation in petition or protest and appeal procedures with respect to the taxes mentioned in (a).

In the aforementioned tasks the German Public Auditor takes into account material published legal decisions and administrative interpretations.

(4) If the German Public auditor receives a fixed fee for ongoing tax advice, the work mentioned under paragraph 3 (d) and (e) is to be remunerated separately, except as agreed otherwise in writing.

(5) Insofar the German Public Auditor is also a German Tax Advisor and the German Tax Advice Remuneration Regulation (*Steuerberatungsvergütungsverordnung*) is to be applied to calculate the remuneration, a greater or lesser remuneration than the legal default remuneration can be agreed in writing (*Textform*).

(6) Work relating to special individual issues for income tax, corporate tax, business tax, valuation assessments for property units, wealth tax, as well as all issues in relation to sales tax, payroll tax, other taxes and dues requires a separate engagement. This also applies to:

- a) work on non-recurring tax matters, e.g. in the field of estate tax, capital transactions tax, and real estate sales tax;
- b) support and representation in proceedings before tax and administrative courts and in criminal tax matters;
- c) advisory work and work related to expert opinions in connection with changes in legal form and other re-organizations, capital increases and reductions, insolvency related business reorganizations, admission and retirement of owners, sale of a business, liquidations and the like, and
- d) support in complying with disclosure and documentation obligations.

(7) To the extent that the preparation of the annual sales tax return is undertaken as additional work, this includes neither the review of any special accounting prerequisites nor the issue as to whether all potential sales tax allowances have been identified. No guarantee is given for the complete compilation of documents to claim the input tax credit.

#### 12. Electronic communication

Communication between the German Public Auditor and the engaging party may be via e-mail. In the event that the engaging party does not wish to communicate via e-mail or sets special security requirements, such as the encryption of e-mails, the engaging party will inform the German Public Auditor in writing (*Textform*) accordingly.

#### 13. Remuneration

(1) In addition to his claims for fees, the German Public Auditor is entitled to claim reimbursement of his expenses; sales tax will be billed additionally. He may claim appropriate advances on remuneration and reimbursement of expenses and may make the delivery of his services dependent upon the complete satisfaction of his claims. Multiple engaging parties are jointly and severally liable.

(2) If the engaging party is not a consumer, then a set-off against the German Public Auditor's claims for remuneration and reimbursement of expenses is admissible only for undisputed claims or claims determined to be legally binding.

#### 14. Dispute Settlement

The German Public Auditor is not prepared to participate in dispute settlement procedures before a consumer arbitration board (*Verbraucherschlichtungsstelle*) within the meaning of § 2 of the German Act on Consumer Dispute Settlements (*Verbraucherstreitbeilegungsgesetz*).

#### 15. Applicable law

The contract, the performance of the services and all claims resulting therefrom are exclusively governed by German law.