

[Convenience Translation from German]

## **Joint Report**

### **of the Executive Board of SAP AG and the management of SAP Erste Beteiligungs- und Vermögensverwaltungs GmbH i.Gr. (in formation)**

pursuant to Section 293 a of the German Stock Corporation Act (*Aktiengesetz*; "AktG") on the Control and Profit and Loss Transfer Agreement between SAP AG and SAP Erste Beteiligungs- und Vermögensverwaltungs GmbH (initialed draft dated March 14, 2006)

#### **I. General information**

The Executive Board of SAP AG and the management of Erste Beteiligungs- und Vermögensverwaltungs GmbH i.Gr. hereby submit the following report pursuant to Section 293 a AktG on the Control and Profit and Loss Transfer Agreement between SAP AG and SAP Erste Beteiligungs- und Vermögensverwaltungs GmbH (hereinafter, the "Subsidiary"), which is to be presented to the general meeting of shareholders (*Hauptversammlung*) of SAP AG for approval in the form of the initialed draft dated March 14, 2006.

#### **II. Initialed draft of the Control and Profit and Loss Transfer Agreement**

On March 14, 2006, SAP AG, acting through its Executive Board member Dr. Werner Brandt, initialed the present draft Control and Profit and Loss Transfer Agreement with the Subsidiary, represented by its managing director Michael Junge, authorized to represent the company alone, (hereinafter, the "Draft Agreement" and, where circumstances relating to a date after the conclusion of the Control and Profit and Loss Transfer Agreement are described, the "Agreement").

The effectiveness of the Control and Profit and Loss Transfer Agreement is conditional upon the approval of both the general meeting of shareholders of SAP AG, which in the present case is to be granted on the basis of the initialed Draft Agreement, and the approval of the shareholders' meeting (*Gesellschafterversammlung*) of the Subsidiary. The Agreement is intended to be concluded as soon as practicable after the date of the general meeting of shareholders, but no earlier than upon registration of the Subsidiary in the commercial register.

The Executive Board and the Supervisory Board of SAP AG will therefore propose at the 19th annual general meeting of shareholders of SAP AG called for May 9, 2006, under Item 12 a) on the Agenda, that the Control and Profit and Loss Transfer Agreement be approved.

Pursuant to Section 294 (2) AktG, the Agreement will not become effective before its registration in the commercial register at the Subsidiary's registered office.

### III. Parties to the Control and Profit and Loss Transfer Agreement

#### 1. SAP AG

SAP AG, having its registered office in Walldorf and entered in the commercial register of the Local Court (*Amtsgericht*) of Mannheim under HRB 350269, is a listed stock corporation under German law (*Aktiengesellschaft*) and the ultimate holding company of the SAP Group.

According to its Articles of Association, the corporate purpose of the Company is to directly or indirectly engage in activities in the area of development, production and marketing of products and the provision of services in the field of information technology, particularly in the following fields:

- Developing and using integrated product and service solutions for e-commerce;
- Developing software for information technology and licensing its use to others;
- Organization and deployment consulting as well as user training for e-commerce and other software solutions;
- Selling, leasing, renting and arranging the procurement and provision of all other forms of use of electronic data processing systems and relevant accessories;
- Making capital investments in enterprises active in the field of information technology to promote the opening of and expansion into international markets in the field of information technology.

SAP AG is authorized to act in all of the business areas listed above and to delegate such activities to affiliated companies (*verbundene Unternehmen*) within the meaning of Sections 15 *et seq.* AktG; SAP AG is in particular authorized to outsource its business in whole or in part to such companies. SAP AG is authorized to establish branch offices in Germany and elsewhere, to establish, acquire, and invest in other companies of the same or a related kind and to enter into cooperation and joint venture agreements. The Company is further authorized to invest in enterprises of all kinds principally for the purpose of placing financial resources. SAP AG is authorized to sell investments, to place the management of enterprises in which it participates under uniform control, to enter into affiliation agreements with such enterprises, or to do no more than manage its investment. Finally, SAP AG is authorized to take all actions and measures that are consistent with its corporate purpose or that directly or indirectly further its corporate purpose.

#### 2. The Subsidiary

The Subsidiary is a company with limited liability under German law in the process of formation. It was established on March 7, 2006 upon the adoption of its Articles of Association by notarial deed (roll of deeds no. 5 UR 353/2006) of notarial director (*Notariatsdirektor*) Manfred Gaul, notary's office of Heidelberg (*Notariat Heidelberg*), and application was thereafter filed for its registration in the commercial register of the Local Court of Mannheim. According to its Articles of Association, the Subsidiary's registered office is in Walldorf, Germany. The Subsidiary's fiscal year commences on July 1 and ends on June 30 of the following year.

According to its Articles of Association, the corporate purpose of the Subsidiary is the acquisition and management of investments, taking over the management, the investment in commercial companies (*Handelsgesellschaften*) as a general partner or the acquisition of investments as a limited partner in limited partnerships (*Kommanditgesellschaften*) as well as the management of its own assets. The

Subsidiary may establish, take over and represent other enterprises of the same or a related kind in Germany and elsewhere; it may also acquire investments in such enterprises and establish branch offices. The Subsidiary may also engage in all transactions that are suitable to further its own corporate purpose and that of its companies.

The Subsidiary has not taken up operations yet. However, the Agreement is already submitted to the general meeting of shareholders of SAP AG for approval in order for the Subsidiary, if necessary, to be included in the fiscal entity (*steuerlicher Organkreis*) of SAP AG as early as during the current fiscal year. SAP AG, if it were to acquire companies or carry out intra-group restructurings, will in this manner be able to attain on a short-term basis a tax optimized integration in the SAP Group through the Subsidiary. However, there are currently no specific plans as to the use of the Subsidiary. Through the establishment of the Subsidiary and the conclusion of the Control and Profit and Loss Transfer Agreement, SAP AG will, however, be in a position to act quickly and flexibly on business opportunities opening up. A copy of the Subsidiary's opening balance sheet is attached to this report as Schedule 2.

The Subsidiary's sole shareholder is SAP AG, directly holding 100% of its shares.

The Subsidiary's sole managing director, authorized to represent the company alone, is Michael Junge.

#### **IV. Legal and economic reasons for the conclusion of the Control and Profit and Loss Transfer Agreement**

The conclusion and the effective implementation of a control and profit and loss transfer agreement are (having regard to the control terms thereof) best suited to ensure the unified control of the Subsidiary's management and its integration into the SAP Group. The Control and Profit and Loss Transfer Agreement will in particular enable the Executive Board of SAP AG to issue directions to the Subsidiary's management in the overriding interest of the Group and to ensure that SAP AG and the Subsidiary will conduct their operations uniformly.

Although the Subsidiary's shareholders' meeting may issue directions to the management, there is no legal certainty as to the extent to which the shareholders' meeting (or any other corporate body authorized to do so under the Articles of Association) may also issue disadvantageous directions to the management. The Control and Profit and Loss Transfer Agreement provides the necessary legal clarity and allows even disadvantageous directions to be issued to a wide extent. Moreover, a formal resolution is required for each direction issued by the shareholders' meeting. For these reasons, the power granted to the shareholders' meeting to issue directions is not as suited to achieve the intended unified control of the Subsidiary as a control and profit and loss transfer agreement.

The conclusion of a profit and transfer and loss agreement allows SAP AG (having regard to the profit and loss transfer terms thereof) to achieve tax optimization. The conclusion of an effective control and profit and loss transfer agreement which has been implemented is a requirement for establishing a fiscal unity for both corporate income and trade tax purposes (*körperschafts- und gewerbsteuerliche Organschaft*). The fiscal unity for both corporate income and trade tax purposes has the benefit of allowing the positive and negative results of the companies forming part of the fiscal entity to be set off simultaneously.

The Control and Profit and Transfer Agreement is intended to be concluded even prior to the Subsidiary taking up its operations in order to ensure that the benefits of the Control and Profit

and Loss Transfer Agreement described above can be attained in the Subsidiary's future activities.

## **V. Explanation of the Control and Profit and Loss Transfer Agreement**

A copy of the initialed draft Control and Profit and Loss Transfer Agreement is attached to this report as Schedule 1. The key terms of the Agreement are explained below.

### **1. § 1 Management of the Subsidiary's Business**

Pursuant to Clause 1 (1) sentence 1 of the Agreement, the Subsidiary places the management of its company under the control of SAP AG. This is to lay down the transfer of decision-making powers, which is an essential part of a control agreement.

Clause 1 (1) sentence 2 of the Agreement provides for the controlling company's power to issue directions, which is a characteristic feature of a control agreement. SAP AG is thus entitled to issue directions to the management of the Subsidiary with respect to the management of its business. As the Agreement does not contain any provisions to the contrary, directions may also be issued which are disadvantageous to the Subsidiary pursuant to Section 308 (1) sentence 2 AktG, provided that they serve the interests of SAP AG or the SAP Group. SAP AG may thus exercise a decisive controlling influence on the management of the Subsidiary's business.

However, Clause 1 (2) of the Agreement provides for an exception insofar as the power to issue directions does not extend to the amendment, maintenance or termination of the Control and Profit and Loss Transfer Agreement itself. The content of this clause is in accordance with the statutory provision laid down in Section 299 AktG and is intended to enable the controlled Subsidiary and its management to freely decide in its own responsibility on the content of the Agreement and its term.

The above provisions are customary for a control and profit and loss transfer agreement.

### **2. § 2 Transfer of Profits**

Clause 2 (1) sentence 1 of the Agreement lays down the obligation to transfer the entire profits to the other contracting party, which is a characteristic feature of a control and profit and loss transfer agreement. During the term of the Agreement, the Subsidiary will be obligated to transfer its entire profits to SAP AG.

Pursuant to Clause 2 (1) sentence 2 of the Agreement, the profits to be transferred, in accordance with Section 301 AktG, are, subject to the establishment and dissolution of reserves pursuant to Clause 2 (2) of the Agreement, the annual net profits arising without the transfer of profits in accordance with the relevant provisions of German commercial law, less any loss carried forward from the preceding year.

Pursuant to Clause 2 (2) sentence 1 of the Agreement, the Subsidiary may allocate amounts from the annual net profits to the revenue reserves pursuant to Section 272 (3) of the German Commercial Code (*Handelsgesetzbuch*; "HGB") only to the extent this is permissible under applicable commercial law and justified in economic terms on the basis of a reasonable commercial assessment. Pursuant to Clause 2 (2) sentence 2 of the Agreement, any other revenue reserves pursuant to Section 272 (3) HGB established during the term of the Agreement must, upon SAP AG's request, be

dissolved and be used to compensate any annual net loss or be transferred as profits. Clause 2 (2) sentence 3 of the Agreement clarifies that any other reserves and any profit carried forward from the period prior the date of the Agreement may neither be transferred as profits nor used to compensate any annual net loss.

The above provisions are customary for a control and profit and loss transfer agreement.

In addition, the Agreement contains specific provisions regarding the due date and interest payable on the claim for the transfer of profits: Pursuant to Clause 2 (1) sentence 3 of the Agreement, the claim for the transfer of profits is due at the end of the fiscal year, and interest is payable thereon as from such date in accordance with Sections 352 (1), 353 HGB, i.e. at a rate of 5% p.a. This is intended to set off any loss in interest income of SAP AG.

### **3. § 3 Assumption of Loss**

Clause 3 (1) sentence 1 of the Agreement provides for the obligation of SAP AG as the controlling company to compensate, in accordance with Section 302 (1) AktG, any annual net loss of the Subsidiary which would otherwise arise during the term of the Agreement, unless such annual net loss is compensated by withdrawal pursuant to Clause 2 (2) sentence 2 of the Agreement of amounts from the other revenue reserves pursuant to Section 272 (3) HGB which were allocated to such reserves during the term of the Agreement. This obligation to assume losses necessarily results from the Control and Profit and Loss Transfer Agreement.

Clause 3 (2) of the Agreement refers to the statutory provisions laid down in the additional paragraphs of Section 302 AktG. In this context, a dynamic reference is made to Section 302 (1) AktG, i.e. as amended.

Section 302 (3) AktG governs the Subsidiary's options to waive the compensation claim and to reach a settlement on such claim. In the present case, the reference made to Section 302 (3) entails, in particular, the following: The Subsidiary may waive or reach a settlement on the compensation claim no earlier than three years from the date on which the registration of the termination of the Agreement in the commercial register is deemed to have been announced pursuant to Section 10 HGB. This does not apply in the event that SAP AG is insolvent or compounds with its creditors to avert insolvency proceedings or if arrangements for compensation are made in an insolvency plan.

Pursuant to Section 302 (4) AktG, the claim for the compensation of losses becomes statute-barred after 10 years from the date on which the registration of the termination of the Agreement in the commercial register is deemed to have been announced pursuant to Section 10 HGB.

The above provisions of Clause 3 of the Agreement are customary for a control and profit and loss transfer agreement.

With regard to the due date and the interest payable on the obligation concerning the assumption of losses, Clause 3 (1) sentence 2 of the Agreement refers to the corresponding provision on the transfer of profits, i.e. the Subsidiary's claim becomes due at the end of the fiscal year, and interest is payable thereon as from such date in accordance with Sections 352 (1), 353 HGB, i.e. at a rate of 5% p.a. This is intended to set off any loss in interest income of the Subsidiary.

#### 4. § 4 Effectiveness and Term

Pursuant to Clause 4 (1) sentence 1 of the Agreement, the conclusion of the Agreement is conditional upon the approval of the general meeting of shareholders of SAP AG and the shareholders' meeting of the Subsidiary. This is to take account of Section 293 AktG. Pursuant to Clause 4 (1) sentence 2 of the Agreement, the Agreement will become effective upon registration in the commercial register at the Subsidiary's registered office. The requirement of registration at the place of the Subsidiary's registered office for the effectiveness of the Agreement also ensues from Section 294 (2) AktG.

Clause 4 (2) through (4) of the Agreement contains provisions concerning the term and termination of the Agreement. Clause 4 (2) sentence 1 of the Agreement provides that the Agreement will be concluded for a minimum term of five full years (which do not have to coincide with the calendar year). The period for the calculation of such minimum term commences at the beginning of the Subsidiary's fiscal year during which the Agreement becomes effective upon registration in the commercial register of the Subsidiary, but no earlier than at the beginning of the fiscal year to which Section 14 (1) sentence 1 of the German Corporate Income Tax Act (*Körperschaftsteuergesetz*; "KStG") applies for the first time. Section 4 (2) sentence 2 of the Agreement provides that the Agreement may not be terminated by notice during this term. Current legislation (Section 14 (1) sentence 1 no. 3 KStG in conjunction with Section 17 KStG) requires a minimum term of five full years (which do not have to coincide with the calendar year) for the establishment of a fiscal unity for corporate income tax purposes. After the expiration of the minimum term, the Agreement may be terminated by notice. The Agreement is automatically renewed for an additional period of one year, unless terminated in writing by either contracting party upon three months' notice with effect as of the end of a calendar year.

The provision in Clause 4 (3) of the Agreement is also intended to ensure the minimum term of five full years (which do not have to coincide with the calendar year) required for the recognition of a fiscal unity for corporate income tax purposes. In the event that a fiscal year of the Subsidiary during the term of the Agreement comprises less than twelve calendar months, the minimum term of the Agreement is extended by additional complete (short) fiscal years up to the expiration of at least five full years (which do not have to coincide with the calendar year). The minimum term of the Agreement is also to be extended if the first year of validity of the Agreement is not recognized by the tax authorities for a fiscal unity for corporate tax purposes.

Moreover, Clause 4 (4) sentence 1 of the Agreement clarifies that both contracting parties have the right to terminate the Agreement at any time for cause without observing any notice period. Pursuant to Clause 4 (4) sentence 2 of the Agreement, a termination for cause is in particular possible in the event that SAP AG ceases to hold the majority of the voting rights in the Subsidiary or for any other reason within the meaning of R 60 (6) sentence 2 of the German Income Tax Rules of 2004 (*Körperschaftsteuer-Richtlinien 2004*) or any other provision replacing such provision.

#### 5. § 5 Final Provisions

The so-called severability clause contained in Clause 5 sentence 1 of the Agreement ensures the validity and practicability of the Agreement in the event that individual provisions are invalid or impracticable at the time of its conclusion or will become invalid or impracticable at a later date, e.g. by a change in legislation or court practice. In this event, the invalid provision, pursuant to Clause 5 sentence 2, is to be replaced by a valid provision that corresponds to the economic intent of the Agreement.

## **VI. Determinations pursuant to Sections 304, 305 AktG / Examination of the Control and Profit and Loss Transfer Agreement**

There was no need to determine any compensation payments or consideration in the Control and Profit and Loss Transfer Agreement for the Subsidiary's outside shareholders, since the Subsidiary does not have any outside shareholders; SAP AG is the sole shareholder of the Subsidiary, directly holding 100% of its shares. The companies concerned therefore did not have to be valuated in order to determine an adequate compensation and an adequate consideration, either. As SAP AG directly holds all shares in the Subsidiary, it was not necessary for the Agreement to be examined by qualified auditors ("contract auditors (*Vertragsprüfer*") pursuant to Section 293 b (1) AktG.

Walldorf, March 24, 2006

SAP AG

The Executive Board

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Walldorf, March 24, 2006

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