

HOCHLEITNER

Rechtsanwälte GmbH

Joint merger report

of the managing board of Fabasoft AG, FN 98699x,

Honauerstraße 4, A-4020 Linz

and

and the management of FB Beteiligungen GmbH, FN 323228k,

Kirchenplatz 8, 4070 Eferding

concerning the merger of FB Beteiligungen GmbH as the Transferring company with Fabasoft AG as the Acquiring company

as follows:

1. Companies involved

- 1.1 The company Fabasoft AG registered in the company register of the regional court Linz as commercial court under the company number FN 98699x with its registered offices in the political municipality Linz (Acquiring company). The share capital of Fabasoft AG amounts to € 11,000,000.00 and comprises 11,000,000 no-par value shares. Fabasoft AG has been listed on the Frankfurt Stock Exchange since 1999.
- 1.2 The company FB Beteiligungen GmbH registered in the company register of the regional court Wels as commercial court under the company number FN 323228k with its registered offices in the political municipality Eferding (Transferring company). The share capital of FB Beteiligungen GmbH amounts to € 35,000.00 and is settled in full. The sole shareholder of FB Beteiligungen GmbH is Fallmann & Bauernfeind Privatstiftung, FN 181039i, with an assumed and fully paid capital contribution amounting to € 35,000.00, which corresponds to a participation of 100%.
- 1.3 FB Beteiligungen GmbH is a shareholder of Fabasoft AG and holds 490,286 no-par value shares in Fabasoft AG, which corresponds to a participation of 4.46%.

- 1.4 The sole shareholder of FB Beteiligungen GmbH, i.e. Fallmann & Bauernfeind Privatstiftung, is also a direct shareholder of the Acquiring company and holds 4,228,228 no-par value shares, which corresponds to a participation of 38.44%.
- 1.5 Fallmann & Bauernfeind Privatstiftung therefore holds a 42.90% participation in Fabasoft AG - a 4.46% participation held indirectly via FB Beteiligungen GmbH and a 38.44% direct participation.

2. Merger

- 2.1 It is now intended to merge FB Beteiligungen GmbH, FN 323228k, as the Transferring company as at the effective merger date of 31.12.2020, by way of universal succession pursuant to § 231 in conjunction with § 224 (3) AktG on passing on of the shares of the Transferring company to the Acquiring company, as a result of the transfer of its assets in their entirety with all rights and obligations and without recourse to liquidation, downstream with Fabasoft AG, FN 98699x, as the Acquiring company, taking full advantage of the tax benefits provided for in particular under Article I of the Austrian Reorganisation Tax Act (UmgrStG).
- 2.2 This merger process concerns a downstream merger of the parent company (FB Beteiligungen GmbH) with the subsidiary (Fabasoft AG). In this merger process the shares in the subsidiary in addition to its assets are therefore transferred to the subsidiary as a result of the merger and become its own shares.

This is permissible pursuant to § 224 (3) AktG as the shares are used as compensation for the shareholders for the loss of their shares in the Transferring parent company ("passing-through of shares by the subsidiary" / "Durchgangserwerb durch die Untergesellschaft").

A merger-related capital increase in the subsidiary as the Acquiring company shall therefore not take place (§ 224 (3) AktG).

In the course of the passing on of the shares Fallmann & Bauernfeind Privatstiftung shall therefore acquire the participation of the Transferring company in the Acquiring company (490,286 no-par value shares, hence 4.46%) as the sole shareholder of the Transferring company ipso iure and no additional legal act is required.

As a consequence Fallmann & Bauernfeind Privatstiftung holds a direct participation of 42.90% in Fabasoft AG.

The Acquiring company therefore acquires by way of universal successor the shares transferred to itself permissibly as its own shares and must pass (“auskehren”) these on directly to the sole shareholder of the Transferring company.

2.3 In order to ensure that no capital increase is effected in the course of this merger process

- (i) no separate determination of an exchange ratio pursuant to §§ 224 AktG in conjunction with 225a (3) AktG is undertaken and
- (ii) as a consequence of this there is no granting of new shares in the Acquiring company pursuant to §§ 224 AktG in conjunction with 225a (3) AktG and therefore
- (iii) also no determination of the time as of which new shares have an entitlement to profit.

In the absence of the need to grant new shares and any additional cash payment, the appointment of an escrow agent pursuant to § 225a AktG is not necessary.

2.4 No special benefits shall be granted to the members of the managing board or supervisory board, the annual auditor or merger auditor. Neither are any special rights granted to individual shareholders, holders of preferential shares, bonds and profit participation rights.

The Acquiring company grants no special rights pursuant to § 220 (2) (6) AktG and no such measures are planned.

2.5 This merger process is a simplified merger pursuant to § 231 AktG, as the participation of the Transferring company in the Acquiring company is on the one hand less than 10% of the share capital of the Acquiring company while on the other hand in the case of a downstream merger the shares to be passed on are not counted, as these are acquired directly from the Transferring company (see in this context *Szep in Artmann/Karollus*, AktG III⁶ § 231 (10)). As the conditions for a simplified merger pursuant to § 231 AktG are objectively satisfied, the managing board has waived the ne-

cessity of the passing of a resolution of the general meeting of the Acquiring company.

- 2.6 **Pursuant to § 231 (3) AktG the shareholders are explicitly informed of their right, whereby shareholders that hold over 5% of the shares of Fabasoft AG either alone or jointly may, until expiry of one month after the passing of the resolution of the shareholders of FB Beteiligungen GmbH (Transferring company), demand the convocation of a general meeting in which a resolution on the approval of the merger is passed. The Articles of Association could link this right to demand the convocation of the general meeting with a lower holding of shares in the share capital, this is however currently not the case.**
- 2.7 This merger process is based on the closing balance sheet of FB Beteiligungen GmbH as at 31 December 2020 and the interim balance sheet as at 30 June 2021. The continuance of book values is applied to the merger process pursuant to fiscal and corporate law. It is hereby noted that due to a lack of any fiscal balance deviation the tax merger balance as at 31 December 2020 complies with the closing balance sheet and the distribution of profits effected in the retrospective period in compliance with § 2 (4) UmgrStG is disclosed as a liability item.
- 2.8 Both FB Beteiligungen GmbH and Fabasoft AG have a positive market value on the effective date of the merger as well as on the present day and both have a positive equity book value. In addition a positive market value of the assets to be transferred is given even when the value of the participation of FB Beteiligungen GmbH in Fabasoft AG and the distribution of profits of FB Beteiligungen GmbH on 15 July 2021 amounting to € 100,000.00 are not taken into account.

3. Consequences of the merger

- 3.1 FB Beteiligungen GmbH has meanwhile lost its company-relevant objective. As a consequence FB Beteiligungen GmbH now functions only as participation administrative company. FB Beteiligungen GmbH has neither any employees nor performs any other operative activity.

The corporate structure will be simplified by the merger. This simplification will lead to higher cost efficiency and a reduction in the burden of costs. In the final analysis of

the merger, the participation of Fallmann & Bauernfeind Privatstiftung in Fabasoft AG is focussed on a legal entity

The intended merger offers the benefits of simplification of the structure, higher cost efficiency and transparency through the establishment of a direct participation of Fallmann & Bauernfeind Privatstiftung in Fabasoft AG. There are explicitly no disadvantages, such as those connected with the dismissal of employees, for example.

- 3.2 In addition Fallmann & Bauernfeind Privatstiftung undertakes as a precautionary measure under accession to the merger agreement to completely indemnify and hold Fabasoft AG harmless for liabilities of FB Beteiligungen GmbH not reported in the closing balance sheet of FB Beteiligungen GmbH as at 31 December 2020 or that occur at a later date.
- 3.3 A dividend of EUR 0.85 per dividend-bearing no-par value share for the fiscal year 2020/2021 was resolved by the general meeting of Fabasoft AG held on 05 July 2021. Payment of the dividend was effected on 14 July 2021, less (any) 27.5% withholding tax on capital in compliance with statutory provisions. The dividends for the fiscal year from 01 April 2020 to 31 March 2021 have to date been received by FB Beteiligungen GmbH. The dividends for the fiscal year 2020/2021 shall be transferred to the sole shareholder of FB Beteiligungen GmbH, i.e. Fallmann & Bauernfeind Privatstiftung, in the course of the passing on of the shares. Pursuant to the retroactive function in compliance with § 5 UmgrStG this is appropriate as FB Beteiligungen GmbH, and therefore is sole shareholder, is entitled to the net dividends resolved and paid out on 05 July 2021. For this reason Fabasoft AG has undertaken to transfer the net dividends distributed for the 490,286 no-par value shares to Fallmann & Bauernfeind Privatstiftung and to transfer the associated legally based recovery claim for withholding tax in due form to Fallmann & Bauernfeind Privatstiftung.
- 3.4 FB Beteiligungen GmbH has paid a minimum corporate income tax in previous years, which passes to Fabasoft AG. An asset amounting to € 43,577.69 is therefore incurred in FB Beteiligungen GmbH, which passes to Fabasoft AG in the course of the merger where it is retained as a compensation of expenses.

Fallmann & Bauernfeind Privatstiftung hereby forgoes any compensatory measure in this connection as well as any capital increase.

- 3.5 The merger does not lead to a capital-reducing/-unblocking effect.
- 3.6 The intended merger falls under Art. I UmgrStG taking full advantage of the tax benefits provided for under reorganisation tax law, in particular continuance of book values. For this reason there is no liquidation taxation and the hidden reserves are assumed by the Acquiring company. In principle any loss deduction of the Transferring company is also transferred to the Acquiring company.
- 3.7 There are no loss carryforwards in the Acquiring company that would be jeopardised by the intended merger.

4. Exchange ratio

- 4.1 A passing-through of shares by the subsidiary arises due to the intended merger process under the passing of the shares of FB Beteiligungen GmbH to shares held by Fabasoft AG. For this reason there is no capital increase and therefore no granting of new shares. In the absence of the need to grant new shares there is no exchange ratio and therefore no information or explanations thereof. Furthermore, in the absence of the need to grant new shares and any additional cash payment, the appointment of an escrow agent pursuant to § 225a AktG is not necessary.

5. Procedure of the merger

- 5.1 The conditions for a simplified merger are satisfied for this merger pursuant to § 231 AktG. For this reason the managing board of Fabasoft AG has waived the necessity of the passing of a resolution by the general meeting. With regard to the publication of the documents pursuant to § 221a (1) (2) AktG, that day is decisive for this simplified merger on which the general meeting of the Transferring company, i.e. FB Beteiligungen GmbH, is convened.

The meeting for the resolution concerning this merger at FB Beteiligungen GmbH will take place on 28 August 2021. In compliance with § 108 (3 – 5) AktG the following documents must therefore be provided one month prior to the general meeting, i.e. as of 28 July 2021:

- (i) The merger agreement or a draft thereof (§ 220 § (1)(2) AktG);

- (ii) the annual financial statements and the management reports and where applicable the corporate governance reports of the companies involved in the merger for the previous 3 fiscal years as well as the closing balance sheet;
- (iii) the interim balance sheet;
- (iv) the merger reports of the managing boards of the companies involved in the merger (§ 220a AktG);
- (v) the audit reports (§ 220b AktG) and
- (vi) the supervisory board report (§ 220c AktG).

The effective date of the merger pursuant to § 220 (2) (5) AktG and § 2 (5) UmgrStG is the 31 December 2020. As of the beginning of 1 January 2021 00:00 hours all actions of FB Beteiligungen GmbH, in particular for the purposes of accounting, are deemed carried out by Fabasoft AG. The transfer of the assets of FB Beteiligungen GmbH to Fabasoft AG shall become effective at the time of registration of the merger in the company register.

Due to the effective date of the merger and the 9-month period applicable under reorganisation tax law, registration of the merger in the company register must be effected by 30 September 2021 at the latest.

The registration in the company register could be effected in a timely manner on expiry of the one-month period pursuant to § 231 (3) AktG on 29 September 2021, provided shareholders of Fabasoft AG whose share holding jointly amounts to 5% of the shares of Fabasoft AG do **not** demand the convocation of a general meeting in which a resolution on the approval of the merger is passed.

This merger agreement is subject to the conditions precedent of (i) timely filing with the company register and (ii) submission of the declaration of the managing board of the Acquiring company that the shareholders of the Acquiring company have waived the exercise of their right pursuant to § 231 (3) AktG or have forgone this right in writing.

- 5.2 In accordance with the decision of the regional court Linz on 27 July 2021 as the company register court Ernst & Young Wirtschaftsprüfungsgesellschaft m.b.H. was appointed at the joint request of the supervisory board of Fabasoft AG and the management of FB Beteiligungen GmbH as the joint merger auditor for FB Beteiligungen Fabasoft AG.

The joint merger auditor shall carry out a merger audit on the basis of the draft of the merger agreement and shall draw up a written report of the findings of the audit. The merger auditor is assigned the task of controlling the accuracy and correctness of the contents of the merger process and the exchange ratio.

- 5.3 The merger must also be audited by the supervisory board of Fabasoft AG (§ 220c AktG). Appropriate audit reports must be made and the audit of the supervisory boards carried out on the basis of the draft of the merger agreement drawn up by the managing board and the management, this merger report and the merger audit report of the merger auditor.

6. Summary of the report

In conclusion it shall be noted that, no disadvantages arise for Fabasoft AG through the intended merger, provision has been made by the indemnifying and harmless holding undertaken by Fallmann & Bauernfeind Privatstiftung and that more than adequate compensation of expenses is ensured by the assets amounting to over € 40,000.00 that are transferred to Fabasoft AG.

The advantages of structure simplification and establishment of a direct shareholder status for Fallmann & Bauernfeind Privatstiftung by far outweigh and the managing board of Fabasoft AG and the management of FB Beteiligungen GmbH come to the joint conclusion of a positive estimation of the intended merger process. The managing board of Fabasoft AG prepared and resolved the contents of this joint merger report in a work meeting with the management of FB Beteiligungen GmbH held on 26 July 2021.

Place/date

[signed by]

Fabasoft AG, FN 98699x

FB Beteiligungen GmbH, FN 323228k

59/32

Fabaso/1282 15 July 2021

Disclaimer:

This is a working translation from the German version. In case of discrepancies, the German version shall prevail.