

*- Convenience Translation -*

**Merck Kommanditgesellschaft auf Aktien  
Darmstadt, Germany**

**Annual General Meeting 2018**

**Explanation of Shareholder Rights**

## **Explanation of Shareholder Rights**

**(pursuant to Sections 122 (2), 126 (1), 127 and 131 (1) of the German Stock Corporation Act (hereinafter "AktG") (each in conjunction with Section 278 (3) AktG))**

The invitation to the Annual General Meeting contains information on the rights of limited shareholders in accordance with Sections 122 (2), 126 (1), 127, 131 (1) AktG (each in conjunction with Section 278 (3) AktG). The following information provides further explanations of these provisions. Excerpts from several of the relevant legal texts are given. Different legal opinions exist on the details of the shareholder rights explained here. In case of doubt, limited shareholders (also referred to hereinafter as *shareholders*) are recommended to seek legal advice.

### **1. Motions to add agenda items pursuant to Section 122 (2) AktG**

Shareholders whose aggregate shareholding amounts to at least one-twentieth of the share capital or represents an amount of the share capital corresponding to € 500,000, may request that additional items are put on the agenda and are published. Since the proportionate amount of € 500,000 (this corresponds to 384,616 shares of the company) is lower than one-twentieth of the share capital of (this is € 8,400,746.38), the attainment of the proportionate amount of € 500,000 is sufficient. Each new item must be accompanied by an explanation or a proposal for a resolution.

Motions to add agenda items must be received by the company at least 30 days prior to the General Meeting, whereby the day of the General Meeting and the day of receipt of the motion are not counted (cf. Section 122 (2) sentence 3, (1) sentence 4 AktG in conjunction with Section 121 (7) AktG). As a result, motions to add agenda items must be received by the company no later than March 27, 2018, 24:00 (CEST).

Motions to add additional agenda items, including the reasons or proposals for a resolution, are to be addressed to the Executive Board of the company in writing. Shareholders who wish to put forward a corresponding motion are requested to submit the same to the following address:

**Merck KGaA  
– HV-Büro –  
Frankfurter Strasse 250  
64293 Darmstadt  
Germany**

Shareholders who request additional items to be put on the agenda must provide evidence that they have owned the required minimum number of shares for at least 90 days prior to the date of receipt of their motion and continue to hold those shares until the Executive Board or a court has decided on the motion (cf. Section 122 (2) sentence 1, (1) sentence 3 and 4 and/or (3) sentence 5 AktG in conjunction with Section 121 (7) AktG). When calculating the period for holding the shares, Section 70 AktG must be observed.

To the extent that they have not already been announced in the invitation to the Annual General Meeting, additions to the agenda that must be announced will be published immediately upon receipt of the request to add additional items in the German Federal Gazette (*Bundesanzeiger*) and in such media of which it can be assumed that they will disseminate the information throughout the European Union. Furthermore, the additions will be made available at the company's website at [www.merckkgaa-darmstadt-germany.com/agm](http://www.merckkgaa-darmstadt-germany.com/agm). The amended agenda will be provided to the shareholders in accordance with Section 125 (1) sentence 3, (2) and (3) AktG.

Excerpts from the provisions of the German Stock Corporation Act on which these shareholder rights are based are as follows:

### *Section 122 AktG: Calling the General Meeting at the request of a minority*

- (1) <sup>1</sup>The General Meeting is to be called if shareholders whose total shareholding equals or exceeds one-twentieth of the share capital request such a meeting in writing, stating the purpose and the reasons; the request is to be addressed to the management board. <sup>2</sup>The articles of association may link the right to request a General Meeting to another form and to the ownership of a lower proportion of the share capital. <sup>3</sup>Shareholders submitting such a request must provide evidence that they have held the shares for at least 90 days before the date of receipt of their motion and that they hold the shares until a decision on the motion has been taken by the management board. <sup>4</sup>Section 121 (7) applies accordingly.
- (2) <sup>1</sup>Similarly, shareholders whose total shareholding amounts to at least one-twentieth of the share capital or represents an amount of the share capital corresponding to € 500,000, may request that items are put on the agenda and published. <sup>2</sup>Each new item must include an explanation or a proposal for a resolution. <sup>3</sup>The request within the meaning of sentence 1 must be provided to the company at least 24 days, in the case of listed companies at least 30 days prior to the meeting; the day of receipt is not to be included in this calculation.
- (3) <sup>1</sup>If the request is not met, a court can authorize the shareholders who have submitted the request to convene the General Meeting or publish the item to be put on the agenda. <sup>2</sup>At the same time, the court may appoint the chairperson of the meeting. <sup>3</sup>When convening the General Meeting or publishing the item to be put on the agenda, the authorization by the court must be mentioned. <sup>4</sup>An appeal may be made against the court decision. <sup>5</sup>The shareholders who have submitted the request must provide evidence that they own the shares until the court decision.

### *Section 121 (7) AktG: General*

<sup>1</sup>As regards deadlines and dates which are to be calculated back from the General Meeting, the date of the General Meeting itself shall not be included in the calculation. <sup>2</sup>Changing the date of the meeting from a Sunday, Saturday or public holiday to a preceding or following working day shall not be an option. <sup>3</sup>Sections 187 to 193 of the German Civil Code shall not be applied analogously. <sup>4</sup>With respect to non-listed companies, the articles of association may stipulate a different calculation of the deadline.

### *Section 70 AktG: Calculation of the period of shareholding*

<sup>1</sup>If the exercise of rights arising from a share requires that the shareholder has been the holder of such share for a certain period of time, the right to request transfer of title from a credit institution, a financial services institution or an enterprise operating under Section 53 (1), sentence 1, or Section 53b (1) sentence 1, or Section 53b (7) of the German Banking Act (Gesetz über das Kreditwesen). <sup>2</sup>The period during which the share has been owned by a predecessor shall be attributed to the shareholder if he/she has acquired the share without consideration, from his/her trustee, as full legal successor, in connection with the winding up of a co-ownership or as a result of a transfer of assets pursuant to Section 13 of the Insurance Supervision Act (Versicherungsaufsichtsgesetz) or Section 14 of the Building Loan Associations Act (Gesetz über Bausparkassen).

## **2. Countermotions pursuant to Section 126 (1) AktG**

Every shareholder has the right to submit countermotions at the General Meeting to proposals put forward by the Executive Board and/or the Supervisory Board regarding specific agenda items.

To the extent a shareholder wishes his countermotion to be made available in accordance with Section 126 (1) AktG, such countermotion, together with the reasons for the countermotion and the shareholder name, must be submitted to the company at least 14 days before the General Meeting, whereby the day of the General Meeting and the day of receipt of the motion are not counted. The last day on which a countermotion can be so submitted is therefore April 12, 2018, 24:00 (CEST). Shareholders are requested to provide evidence of their status as a shareholder when they submit the countermotion.

Counter motions must be submitted exclusively to the following address, which is also stated in the invitation to the Annual General Meeting:

**Merck KGaA**  
**– HV-Büro –**  
**Frankfurter Strasse 250**  
**64293 Darmstadt**  
**Germany**  
**Telefax: +49 6151 72-9877**  
**Email: [hauptversammlung@merckkgaa-darmstadt-germany.com](mailto:hauptversammlung@merckkgaa-darmstadt-germany.com)**

Counter motions that are addressed differently will not be considered.

Counter motions that are to be published will be made available without delay together with the shareholder's name, the reasons for the countermotion and possibly a statement by the company on the company's website at [www.merckkgaa-darmstadt-germany.com/agm](http://www.merckkgaa-darmstadt-germany.com/agm).

The Executive Board reserves the right to combine counter motions and their explanations if several shareholders present counter motions on the same subject matter of a resolution.

Pursuant to the conditions of Section 126 (2) AktG, the company is not obliged to make a countermotion and its explanation or an election proposal accessible. Moreover, the explanation for a permissible countermotion does not need to be made accessible if it is longer than 5,000 characters in total.

Counter motions of shareholders, irrespective of whether they have been published, can only be voted on if they are submitted during the course of the General Meeting.

Excerpts from the provisions of the German Stock Corporation Act on which these shareholder rights are based and which also specify the conditions under which the company may refrain from making counter motions available, are as follows:

*Section 126 AktG: Shareholder motions*

(1) <sup>1</sup>Shareholder motions, including the shareholder's name, the reasons and any statements by the management, are to be made available to the entitled persons specified in Section 125 (1) – (3) in line with the conditions set forth if at least 14 days before the General Meeting the shareholder sends to the address indicated in the invitation to the General Meeting a countermotion to a proposal of the management board and supervisory board regarding a certain agenda item. <sup>2</sup>The date of receipt shall not be taken into account. <sup>3</sup>In the case of listed companies, access is to be provided on the company's website. <sup>4</sup>Section 125 (3) applies accordingly.

(2) <sup>1</sup>A countermotion and the reasons for it do not need to be made available if:

1. the management board would subject itself to criminal prosecution by making it available;

2. the countermotion would result in a resolution of the General Meeting that would be illegal or in violation of the Articles of Association;
3. if the reasons are obviously false or misleading in material respects or constitute libel;
4. a countermotion from the shareholder pertaining to the same subject has already been put forward to a General Meeting of the company pursuant to Section 125;
5. the same countermotion from the shareholder for basically the same reasons has already been put forward pursuant to Section 125 to at least two General Meetings of the company within the past five years and at the General Meetings less than one-twentieth of the share capital represented voted in favor of the countermotion;
6. the shareholder indicates that he/she will neither attend nor be represented at the General Meeting;
7. within the past two years at two General Meetings the shareholder did not make or did not allow a countermotion to be made that he/she had communicated.

<sup>2</sup>The reasons do not need to be made available if their total length exceeds 5,000 characters.

- (3) If several shareholders file countermotions on the same item put forward for a resolution, then the management board can summarize the countermotions and their reasons.

Section 125 (1) sentence 1, (2) sentence 1 and (3) AktG: Communications to shareholders and supervisory board members

- (1) <sup>1</sup>The management board shall, at least 21 days before the meeting, announce the convening of the meeting to those credit institutions and shareholders' associations which had exercised voting rights on behalf of shareholders in the preceding general meeting or which have requested such information.
- (2) <sup>1</sup>The management board shall provide the same information to shareholders who make such request or are registered as shareholders in the company's share register at the beginning of the 14<sup>th</sup> day before the meeting.
- (3) Each member of the supervisory board may request that the management board send the same communications to him.

### **3. Election proposals by shareholders in accordance with Section 127 AktG**

The provisions of the German Stock Corporation Act on countermotions (see No. 2 above) apply analogously in accordance with Section 127 AktG to the proposal by a shareholder on the election of supervisory board members or of auditors.

However, reasons for such election proposals do not need to be given.

They are to be sent to the address stated above under No. 2 and in the invitation to the Annual General Meeting and must be received by the company by April 12, 2018, 24:00 (CEST).

In addition to the reasons stated in Section 126 (2) AktG, an election proposal also does not need to be made available if the proposal on electing supervisory board members or the auditor does not state their name, profession and place of residence, and, with regard to a proposal to elect supervisory board members, does not state any information on their membership of other statutory supervisory boards or of comparable German and foreign supervisory bodies of business enterprises. When proposing auditors, they are to be designated by their company name and location instead of their name, profession and place of residence.

If several shareholders make election proposals on the same election, then the Executive Board can summarize the election proposals as well as their reasons (if any).

Excerpts from the provisions of the German Stock Corporation Act on which these shareholder rights are based are as follows:

*Section 127 AktG: Election proposals by shareholders*

*<sup>1</sup>Section 126 applies analogously to a proposal by a shareholder on the election of a member of the supervisory board or external auditors. <sup>2</sup>The election proposal does not need to be supported by a statement of the reasons. <sup>3</sup>The management board also does not need to communicate the election proposal if it fails to contain the data required by Section 124 (3) sentence 4 and Section 125 (1) sentence 5.*

*Section 124 (3) sentence 4 AktG:*

*The proposal for the election of members of the supervisory board or auditors must state their name, profession and place of residence.*

*Section 125 (1) sentence 5 AktG:*

*In the case of listed companies, information on memberships of other statutory supervisory boards must be added to any proposal for the election of supervisory board members; details on their membership of comparable German and foreign supervisory bodies of business enterprises shall be included.*

#### **4. Information right pursuant to Section 131 (1) AktG**

Upon request, every shareholder must be provided with information by the Executive Board at the General Meeting regarding the company's affairs, to the extent that this information is necessary to properly evaluate the relevant agenda item and no right to refuse to provide information exists. The obligation of the Executive Board to provide information also extends to the company's legal and business relations with any affiliate as well as to the situation of the Group and the entities included in the consolidated financial statements.

In the cases stipulated in Section 131 (3) AktG, the Executive Board may refuse to give information. According to Section 131 (2) sentence 2 AktG in conjunction with Article 23 (2) sentence 3 of the Articles of Association of the company, the chairman of the General Meeting may suitably limit the amount of time available to shareholders to exercise the right to ask questions and speak.

If information has been provided outside the General Meeting to a shareholder by reason of his status as a shareholder, this information is to be provided upon request to any other shareholder at the General Meeting, even if such information is not necessary to permit a proper evaluation of an item on the agenda. In this case, the Executive Board may not refuse to provide information according to Section 131 (3) sentence 1 No. 1 to 4 AktG.

A shareholder who has been refused information may request that his question and the reason for which the information was refused be recorded in the notarized minutes of the meeting.

Excerpts from the provisions of the German Stock Corporation Act on which these shareholder rights are based and which also specify the conditions under which the company may refrain from providing information are as follows:

*Section 131 AktG: Shareholders' right to information*

(1) *<sup>1</sup>Upon request, every shareholder is to be provided with information at the General Meeting by the management board regarding the company's affairs, to the extent that such information is necessary to permit a proper evaluation of the relevant item on the agenda. <sup>2</sup>The obligation to provide information also extends to the company's legal and business relations with any affiliate. <sup>3</sup>If a company makes use of the simplified procedure pursuant to*

Section 266 (1) sentence 3, Section 276 or Section 288 of the German Commercial Code (HGB), each shareholder may request that the annual financial statements be presented to him/her at the General Meeting approving such annual financial statements in the form which would have been used if such simplifications were not applied. <sup>4</sup>The obligation of the management board of a parent company (Section 290 (1), (2) HGB) to provide information at the General Meeting at which the consolidated financial statements and consolidated management report are presented extends to the position of the Group and the companies included in the consolidated financial statements.

(2) <sup>1</sup>The information provided must comply with the principles of conscientious and faithful reporting. <sup>2</sup>The Articles of Association or the rules of procedure pursuant to Section 129 may authorize the chairman of the meeting to suitably limit the amount of time available for shareholders' right to ask questions and to speak and to specify further details thereof.

(3) <sup>1</sup>The management board may refuse to provide information,

1. to the extent that providing such information is, according to sound business judgment, likely to cause material damage to the company or an affiliate;
2. to the extent that such information relates to valuations made for tax purposes or the amount of individual taxes;
3. with regard to the difference between the measurement of items disclosed in the balance sheet and the higher market value of such items, unless the General Meeting is to adopt the annual financial statements;
4. with regard to the accounting policies, if disclosure of such policies in the notes suffices to provide a clear view of the company's actual financial and earnings position within the meaning of Section 264 (2) HGB; the foregoing does not apply if the General Meeting is to adopt the annual financial statements;
5. the management board would by reason of providing information subject itself to criminal prosecution;
6. to the extent that in the case of a bank or financial services institution information about the accounting policies applied as well as the calculations made in the annual financial statements, the management report, the consolidated annual financial statement or the group's management report do not need to be given;
7. if the information is continuously available on the company's website seven or more days prior to the General Meeting as well as during the Meeting.

<sup>2</sup>The provision of information may not be refused for other reasons.

(4) <sup>1</sup>If information has been provided outside the General Meeting to a shareholder due to his/her status as a shareholder, upon request the information is to be provided to any other shareholder at the General Meeting, even if the information is not necessary to permit a proper evaluation of an item on the agenda. <sup>2</sup>The management board may not refuse to provide information on the reasons of (3) sentence 1 No. 1 to 4. <sup>3</sup>Sentences 1 and 2 do not apply if a subsidiary (Section 290 (1), (2) HGB), a joint venture (Section 310 (1) HGB) or an affiliate (Section 311 (1) HGB) provides the information to a parent company (Section 290 (1), (2) HGB) for the purpose of inclusion in the consolidated annual financial statements of the parent company and the information is required for this purpose.

(5) A shareholder who has been refused information may request that his question and the reason for which the information was refused be recorded in the minutes of the meeting.

The chairman of the General Meeting is authorized to take various measures with respect to conduct and order at the General Meeting. This also includes restricting the right to speak and ask questions (cf. Section 131 (2) sentence 2 AktG).

The excerpt from the Articles of Association of the company on which this is based is as follows:

Article 23 (2) sentences 1 to 3 of the Articles of Association of the company:

*<sup>1</sup>The Chairman presides over the meeting. <sup>2</sup>He determines the order in which to discuss the items on the agenda, as well as the type of voting procedures to be used and the order in which agenda items are voted on. <sup>3</sup>He may suitably limit the amount of time available to shareholders to exercise the right to ask questions and speak.*