

Joint Report to the Annual General Meeting

**on the Restructuring
of the Operating Business of**

Merck KGaA, Darmstadt, Germany

**in the
Healthcare, Life Science, and
Performance Materials Business Sectors**

Legal remarks

In the United States and Canada, Merck & Co., Inc., Kenilworth, NJ, United States, which is independent of Merck KGaA, Darmstadt, Germany, and its subsidiaries, holds all rights to the name “Merck”. Therefore, in these countries, Merck KGaA, Darmstadt, Germany, is presented with the addition “Darmstadt, Germany,” meaning under “Merck KGaA, Darmstadt, Germany”. Since this report is also available in the United States and Canada via the Internet site of Merck KGaA, Darmstadt, Germany, the use of the term “Merck”, which is subject to restricted rights of use, is to be taken into account in this report by consistently designating companies in this report, also in its German version. However, any additions or abbreviations do not constitute part of the company name of the companies referred to under German commercial law.

In particular, the following companies will be referred to and, given these facts, abbreviated as follows in this Combined Report:

E. Merck Beteiligungen KG, Darmstadt, Germany, a related party of Merck KGaA, Darmstadt, Germany	EMB KG
E. Merck KG, Darmstadt, Germany	EM KG
Business Partnership E. Merck, Darmstadt, Germany	Business Partnership EM
Merck Financial Services GmbH, Darmstadt, Germany, an affiliated company of Merck KGaA, Darmstadt, Germany	MFS GmbH
Merck Healthcare Germany GmbH, Darmstadt, Germany, an affiliated company of Merck KGaA, Darmstadt, Germany	HC OpCo
Merck Healthcare Holding GmbH, Darmstadt, Germany, an affiliated company of Merck KGaA, Darmstadt, Germany	HC HoldCo
Merck Kommanditgesellschaft auf Aktien, Darmstadt, Germany	KGaA
Merck Life Science Germany GmbH, Darmstadt, Germany, an affiliated company of Merck KGaA, Darmstadt, Germany	LS OpCo
Merck Life Science Holding GmbH, Darmstadt, Germany, an affiliated company of Merck KGaA, Darmstadt, Germany	LS HoldCo
Merck Performance Materials Germany GmbH, Darmstadt, Germany, an affiliated company of Merck KGaA, Darmstadt, Germany	PM OpCo
Merck Performance Materials Holding, Darmstadt, Germany, an affiliated company of Merck KGaA, Darmstadt, Germany	PM HoldCo
Merck Pensionstreuhand e.V., Darmstadt, Germany, a related party of Merck KGaA, Darmstadt, Germany	MP e.V.
Merck Real Estate GmbH, Darmstadt, Germany, an affiliated company of Merck KGaA, Darmstadt, Germany	MRE GmbH

This Joint Report
to the Annual General Meeting
is
at the same time

Joint Report

of the Executive Board of
KGaA
and of the managements of
HC OpCO,
LS OpCo, and
PM OpCo
pursuant to Sec. 127 (1) German Reorganization Act

on the hive-down of the operating business of KGaA
in the Healthcare, Life Science,
and Performance Materials Business Sectors

Joint Report

of the Executive Board of
KGaA
and of the managements of
HC HoldCo,
LS HoldCo, and
PM HoldCo
pursuant to Sec. 127 (1) German Reorganization Act

on the hive-down of the company shares of KGaA
in HC OpCo, LS OpCo, and PM OpCo

Joint Report

of the management of
HC OpCO
and the Executive Board of
KGaA
in accordance with Sec. 293a German Stock Corporation Act

on the conclusion of a temporary Business Lease Agreement
between HC OpCo as the lessor and KGaA as the lessee

Joint Report

of the management of
LS OpCo
and the Executive Board of
KGaA
in accordance with Sec. 293a German Stock Corporation Act

on the conclusion of a temporary Business Lease Agreement
between LS OpCo as the lessor and KGaA as the lessee

as well as

Joint Report

of the management of
PM OpCo
and the Executive Board of
KGaA
in accordance with Sec. 293a German Stock Corporation Act

on the conclusion of a temporary Business Lease Agreement
between PM OpCo as the lessor and KGaA as the lessee

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Annex 1: List of shareholdings as of December 31, 2017

General list of abbreviations

Abbreviation	Term
<i>AktG</i>	German Stock Corporation Act (<i>Aktiengesetz</i>)
DPLA	domination and profit and loss transfer agreement
<i>BGB</i>	German Civil Code (<i>Bürgerliches Gesetzbuch</i>)
CTA	Contractual Trust Agreement
EBIT	Earnings before Interests and Taxes
EBITDA	Earnings before Interests, Taxes, Depreciation and Amortization
EBITDA pre	Earnings before Interests, Taxes, Depreciation and Amortization pre exceptionals
earnings per share pre	earnings per share pre exceptionals
ERP	Enterprise Resource Planning
<i>GewStG</i>	German Trade Tax Act (<i>Gewerbesteuer</i> gesetz)
<i>HGB</i>	German Commercial Code (<i>Handels</i> gesetzbuch)
IFRS	International Financial Reporting Standards
<i>KStG</i>	German Corporation Tax Act (<i>Körperschaft</i> steuer <i>gesetz</i>)
<i>MitbestG</i>	German Co-Determination Act (<i>Mitbestimmung</i> gesetz)
<i>UmwG</i>	German Reorganization Act (<i>Umwandlung</i> gesetz)
<i>UmwStG</i>	German Reorganization Tax Act (<i>Umwandlungs</i> steuer <i>gesetz</i>)
<i>UStG</i>	German Value-Added Tax Act (<i>Umsatz</i> steuer <i>gesetz</i>)

Introduction

Merck Kommanditgesellschaft auf Aktien, Darmstadt, Germany (hereinafter **Merck KGaA, Darmstadt, Germany** or **KGaA**), along with its German and foreign subsidiaries (the **Group**), is a globally operating science and technology company, which, on December 31, 2017, was represented in 66 countries with a total of 217 legal entities with staff and more than 50,000 employees.¹ Today, KGaA is the parent company and managing holding company of the Group, which is functionally subdivided into the three global business sectors of Healthcare, Life Science and Performance Materials (hereinafter **Business Sectors** or **Sectors**). At the same time, KGaA continues to be a manufacturing and research company with around 10,570 employees at the Darmstadt and Gernsheim locations.

The Executive Board of KGaA decided on February 14, 2018 that the operational activities of the Healthcare, Life Science, and Performance Materials Business Sectors operated within KGaA in Darmstadt and Gernsheim, along with the associated assets and liabilities (hereinafter the **Operating Unit KGaA Healthcare**, the **Operating Unit KGaA Life Science**, and the **Operating Unit KGaA Performance Materials**, and, regardless of the Business Sector, each an **Operating Unit** or **Operating Units**), shall, in accordance with Sec. 20 German Reorganization Tax Act (*Umwandlungssteuergesetz - UmwStG*), be hived down to three separate subsidiaries via a hive-down by absorption pursuant to Sec. 123 (3) (1) of the German Reorganization Act (*Umwandlungsgesetz - UmwG*) by way of partial universal succession, as well as in part by transferring or granting beneficial ownership (the **Operational Hive-down**). The acquiring entities in the Operational Hive-down are HC OpCo for the Operating Unit KGaA Healthcare, LS OpCo for the Operating Unit KGaA Life Science, and PM OpCo for the Operating Unit KGaA Performance Materials (regardless of the Business Sector, each referred to as **OpCo** or collectively as **OpCos**, on the company names of the OpCos cf. page II, “Legal remarks“). A domination and profit and loss transfer agreement is in place between KGaA and each of the OpCos, which ensures the consistent management of the OpCos by KGaA as well as the long-term status as an income tax (corporate and trade tax) and VAT tax group. The Operational Hive-down is based on the Hive-down and Transfer Agreement, which was concluded between KGaA and the OpCos on March 2, 2018 in notarized form (the **Operational Hive-down Agreement**).

Immediately after the Operational Hive-down becoming effective, all shares held by KGaA in the OpCos shall be transferred to holding companies by way of a further hive-down (hereinafter the **Holding Hive-down**), so that, in the future, KGaA will indirectly hold each OpCo via an intermediate holding company. The acquiring entities in the Holding Hive-down are HC HoldCo for the HC OpCo Company Shares, LS HoldCo for the LS OpCo Company Shares, and PM HoldCo for the PM OpCo Com-

¹ The figures presented in this joint report relate to the number of employees as of December 31, 2017 and include only active employees (with the exception of working students and apprentices).

pany Shares (regardless of the Business Sector, each referred to as **HoldCo** or collectively as **HoldCos**). For this purpose, KGaA and the HoldCos entered into a hive-down and transfer agreement (the **Holding Hive-down Agreement**) that was also notarized on March 2, 2018.

The global Healthcare, Life Science, and Performance Materials Business Sectors operate on different markets with distinct business models and products. These circumstances lead to business processes that differ significantly from each other and consequently also result in varying requirements regarding the IT systems in which these business processes are captured, planned, and controlled (so-called **Enterprise Resource Planning Systems** or **ERP systems**). The Executive Board of KGaA decided in 2015 to meet these divergent requirements by implementing three global, business sector-specific ERP systems. The transfer of the Operating Units to three separate entities supports the introduction of these global, business sector-specific ERP systems for the German business. At the same time, the business activities of the Operating Units thus far operated within KGaA can be integrated more efficiently into the management of the global Business Sectors. In addition, the Operational Hive-down, in conjunction with the subsequent Holding Hive-down, serves to align the structure of the German business, which is currently managed within KGaA as “operational parent company” (*Stammhauskonzern*), with the globally applicable structural principles of the Group. These strengthen the Group’s ability to respond quickly and flexibly to available strategic development options as well as the adaptability of the Business Sectors to changes in the market environment. The Group’s global innovation and growth strategy is in this way also implemented in Germany. The remaining German and foreign subsidiaries of KGaA – and thus the majority of its assets – will not be subject to the hive-down measures. The hive-down measures also do not aim at establishing “global sub-groups” under separate Business Sector holdings. The strategic management of the global Business Sectors Healthcare, Life Science, and Performance Materials shall continue to be carried out directly by KGaA.

Since the technical requirements for introducing the (business sector-specific) ERP systems do not currently exist at the OpCos – the introduction is planned for the period from early 2019 to 2020, depending on the Business Sector – it is intended that the business activities hived down to the OpCos be temporarily leased back to KGaA until the introduction of the ERP systems in the respective OpCo. For this purpose, HC OpCo, LS OpCo, and PM OpCo entered into a Business Lease Agreement as specified in Sec. 292 (1) (3) Var. 1 of the German Stock Corporation Act (*Aktiengesetz - AktG*) with KGaA, each dated March 2, 2018, regarding the lease(back) of their entire operations previously hived down to KGaA (regardless of the Business Sector, the **Business Lease Agreement** or collectively the **Business Lease Agreements**). Due to the Business Lease, the hive-downs can be implemented with economic effect at a uniform date and time, January 1, 2018, 0:00 hours (Economic Effective Date in accordance with Sec. 126 (1) (6) *UmwG*), and there is nonetheless the flexibility to transfer the management of the respective operational business to the respective OpCo

in a targeted way in accordance with the individual business sector-specific ERP implementation with separate timing.

The above-described Hive-down and Business Lease Agreements were entered into in a combined notarized deed (joint deed) (Deed No. 92/2018 of the Notary Public Dr. Andreas von Werder in Frankfurt am Main). They constitute part of a joint entrepreneurial concept and shall also be presented as a single transaction to the Annual General Meeting of KGaA on April 27, 2018 (**2018 Annual General Meeting**) for approval in one resolution. Both the Operational Hive-down Agreement and the Holding Hive-down Agreement require the approval of the Annual General Meeting of KGaA due to Sec. 125 s. 1, Sec. 13 (1), Sec. 65 (1) *UmwG*. The approval of the Business Lease Agreements by the Annual General Meeting of KGaA is not required under the applicable laws since KGaA does not act as a lessor of the operations. However, due to the close factual relation between the Operational Hive-down and the lease-back of the operations, the Business Lease Agreements shall also be subject to resolution by the Annual General Meeting (cf. section E.I.3.e)).

Sec. 127 s. 1 *UmwG* prescribes that the Executive Board of KGaA and the management of OpCos and HoldCos as the representative bodies of the entities participating in the Operational Hive-down and the Holding Hive-down each submit a written hive-down report detailing the hive-down and the hive-down agreement from legal and economic perspectives. The management of KGaA and the management of the OpCos and HoldCos apply the option set forth in Sec. 127 s. 1 last half-s. *UmwG* to present in each case a joint hive-down report. In a corresponding application of Sec. 293a *AktG*, the management of the OpCos and the Executive Board of KGaA as the representative bodies of the entities involved in the respective Business Lease Agreement shall also provide a written report in which the Business Lease and the Business Lease Agreement are legally and economically explained and justified. The management of the OpCos and the management of KGaA apply the option provided in Sec. 293a (1) s. 1 last half-s. *AktG*, and thus present a joint report on the respective Business Lease.

With regard to the close interrelation of the measures and due to the holistic transaction approach, the Executive Board of KGaA and the management of the OpCos and HoldCos set out and explain the Operational Hive-down, the Holding Hive-down, and the respective Business Lease based on legal and economic considerations in one consolidated report. This consolidated report (**Combined Report**) is deemed at the same time a hive-down report as defined in Sec. 123 (3) (1), Sec. 125, Sec. 127 *UmwG* on the Operational Hive-down and the Holding Hive-down and a report on the conclusion of a Business Lease Agreement according to Sec. 293a (1) *AktG*.

This Combined Report is divided into six sections. For a more concise presentation, section A. provides a general overview of the planned transaction measures at KGaA and the underlying business objectives. Section B. describes all entities involved in the transaction. Sections C. to E. each contain a detailed description of the different measures associated with the transaction, their economic rationale and explanation (including consequences, risks, alternatives, and costs). Section C. explains the Opera-

tional Hive-down and section D. the Holding Hive-down. Section E. describes the planned temporary leaseback of the Operating Units of KGaA hived down to the OpCos. Section E.I, for reasons of clarity, first summarizes some explanations relating to all Business Lease Agreements. Sections E.II, E.III, and E.IV each contain a separate explanation of the planned leaseback of the Operating Units KGaA Healthcare, Life Science, and Performance Materials hived down to the respective OpCos. Finally, section F. provides an overview of the main effects of the transaction on the entities involved and on the Group itself.

A. Overview of the overall transaction measures

I. Background and reason for the transaction – distinct business models in the Sectors and specific ERP systems

The Group's global Healthcare, Life Science, and Performance Materials Business Sectors (cf. section B. for a description of KGaA, the Group, and its global Business Sectors) operate on different markets based on distinct business models and products. For example, the development of innovative cancer medicines (Healthcare) is subject to entirely different underlying conditions and value add mechanisms than the production of laboratory materials (Life Science) or the production of liquid crystals for flat screens (Performance Materials). These different environments lead to different business processes and consequently also to different requirements regarding the respective IT systems with which these business processes are captured and controlled (ERP systems; cf. explanatory comments in the Introduction).

Given the highly divergent business models and considering the volume of business that has been reached in the individual business sectors, *inter alia*, due to acquisitions, the Group decided in 2015 on a global, business sector-specific ERP strategy. The objective of this strategy is to replace the historically often independently grown ERP systems, which, due to the acquisitions of the recent past, are also very different locally and regionally, with three new global (business sector-specific) systems that take the different requirements of each Business Sector into account.

The introduction of these global, business sector-specific ERP systems should lead to a Group-wide harmonization and streamlining of the “ERP landscape” of the Group, making business management and handling in the individual Business Sectors easier and more efficient. Another advantage is that, in the future, the Business Sectors will be able to reflect changes in business processes or in their respective regulatory environment more flexibly and independently of the respective other Business Sectors.

With the introduction of the new business sector-specific ERP systems, KGaA's Executive Board expects significant improvements in the management of the operating business with a positive impact on the positioning of the Group in global competition, including more efficient production network planning, and distribution in the Business Sectors which can become more customer-focused, thus moving the businesses “closer to the customer.”

The introduction of global, business sector-specific ERP systems and the aim to efficiently implement these systems also for the business in Germany, is the main reason for the transaction (on the other business objectives, see directly below in section A.III).

II. Overview of the planned transaction

1. Hive-down of the operational business of the Healthcare, Life Science, and Performance Materials Business Sectors operated within KGaA to the OpCos

In order to implement the planned new legal entity structure for KGaA, in a first step, the operational business activities of the Healthcare, Life Science, and Performance Materials Business Sectors, which are operated within KGaA at the Darmstadt and Gernsheim sites, and the associated assets and liabilities shall be hived down via a hive-down by absorption pursuant to Sec. 123 (3) (1) *UmwG*, as well as partially through measures to transfer and/or grant beneficial ownership to the respective OpCo with economic effect as of January 1, 2018, 0:00 hours (Economic Effective Date) (Operational Hive-down). The basis for the Operational Hive-down is the Operational Hive-down Agreement concluded between KGaA and the OpCos.

KGaA is described in more detail in section B.I and the OpCos are each described in more detail in the respective sections B.II.1, B.II.2, as well as B.II.3. The Operational Hive-down is explained in more detail in section C.

2. Hive-down of the Company Shares held by KGaA in OpCos to HoldCos

In a further step, the Company Shares held by KGaA in the OpCos – including the new shares granted by the OpCos to KGaA as consideration in the course of the Operational Hive-down – shall be transferred to the HoldCos in accordance with Sec. 123 (3) (1) *UmwG*. The Holding Hive-down, like the Operational Hive-down, shall also take place with economic effect as of January 1, 2018, 0:00 hours (Economic Effective Date). The basis for the Holding Hive-down is the Holding Hive-down Agreement concluded between KGaA and the HoldCos.

KGaA is described in more detail in section B.I and the HoldCos are each described in more detail in the respective sections B.III.1, B.III.2, as well as B.III.3. The Holding Hive-down is described in more detail in section D.

3. Temporary leaseback of the hived-down Operating Units by the OpCos to KGaA

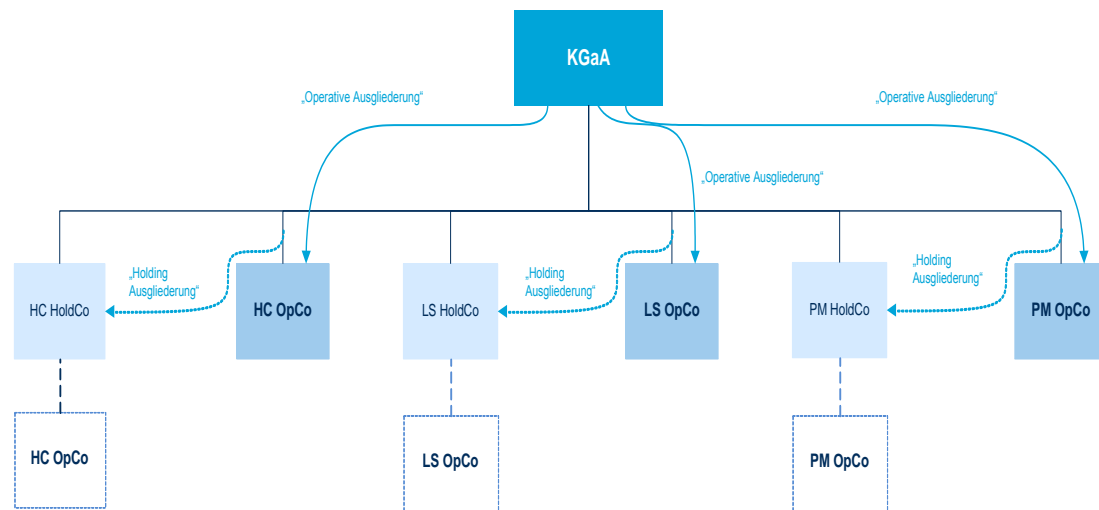
The business operations of the Operating Units transferred to the OpCos by way of the Operational Hive-down shall then be temporarily leased back to KGaA by the OpCos based on three Business Lease Agreements in accordance with Sec. 292 (1) (3) Var. 1 *AktG* – until the introduction of the new ERP system in the respective OpCo – also with economic effect as of January 1, 2018, 0:00 hours. As a result, KGaA continues to temporarily operate the hived-down operation as a lessee in its own name

and for its own account and by using the existing, cross-sector IT management system. Upon introduction of the ERP system for the affected OpCo (see directly below in section III.1), the Business Lease Agreement with this OpCo (as the lessor) shall be terminated and the respective previously Leased Operation shall then be transferred permanently to the OpCo (return of the Leased Item).

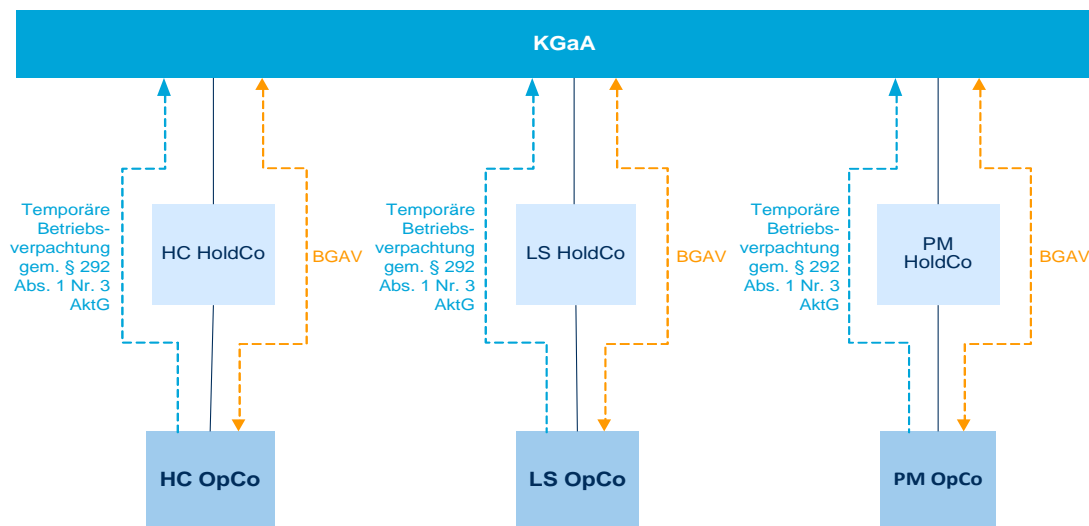
KGaA is described in more detail in section B.I and the OpCos are each described in more detail in the respective sections B.II.1, B.II.2, as well as B.II.3. The Business Lease Agreements are explained in greater detail in section E., particularly in E.II, E.III, and E.IV.

4. Overview of the target structure with regard to the Operating Units after implementation of the measures

The following diagrams depict, in a simplified form, the individual transaction steps (*Figure 1*) and the target structure (*Figure 2*):



(Fig. 1: Implementation of the Operational Hive-down and the Holding Hive-down)



(Fig. 2: Intended target structure after the transaction)

The transaction is purely an intra-group measure. Apart from the fact that the hived-down Operational Units will be managed in the OpCos in the future and that the KGaA, in this respect, has the function of a managing holding, the measure has no impact on the rights of the shareholders. This applies in particular to the voting rights in the general meeting of KGaA, e.g. in the resolution on the approval of the annual financial statements, the appropriation of net retained profit, the election of the Supervisory Board, capital measures or amendments to the Articles of Association. The transaction also has no impact on the structure and composition of the Executive Board and of the Supervisory Board of KGaA. Both during the Business Lease phase and after the termination of the Business Lease, KGaA employees belonging to the hived-down Operating Units KGaA will continue to be attributed to KGaA for the purpose of co-determination, so that the Supervisory Board of KGaA continues unchanged in size and parity of composition.

As a result of the domination and profit and loss transfer agreements between KGaA and CpCos, the business hived-down to the OpCos can continuously be managed directly out of the KGaA. The national and international subsidiaries of KGaA will not be affected by the hive-down measure; the strategic management of the global Business Sectors Healthcare, Life Science, and Performance Materials shall continue to be carried out directly by KGaA as managing holding.

The dividend ability and policy of KGaA is not affected by the transaction measures. The dividends based on the earnings per share are determined on a pre exceptionals basis on the basis of the consolidated financial statements. During the Business Lease phase, the income of the operational business will in any case accrue directly to KGaA (operation “for own account”). After the termination of the respective Business Lease phase, the income from the operational business activity will accrue at the level of the OpCos; it is, however, transferred to KGaA under the existing domination and profit and loss transfer agreements. Thus, the type of income generated by KGaA changes (henceforth investment income rather than operating income). Moreover, under the sustainable dividend policy pursued by the Executive Board of KGaA –

provided that the economic environment develops in a stable manner – the current dividend represents the minimum level for future dividend proposals (see on this also p. 69 of the 2017 Consolidated Annual Report). The transaction will not affect the equity and debt financing of KGaA since only the composition of the assets changes, not their overall value. Due to the intra-group nature of the measure, there are also no adverse effects on the Group's rating.

III. Business objectives of the transaction

1. More efficient ERP implementation and better integration of the Operating Units of KGaA into the Group's global Business Sectors

As explained in section A.I, the Executive Board of KGaA plans for a stepwise implementation of the new business sector-specific ERP systems in Germany during the period from early 2019 to 2020. The new set-up of the Operating Units of KGaA described in the Introduction and under A.II shall support the introduction and operation of the global ERP systems for the German business and facilitate the integration of the business activities of the Operating Units into the global ERP system of the respective Business Sector.

KGaA is currently organized as an “operational parent group” (*Stammhauskonzern*): KGaA's operational activities in the three Business Sectors Healthcare, Life Science, and Performance Materials are operated directly in one legal entity with multiple interlinkages within this entity. Running all three operations within KGaA limits the scope for required (Business Sector-related) adjustments in the existing ERP system, since such adjustments must be aligned with the (potentially very different) requirements of all three operations. This substantially increases the complexity of the adjustment measures.

Given the upcoming introduction of new, business sector-specific ERP systems, the separation of the operations of KGaA into separate entities has considerable benefits: Since the business activities of the Operating Units KGaA Healthcare, Life Science, and Performance Materials are clearly attributed to separate entities, from a German commercial law perspective, neither cross-sector data administration and mapping of processes nor the consolidation of company codes is necessary. Without the establishment of separate, business sector-specific entities, a scenario with three ERP systems would require a large number of adjustment, standardization, and consolidation steps at the level of KGaA, for example in the elimination of business transactions between (not legally independent) operating units or the consolidation and standardization of all data necessary for the compilation of the financial statements and the management report of KGaA under German commercial law as well as for tax purposes. A solution with three different ERP systems in one legal entity would therefore significantly increase the complexity with respect to the requirements of financial reporting according to the German Commercial Code (*HGB*) and entail considerable implementation risks. Successful automated consolidation from different source systems within one entity has until now – to the extent that it has been identified as com-

parable in the first place – not been observed on the market. Moreover, the implementation costs of a “three-in-one” solution are only slightly lower than a separation solution, so that the resulting risks and uncertainties would not be offset by significant cost savings.

Even in the continued operation and administration, the use of only one ERP system per legal entity is beneficial since complex interfaces to the planning systems of the other Business Sectors and consolidation instances are not required. Above all, however, when adapting the ERP systems to (changed) requirements of the business, the legal separation into different entities provides significantly greater flexibility. In a “one-size-fits-all” solution within KGaA, adjustments to the business-specific ERP systems would also have to be “translated” to the consolidation instance, which would be more time-consuming and trigger the risk of becoming a new, highly complex overall system that is difficult to administer. This risk is eliminated by operating business sector-specific ERP systems in separate legal entities.

The clear allocation of the operating resources of the respective Operating Unit to individual companies (entities) also leads to increased transparency in terms of costs and in offsetting of services between the Operating Units which, in the future, will be based on defined intercompany agreements. The increased transparency in the mapping of the processes will, in the future, enable even more targeted business management, both within the respective entity as well as with regard to the global Business Sectors.

2. Aligning the German business with the structural principles of the Group consistent with the existing growth and innovation strategy

Due to the growth in the volume of business and because of the different business models in the individual Business Sectors, within the Group, the principle applies to establish business sector-specific local legal entities where possible (i.e., subject to conflicting legal or economic considerations). All subsidiaries are predominantly held via either German or other holding companies. With these structural principles, the Group on the one hand supports the business sector-specific ERP strategy and the general principle of having one ERP system per legal entity wherever possible (see above A.III.1). On the other hand, the principles aim, even today, at strengthening the Business Sectors’ adaptability to market changes and the continued strategic development of their businesses.

As a result of the planned measures, the structural principles of the Group and the underlying growth and innovation strategy are also being implemented in the German corporate structure: Thus, KGaA is in essence transforming from a research and manufacturing company into a pure managing holding company, also as regards its operational activities in the Operating Units KGaA Healthcare, Life Science, and Performance Materials.

Separating the business activities of the three global Business Sectors operated in KGaA into business sector-specific subsidiaries not only facilitates the management

of the German business activities within the respective Business Sectors (cf. above 1.) above in this regard), but – in conjunction with establishing intermediate holding companies – also supports the Group’s ability to respond quickly and flexibly to strategic development options that arise. Both acquisitions and strategic partnerships of the Group are predominantly “mono-sectoral” today, i.e., they essentially concern only one Business Sector.

Given these facts, the intermediate holding companies established in the course of the Holding Hive-down can serve as a platform for future business sector-specific acquisitions in line with the general structural principles of the Group. Such use of acquisition vehicles also provides advantages in terms of taxation over any direct acquisition by, for example, KGaA – in particular since any (intra-group) restructuring following the integration of an acquired company within the Group, such as mergers, can in principle be carried out without a direct tax impact on KGaA and its investors due to the intermediate holding structure. The same applies to any share transfers by an intermediate holding company that – after a seven-year so-called “blocking period” has elapsed – are subject to what results in being a 95% tax exemption of Sec. 8b German Corporation Tax Act (*Körperschaftsteuergesetz - KStG*) for corporation and trade tax purposes, which also has a beneficial effect on KGaA and its capital owners (for details regarding the seven-year tax “blocking period” of a so-called “Contribution Profit I” according to Sec. 22 (1) *UmwStG* or (pro rata) according to Sec. 22 (2) *UmwStG*, see section C.IV.5).

The “mono-business” orientation of the future OpCos as Healthcare, Life Science, or Performance Materials entities also facilitates subsequent integration of any entities or operations acquired in a particular business area, since comparable business activities can usually be combined and/or integrated with each other more easily. Mergers can also be achieved in a less complex and business sector-specific ERP landscape – which again is a consequence of the separation of the operating business into separate entities achieved by the planned transaction.

3. Flexibility with regard to the timing of introducing the ERP systems through the temporary leaseback of the Operating Units to KGaA

At the global level, the introduction of business sector-specific ERP systems has started already. However, the ERP implementation at the OpCos still requires further technical and organizational preparation. The ERP introduction is planned for early 2019 for the Operating Unit KGaA Healthcare; the implementation at the Operating Unit KGaA Life Science and at the Operating Unit KGaA Performance Materials is expected in the course of 2020. Until the respective dates of the ERP introduction, the affected OpCos cannot yet independently capture and reflect in their systems the complex business processes of the Operating Units transferred to them (including their presentation in the financial reporting).

In order to avoid a multi-year and “staggered” transformation under corporate law – including all associated information and approval procedures – the Executive Board

of KGaA considered the holistic implementation of the hive-downs with economic effect as of January 1, 2018 to be advantageous. The implementation in 2018 will enable the establishment of the new legal entity structure in time for the first ERP introduction at HC OpCo in early 2019. The preparation and implementation of the Operational Hive-down as a joint measure for all OpCos in 2018 will also result in KGaA's Annual General Meeting dealing with the issue only once and to full extent. A gradual hive-down of the Operating Units – depending on when the ERP is introduced – would, in contrast, lead to a sequence of elaborate transaction measures over the next two or three years. This would lead to substantial additional costs, including costs related to the internal resources tied up at KGaA.

The Business Lease provides a suitable approach in this scenario to bridge the period between the Economic Effective Date and the effective implementation of the respective ERP system. On the basis of the concluded Business Lease Agreements, KGaA temporarily manages the operations of the OpCos as a lessee – and in this respect as today – in its own name and for its own account. Hence, the OpCos are for now in fact “rent recipients” with correspondingly low requirements regarding the ERP systems. With the introduction of the respective final business sector-specific ERP system, the Business Lease is terminated with regard to the OpCo concerned, and management of the respective operation is transferred to the OpCo completely and permanently (as retransfer of the Leased Item). By concluding the Business Lease Agreements, the transition of the actual management to the OpCos for the respective operating activities, and the management and presentation of the operating income and expenses in the external accounting, can be accomplished with flexibility and individually based on the progress of the implementation of the respective ERP systems.

B. Participating companies

I. Merck KGaA, Darmstadt, Germany

1. History and Development of KGaA and of the Group

The history of KGaA dates back to 1668. At that time, *Friedrich Jakob Merck* acquired “Engel Pharmacy” in Darmstadt, laying the foundation for the formation of today's KGaA and the entire Group. After *Emanuel Merck* took over the management of Engel Pharmacy in 1816, it developed from a simple apothecary craft business to a research-based industrial enterprise, which from 1850 onwards was managed by *Emanuel Merck* and his sons as the business partnership E. Merck, Darmstadt, Germany (***Business Partnership EM***). In the 18th and 19th centuries, Business Partnership EM had a successful export business and established business relations with other European countries. In 1887, it established its own branch in New York and in 1890 founded a U.S. subsidiary, Merck & Co. Inc. In the wake of the First World War, however, Business Partnership EM lost its foreign branches and in particular the U.S.-based subsidiary, which continues to operate today as an autonomous U.S. company independent of the current Group. After the Second World War, the expansion of

Business Partnership EM into an international pharmaceutical group was actively pursued. The operation was managed by E. Merck OHG, Darmstadt, Germany (now E. Merck KG, Darmstadt, Germany) until 1994. In 1995, the entire operation of E. Merck OHG, Darmstadt, Germany, was hived down to the newly founded KGaA. This was followed by the initial public offering of KGaA, which, at a volume of 2.4 billion deutschmarks, was the largest initial public offering in German history until that point.

Today, KGaA, with its headquarters and management in Darmstadt, is the parent company and managing holding company of the Group, which is functionally subdivided into the Healthcare, Life Science and Performance Materials Business Sectors. At the same time, KGaA is still a manufacturing company with around 10,570 employees at the Darmstadt and Gernsheim locations. The Group employs a total of more than 50,000 people (as of December 31, 2017). With its 350-year history, the Group is the world's oldest pharmaceutical and chemical company. The founding family continues to be the majority capital owner in KGaA via the (general partner) equity interest held by E. Merck KG, Darmstadt, Germany (**EM KG**).

Over the past decade in particular, KGaA has developed from a classic supplier of pharmaceuticals and chemicals to the parent company of a global science and technology group. The main driver was the restructuring of the business portfolio as a result of the sale of Generics (2007) and the acquisition between 2007 and 2015 of several companies active in the Healthcare (Serono S.A.), Life Science (Millipore Corporation and Sigma-Aldrich Corporation), and Performance Materials (AZ Electronic Materials S.A.) Business Sectors in the U.S. In addition, it focused its businesses on innovation-driven and highly specialized products, extensively revamped the internal structures and processes, and expanded its presence in global growth markets.

With the acquisition of the Swiss company Serono SA in 2007 for a purchase price of around 10.3 billion Euros, KGaA initially became one of the world's leading biopharmaceutical companies. In 2010, the Group also acquired Millipore Corporation, a leading life sciences company in the U.S., for approximately 5.1 billion Euros. With the acquisition of Millipore, KGaA strengthened its activities in the life science industry and in the areas of biotechnological research and production. In 2014, KGaA acquired AZ Electronics Materials S.A. for a purchase price of 1.9 billion Euros. This enabled KGaA to produce high-purity specialty chemicals and materials for use in integrated circuits and devices, flat screens, displays, and for photographic printing. The acquisition of the U.S. life science company Sigma-Aldrich Corporation, which was completed the following year for about 14.6 billion Euros, has been the largest acquisition in the company's history so far. The Group has since established itself as one of the world's largest providers of life science products.

2. General corporate information on KGaA

KGaA is a Kommanditgesellschaft auf Aktien headquartered in Darmstadt, registered in the Commercial Register of the Darmstadt Local Court under HRB 6164. The fi-

financial year of KGaA is the calendar year. According to the Articles of Association, the purpose of KGaA is

- the manufacturing as well as sales and marketing of chemical and biotechnical products, in particular pharmaceuticals, basic pharmaceutical substances, fine chemicals, industrial chemicals, pigments, and cosmetic substances,
- the manufacturing, sales, and marketing, as well as trading of preparations and equipment for laboratory use, in particular of reagents and diagnostics,
- the development, acquisition, and exploitation of chemical processes and facilities.

The Company may undertake all transactions and actions that are deemed expedient for serving the Company's purpose. It may, in particular, provide services, acquire, manage and dispose of real estate, set up, acquire, and invest in other companies, and direct such companies or restrict itself to administering the investment. The Company is also authorized to conduct its business via subsidiaries, holding companies, and joint ventures. It may hive down all or part of its operations to affiliated companies, or transfer them to affiliated companies.

3. Managing bodies of KGaA, bodies at EM KG level, capital, and shareholders of KGaA

a) Managing bodies of KGaA

The managing bodies of KGaA are the general partners, the Supervisory Board, and the Annual General Meeting. The competencies of these bodies are governed by the German Stock Corporation Act, the Articles of Association of KGaA as amended on April 28, 2017 (the *Articles of Association*), as well as by the respective rules of procedure for the Executive Board and the Supervisory Board.

(1) General Partners with and without equity interest

The General Partner with equity interest is EM KG (the *GP with Equity Interest*).

General Partners without any equity interest (the *GPs without Equity Interest* or the *GP without Equity Interest*) in accordance with Article 9 (1) of the Articles of Association are

- Dr. Stefan Oschmann (Chairman of the Executive Board) (Executive Board member since 2011),
- Dr. Udit Batra (Executive Board member since 2016),
- Dr. Kai Beckmann (Executive Board member since 2011),
- Walter Galinat (Executive Board member since 2016),
- Belén Garijo Lopez (Executive Board member since 2015), and

- Dr. Marcus Kuhnert (Executive Board member since 2014).

The GPs without Equity Interest are appointed by EM KG with the consent of a simple majority of the other General Partners and must, at the same time, be General Partners of EM KG (Article 9 (2) of the Articles of Association). Pursuant to Article 13 (1) s. 1, s. 2 of the Articles of Association, the management of the Company's business is incumbent upon the GPs without Equity Interest and, if appropriate, other members appointed by EM KG and with the consent of all General Partners (the **Executive Board**). Since other members within the meaning of s. 1 of Article 13 (2) of the Articles of Association have currently not been specified, the Executive Board is at present exclusively made up of GPs with Equity Interest (s. 3 of Article 13 (1) of the Articles of Association).

In accordance with Article 12 (1) s. 1 of the Articles of Association, KGaA is generally represented by two GPs without Equity Interest or by one GP without Equity Interest together with an officer of the company with general commercial power of attorney. If there is only one GP without Equity Interest, this GP represents KGaA alone in accordance with Article 12 (1) s. 2 of the Articles of Association. According to Article 12 (2), EM KG is authorized to grant power of sole representation to a GP without Equity Interest. EM KG has not exercised this authority.

(2) Supervisory Board

In accordance with Article 15 (1) of the Articles of Association in conjunction with Sec. 7 (1) of the German Co-Determination Act of May 4, 1976 (*Mitbestimmungsgesetz*), the Supervisory Board of KGaA is composed of eight Supervisory Board members representing the shareholders (*Kommanditaktionäre*)¹ and the employees. Six shareholder representatives in the Supervisory Board are elected by the Annual General Meeting. As for the remaining two shareholder representatives, E. Merck Beteiligungen KG, Darmstadt, Germany, an affiliated company of Merck KGaA, Darmstadt, Germany (**EMB KG**), which in turn holds a limited partner interest in EM KG, has the power to appoint pursuant to Article 6 (5) of the Articles of Association. The eight employee representatives are elected by the employees in accordance with the provisions of the *Mitbestimmungsgesetz* and consist of six employees of the Company (including one executive employee) and two representatives of the unions.

The eight shareholder representatives in the Supervisory Board are currently:

- Dr. Wolfgang Büchele (member of the Supervisory Board since 2009),
- Michaela Freifrau von Glenck (member of the Supervisory Board since 2008),

¹ The term "shareholder"/"shareholders" in this joint report also (but not only) refers to the technical German term "Kommanditaktionär"/"Kommanditaktionäre".

- Dr. Siegfried Karjetta (member of the Supervisory Board since 2014),
- Albrecht Merck (member of the Supervisory Board since 2005),
- Prof. Dr. Helga Rübsamen-Schaeff (member of the Supervisory Board since 2014),
- Prof. Dr. Gregor Schulz (member of the Supervisory Board since 2014),
- Prof. Dr. Theo Siegert (member of the Supervisory Board since 2006), and
- Tobias Thelen (member of the Supervisory Board since 2014).

The eight members of the Supervisory Board representing the employees are currently:

- Crocifissa Attardo (member of the Supervisory Board since 2009),
- Dr. Mechthild Auge (member of the Supervisory Board since 2009),
- Dr. Gabriele Eismann (member of the Supervisory Board since 2014),
- Michael Fletterich (member of the Supervisory Board since 1998),
- Edeltraud Glänzer (member of the Supervisory Board since 2008),
- Dr. Dietmar Oeter (member of the Supervisory Board since 2014),
- Alexander Putz (member of the Supervisory Board since 2014), and
- Dr. Veit Ulshöfer (member of the Supervisory Board since 2016).

Dr. Wolfgang Büchele is the chairman of the Supervisory Board; Mr. Michael Fletterich is the deputy chairman of the Supervisory Board. The term in office of all current members of the Supervisory Board ends at the end of the 2019 Annual General Meeting.

b) Other bodies at EM KG level

A Board of Partners has been formed at EM KG as the General Partner of KGaA. Its members are elected by the Family Council of EM KG (cf. details below). The Board of Partners has a function comparable to the supervisory board of a stock corporation. The Board of Partners decides on the appointment and dismissal of KGaA Executive Board members and oversees the management. In addition, it approves extraordinary business transactions at the level of KGaA (cf. also Article 13 (4) of the Articles of Association). The Board of Partners convenes as needed; it meets at least, however, twice a year. Currently, the following persons are members of the Board of Partners: Johannes Baillou, Dr. Frank Stangenberg-Haverkamp, Dr. Wolfgang Büchele, Dr. Siegfried Karjetta, Albrecht Merck, Prof. Dr. Helga Rübsamen-Schaeff, Prof. Dr. Gregor Schulz, Prof. Dr. Theo Siegert, and Tobias Thelen. Another committee at EM KG level is a Family Council. Its members are elected by the shareholders' meeting of

EM KG. One of the responsibilities of the Family Council, which consists of representatives of the owner families, is to approve business transactions of KGaA that are of fundamental strategic importance.

c) Capital and shareholders of KGaA

The total capital of KGaA is currently 565,211,241.95 Euros. The total capital of the Company comprises a “capital share” of 397,196,314.35 Euros in terms of Article 8 (1) of the Articles of Association held by the general partner EM KG and the share capital of KGaA divided into 129,242,252 non-par value shares of currently 168,014,927.60 Euros.

Share number 1 bears the shareholder’s name; the remaining shares are bearer shares (Article 6 (2) s. 1 of the Articles of Association). The registered share is currently held by EMB KG and, pursuant to Article 6 (4) of the Articles of Association, may only be transferred with the consent of KGaA. The approval is granted at the sole discretion of EM KG. The bearer shares of KGaA held by the shareholders (Securities Identification Number 659990 and International Securities Exchange Number DE0006599905) are admitted for trading on the regulated market with additional post-admission obligations at the Frankfurt Stock Exchange (Prime Standard segment) and at the Berlin, Düsseldorf, Hamburg, Hanover, Munich, and Stuttgart Stock Exchanges, the Tradegate Exchange, the London Stock Exchange, and the Swiss SIX Exchange. KGaA is also represented in several indices including the German Stock Index (DAX).

According to the voting rights notifications received by KGaA pursuant to the provisions of the German Securities Trading Act (*Wertpapierhandelsgesetz*), the shareholder Black Rock, Inc. holds between 5% and 10%, and the shareholders Templeton Global Advisors Limited and companies of the Sun Life group between 3% and 5% of the share capital. The remaining shares are free-floating shares.

In accordance with Article 5 (3) s. 1 of the Articles of Association, the Executive Board is authorized to increase the share capital of KGaA until (and including) April 27, 2022 with the approval of the Supervisory Board and EM KG by issuing up to 56,521,124.19 Euros in new bearer shares against cash contributions or contributions in kind once or several times (2017 Authorized Capital). The Executive Board is also authorized, subject to the approval of the Supervisory Board, to exclude the subscription rights of shareholders in the event of cash or in-kind capital increases under certain conditions. The Management Board has not yet utilized the 2017 Authorized Capital.

The share capital of KGaA has been conditionally increased (Conditional Capital I) by up to 66,406,298.40 Euros divided into 51,081,768 shares in accordance with Article 5 (4) s. 1 of the Articles of Association. The increase in contingent capital serves to grant exchange rights to EM KG in accordance with Article 33 of the Articles of Association of KGaA to enable the conversion of its equity interest.

The share capital of KGaA has been conditionally increased (Conditional Capital II) by up to 16,801,491.20 Euros divided into 12,924,224 bearer shares, in accordance with Article 5 (5) s. 1 of the Articles of Association. This conditional capital increase is only implemented insofar as the bearers or creditors of option or conversion rights or the conversion obligations on warrant bonds, option participation certificates, option participation bonds, convertible bonds, convertible participation certificates, or convertible participation bonds issued against contributions that are issued or guaranteed by the Company or a subordinate Group company until May 8, 2019 on the basis of the authorizing resolution by the Annual General Meeting dated May 9, 2014, exercise their option or conversion rights or, to fulfill their conversion obligation insofar as they are obliged to fulfill their conversion obligation, or insofar as the Company exercises an option, in full or in part, of granting shares in the Company instead of paying the amount due and to the extent that in each case a cash settlement is not granted, or own shares or other forms of fulfillment are used.

Under Sec. 71 (1) (8) *AktG*, the Company is not authorized by the Executive Board to acquire its own shares.

4. Business activities and key figures

a) The Group and its global Business Sectors

As of December 31, 2017, the Group was represented by a total of 217 legal entities with employees in 66 countries. In line with the strategic direction of the Group, the business of the Group consists of the three Business Sectors of Healthcare, Life Science, and Performance Materials (for more information in this regard, see sections B.I.4.a)(1), B.I.4.a)(2) and B.I.4.a)(3)). The Healthcare Business Sector comprises three businesses (Biopharma, Consumer Health, and Allergopharma). The Life Science and Performance Materials Business Sectors each comprise one business (with the same names as the Business Sectors, namely Life Science and Performance Materials). The businesses are further divided into so-called business units or business areas.

The key figures of the Group calculated on the basis of International Financial Reporting Standards (**IFRS**) and explained in more detail in the Group's annual reports² for the years 2016 and 2017 are as follows:

	2017	2016	Change in million EUR	Change in %
Net sales (in million EUR)	15,327	15,024	303	2.0%
EBIT* (in million EUR)	2,525	2,481	44	1.8%
EBITDA* (in million EUR)	4,282	4,415	-133	-3.0%
EBITDA pre* (in million EUR)	4,414	4,490	-76	-1.7%
Earnings per share* (in EUR)	5.98	3.75	2.23	59.5%
Earnings per share pre* (in EUR)	6.16	6.21	-0.05	-0.8%
Business free cash flow* (in million EUR)	3,318	3,318	0.0	0.0%
Balance sheet total	35,621	38,258	-2.63	-6.9%
Equity ratio	39.5%	36.7%	-	2.8**
Number of employees	52,941	50,414	-	5.0%

* Indicator not defined by the International Financial Reporting Standards (IFRS) (for details regarding the determination of this indicator, cf. 2016 and 2017 annual reports).

** Change in percentage points

(1) Business activities of the global Healthcare Business Sector

In its Healthcare Business Sector consisting of the three businesses Biopharma, Consumer Health, and Allergopharma, the Group discovers, develops and manufactures prescription medicines used to treat cancer, multiple sclerosis, and infertility. Belén Garijo Lopez is the Executive Board member responsible for the Healthcare Business Sector. In the 2017 financial year, the Global Healthcare Business Sector generated about 46% of the Group sales and about 41% of the EBITDA pre (excluding Corporate costs and Other costs).

(a) Biopharma

In the Biopharma business, the Group discovers, develops, manufactures and markets innovative pharmaceutical and biological prescription drugs to treat cancer, multiple sclerosis (MS), infertility, growth disorders as well as certain cardiovascular and metabolic diseases. Biopharma is the largest business within the Healthcare Business Sector. The development of the Biopharma business was largely shaped by the acquisition of the Swiss company Serono S.A. in 2007. Biopharma is divided into four franchises: Oncology, Neurology & Immunology, Fertility, and General Medicine & Endocrinology.

² If reference is made in this Combined Report to annual reports or financial statements of the Group or of KGaA, these are retrievable on the Internet for visitors outside the United States and Canada at <https://www.merckgroup.com/de/investors/reports-and-financials.html>, and for visitors from the United States and Canada at <https://www.emdgroup.com/en/investors/reports-and-financials.html>.

(b) Consumer Health

Our Consumer Health business focuses on consumer-centric innovation under the umbrellas of several strategic brands such as Neurobion®, Bion3®, Seven Seas®, Nasivin®, Femibion® and Dolo-Neurobion®, as well as Vivera®/Floratil®, Sango-bion®, Vigantoletten®, Apaisyl®, and Kytta®. On September 5, the Group announced to prepare strategic options for the Consumer Health business, including a potential full or partial sale of the business as well as strategic partnerships.

(c) Allergopharma

The Allergopharma portfolio includes a diverse spectrum of approved allergen products that meet high quality standards and offers high-dose, hypoallergenic, standardized products for allergen immunotherapy of pollen and mite allergies. With more than 100 single allergens, the Group provides physicians with the specific tools needed to identify the substances causing an allergy. In addition, Allergopharma provides individual allergen extracts on a named patient basis, which are needed to treat less frequent allergies.

(d) Significant key figures

The key figures of the Group calculated on the basis of the IFRS and explained in more detail in the Group's 2016 and 2017 annual reports for the Healthcare Business Sector are as follows:

	2017	2016	Change in million EUR	Change in %
Net sales (in million EUR)	6,999	6,855	144	2.1%
EBIT* (in million EUR)	1,447	1,593	-146	-9.2%
EBITDA* (in million EUR)	2,155	2,425	-269	-11.1%
EBITDA pre* (in million EUR)	1,949	2,128	-179	-8.4%
Number of employees	19,795	18,823	-	5.2%

* Indicator not defined by the International Financial Reporting Standards (IFRS) (for details regarding the determination of this indicator, cf. 2016 and 2017 annual reports).

(2) Business activities of the global Life Science Business Sector

In its Life Science Business Sector, the Group provides scientists with laboratory materials, technologies and services to make research and biomanufacturing easier, faster and more successful. The Life Science Business Sector comprises the three business areas Research Solutions, Process Solutions, and Applied Solutions. Dr. Udit Batra is the Executive Board member responsible for the Life Science Business Sector. In 2017, the Life Science Business Sector contributed about 38% to Group net sales and about 38% to the EBITDA pre (excluding Corporate costs and Other costs).

(a) Research Solutions

The Research Solutions business unit serves customers focused on identifying and developing new medicines. The Group offers a broad portfolio of more than 200,000 products and services, including molecular platforms, protein and pathway technologies, biochemicals, materials science and cell culture workflow tools.

(b) Process Solutions

The Process Solutions business unit delivers end-to-end products and expertise to customers who take what is developed in labs and manufacture it. The Group offers a diverse range of products to pharmaceutical and biotechnology companies that enables customers to develop large- and small-molecule drugs safely, effectively and cost-efficiently. The 15,000-plus products and services in this business unit include single-use manufacturing, filtration, chromatography and purification, virus reduction, pharma and biopharma raw materials, drug delivery compounds and engineering and validation services. The development of the Process Solutions business area was significantly strengthened by the acquisition of Millipore Corporation and the acquisition of Sigma-Aldrich Corporation.

(c) Applied Solutions

Within the Applied Solutions business unit the Group supports customers in their efforts to ensure that drugs, food and beverages are safe for consumption and provides trusted products and comprehensive workflow solutions that streamline processes, lower costs and deliver consistent, reliable results. The 62,000-plus products and services include analytical separation systems, reference materials, lab water instruments with consumables and services, and microbiology and bio-monitoring testing materials.

(d) Significant key figures

The key figures of the Group calculated on the basis of the IFRS and explained in more detail in the Group's 2016 and 2017 annual reports for the Life Science Business Sector are as follows:

	2017	2016	Change in million EUR	Change in %
Net sales (in million EUR)	5,882	5,658	224	4.0%
EBIT* (in million EUR)	834	556	277	49.8%
EBITDA* (in million EUR)	1,580	1,378	202	14.6%
EBITDA pre* (in million EUR)	1,786	1,652	134	8.1%
Number of employees	19,607	19,178	-	2.2%

* Indicator not defined by the International Financial Reporting Standards (IFRS) (for details regarding the determination of this indicator, cf. 2016 and 2017 annual reports).

(3) Business activities of the global Performance Materials Business Sector

The Group's specialty chemicals business is combined in the Performance Materials business sector. The portfolio includes high-tech chemicals for applications in fields such as consumer electronics, lighting, coatings, printing technology, paints, plastics, and cosmetics. Performance Materials comprises four business units: Display Materials, Integrated Circuit Materials, Pigments & Functional Materials, and Advanced Technologies (on the organizational reorganization of the PM business units in 2018, see section B.I.4.a)(3)(e)). Dr. Kai Beckmann is the Executive Board member responsible for the Performance Materials Business Sector. In the 2017 financial year, the Performance Materials Business Sector accounted for about 16% of the Group net sales and about 21% of the EBITDA pre (excluding Corporate costs and Other costs).

(a) Display Materials

Within the Display Materials business unit the focus is on the liquid crystals business and the associated introduction of new, sophisticated liquid crystal technologies, such as SA-VA self-aligned vertical alignment) and UB-Plus (ultra brightness). Also the development of new applications for liquid crystals was actively promoted in 2017 by opening a production facility for switchable liquid crystal window modules.

(b) Integrated Circuit Materials

The second-largest business unit Integrated Circuit Materials supplies products to manufacture integrated circuits and microelectronic systems, for antireflection coatings, and for the miniaturization of transistor structures. Deposition materials and conductive pastes for semiconductor packaging round off the portfolio. The operating activities of Integrated Circuit Materials were expanded primarily as a result of the acquisition of AZ Electronics Materials SA in 2014.

(c) Pigments & Functional Materials

The Pigments & Functional Materials business unit develops and markets a comprehensive product portfolio of decorative effect pigments and functional materials. Our effect pigments are primarily used in automotive and industrial coatings, plastics, printing applications, cosmetics and some foods, in order to give products a unique luster. Functional materials include laser marking, conductive additives, applications for counterfeit protection as well as high-quality cosmetic active ingredients, for example for use in skin care, as well as sun protection and insect repellants.

(d) Advanced Technologies

Within the Advanced Technologies business unit the Group invests further, particularly in future-oriented research and development in Performance Materials. An example are the materials for organic light-emitting diodes (OLEDs). Apart from the use of OLED materials in displays, the Group continues to target the lighting market. In the field of organic photovoltaics, more and more pilot projects demonstrate the manifold applications of the technology in architecture. In initial construction projects in Europe and Brazil, printed solar foils turn glass façades and canopies into active power generators. In 2017, the Group received the Innovation Award Architecture + Building at the BAU 2017 for the organic photovoltaic modules developed in cooperation with Belectric OPV.

(e) Reorganization of the global Performance Materials Business Sector announced for 2018

After implementing an internal restructuring of the (global) Performance Materials Business Sector announced in December 2017 for 2018, the expertise will in the future be combined into three redesigned business units, organized based on the individual target markets:

(1) Display Solutions: This business unit basically includes the OLED business, which was part of the previous Advanced Technologies business unit until December 31, 2017, and the former Display Materials business unit.

(2) Semiconductor Solutions: This is only a renaming of the Integrated Circuit Materials business unit.

(3) Surface Solutions: This business unit basically includes the main part of the optoelectronics materials business, which until December 31, 2017 was part of the previous Advanced Technologies business unit, and the former Pigments and Functional Materials business unit.

Former Advanced Technologies will presumably be liquidated and, as outlined above, in organizational terms in essence reorganized and integrated into the Display Solutions and Surface Solutions business units. In addition, all activities in the Performance Materials Business Sector relating to research, business development,

and external partnerships are intended to be consolidated in one central research and innovation unit (“*Early Research & Business Development*”).

(f) Significant key figures

The key figures of the Group calculated on the basis of the IFRS and explained in more detail in the Group’s 2016 and 2017 annual reports for the Performance Materials Business Sector are as follows:

	2017	2016	Change in million EUR	Change in %
Net sales (in million EUR)	2,446	2,511	-65	-2.6%
EBIT* (in million EUR)	689	823	-134	-16.3%
EBITDA* (in million EUR)	947	1,077	-130	-12.1%
EBITDA pre* (in million EUR)	980	1,106	-127	-11.4%
Number of employees	5,529	5,469	-	1.1%

* Indicator not defined by the International Financial Reporting Standards (IFRS) (for details regarding the determination of this indicator, cf. 2016 and 2017 annual reports).

b) KGaA and its operational activities in the Operating Units KGaA Healthcare, Life Science, and Performance Materials

KGaA is the parent company and managing holding company of the Group and holds the direct and indirect subsidiaries and affiliated companies in which the Group operates its global business. As the managing holding company of the Group, KGaA ensures, *inter alia*, uniform Group management and operates active portfolio management. Accordingly, the central Group and administrative functions of KGaA (hereinafter **KGaA Group Functions**) are also located in KGaA. These include Group Accounting, Internal Auditing, Group Tax, Group Legal & Compliance, Group Procurement, and Group Human Resources.

At the same time, however, KGaA is still also a research and manufacturing company with operating activities in the Operating Units KGaA Healthcare, Life Science and Performance Materials at the Darmstadt and Gernsheim sites. The organizational area “Site Operations” is also managed within KGaA (**KGaA Site Operations**). KGaA Site Operations includes in particular the central infrastructure facilities of KGaA on the factory premises in Darmstadt and Gernsheim (e.g., wastewater treatment plant, power plants, and factory fire brigade). The land and buildings of KGaA are leased by KGaA to Merck Real Estate GmbH, Darmstadt, Germany, an affiliated company of Merck KGaA, Darmstadt, Germany (**MRE GmbH**) based on a general lease agreement concluded on December 12, 2017. MRE GmbH is a wholly-owned subsidiary of KGaA, which is linked to KGaA by a domination and profit and loss transfer agreement. It leases the real estate and land back to KGaA under separate sector-related subleases and provides certain real estate-related services in this context, such as building maintenance and cleaning. MRE GmbH also bears the risk relating to vacancies. The lease and sector-related leaseback of the land and buildings of KGaA were

implemented upon concluding the respective contracts. In addition, KGaA manages the industrial property rights it holds (such as patents or trademarks), also to the extent that these are used in the global Business Sectors.

At the time at which the Operational Hive-Down Agreement is entered into, the operation of the activities in the Consumer Health business for Merck Consumer Health GmbH, an affiliated company of Merck KGaA, Darmstadt, Germany, will also be – temporarily – managed by KGaA as the lessee. However, in respect of the current transaction considerations as regards the Consumer Health business, these activities are not the subject of the Operational Hive-down.

The key figures of KGaA calculated in accordance with the accounting and measurement principles set forth in the *HGB* are as follows:

	2017	2016	Change in million EUR	Change in %
Net sales (in million EUR)	4,807*	4,465*	342	7.7%
Profits before profit transfers and taxes / Net income (in million EUR)	917	621	296	47.7%
Profit after profit transfers and taxes / Net income (in million EUR)	171	156	15	9.6%
Equity ratio	26.7%	27.7%	-	-1**
Balance sheet total	19,940	19,095	845	4.4%
Number of employees	10,677***	9,988***	-	6.9%

* The net sales of KGaA reported according to HGB are essentially based on business services rendered to affiliated companies.

** Change in percentage points

*** The employee figures shown also include the employees of Merck Schuchardt OHG, Darmstadt, Germany, an affiliated company of Merck KGaA, Darmstadt, Germany.

Also refer to the publicly disclosed 2016 and 2017 annual reports and financial statements of KGaA.

(1) Business activities of the Operating Unit KGaA Healthcare to be hived down

Of the three global businesses of the Healthcare Business Sector (Biopharma, Consumer Health, Allergopharma), only the Biopharma business is operated by KGaA at the Darmstadt site. Products for the Consumer Health business are produced as well. The Biopharma business, to which about 2,700 employees are assigned at the Darmstadt site, researches, develops, and produces prescription drugs. For the business units Oncology and General Medicine & Endocrinology, these drugs are produced and bottled on the works premises of KGaA in Darmstadt. The Oncology business unit comprises the production of prescription medicines to fight cancer. Erbitux (Cetuximab) is the second best-selling drug in the global portfolio of Biopharma and is KGaA's flagship product in Oncology. The General Medicine & Endocrinology business unit includes the production of prescription medicines to combat

cardiovascular, endocrine, diabetes, pain and inflammation. The drugs Concor® and Euthyrox® held within KGaA are high-value brands and market leaders in many key markets around the world.

In addition, research and development activities for the Biopharma business are pursued within KGaA. These too shall be hived down to HC OpCo in full. Thus, HC OpCo will become the largest research and development unit of the Healthcare Business Sector. All disciplines and functions are represented – from the early stages of research to approval. The focus of the Biopharma research and development activities will remain the development of innovative drugs in the field of oncology.

The sales and the number of employees of the Operating Unit KGaA Healthcare determined in accordance with the accounting and measurement principles set forth in the *HGB* are shown in the following table:

	2017	2016	Change in million EUR	Change in %
Net sales (in million EUR)	2,404	2,232	172	7.7%
Number of employees	2,704	2,393	-	12.9%

The balance sheet presentation of the Operating Unit KGaA Healthcare to be hived down results from the following pro forma segment balance sheet as of January 1, 2018, 0:00 hours, which is also attached to the Operational Hive-down Agreement as Annex 3.3 (*Hive-down Balance Sheet Healthcare*):

Hive-down Balance Sheet Healthcare, January 1, 2018, 0:00 hours (in EUR)			
Assets		Equity and Liabilities	
A. Fixed assets		A. Equity	
I. Intangible assets	287,768,662	Equity Hive-down Balance Sheet	356,638,352
II. Tangible Assets	82,895,788		
III. Financial assets	230,081	B. Provisions	
Total fixed assets	370,894,532	1. Provisions for pensions and other post-employment benefits	29,692,103
B. Current assets		2. Other provisions	275,133,220
I. Inventories	203,439,437	Total provisions	304,825,324
II. Receivables and other assets		C. Liabilities	
1. Trade accounts receivable	116,389,693	1. Trade accounts payable	149,151,571
2. Other receivables and other assets	120,443,662	2. Other liabilities	519,491
Total current assets	440,272,792	Total liabilities	149,671,062
C. Prepaid expenses	1,720,250	D. Deferred income	1,752,836
Total assets	812,887,573	Total equity and liabilities	812,887,573

(2) Business activities of the Operating Unit KGaA Life Science to be hived down

The Life Science business of KGaA in Darmstadt has approximately 1,680 employees. Within KGaA, they are primarily responsible for production activities as well as – to some extent globally oriented – activities in the areas of sales and marketing, customer service, product management (pricing, advertising, marketing), R&D, and portfolio management for the three global business areas Research Solutions, Process Solutions, and Applied Solutions. Within the business areas, the functional areas now domiciled in KGaA share responsibility for coordinating the respective global business and monitoring, e.g., the profitability of individual products as well as the overall portfolio and the net sales from customers in individual market countries. In this respect, they also act as coordinator for the supply chain / distribution organization and production within Life Science.

In addition, production activities for all business areas that are specialized in chemical production processes are represented in the Operating Unit KGaA Life Science. Thus, with the production in Darmstadt, KGaA serves only a part of the entire Life Science product portfolio. Of relevance are (i) in the Research Solutions business area, in particular chemicals and equipment for the research and development and quality assur-

ance in the pharmaceutical and biopharmaceutical industry, (ii) in the Applied Solutions business area, analytical separation systems, reference materials and test solutions for microbiology, and (iii) in the Process Solutions business area, pharmaceutical and biopharmaceutical raw materials.

In addition to the activities in the production area as well as for the three global business units, the KGaA site Darmstadt is responsible for the management of the supply chain across business units and areas, quality management, support in regulatory matters, as well as the management of distribution activities at the Darmstadt site across business units and areas and to some extent across Business Sectors (“on behalf of the Performance Materials and Healthcare Business Sectors”).

The sales and the number of employees of the Operating Unit KGaA Life Science determined in accordance with the accounting and measurement principles set forth in the *HGB* are shown in the following table:

	2017	2016	Change in million EUR	Change in %
Net Sales (in million EUR)	777	710	67	9.4%
Number of employees	1,675	1,493	-	12.2%

The balance sheet presentation of the Operating Unit KGaA Life Science to be hived down results from the following pro forma segment balance sheet as of January 1, 2018, 0:00 hours, which is also attached to the Operational Hive-down Agreement as Annex 15.3 (*Hive-down Balance Sheet Life Science*):

Hive-down Balance Sheet Life Science as of January 1, 2018, 0:00 hours (in EUR)			
Assets		Equity and Liabilities	
A. Fixed assets		A. Equity	
I. Intangible assets	2,784,342	Equity Hive-down Balance Sheet	294,416,941
II. Tangible Assets	84,156,919		
Total fixed assets	86,941,261	B. Provisions	
B. Current assets		1. Provisions for pensions and other post-employment benefits	25,424,000
I. Inventories	176,961,303	2. Other provisions	65,598,287
II. Receivables and other assets		Total provisions	91,022,287
1. Trade accounts receivable	57,685,560	C. Liabilities	
2. Other receivables and other assets	106,044,682	1. Trade accounts payable	39,314,670
Total current assets	340,691,544	2. Other liabilities	3,113,638
C. Prepaid expenses	234,730	Total liabilities	42,428,308
Total assets	427,867,535	Total equity and liabilities	427,867,535

(3) Business activities of the Operating Unit KGaA Performance Materials to be hived down

The Performance Materials business of KGaA in Darmstadt has approximately 2,500 employees. The activities within KGaA focus primarily on the business units Display Materials, Integrated Circuit Materials, Pigments & Functional Materials, and Advanced Technologies, on central functions like Strategy and Business Operations, production, quality management, and the support of regulatory matters, as well as on Supply Chain Management (for details regarding the organizational restructuring of the PM business units in 2018 see section B.I.4.a)(3)(e)).

Within the business units, the functional areas represented in KGaA share responsibility for – to some extent global – coordination of sales and marketing, and customer service (this applies in particular to the business units Display Materials, Advanced Technologies, and Pigments & Functional Materials), product management (pricing, advertising, marketing), R&D, and the management of the product portfolio in the various customer segments, as well as in local and global markets. Furthermore, the functions within KGaA within the Operating Unit KGaA Performance Materials

coordinate the interface to intra-group and external customers (in particular in Darmstadt and Gernsheim).

The production activities of the Operating Unit KGaA Performance Materials are concentrated in the business units Display Materials, Advanced Technologies, and Pigments & Functional Materials. The focus of the production activity for the Display Materials business is on the liquid crystals segment. As for the Advanced Technologies business unit, the focus is on end products of OLED production. Pigment production for the Pigments & Functional Materials business unit takes place at the Gernsheim site. At both locations, preliminary and end products are produced for the Life Science Business Sector.

The activities of KGaA in Darmstadt and Gernsheim in the Operating Unit KGaA Performance Materials include the area of Supply Chain Management, where the local and global control and planning of (customer) orders, inventories, material flows, warehousing, and production in the Operating Unit KGaA Performance Materials takes place. The employees in the Operating Unit KGaA Performance Materials ensure the availability of goods for incoming customer orders of KGaA. They also cover sales planning, network planning, and production planning for the Operating Unit KGaA Performance Materials' own manufacturing operations, as well as external subcontractors (contract manufacturers) at international or global level. The supply chain translates the needs of the Business Sectors' customers into production plans for the production plants in Darmstadt and Gernsheim or into procurement plans at contract manufacturers, and plans the distribution of the goods from the distribution center. In addition, this unit is responsible for logistics in Gernsheim: The task of logistics in Gernsheim comprises, in respect of raw and packaging materials, technical materials and finished products, the functions of incoming goods, storage, internal distribution on the plant premises (including, besides production materials, also mail), distribution, central shipment, and transport management. The logistics services in Darmstadt related to the Operating Unit KGaA Performance Materials are rendered by Life Science.

The sales and the number of employees of the Operating Unit KGaA Performance Materials determined in accordance with the accounting and measurement principles set forth in the *HGB* are shown in the following table:

	2017	2016	Change in million EUR	Change in %
Net Sales (in million EUR)	1,399	1,407	-8	-0.6%
Number of employees	2,498	2,463	-	1.4%

The balance sheet presentation of the Operating Unit KGaA Performance Materials to be hived down results from the following pro forma segment balance sheet as of January 1, 2018, 0:00 hours, which is also attached to the Operational Hive-down Agreement as Annex 27.3 (*Hive-down Balance Sheet Performance Materials*):

Hive-down Balance Sheet Performance Materials, January 1, 2018, 0:00 hours (in EUR)			
Assets		Equity and Liabilities	
<i>A. Fixed assets</i>		<i>A. Equity</i>	
I. Intangible assets	7,350,878	Equity Hive-down Balance Sheet	374,294,652
II. Tangible Assets	184,304,365		
III. Financial assets	128,113		
Total fixed assets	191,783,356	<i>B. Provisions</i>	
<i>B. Current assets</i>		1. Provisions for pensions and other post-employment benefits	34,629,033
I. Inventories	283,264,913	2. Other provisions	142,431,338
II. Receivables and other assets		Total provisions	177,060,371
1. Trade accounts receivable	8,256,393	<i>C. Liabilities</i>	
2. Other receivables and other assets	102,869,745	1. Trade accounts payable	33,829,167
Total current assets	394,391,051	2. Other liabilities	376,717
		Total liabilities	34,205,884
Total assets	586,174,407	<i>D. Deferred income</i>	613,500
		Total equity and liabilities	586,174,407

5. Important subsidiaries of KGaA

A list of shareholdings drawn up on the basis of the companies and shareholdings in legal entities listed in the notes to the consolidated financial statements of the KGaA (Sec. 313 (2) HGB) is attached to this report as **Annex 1**. In particular, the following companies are essential operating (indirect) subsidiaries of Merck KGaA, Darmstadt, Germany (and at the same time affiliated companies of Merck KGaA, Darmstadt, Germany):

EMD Millipore Corporation, United States; EMD Serono, Inc., United States; Merck Serono Co., Ltd., China; Merck SA, Brazil; Merck Serono S.A.S., France; Sigma-Aldrich, Inc., United States; Merck Ltd., Japan; Millipore S.A.S., France; Merck Chemicals, (Shanghai) Co., Ltd., China; Sigma-Aldrich Chemie GmbH, Germany; Merck Performance Materials Ltd., Taiwan; Merck Display Materials (Shanghai) Co., Ltd., China; and Merck Performance Materials Ltd., Japan.

The subsidiaries of KGaA are not part of the Operational Hive-down, and only a few selected investments will be transferred in the course of the Operational Hive-down.

6. Employees and co-determination

As of December 31, 2017, KGaA had around 10,570 employees at its headquarters in Darmstadt and its neighboring plant in Gernsheim, Germany, where primarily pigments are produced. At the end of 2017, over 50,000 employees worldwide worked in the Group.

The Supervisory Board of KGaA is composed in accordance with the provisions of the German Co-Determination Act (*Mitbestimmungsgesetz*) and consists of 16 members, namely eight shareholder and eight employee representatives (cf. above in section B.I.3.a)(2)).

As of December 31, 2017, KGaA employed approximately 2,700 employees in the Operating Unit KGaA Healthcare. A total of about 19,800 employees were working in the global Healthcare Business Sector as of that reporting date.

As of December 31, 2017, KGaA employed about 1,680 employees in the Operating Unit KGaA Life Science. A total of 19,610 employees were working in the global Life Science Business Sector as of that reporting date.

As of December 31, 2017, KGaA employed about 2,500 employees in the Operating Unit KGaA Performance Materials. A total of about 5,530 employees were working in the global Performance Materials Business Sector as of that reporting date.

KGaA has a works council constituted on the basis of a collective bargaining agreement on works structure (*Collective Bargaining Agreement On Works Structure*) that is responsible for the Darmstadt and Gernsheim locations (*Joint Operation Darmstadt/Gernsheim*) (hereinafter referred to as *Works Council Of Joint Works*). Furthermore, KGaA has formed an economic committee, a youth and apprentices council, a representative body for severely disabled persons, and a committee representing the executive employees. In addition, a group works council (*Konzernbetriebsrat*) has been formed at Group level. At European level, there is the so-called Euroforum.

II. The OpCos

1. HC OpCo

HC OpCo was incorporated as a shelf company on December 19, 2016 under the company name Merck 23. Allgemeine Beteiligungs-GmbH, Darmstadt, Germany, an affiliated company of Merck KGaA, Darmstadt, Germany. In view of the preparation of the Operational Hive-down, the articles of association of HC OpCo were revised by a notarized shareholders' resolution dated December 4, 2017, in particular by changing the company name and the purpose of the company. Since registration of the

amendment to the articles of association, the company has been operating under “Merck Healthcare Germany GmbH” (registered office: Darmstadt, Germany), an affiliated company of Merck KGaA, Darmstadt, Germany. HC OpCo has its registered office in Darmstadt and is registered in the Commercial Register of the Darmstadt Local Court under HRB 96240. The purpose of HC OpCo, in accordance with Article 2 of the revised articles of association dated December 4, 2017, is the production as well as the sales and marketing of chemical and biotechnical medicinal products, and all related business transactions. HC OpCo may undertake all transactions and actions that are deemed expedient for serving the Company’s purpose. It may, in particular, provide services, acquire, manage and dispose of real estate, set up, acquire, and invest in other companies, and direct such companies or restrict itself to administering the investment. HC OpCo is also authorized to conduct its business through subsidiaries, holding companies, and joint ventures. It may hive down all or part of its operations to affiliated companies, or transfer or lease them to affiliated companies. The financial year of HC OpCo is the calendar year.

A domination and profit and loss transfer agreement exists between KGaA and HC OpCo with KGaA as the controlling company and HC OpCo as the controlled company, which was approved by the shareholders’ meeting of HC OpCo on February 21, 2017 and the Annual General Meeting of KGaA on April 28, 2017; it became effective on August 24, 2017 upon registration in the Commercial Register of HC OpCo. Based on this domination and profit and loss transfer agreement, HC OpCo – from an income tax perspective – is a controlled company of KGaA for corporation and trade tax purposes (Sec. 14 *KStG*, Sec. 2 (2) German Trade Tax Act – *GewStG*), and thus part of the fiscal unit of KGaA for income tax purposes. Due to the domination and profit and loss transfer agreement, HC OpCo will in the future also be part of the fiscal unit of KGaA for sales tax purposes (Sec. 2 (2) German Value Added Tax Act (*Umsatzsteuergesetz* - *UStG*)).

Pursuant to Article 7 (1) s. 1 of the articles of association, the management of HC OpCo consists of one or more managing directors. Currently, the management of HC OpCo consists of two managing directors,

- Dr. André Overmeyer and
- Dr. Tina Sandmann.

If several managing directors are appointed, HC OpCo is represented jointly by two managing directors or one managing director together with an officer of the company with general commercial power of attorney in accordance with Article 7 (1) s. 2 of the articles of association. If only one managing director has been appointed, this managing director has the power to solely represent HC OpCo in accordance with Article 7 (1) s. 3 of the articles of association. Pursuant to Article 7 (2) of the articles of association, one or more managing directors may be granted power of sole representation by resolution of the shareholders of HC OpCo. In addition, pursuant to Article 7 (3) of the articles of association, the shareholders may discharge one or more managing di-

rectors from the restrictions of Sec. 181 of the German Civil Code (*Bürgerliches Gesetzbuch - BGB*) by a shareholders' resolution. By way of a shareholders' resolution dated December 4, 2017, KGaA, as the sole shareholder of HC OpCo, discharged Dr. André Overmeyer and Dr. Tina Sandmann from the restrictions of Sec. 181 *BGB*.

So far, HC OpCo has not yet started operations. HC OpCo also holds no equity interests. Upon the Operational Hive-down becoming effective, the assets and liabilities of the Operating Unit KGaA Healthcare are transferred to HC OpCo. HC OpCo shall lease the operations of the hived-down Operating Unit KGaA Healthcare back to KGaA until the introduction of the ERP system for HC OpCo (planned for Q1 2019). The specifics of this Business Lease are outlined in more detail in section E.II.3. After the termination of the Business Lease, HC OpCo will continue the divested business activities of KGaA related to the Operating Unit KGaA Healthcare in its own name and for its own account.

The share capital of HC OpCo amounts to 25,000 Euros at the time of issuance of this report. It is divided into one share in the nominal amount of 25,000 Euros, which is held by KGaA as the sole shareholder.

In order to carry out the Operational Hive-down, the share capital of HC OpCo will be increased by 975,000 Euros to a total of 1,000,000 Euros. The new share in the nominal amount of 975,000 Euros will be granted to KGaA as consideration for the assets and liabilities transferred to HC OpCo.

HC OpCo does not have any employees at the time of issuance of this report. Accordingly, HC OpCo currently has no works or corporate co-determination.

2. LS OpCo

LS OpCo was incorporated as a shelf company on December 8, 2014 under the company name Merck 19. Allgemeine Beteiligungs-GmbH, Darmstadt, Germany, an affiliated company of Merck KGaA, Darmstadt, Germany. With regard to the preparation of the Operational Hive-down, the articles of association of LS OpCo were revised by a notarized shareholders' resolution dated December 4, 2017, in particular by changing the company name and the purpose of the company. Since registration of the amendment to the articles of association, the company has been operating under "Merck Life Science Germany GmbH" (registered office: Darmstadt, Germany), an affiliated company of Merck KGaA, Darmstadt, Germany. LS OpCo has its registered office in Darmstadt and is registered in the Commercial Register of the Darmstadt Local Court under HRB 93771. The purpose of LS OpCo in accordance with Article 2 of the revised articles of association dated December 4, 2017 is the production, sales and marketing, and trade of products and services for the life science industry, in particular reagents, diagnostics and equipment for research, development and analytics, as well as raw materials and products for the pharmaceutical and biopharmaceutical industries, as well as the development, acquisition and exploitation of chemical, biological and mechanical processes and facilities and all related business transactions.

LS OpCo may undertake all transactions and actions that are deemed expedient for serving the Company's purpose. It may, in particular, provide services, acquire, manage and dispose of real estate, set up, acquire, and invest in other companies, and direct such companies or restrict itself to administering the investment. The Company is also authorized to conduct its business via subsidiaries, holding companies, and joint ventures. It may hive down all or part of its operations to affiliated companies, or transfer or lease them to affiliated companies. The financial year of LS OpCo is the calendar year.

A domination and profit and loss transfer agreement exists between KGaA and LS OpCo with KGaA as the controlling company and LS OpCo as the controlled company, which was approved by the shareholders' meeting of LS OpCo on February 23, 2015 and the Annual General Meeting of KGaA on April 17, 2015; it became effective on July 20, 2015 upon registration in the Commercial Register of LS OpCo. Based on this domination and profit and loss transfer agreement, LS OpCo – from an income tax perspective – is a controlled company of KGaA for corporation and trade tax purposes (Sec. 14 *KStG*, Sec. 2 (2) *GewStG*), and thus part of the fiscal unit of KGaA for income tax purposes. Due to the domination and profit and loss transfer agreement, LS OpCo will in the future also be part of the fiscal unit of KGaA for sales tax purposes (Sec. 2 (2) *UStG*).

Pursuant to Article 7 (1) s. 1 of the articles of association, the management of LS OpCo consists of one or more managing directors. Currently, the management of LS OpCo consists of two managing directors,

- Dr. Robert Nass and
- Mr. Stephan Lahrkamp.

If several managing directors are appointed, LS OpCo is represented jointly by two managing directors or one managing director together with an officer of the company with general commercial power of attorney in accordance with Article 7 (1) s. 2 of the articles of association. If only one managing director has been appointed, this managing director has the power to solely represent LS OpCo in accordance with Article 7 (1) s. 3 of the articles of association. Pursuant to Article 7 (2) of the articles of association, one or more managing directors may be granted power of sole representation by resolution of the shareholders of LS OpCo. In addition, pursuant to Article 7 (3) of the articles of association, the shareholders may discharge one or more managing directors from the restrictions of Sec. 181 *BGB* by way of shareholders' resolution. By way of shareholders' resolution dated December 4, 2017, KGaA, as the sole shareholder of LS OpCo, discharged Dr. Robert Nass and Mr. Stephan Lahrkamp from the restrictions of Sec. 181 *BGB*.

So far, LS OpCo has not yet started operations. LS OpCo also holds no equity interests. Upon the Operational Hive-down becoming effective, the assets and liabilities of the Operating Unit KGaA Life Science are transferred to LS OpCo. LS OpCo shall lease the operations of the hived-down Operating Unit KGaA Life Science back to

KGaA until the introduction of the ERP system for LS OpCo (planned during 2020). The specifics of this Business Lease are outlined in more detail in section E.III.3. After the termination of the Business Lease, LS OpCo will continue the divested business activities of KGaA related to the Operating Unit KGaA Life Science in its own name and for its own account.

The share capital of LS OpCo amounts to 25,000 Euros at the time of the issuance of this report. It is divided into one share in the nominal amount of 25,000 Euros, which is held by KGaA as the sole shareholder.

In order to carry out the Operational Hive-down, the share capital of LS OpCo will be increased by 975,000 Euros to a total of 1,000,000 Euros. The new share in the nominal amount of 975,000 Euros will be granted to KGaA as consideration for the assets and liabilities transferred to LS OpCo.

LS OpCo does not have any employees at the time of the issuance of this report. Accordingly, LS OpCo currently has no works or corporate co-determination.

3. PM OpCo

PM OpCo was incorporated as a shelf company on December 8, 2014 under the company name Merck 18. Allgemeine Beteiligungs-GmbH, Darmstadt, Germany, an affiliated company of Merck KGaA, Darmstadt, Germany. With regard to the preparation of the Operational Hive-down, the articles of association of PM OpCo were revised by a notarized shareholders' resolution dated December 4, 2017, in particular by changing the company name and the purpose of the company. Since registration of the amendment to the articles of association, the company has been operating under "Merck Performance Materials Germany GmbH" (registered office: Darmstadt, Germany), an affiliated company of Merck KGaA, Darmstadt, Germany. PM OpCo has its registered office in Darmstadt and is registered in the Commercial Register of the Darmstadt Local Court under HRB 93768. The purpose of PM OpCo, in accordance with Article 2 of the revised articles of association dated December 4, 2017, is the production, sales and marketing of chemical and biotechnical products, in particular specialty chemicals, industrial chemicals, basic pharmaceutical substances, pigments, cosmetic substances and functional materials as well as the preparation, acquisition, and sale of chemicals, and the exploitation of chemical processes and facilities, as well as all related business transactions. PM OpCo may undertake all transactions and actions that are deemed expedient for serving the Company's purpose. It may, in particular, provide services, acquire, manage and dispose of real estate, set up, acquire, and invest in other companies, and direct such companies or restrict itself to administering the investment. PM OpCo is also authorized to conduct its business through subsidiaries, holding companies, and joint ventures. It may hive down all or part of its operations to affiliated companies, or transfer or lease them to affiliated companies. The financial year of PM OpCo is the calendar year.

A domination and profit and loss transfer exists agreement between KGaA and PM OpCo with KGaA as the controlling company and PM OpCo as the controlled company, which was approved by the shareholders' meeting of PM OpCo on February 23, 2015 and the Annual General Meeting of KGaA on April 17, 2015; it became effective on July 25, 2015 upon registration in the Commercial Register of PM OpCo. Based on this domination and profit and loss transfer agreement, PM OpCo – from an income tax perspective – is a controlled company of KGaA for corporation and trade tax purposes (Sec. 14 *KStG*, Sec. 2 (2) *GewStG*), and thus part of the fiscal unit of KGaA for income tax purposes. Due to the domination and profit and loss agreement, PM OpCo will in the future also be part of the fiscal unit of KGaA for sales tax purposes (Sec. 2 (2) *UStG*).

Pursuant to Article 7 (1) s. 1 of the articles of association, the management of PM OpCo consists of one or more managing directors. Currently, the management of PM OpCo consists of two managing directors,

- Dr. Andreas Kruse and
- Ms. Anke Steffen.

If several managing directors are appointed, PM OpCo is represented jointly by two managing directors or one managing director together with an officer of the company with general commercial power of attorney in accordance with Article 7 (1) s. 2 of the articles of association. If only one managing director has been appointed, this managing director has the power to solely represent PM OpCo in accordance with Article 7 (1) s. 3 of the articles of association. Pursuant to Article 7 (2) of the articles of association, one or more managing directors may be granted power of sole representation by way of resolution of the shareholders of PM OpCo. In addition, pursuant to Article 7 (3) of the articles of association, the shareholders may discharge one or more managing directors from the restrictions of Sec. 181 *BGB* by way of shareholders' resolution. By way of shareholders' resolution dated December 4, 2017, KGaA, as the sole shareholder of PM OpCo, discharged Dr. Andreas Kruse and Ms. Anke Steffen from the restrictions of Sec. 181 *BGB*.

So far, PM OpCo has not yet started operations. PM OpCo also holds no equity interests. Upon the Operational Hive-down becoming effective, the assets and liabilities of the Operating Unit KGaA Performance Materials operated within KGaA are transferred to PM OpCo. PM OpCo shall lease the operations of the hived-down Operating Unit KGaA Performance Materials back to KGaA until the introduction of the ERP system for PM OpCo (planned during 2020). The specifics of this Business Lease are outlined in more detail in section E.IV. After the termination of the Business Lease, PM OpCo will continue the divested business activities of KGaA related to the Operating Unit KGaA Performance Materials in its own name and for its own account.

The share capital of PM OpCo amounts to 25,000 Euros at the time of the issuance of this report. It is divided into one share in the nominal amount of 25,000 Euros, which is held by KGaA as the sole shareholder.

In order to carry out the Operational Hive-down, the share capital of PM OpCo will be increased by 975,000 Euros to a total of 1,000,000 Euros. The new share in the nominal amount of 975,000 Euros will be granted to KGaA as consideration for the assets and liabilities transferred to PM OpCo.

PM OpCo does not have any employees at the time of the issuance of this report. Accordingly, PM OpCo currently has no works or corporate co-determination.

III. The HoldCos

1. HC HoldCo

HC HoldCo was incorporated on July 31, 2017 under the company name Merck 35. Allgemeine Beteiligungs-GmbH, Darmstadt, Germany, an affiliated company of Merck KGaA, Darmstadt, Germany. With regard to the preparation of the Holding Hive-down, the articles of association of HC HoldCo have been revised by notarized shareholders' resolution dated December 4, 2017, in particular by changing the company name and the purpose of the company. Since registration of the amendment to the articles of association, the company has been operating under "Merck Healthcare Holding GmbH" (registered office: Darmstadt, Germany), an affiliated company of Merck KGaA, Darmstadt, Germany. HC HoldCo has its registered office in Darmstadt and is registered in the Commercial Register of the Darmstadt Local Court under HRB 97141. The purpose of HC HoldCo, in accordance with Article 2 of the newly drafted articles of association dated December 4, 2017, is the acquisition, holding, management and disposal of all types of investments in the production sector, and the sales and marketing of chemical and biotechnical medicinal products, as well as all related business transactions. HC HoldCo may undertake all transactions and actions that are deemed expedient for serving the Company's purpose. It may, in particular, set up, acquire and invest in other companies and direct such companies or restrict itself to managing the investment. The Company is also authorized to conduct its business via subsidiaries, holding companies, and joint ventures. The financial year of HC HoldCo is the calendar year.

Pursuant to Article 7 (1) s. 1 of the articles of association, the management of HC HoldCo consists of one or more managing directors. Currently, the management of HC HoldCo consists of two managing directors,

- Dr. Friederike Rotsch and
- Mr. Stephan Lahrkamp.

If several managing directors are appointed, HC HoldCo is represented jointly by two managing directors or one managing director together with an officer of the company with general commercial power of attorney in accordance with Article 7 (1) s. 2 of the articles of association. If only one managing director has been appointed, this managing director has the power to solely represent HC HoldCo in accordance with Article 7 (1) s. 3 of the articles of association. Pursuant to Article 7 (2) of the articles of asso-

ciation, one or more managing directors may be granted power of sole representation by way of resolution of the shareholders of HC HoldCo. In addition, pursuant to Article 7 (3) of the articles of association, the shareholders may discharge one or more managing directors from the restrictions of Sec. 181 *BGB* by way of shareholders' resolution. By way of shareholders' resolution dated December 4, 2017, KGaA, as the sole shareholder of HC HoldCo, discharged Dr. Friederike Rotsch and Mr. Stephan Lahrkamp from the restrictions of Sec. 181 *BGB*.

So far, HC HoldCo has not yet started operations. HC HoldCo also holds no equity interests. Upon the Holding Hive-down becoming effective, the shares held by KGaA in HC OpCo will be transferred to HC HoldCo.

The share capital of HC HoldCo amounts to 25,000 Euros at the time of the issuance of this report. It is divided into one share in the nominal amount of 25,000 Euros, which is held by KGaA as the sole shareholder. No domination and/or profit and loss transfer agreement exists with either KGaA or HC OpCo.

In order to carry out the Holding Hive-down, the share capital of HC HoldCo will be increased by 1,000 Euros to a total of 26,000 Euros. The new share in the nominal amount of 1,000 Euros will be granted to KGaA as consideration for the investment of KGaA in HC OpCo hived down to HC HoldCo.

HC HoldCo does not have any employees at the time of the issuance of this report. Accordingly, HC HoldCo currently has no works or corporate co-determination.

2. LS HoldCo

LS HoldCo was incorporated on July 31, 2017 under the company name Merck 34. Allgemeine Beteiligungs-GmbH, Darmstadt, Germany, an affiliated company of Merck KGaA, Darmstadt, Germany. With regard to the preparation of the Holding Hive-down, the articles of association of LS HoldCo have been revised by notarized shareholders' resolution dated December 4, 2017, in particular by changing the company name and the purpose of the company. Since registration of the amendment to the articles of association, the company has been operating under "Merck Life Science Holding GmbH" (registered office: Darmstadt, Germany), an affiliated company of Merck KGaA, Darmstadt, Germany. LS HoldCo has its registered office in Darmstadt and is registered in the Commercial Register of the Darmstadt Local Court under HRB 97051. The purpose of LS HoldCo, in accordance with Article 2 of revised articles of association dated December 4, 2017, is the acquisition, holding, management and disposal of all types of investments in the production, sales and marketing, and trade of products and services for the life science industry, in particular reagents, diagnostics and equipment for research, development and analytics, as well as raw materials and products for the pharmaceutical and biopharmaceutical industries, as well as the development, acquisition and exploitation of chemical, biological and mechanical processes and facilities, and all related business transactions. LS HoldCo may undertake all transactions and actions that are deemed expedient for serving the Compa-

ny's purpose. It may, in particular, set up, acquire and invest in other companies and direct such companies or restrict itself to managing the investment. The Company is also authorized to conduct its business via subsidiaries, holding companies, and joint ventures. The financial year of LS HoldCo is the calendar year.

Pursuant to Article 7 (1) s. 1 of the articles of association, the management of LS HoldCo consists of one or more managing directors. Currently, the management of LS HoldCo consists of two managing directors,

- Dr. Friederike Rotsch and
- Mr. Stephan Lahrkamp.

If several managing directors are appointed, LS HoldCo is represented jointly by two managing directors or one managing director together with an officer of the company with general commercial power of attorney in accordance with Article 7 (1) s. 2 of the articles of association. If only one managing director has been appointed, this managing director has the power to solely represent LS HoldCo in accordance with Article 7 (1) s. 3 of the articles of association. Pursuant to Article 7 (2) of the articles of association, one or more managing directors may be granted power of sole representation by way of resolution of the shareholders of LS HoldCo. In addition, pursuant to Article 7 (3) of the articles of association, the shareholders may discharge one or more managing directors from the restrictions of Sec. 181 *BGB* by way of shareholders' resolution. By way of shareholders' resolution dated December 4, 2017, KGaA, as the sole shareholder of LS HoldCo, discharged Dr. Friederike Rotsch and Mr. Stephan Lahrkamp from the restrictions of Sec. 181 *BGB*.

So far, LS HoldCo has not yet started operations. LS HoldCo also holds no equity interests. Upon the Holding Hive-down becoming effective, the shares held by KGaA in LS OpCo will be transferred to LS HoldCo.

The share capital of LS HoldCo amounts to 25,000 Euros at the time of the issuance of this report. It is divided into one share in the nominal amount of 25,000 Euros, which is held by KGaA as the sole shareholder. No domination and/or profit and loss transfer agreement exists with either KGaA or LS OpCo.

In order to carry out the Holding Hive-down, the share capital of LS HoldCo will be increased by 1,000 Euros to a total of 26,000 Euros. The new share in the nominal amount of 1,000 Euros will be granted to KGaA as consideration for the investment in LS OpCo hived down to LS HoldCo.

LS HoldCo does not have any employees at the time of the issuance of this report. Accordingly, LS HoldCo currently has no works or corporate co-determination.

3. PM HoldCo

PM HoldCo was incorporated on July 31, 2017 under the company name Merck 33. Allgemeine Beteiligungs-GmbH, Darmstadt, Germany, an affiliated company of

Merck KGaA, Darmstadt, Germany. With regard to the preparation of the Holding Hive-down, the articles of association of PM HoldCo have been revised by notarized shareholders' resolution dated December 4, 2017, in particular by changing the company name and the purpose of the company. Since registration of the amendment to the articles of association, the company has been operating under "Merck Performance Materials Holding GmbH" (registered office: Darmstadt, Germany), an affiliated company of Merck KGaA, Darmstadt, Germany. PM HoldCo has its registered office in Darmstadt and is registered in the Commercial Register of the Darmstadt Local Court under HRB 97192. The purpose of HC HoldCo, in accordance with Article 2 of the revised articles of association dated December 4, 2017, is the acquisition, holding, management and disposal of all types of investments in the production sector, and the sales and marketing of chemical and biotechnical medicinal products, in particular specialty chemicals, industrial chemicals, basic pharmaceutical substances, pigments, cosmetic substances and functional materials, the provision of services and the preparation, acquisition and exploitation of chemical processes and equipment, as well as all related business transactions. PM HoldCo may undertake all transactions and actions that are deemed expedient for serving the Company's purpose. It may, in particular, set up, acquire and invest in other companies and direct such companies or restrict itself to managing the investment. The Company is also authorized to conduct its business via subsidiaries, holding companies, and joint ventures. The financial year of PM HoldCo is the calendar year.

Pursuant to Article 7 (1) s. 1 of the articles of association, the management of PM HoldCo consists of one or more managing directors. Currently, the management of PM HoldCo consists of two managing directors,

- Dr. Friederike Rotsch and
- Mr. Stephan Lahrkamp.

If several managing directors are appointed, PM HoldCo is represented jointly by two managing directors or one managing director together with an officer of the company with general commercial power of attorney in accordance with Article 7 (1) s. 2 of the articles of association. If only one managing director has been appointed, this managing director has the power to solely represent PM HoldCo in accordance with Article 7 (1) s. 3 of the articles of association. Pursuant to Article 7 (2) of the articles of association, one or more managing directors may be granted power of sole representation by way of resolution of the shareholders of PM HoldCo. In addition, pursuant to Article 7 (3) of the articles of association, the shareholders may discharge one or more managing directors from the restrictions of Sec. 181 *BGB* by way of shareholders' resolution. By way of shareholders' resolution dated December 4, 2017, KGaA, as the sole shareholder of PM HoldCo, discharged Dr. Friederike Rotsch and Mr. Stephan Lahrkamp from the restrictions of section 181 *BGB*.

So far, PM HoldCo has not yet started operations. PM HoldCo also holds no equity interests. Upon the Holding Hive-down becoming effective, the shares held by KGaA in PM OpCo will be transferred to PM HoldCo.

The share capital of PM HoldCo amounts to 25,000 Euros at the time of the issuance of this report. It is divided into one share in the nominal amount of 25,000 Euros, which is held by KGaA as the sole shareholder. No domination and/or profit and loss transfer agreement exists with either KGaA or PM OpCo.

In order to carry out the Holding Hive-down, the share capital of PM HoldCo will be increased by 1,000 Euros to a total of 26,000 Euros. The new share in the nominal amount of 1,000 Euros will be granted to KGaA as consideration for the investment of KGaA in PM OpCo hived down to PM HoldCo.

PM HoldCo does not have any employees at the time of the issuance of this report. Accordingly, PM HoldCo currently has no works or corporate co-determination.

C. Hive-down of the Operating Units KGaA Healthcare, Life Science, and Performance Materials to the OpCos

I. Participating entities

1. KGaA as the Transferring Entity

In the Operational Hive-down, KGaA acts as the Transferring Entity. With regard to the presentation of KGaA, reference is made to the above statements in section B.I.

2. The OpCos as the acquiring entities

The OpCos shall be the acquiring entities under the Operational Hive-down. KGaA transfers

- the Operating Unit KGaA Healthcare to HC OpCo;
- the Operating Unit KGaA Life Science to LS OpCo;
- the Operating Unit KGaA Performance Materials PM OpCo.

With regard to the description of the OpCos, reference is made to the above explanations in section B.II.

II. Economic rationale for and explanation of the Operational Hive-down

1. Background and business objectives of the Operational Hive-down

The business considerations underlying the transaction as a whole have already been explained in section A.III, and reference is made to these statements. The Operational Hive-down is an integral part of the transaction. It is being used to legally separate the operational business of the Business Sectors currently operated within KGaA into separate entities.

a) More efficient ERP implementation and better integration of the Operating Units of KGaA into the Group's global Business Sectors

As shown, the management of KGaA plans a gradual implementation of the new business sector-specific ERP systems that is expected in the course of 2020. The objective is to integrate the German business activities of KGaA into the ERP systems of the Group's global Business Sectors. Since the global Business Sectors operate on different markets with distinct business models and products, their differing business processes also result in varying requirements regarding the ERP systems. The separation into three business sector-specific legal units signifies a modernization, harmonization, and streamlining of the "ERP landscape" for the global Healthcare, Life Science, and Performance Materials Business Sectors. With the new business sector-specific ERP systems, business management and handling in the individual Business Sectors can be made more efficient and flexible. The Operational Hive-down of the operational business activities of KGaA at the Darmstadt and Gernsheim sites therefore supports the introduction of the global ERP systems for the German business transactions of KGaA and facilitates the integration of the German business activities into the global ERP system of the respective Business Sector. KGaA is currently organized as an "operational parent group" (*Stammhauskonzern*): KGaA's operational activities in the three Business Sectors Healthcare, Life Science, and Performance Materials are operated directly in one legal entity with multiple nexuses within this entity. Running all three operations within KGaA limits the scope for required (Business Sector-related) adjustments in the existing ERP system, since such adjustments must be aligned with the (potentially very different) requirements of the three operations. This substantially increases the complexity of adjustment measures.

Given the upcoming introduction of new, business sector-specific ERP systems, the separation of KGaA's operational business activities of the Business Sectors into separate entities has considerable benefits: Since the business activities of the Operating Units KGaA Healthcare, Life Science, and Performance Materials are clearly attributed to separate entities, from a German commercial law perspective, neither cross-sector data administration and mapping of processes nor the consolidation of company codes is necessary. Without the establishment of separate, business sector-specific entities, a scenario with three ERP systems would require a large number of adjustment, standardization, and consolidation steps at the level of KGaA, for example in the elimination of business transactions between (not legally independent) operating units or the consolidation and standardization of all data necessary for the compilation of the financial statements and the management report of KGaA under German commercial law as well as for tax purposes. A solution with three different ERP systems in one entity would therefore significantly increase the complexity with respect to the requirements of financial reporting according to the German Commercial Code (*Handelsgesetzbuch - HGB*) and entail considerable implementation risks. Successful automated consolidation from different source systems within one entity has until now – to the extent that it has been identified as comparable in the first place – not been observed on the market. Moreover, the implementation costs of a "three-in-one" solution

are only slightly lower than a separation solution, so that the resulting risks and uncertainties would not be offset by significant cost savings.

Even in the continued operation and administration, the use of only one ERP system per legal entity is beneficial since complex interfaces to the planning systems of the other Business Sectors and consolidation instances are not required. Above all, however, when adapting the ERP systems to (changed) requirements of the business, the legal separation into different entities provides significantly greater flexibility. In a “one-size-fits-all” solution within KGaA, adjustments to the business-specific ERP systems would also have to be “translated” to the consolidation instance, which would be more time-consuming and trigger the risk of becoming a new, highly complex overall system that is difficult to administer. This risk is eliminated by operating business sector-specific ERP systems in separate legal entities.

The clear allocation of the company resources of the respective Operating Unit to individual companies (entities) also leads to increased transparency in terms of costs and offsetting of services between the Operating Units, which, in the future, will be based on defined intercompany agreements. The increased transparency in the mapping of the processes will, in the future, enable even more targeted business management, both within the respective entity as well as with regard to the global Business Sectors.

b) Aligning the German business with the structural principles in effect within the Group consistent with the existing growth and innovation strategy

Where possible (i.e., subject to conflicting legal or economic considerations), within the Group, a principle is applied to establish business sector-specific local legal entities (see above section A.III.2). All subsidiaries are predominantly held via either German or other holding companies. With this structure principle, the Group supports the business sector-specific ERP strategy and the general principle of having one ERP system per legal entity wherever possible (see above A.III.1). In addition, this principle aims, already today, at strengthening the Business Sectors’ adaptability to market changes and the continued strategic development of operational business.

As a result of the Operational Hive-down, the structural principles of the Group and the underlying growth and innovation strategy are also being implemented in the German corporate structure: Thus, KGaA is in essence transforming from a research and manufacturing company into a pure managing holding company, also as regards its operational activities in the Operating Units KGaA Healthcare, Life Science, and Performance Materials.

Separating the business activities of the three global Business Sectors operated in KGaA into subsidiaries not only facilitates the management of the German business activities within the respective Business Sectors in this regard (cf. section C.II.1.a) above), but also supports the Group’s ability to respond quickly and flexibly to strategic development options that arise.

Both acquisitions and strategic partnerships of the Group are predominantly “mono-sectoral” today, i.e., they essentially concern only one Business Sector. Thus, they can be realized with more flexibility from mono-sectoral companies than in the previous “parent company structure,” where the operational activities and related assets and liabilities of KGaA as relates to all three Business Sectors and the central Group and management functions are intertwined within one single entity.

Overall, the Group is strengthening its ability to respond quickly and flexibly to strategic options that arise. Above all, the “mono-business” orientation of the future OpCos as Healthcare, Life Science, or Performance Materials entities also facilitates subsequent integration of any entities or operations acquired in a particular business area, since comparable business activities can usually be combined and/or integrated with each other more easily. Mergers can also be achieved in a less complex and business sector-specific ERP landscape – which again is a consequence of the separation of the operating business into separate entities achieved by the planned transaction. Since the business activities of the Operating Units KGaA Healthcare, Life Science, and Performance Materials of KGaA are clearly attributable to separate entities, from the perspective of German commercial law, neither cross-sector data administration and mapping of processes nor consolidation according to company codes is necessary.

Finally, the separation of KGaA’s operational business activities of the Business Sectors into separate entities also makes sense from a tax perspective. For example, joint venture transactions or similar portfolio measures would be easier to implement in terms of taxation after the Operational Hive-down as there are no cross-sector mixed-use assets as an “impediment to conversion or transaction” from a tax perspective or as a de facto “conversion or transaction lock” from a tax perspective (compared to the “parent company structure” in the status quo, which is more complex in terms of taxation).

2. Alternatives to the hive-down

The primary goal of the Operational Hive-down is to separate KGaA’s operational business activities in the Healthcare, Life Science, and Performance Materials Business Sectors into different entities. As possible alternatives to a hive-down pursuant to Sec. 123 (3) (1) of the German Reorganization Act (*UmwG*), other transaction options such as contributing the operational activities to the OpCos by way of a capital increase with a contribution in kind or a sale (asset deal) have been analyzed and carefully considered. The result of these considerations was that a hive-down according to the German Reorganization Act appeared preferable. The significant advantage of a hive-down according to the German Reorganization Act is the fact that the transferred assets (cf. section C.II.6) of the Operating Units KGaA Healthcare, Life Science, and Performance Materials are transferred to the OpCos by way of universal succession once the measure has been registered into the Commercial Register of KGaA: in other words, “lock, stock, and barrel.” In principle, no approval – such as by contractual parties – is required for the transfer of agreements or other legal relationships by way of universal succession. Contracts and other legal relationships are transferred to the

OpCos without any change in content, which is beneficial in terms of continuity of the business activities and the reduction of administrative effort for all concerned. It is therefore possible to transfer even complex and high-volume company units, such as the Operating Units KGaA Healthcare, Life Science, and Performance Materials, to subsidiaries with legal certainty and efficiency.

In contrast, a transfer of the Operating Units outside the scope of the German Reorganization Act – such as a contribution in kind in the scope of a capital increase at the level of the OpCos or a sale – would only be possible by way of singular succession with individual transfers. Successful implementation of the transaction would then in addition be dependent on a large number of external acts of approval and implementation. While it appears possible in principle to obtain these approvals, and, in fact, it is even planned in the subsequent leaseback of the Operating Units to KGaA (cf. section E.) that contractual relationships are retransferred to KGaA temporarily with the approval of the contractual partners. However, from the perspective of KGaA, it seems advisable to implement the Operational Hive-down as the “core element” of the transaction in an overall step with as much legal certainty as possible with regard to the transfer of undertakings. Any implementation deficits resulting from the leaseback (e.g., due to a lack of consent from third parties of the transfer of the agreements) can be compensated for by corresponding fallback clauses given the merely temporary nature of the lease. Irrespective of this, the Operational Hive-down is to be reliably and efficiently implemented.

The hive-down pursuant to the German Reorganization Act also enables a tax-neutral transfer of assets and liabilities to the OpCos (contribution of so-called separable parts of the operations for tax purposes at carrying amount pursuant to Sec. 20 *UmwStG*). Unlike in a scenario where Operating Units are sold to the OpCos, for instance, it is possible to avoid the disclosure of hidden reserves, and thus the incurrence of income taxes as a result of the transaction. While a tax-neutral implementation would also be possible in a singular succession transaction in case of an in-kind increase pursuant to Sec. 20 *UmwStG*, the Executive Board of KGaA preferred a structured process as specified by the German Reorganization Act for the reasons laid out above, particularly since the hive-down pursuant to the German Reorganization Act entails an established and transparent process for the restructuring of complex assets within a group of companies.

Furthermore, the entities involved have decided to implement the Operational Hive-down and the temporary leaseback in a single transaction with retroactive economic effect as of January 1, 2018. Alternatives considered are the option of hiving down the three Operating Units KGaA Healthcare, Life Science, and Performance Materials gradually in individual steps upon completion of each ERP system over several years, or delaying the implementation until all ERP systems have been completed. None of these alternatives were able to meet the goals of the transaction in the same manner. The hive-down of the Operating Units KGaA Healthcare, Life Science, and Performance Materials pursuant to Sec. 123 (3) (1) *UmwG* in several steps would have led

to the repeated involvement of KGaA's Annual General Meeting, and thus to considerably greater organizational time effort and increased costs. From the perspective of the company's shareholders as well, it is more efficient if it is only necessary to deal with an interrelated measure once.

Moreover, a hive-down process that lasts multiple years would unnecessarily consume more resources in the managing bodies and the respective organizational units. Meetings and negotiations with the employee representatives would need to be longer or take place more frequently as well. Furthermore, the tax law "blocking periods" within the meaning of Sec. 22 *UmwStG* resulting from the Operational Hive-downs will be initiated simultaneously (see also the comments in section C.IV.5).

The existing combination of a hive-down and leaseback enables a transfer in "one step" with simultaneous, "custom-fit" scheduling of the transfer of the operational activities to the OpCos – in line with the respective date at which each ERP system is introduced.

3. Decision in favor of a hive-down "by absorption"

The Operational Hive-down shall be executed as a hive-down by absorption in accordance with Sec. 123 (3) (1) *UmwG*. Unlike in a hive-down by incorporating a new entity in accordance with Sec. 123 (3) (2) *UmwG*, in the event of a hive-down by absorption, the acquiring entity (here the OpCos) exists prior to the Hive-down. The hive-down by absorption has the advantage that KGaA would only have to "activate" the OpCos, which already existed as shelf companies and were each affiliated with KGaA by way of a domination and profit and loss transfer agreement, so that they can act as acquiring entities in the course of the Operational Hive-down. For the activation of the OpCos in particular, the company name and the purpose of the respective company were each changed, as well as old managing directors dismissed and new managing directors appointed. The documentation under corporate and reorganization law of a hive-down by incorporating a new entity, as a potential alternative, would be more complex for KGaA and the OpCos, so that the management of KGaA found the hive-down by absorption preferable. Particularly also for transferring or granting beneficial ownership as an alternative transfer path in the scope of the Operational Hive-Down, it was advantageous that the OpCos were already established and could act as parties to any agreement on an irrevocable right of use that is free of charge.

4. Risks and disadvantages of the Operational Hive-down

The Operational Hive-down is an intra-group optimization measure that is restricted to KGaA's operating business activities in the Healthcare, Life Science, and Performance Materials Business Sectors (cf. Preamble and section B.I.4.b)). From the perspective of KGaA's Executive Board, the measure does not entail any relevant risks for KGaA, its subsidiaries, or its capital owners. Since the OpCos are bound to KGaA via domination and profit and loss transfer agreements, the profit/loss generated at the level of the OpCos is transferred directly to KGaA, meaning that no adverse effects

result from the Operational Hive-down for KGaA and/or the Group, neither with regard to profitability nor the financing capability. The Operational Hive-down will have no material effects on the Group's balance sheet or its income statement. The attribution of mixed-use fixed assets (*Anlagevermögen*) to the individual OpCos would result only in slight asset shifts between the three global Business Sectors. There are effects only on KGaA's separate commercial-law financial statements (financial statements) pursuant to the *HGB* (cf. the explanations in section C.IV.1.a)). Due to the intra-group nature of the measure, there are also no adverse effects on the Group's rating. The Operational Hive-down also has no effects on KGaA's ability to distribute dividends; a change in the dividend policy is not planned (cf. the statements on the overall representation of the effects of the transaction on KGaA in this regard in section F.1.c)).

While outsourcing the business to subsidiaries results in a so-called mediation effect from the perspective of the shareholders, since – in the future – they will only be participating indirectly in the operating business of KGaA via the holdings in the HoldCo and the OpCo, this effect will practically be eliminated due to the existing domination and profit and loss transfer agreements between KGaA and the OpCos, giving KGaA direct access to control of the OpCos' business and their profits. What also needs to be considered is the fact that the Operational Hive-down affects only part of the Group's assets (approx. 25% of the Group's fixed assets) and value chain (primarily research and production). It is the opinion of the Executive Board that no risks or relevant adverse effects for KGaA or its capital owners will result from this. On the contrary, the modification of the conventional "parent company structure" based on the international principles of the Group structure that accompanies the Operational Hive-down provides the benefits described above under A.III.2 due to basing the German operational activities on the Group's applicable growth and innovation strategy.

The Operational Hive-down entails a certain amount of administrative expenses for the initial documentation of additional internal Group service relationships. By transferring the operational business activities of KGaA to the OpCos, new "intercompany agreements" based on a standard that has already been established will become necessary, both "vertically" between KGaA and the OpCos and "horizontally" among the OpCos themselves and between the OpCos and other Group companies. For example, infrastructure services of KGaA Site Operations – such as the use of the wastewater treatment plant – will no longer be rendered "within" the KGaA entity, but rather on the basis of a corresponding service agreement between KGaA and the OpCo. Even if an OpCo uses services of another OpCo or Group company (such as in production or logistics), this will, in the future, be on the basis of contractual agreements (intercompany agreements).

Moreover, there will be a certain additional expenditure for the ongoing administration of the HoldCos and OpCos (e.g., costs for accounting and billing, registration costs, documentation of resolutions, etc.). However, given the advantages of the restructuring, the Executive Board considers this increased expenditure as readily ac-

ceptable, particularly since there are a large number of internal Group service agreements between Group companies already, and they are largely concluded according to standardized processes. On the contrary: it is even the declared goal of the transaction to bring about an increased transparency in the area of costs and in the offsetting of services between the Operating Units by clearly allocating the operating resources of the respective Operating Unit to individual companies (entities). The increased transparency in the mapping of the processes will, in the future, enable even more targeted business management, both within the respective entity as well as with regard to the global Business Sectors.

One adverse effect of the Operational Hive-down is that the power consumption of the OpCos will, in the future, be subject to the EEG levy (German Renewable Energies Act) due to the elimination of the “own generation privilege” – but with predominant legal likelihood not until the Business Lease has been terminated. Assuming the continuation of the current underlying legal conditions, the Executive Board estimates the adverse financial effects resulting from this as being around six to seven million Euros per year. However, the Executive Board of KGaA is of the opinion that the benefits of the transaction referred to under sections C.II and A.III will outweigh this adverse effect by far, particularly the efficiency benefits in operating the ERP systems and the flexibility in reacting to strategic options that may arise; in addition, the underlying energy law conditions may also be subject to changes in the future.

What also needs to be considered is the resulting joint and several liability of KGaA arising from Sec. 133 *UmwG* for the liabilities transferred to the OpCos for a period of five years (or ten years in the case of pension commitments according to the law for improving company pension schemes (German Company Pensions Act (*Betriebsrentengesetz*)) that were established before the Operational Hive-down took effect. The same applies to the OpCos with respect to the fulfillment of any remaining liabilities of KGaA. However, KGaA and the OpCos have made arrangements in the Operational Hive-down Agreement according to which they will indemnify each other if claims are asserted for liabilities that have not been assigned to the respective entity. The liability for such external obligations will therefore be allocated internally based on the cause. Moreover, the risk of any subsequent liability on the part of KGaA due to domination and profit and loss transfer agreements existing between KGaA and the OpCos will not have any significant effect on the assets and liabilities, financial situation, or results of operations of KGaA compared to the status quo, since any profits and losses of the OpCos will ultimately be transferred to KGaA. From the perspective of KGaA and its shareholders, the “overall risk position” therefore will not change because of the Hive-down since KGaA would have remained the primary debtor for all of the liabilities even without the hive-down.

When considering the pros and cons and the costs of the transaction (see also the following section C.II.5), the Executive Board is of the opinion that the benefits of the Operational Hive-down described under sections C.II and A.III clearly outweigh any adverse effects and the costs of the transaction triggered by the measure.

5. Costs of the transaction

For the overall transaction, i.e., the Operational Hive-down, the Holding Hive-down, and the Business Lease, costs between 25 million Euros to 30 million Euros are expected according to current estimates. At the time of the issuance of this report, the costs actually incurred amount to approximately eight million Euros. The total costs consist mainly of external consultancy costs (including legal advisors, tax consultants, and auditors), costs for the precautionary review of the Business Lease Agreements by external auditors, notarization fees, and other costs (Commercial Register filings, fees for the issuance of binding tax information pursuant to Sec. 89 German Fiscal Code (*Abgabenordnung* - *AO*), translation costs, etc.). Since this is a uniformly prepared and executed overall transaction, the total costs cannot be properly broken down into the individual transaction steps. With regard to bearing the costs, reference is made to the explanation in the Operational Hive-down Agreement in section C.V.25.

Real estate transfer tax, income tax, and sales tax are not incurred as a result of the implementation of the Operational Hive-down. The details on the tax effects of the Operational Hive-down are described in more detail in section C.IV.5.

6. Asset And Liability Items to be hived down and relevant effective dates

The Operational Hive-down of the Operating Units KGaA Healthcare, Life Science, and Performance Materials (***Operating Assets To Be Transferred***) is carried out as a hive-down by absorption in accordance with Sec. 123 (3) (1) *UmwG* and in accordance with the provisions of the Operational Hive-down Agreement in part by way of alternative measures, such as transferring and granting beneficial ownership (see directly at the end of the section). If the Operating Assets To Be Transferred are transferred to the relevant OpCo as part of the Hive-down pursuant to Sec. 123 (3) (1) *UmwG*, they will be transferred in each case as a “whole” by way of so-called partial universal succession (Sec. 131 (1) (1) *UmwG*). The Operating Assets To Be Transferred comprise all assets and liabilities held by KGaA within the meaning of Sec. 126 (1) (9) *UmwG* of the relevant operating unit, including intangible assets, tangible assets, contractual relationships, and other legal relationships of all kinds, receivables and liabilities, contingent liabilities, uncertain liabilities, and future receivables and liabilities the legal basis of which has already been constituted (***Asset And Liability Items***), insofar as they are not explicitly excluded from the transfer in the Operational Hive-down Agreement. The Operating Assets To Be Transferred also include all items that are not required to be or cannot be recorded in the balance sheet, and all items, rights, and obligations not recognized in the balance sheet, provided that they can be assigned to the Operating Units KGaA Healthcare, Life Science, and Performance Materials. The Operating Assets To Be Transferred also include the assets and liabilities of the Operating Units KGaA Healthcare, KGaA Life Science, and KGaA Performance Materials that are contributed to the OpCos by transfer and/or granting beneficial ownership pursuant to Sec. 39 *AO* within the meaning of Sec. 20 *UmwStG*.

Essentially, the Operating Assets To Be Transferred include the production plants, factory and office equipment, research and development facilities, as well as other functions that can be attributed to the Operating Units (e.g., quality assurance and logistics), the respective current assets, the respective agreements (including license agreements for software used exclusively in the Operating Units), and liabilities and provisions pertaining to the Operating Units KGaA Healthcare, Life Science, and Performance Materials. Furthermore, the industrial property rights held by KGaA for the global Healthcare, Life Science, and Performance Materials Business Sectors, such as patents and trademarks, will also be transferred (cf. the description in this regard in section B.I.4.b)). The object of the Operational Hive-down also includes the employment relationships of the employees working in the Operating Units KGaA Healthcare, Life Science, and Performance Materials. In this context, beneficial ownership of the plan assets held in trust for KGaA by Merck Pensionstreuhand e.V., Darmstadt, Germany, a related party of Merck KGaA, Darmstadt, Germany (**MP e.V.**), and/or Metzler Trust e.V. to cover the pension entitlements and time account claims of the employees attributable to the Operating Units will also be transferred to the respective OpCo. This is executed by MP e.V. and Metzler Trust e.V. holding the plan assets in trust for the OpCo from the completion of the hive-down with retroactive economic effect as of January 1, 2018.

If regulatory approvals or permits can be assigned exclusively or as well (but not exclusively) to one Operating Unit, these approvals are part of the Operating Assets To Be Transferred. This applies in particular to plant-related and environmental law authorizations, as well as for authorizations under drug and product law. These permits will initially remain with KGaA for the duration of the respective Business Lease (cf. also the explanatory comments regarding § 48 of the Operational Hive-down Agreement in section C.V.12), since KGaA will continue to act as the operator and manufacturer during that time. However, during that period KGaA will hold the authorizations in trust for the OpCos affected by the permit (trust agreement). Upon termination of the Business Lease, the permits are then transferred to the affected OpCos. Where this is not possible, the Parties will work together to bring about the reissuing of the permit. The specifics are explained in section C.V.12. The measure is implemented in close coordination with the competent authorities.

The Operating Assets To Be Transferred shall be transferred in the relationship between KGaA and the OpCos with economic (retroactive) effect as of January 1, 2018, 0:00 hours (Economic Effective Date as defined in Sec. 126 (1) (6) *UmwG*). From then on, KGaA's actions are deemed to have been made for the account of the OpCos. Additions and disposals of Asset And Liability Items between the Economic Effective Date and the registration of the hive-down in the Commercial Register of KGaA are also taken into account in accordance with the Operational Hive-down Agreement. The Transfer Date for Tax Purposes for the Operational Hive-down will be December 31, 2017, 24:00 hours (for more information see below in section C.V.3).

The details of the assignment of the items to the respective Operating Units can be found below in section C.V where the Operational Hive-down Agreement is explained in more detail, in particular in the explanatory comments relating to § 3 to § 38 (cf. section C.V.4). In this context, it is also explained in which cases – unlike a transfer of rights by way of partial universal succession – alternative measures, such as the transfer and granting of beneficial ownership by, for instance, entering into a trust agreement or “duplication of beneficial ownership” as relates to certain intellectual property, such as mixed-use software or umbrella brands, were selected. The balance sheet presentation of the Operating Assets To Be Transferred is shown in the Hive-down Balance Sheets attached to the Operational Hive-down Agreement and in the presentation in section C.IV.1 of this report.

7. Functions and assets and liabilities remaining with KGaA

As already explained above, the Operational Hive-down includes only the business activities of the Operating Units KGaA Healthcare, Life Science, and Performance Materials within KGaA at the Darmstadt and Gernsheim sites, along with the associated assets and liabilities. The great majority of the assets of KGaA are not hived down, but remain with KGaA.

- a) In particular, all shares in affiliated companies owned by KGaA and nearly all investments will not be transferred. This also applies in particular to the holding companies held by KGaA which in turn hold investments in the Group companies referred to in section B.I.5 (for details regarding the transfer of the few minority interests, see sections C.IV.1.a)(2) and C.V.4.e)).
- b) Furthermore, the KGaA Group Functions, i.e., the central Group and administrative functions will not be transferred to the OpCos. These include Group Accounting, Internal Auditing, Group Tax, Group Legal & Compliance, Group Procurement, and Group Human Resources (see Annex V.3 to the Operational Hive-down Agreement). KGaA Group Functions also include the “Business Technologies” group function, which is responsible for the operation of the essential Group-wide ERP systems. KGaA Group Functions shall continue to support KGaA as the group management holding company in the exercising of the global corporate governance functions and the consistent management of the Group. KGaA Group Functions employs about 1,840 people.
- c) KGaA Site Operations will also remain with KGaA, which includes in particular the central infrastructure facilities of KGaA on the factory premises in Darmstadt and/or Gernsheim, such as the wastewater treatment plant, the power plant, the fire department, but also central laboratories, and units responsible for quality control. Even after the Operational Hive-down takes effect, they shall ensure the infrastructural basis of the OpCos’ business on the basis of intra-group service agreements. KGaA Site Operations employs around 1,560 people.

- d) The “Local Functions” organizational unit also remains with KGaA (***KGaA Local Functions***). KGaA Local Functions include, *inter alia*, KGaA Betriebskrankenkasse (*Health Insurance Fund*), KGaA Zeitservice (*Time Service*), and the Ausbildung & Learning (*Training & Learning*) Germany segments. KGaA Local Functions has around 290 employees.
- e) Furthermore, none of the land and buildings owned by KGaA will be transferred. These have been leased to MRE GmbH – a wholly-owned subsidiary of KGaA that is affiliated with KGaA by way of a domination and profit and loss transfer agreement – by a master rental contract dated December 12, 2017, and subsequently leased back to KGaA (see section B.I.4.b)). The leaseback was carried out by way of separate sublease agreements related to the existing operating units within KGaA and supplemented by real estate-related services. The subleases are, if they relate to buildings, property areas, and other objects of the sublease agreements assigned to the individual Operating Units, part of the Assets To Be Transferred under the Operational Hive-down, and are transferred to the corresponding OpCo in accordance with § 10, § 22, and § 34 of the Operational Hive-down Agreement by way of universal succession.
- f) For clarification purposes, § 39 of the Operational Hive-down Agreement contains a list of other assets and functions of KGaA that will not be transferred to the OpCos as part of the Hive-down (see the explanations in section C.V.5).

According to § 48.1 of the Operational Hive-down Agreement, KGaA will also retain all authorizations under public law that can be allocated to KGaA Group Functions and KGaA Site Operations.

III. The legal implementation of the Operational Hive-down and the course of the hive-down procedure

The procedure for the hive-down of the Operating Units KGaA Healthcare, Life Science, and Performance Materials is based on Sec. 123 et seq. *UmwG*.

1. Conclusion of the Operational Hive-down Agreement, delivery, and public disclosure

The basis for the legal implementation of the Operational Hive-down is the Operational Hive-down Agreement, which was concluded in notarized form on March 2, 2018 before the Notary Public Dr. Andreas von Werder, with his office situated in Frankfurt am Main. The Operational Hive-down Agreement contains all mandatory information required under Sec. 126 *UmwG*. A review of the Operational Hive-down by expert auditors in accordance with Sec. 9 to Sec. 12 *UmwG* is not required pursuant to Sec. 125 s. 2 *UmwG*.

Before the date of the 2018 Annual General Meeting, the Operational Hive-down Agreement will be submitted to the Darmstadt Local Court in accordance with Sec. 125 s. 1 in conjunction with Sec. 61 *UmwG*. In addition, the Operational Hive-down Agreement must be forwarded to the relevant works councils no later than one month

before the date of the 2018 Annual General Meeting or the shareholders' meetings of the OpCos in accordance with Sec. 126 (3) *UmwG*.

2. Approval of the Operational Hive-down Agreement by the Annual General Meeting of KGaA and the shareholders' meetings of the OpCos

According to Sec. 125 s. 1 and Sec. 13 (1) *UmwG*, the Operational Hive-down Agreement becomes effective only if the shareholders of the entities participating in the Operational Hive-down agree to it by way of a resolution. The approval resolution at KGaA level requires a simple majority pursuant to Sec. 133 (1) *AktG*, as well as, pursuant to Sec. 125 (1), Sec. 13 (1), Sec. 65 (1) *UmwG*, a majority of at least three quarters of the share capital represented when voting on the resolution. Since the Operational Hive-down together with the Holding Hive-down and the Business Lease Agreements forms a joint entrepreneurial concept, the Operational Hive-down together with the other measures will be subject to joint voting.

The resolutions by the shareholders' meetings of the OpCos for the approval of the Operational Hive-down require a majority of at least three quarters of the votes given pursuant to Sec. 125 (1), Sec. 13 (1), Sec. 50 (1) *UmwG*. It is intended that KGaA – as the sole shareholder of the OpCos – will agree to the Operational Hive-down Agreement prior to the 2018 Annual General Meeting.

3. Approval of the Operational Hive-down Agreement and the resolution at the Annual General Meeting by EM KG and all general partners of KGaA

The Operational Hive-down is a transaction that goes beyond the ordinary business operations of KGaA, so that the conclusion of the Operational Hive-down Agreement by the Executive Board of KGaA as well as the additional transaction measures pursuant to Article 13 (4) s. 1 of KGaA's articles of association require the approval of EM KG as the General Partner with a majority equity interest. This approval was granted on February 28, 2018. The Board of Partners and the Family Council previously approved the transaction.

Furthermore, the resolution by the 2018 Annual General Meeting approving the Operational Hive-down Agreement and the additional measures pursuant to Sec. 125 s. 1, Sec. 78 s. 3 first half-s. *UmwG* and Sec. 285 (2) s. 1 *AktG* and Article 25 (1) of the articles of association requires the consent of the general partners, i.e., the members of the Executive Board of KGaA as the General Partners without an equity interest and EM KG as the General Partner with an equity interest. As has been customary in the last few years, this approval is to be declared immediately after the 2018 Annual General Meeting on April 27, 2018, pursuant to s. 3 of Article 25 (2) of the articles of association. It will also be notarized in the minutes of the Annual General Meeting pursuant to s. 2 of Sec. 285 (3) *AktG*.

4. Capital increase at the OpCos

The shareholders' meetings of the OpCos will each in conjunction with the resolution on the approval of the Operational Hive-Down Agreement decide on a capital increase of their current share capital from 25,000 Euros by 975,000 Euros to 1,000,000 Euros in order to create one new company share in the nominal amount of 975,000 Euros each, which KGaA will accept in each case as the respective consideration for the transfer of assets attributable to the Operating Units KGaA Healthcare, Life Science, and Performance Materials to be hived down (see also section C.V.7). The capital increases are made against contribution in kind, whereby the contribution consists of the respective assets attributable to the Operating Units KGaA Healthcare, Life Science, and Performance Materials to be hived down. It is planned for KPMG AG Wirtschaftsprüfungsgesellschaft, Berlin, to submit a certificate confirming that the value of the respective hived-down assets covers the nominal amount of the newly issued company share (so-called valuation certificate (*Werthaltigkeitsbescheinigung*)). The company shares to be granted by the OpCos to KGaA shall be entitled to profits for the financial years beginning on (and including) January 1, 2018. If the value at which the contribution in kind provided by KGaA is accepted by the respective OpCo exceeds the nominal amount of the respective new company share, the amount will be transferred to the capital reserves of the respective OpCo pursuant to Sec. 272 (2) (1) *HGB*.

5. Registration in the Commercial Register and the Operational Hive-down becoming effective

The Operational Hive-down as well as the capital increase at the level of the OpCos for the granting of shares in connection with the Operational Hive-down require their registration in the Commercial Register in order to become effective. First the increase of the share capital and then the Operational Hive-down are registered in the Commercial Register of the respective OpCo (Sec. 125 s. 1, Sec. 53, Sec. 130 *UmwG*). Then the Operational Hive-down is registered in the Commercial Register of the registered office of KGaA. The application of the Operational Hive-down in the Commercial Register of KGaA is to be accompanied by a balance sheet of KGaA as the closing balance sheet in accordance with Sec. 125 s. 1 in conjunction with Sec. 17 (2) *UmwG*. The balance sheet of KGaA as of December 31, 2017, 24:00 hours, which was prepared by the auditor KPMG AG Wirtschaftsprüfungsgesellschaft, Berlin, as part of the financial statements of KGaA, is used as the closing balance sheet. This date is thus also the contractually defined Closing Balance Effective Date.

The Operational Hive-down becomes effective upon registration in the Commercial Register of the registered office of KGaA as the Transferring Entity in accordance with Sec. 130 (1) *UmwG*. At that point in time, the Operating Assets To Be Transferred, insofar as no alternative measures are planned, are transferred in rem to the OpCos as the acquiring entities (Sec. 131 (1) (1) *UmwG*). KGaA, the OpCos, and the HoldCos will work to ensure that, immediately after the Operational Hive-down has

become effective, the Business Lease Agreements (for details see section D.IV.5) and the Holding Hive-down (for details see section E.I.3.g)) become effective as well. In accordance with Sec. 10 *HGB*, the competent registration court in Darmstadt will publicly disclose the registrations of the Hive-down into the Commercial Register in the electronic information and communication system designated by the state justice administration (www.registerbekanntmachungen.de).

Assuming that no action for annulment or ineffectiveness is filed against the resolution of the 2018 Annual General Meeting on the approval of the Operational Hive-down Agreement, the Holding Hive-down, and the Business Lease Agreements, the Executive Board of KGaA expects that the registration of the Operational Hive-down and the other measures will be completed in the first half of 2018. If an action is filed against the resolution of the 2018 Annual General Meeting on the approval of the Operational Hive-down, this will, irrespective of its prospects of success, initially prevent registration, and thus the effectiveness of the Operational Hive-down and the entire transaction. However, the competent Frankfurt am Main Higher Regional Court (*Oberlandesgericht*) may resolve that the filing of the suit does not preclude registration of the measures and the deficiencies in the resolution of the Annual General Meeting do not affect the effectiveness of the registration (so-called Clearance Decision, Sec. 125 s. 1, Sec. 16 (3) *UmwG* in conjunction with Sec. 246a (1) s. 1 *AktG*). This decision cannot be appealed (Sec. 125 s. 1, 16 (3) s. 9 *UmwG*, Sec. 246a (3) s. 4 *AktG*). Pursuant to Sec. 125 s. 1 in conjunction with Sec. 16 (3) s. 3 *UmwG* and Sec. 246a (2) *AktG*, respectively, the ruling shall be issued if (i) the action is inadmissible or obviously unfounded, or (ii) the claimant has not provided supporting evidence within one week of being served the request to prove that it has held a pro rata amount of at least 1,000 Euros in the share capital of KGaA since the announcement of convening; or (iii) the measures take effect as a matter of priority because the substantial adverse effects described by KGaA on the entities involved in the measures and their shareholders, in the unbiased opinion of the court, outweigh the adverse effects on the claimant shareholder, unless the infringement is particularly grave. The Executive Board of KGaA is of the opinion that delayed effectiveness of the Operational Hive-down and the additional transaction measures would have significant adverse effects on KGaA and the respective OpCo and would oppose the interests of KGaA and its shareholders, since the realization of the benefits anticipated from the transaction (see sections C.II and A.III) would be delayed and additional costs would be incurred.

IV. Balance sheet, corporate law, tax and other consequences of the Operational Hive-down

1. Balance sheet impacts

The balance sheet effects of the Operational Hive-down are shown in the overviews, balance sheets, and pro forma balance sheets below of KGaA and the OpCos as of December 31, 2017, 24:00 hours, and January 1, 2018, 0:00 hours. The representations were derived from the balance sheet, which is part of the financial statements of KGaA as of December 31, 2017, 24:00 hours, audited and granted an unqualified au-

dit opinion by KPMG AG Wirtschaftsprüfungsgesellschaft, Berlin. The pro forma balance sheets were each compiled on the basis of these balance sheet figures as of December 31, 2017, 24:00 hours, and refer to the Economic Effective Date January 1, 2018, 0:00 hours. The balance sheet of KGaA as of December 31, 2017, 24:00 hours, is also the closing balance sheet for the Operational Hive-down in accordance with Sec. 125 s. 1 in conjunction with Sec. 17 (2) *UmwG*.

For further information, the sections below also contain information on the balance sheet effects of the Holding Hive-down at the level of KGaA and the temporary leaseback. The additional details on the balance sheet effects of the Holding Hive-down are explained in detail in section D.V.1 and the leaseback in section E.I.4.b).

Since both the Operational Hive-down and the Holding Hive-down as well as the temporary leaseback take effect, from an economic perspective, retroactively as of January 1, 2018, 0:00 hours (for details on the economic retroactive effect of the Operational Hive-Down see section C.IV.2.b)), the dates December 31, 2017 and January 1, 2018, respectively, were used as the basis for the relevant balance sheets and pro forma balance sheets (on the basis of the continuation of carrying amounts under German commercial law pursuant to Sec. 24 *UmwG*). The increase in the share capital at the OpCos to carry out the Operational Hive-down was taken into account.

The balance sheets were each compiled based on the accounting and measurement principles set forth in the *HGB*. Due to rounding, individual figures in the annual balance sheets and the pro forma balance sheets may not exactly add up to the totals indicated.

a) Effects on the balance sheet of KGaA

(1) Balance sheet as of December 31, 2017 and pro forma balance sheets as of January 1, 2018

The following overview (p. 56) contains an overall representation of the effects of the transaction on the balance sheet of KGaA. The additional remarks in this section refer primarily to the balance sheet effects of the Operational Hive-down.

(figures in thousand EUR)	KGaA (before (i) Operational Hive-down, (ii) Holding Hive-down, and (iii) leaseback) Dec. 31, 2017	KGaA (after Operational Hive-down) Jan. 1, 2018	KGaA (after (i) Operational Hive-down and (ii) Holding Hive-down) Jan. 1, 2018	KGaA (after (i) Operational Hive-down, (ii) Holding Hive-down, and (iii) temporary leaseback) Jan. 1, 2018	(figures in thousand EUR)	KGaA (before (i) Operational Hive-down, (ii) Holding Hive-down, and (iii) leaseback) Dec. 31, 2017	KGaA (after Operational Hive-down) Jan. 1, 2018	KGaA (after (i) Operational Hive-down and (ii) Holding Hive-down) Jan. 1, 2018	KGaA (after (i) Operational Hive-down, (ii) Holding Hive-down, and (iii) temporary leaseback) Jan. 1, 2018
<u>ASSETS</u>					<u>EQUITY AND LIABILITIES</u>				
Fixed assets					Equity				
Intangible assets	489,734	191,830	191,830	191,830	Subscribed capital	168,015	168,015	168,015	168,015
Tangible assets	1,172,949	821,592	821,592	821,592	General partner's equity	397,196	397,196	397,196	397,196
Financial assets	16,485,747	17,510,738	17,510,738	17,510,738	Capital reserves	3,813,733	3,813,733	3,813,733	3,813,733
<i>Total fixed assets</i>	18,148,430	18,524,160	18,524,160	18,524,160	Retained earnings	701,645	701,645	701,645	701,645
					Profit carried forward EM KG	60,266	60,266	60,266	60,266
Current assets					Net retained profit limited liability shareholders	187,045	187,045	187,045	187,045
Inventories	688,334	23,516	23,516	688,334	<i>Total equity</i>	5,327,900	5,327,900	5,327,900	5,327,900
					Provisions				
Receivables and other assets					Provisions for pensions and other post-employment benefits	200,414	110,669	110,669	110,669
Trade accounts receivable	181,336	2,456	2,456	181,336	Other provisions	1,112,089	627,773	627,773	946,134
Other receivables and other assets	891,567	562,209	562,209	591,567	<i>Total provisions</i>	1,312,503	738,442	738,442	1,056,802
Cash and cash equivalents	1,402	1,402	1,402	1,402	Liabilities				
<i>Subtotal</i>	1,074,305	566,068	566,068	774,305	Financial liabilities	1,500,000	1,500,000	1,500,000	1,500,000
<i>Total current assets</i>	1,762,640	589,584	589,584	1,462,640	Trade accounts payable	292,115	73,272	73,272	292,115
					Other liabilities	11,489,235	11,485,225	11,485,225	11,820,666
Prepaid expenses	28,515	26,560	26,560	28,515	<i>Total liabilities</i>	13,281,350	13,058,497	13,058,497	13,612,782
	19,939,584	19,140,304	19,140,304	20,015,315	Deferred income	17,831	15,465	15,465	17,831
						19,939,584	19,140,304	19,140,304	20,015,315

The first column of the respective overview (assets and equity and liabilities) contains the balance sheet of KGaA as of December 31, 2017, 24:00 hours. It shows the state before the Operational Hive-down (and all other measures) become(s) effective.

The second column “KGaA (after Operational Hive-down) Jan. 1, 2018” of the respective overview (assets and equity and liabilities) contains the pro forma balance sheet of KGaA after the Operational Hive-down (without Holding Hive-down and leaseback) becomes effective. As a result of the Operational Hive-down, in particular the assets and liabilities attributable to the Operating Units KGaA Healthcare, Life Science, and Performance Materials are transferred from KGaA to the respective Op-Co at the carrying amount under German commercial law pursuant to the allocations of the Operational Hive-down Agreement, and are eliminated from KGaA’s balance sheet. Due to the increase in share capital and capital reserves at the OpCos, the item “Shares in affiliated companies” in the balance sheet of KGaA increases by 1,025,349,945 Euros in total.

The third column “KGaA (after (i) Operational Hive-down and (ii) Holding Hive-down) Jan. 1, 2018” of the respective overview contains the pro forma balance sheet of KGaA after the Operational Hive-down and the Holding Hive-down become effective. In the course of the Holding Hive-down, all shares of KGaA in the OpCos are transferred to the respective HoldCo pursuant to the allocations of the Holding Hive-down Agreement and are eliminated from the balance sheet of KGaA. The contribution of the shares in the OpCos results in an increase of the share capital and capital reserves in the balance sheets of the HoldCos. There is no change in the balance sheet of KGaA as a result of the Holding Hive-down (merely a share swap within the balance sheet item “Financial assets” (and within that, the line item “Shares in affiliated companies”)). The additional details on the balance sheet effects of the Holding Hive-down at the level of KGaA are explained in detail in section D.V.1.a).

The fourth column “KGaA (after (i) Operational Hive-down, (ii) Holding Hive-down, and (iii) temporary leaseback) Jan. 1, 2018” contains a pro forma balance sheet of KGaA at the point in time immediately after the (retroactive) effective date of the leaseback by the OpCos without, however, showing any tax effects from the sale of inventories (for details regarding the tax consequences of the leaseback see section E.I.4.d)).

As a result of the stipulations of the respective Business Lease Agreement, KGaA leases all fixed assets (*Anlagevermögen*) from the OpCos and acquires at carrying amount the current assets and liabilities and/or contingent and uncertain liabilities, as well as provisions (at the total carrying amount of 331,431,064 Euros), with the exception of the provisions for pensions, as well as certain other provisions. The plan assets in terms of Sec. 246 (2) s. 2 *HGB* will be attributed to the OpCos for accounting purposes during the Business Lease.

During the Business Lease, KGaA – temporarily and with retroactive economic effect as of the Economic Effective Date – will continue in its own name and for its own

account the business operations of the hived-down Operating Units KGaA Healthcare, Life Science, and Performance Materials, so that the expenses and income resulting therefrom are attributed to KGaA. In the scope of the Business Lease Agreement, the OpCos receive rent that is calculated, *inter alia*, based on the depreciation on the leased fixed assets. The additional details on the balance sheet effects of the leaseback at the level of KGaA are explained in detail in section E.I.4.b)(2).

The profit or loss of the respective OpCo will be transferred in full to KGaA on the basis of the domination and profit and loss transfer agreements concluded (cf. section C.IV.4) and recorded in the investment income.

The Operational Hive-down will have no material effects on the Group's balance sheet or its income statement (cf. section C.II.4). For the Consolidated Financial Statements of KGaA as of December 31, 2017, please refer to the 2017 annual report of the Group, page 203 et seq.

(2) Explanation of the effect of the Operational Hive-down on the balance sheet of KGaA

The Operational Hive-down will, as described above, only become effective upon registration in the Commercial Register. At this point in time (during the financial year), in terms of German commercial law, the disposal of the Operating Assets To Be Transferred as a result of the hive-down at KGaA and the addition of the new shares in the OpCos granted in the course of the capital increase (Operational Hive-down) and in the HoldCos (Holding Hive-down) are effected.

In the opinion of the Auditing and Accounting Board (*Hauptfachausschuss - HFA*) of the Institute of Public Auditors in Germany, Incorporated Association (*Institut der Wirtschaftsprüfer in Deutschland e.V., IDW*), statement on accounting ("RS") "Effects of a spin-off on the financial statement under German commercial law" – **IDW RS HFA 43** -, lit. 21, the hive-down constitutes an exchange transaction at the transferring entity for which it receives shares in the acquiring entity as consideration for the hived-down assets and liabilities. This exchange transaction shall be recorded as a current transaction. The acquisition cost of the shares received is determined according to the exchange principles, and accordingly corresponds either to the carrying amount, the fair value, or the interim value of the transferred assets without impact on the income statement. Under German commercial law, KGaA thus has an option to measure the new shares received according to so-called exchange principles at the (net) carrying amounts of the Operating Assets To Be Transferred. KGaA exercises this option. Accordingly, the Operational Hive-down does not affect the profit or loss at the level of KGaA.

Due to the Operational Hive-down, as relates to the assets of KGaA, mainly parts of the intangible assets, parts of the tangible assets, the majority of the current assets, and prepaid expenses with a total carrying amount of 1,826,929,516 Euros are transferred to the OpCos. The significant balance sheet item "Financial assets" on the assets side with a carrying amount totaling 16,485,746,674 Euros remains with KGaA, except for

a few minor exceptions. As for the equity and liabilities of KGaA, liabilities side and provisions, as well as the deferred income with a carrying amount totaling 801,579,571 Euros are transferred to the OpCos.

In detail, the Operational Hive-down – without taking the subsequent leaseback into account – will have the following effects on the assets side of the balance sheet of KGaA:

- The balance sheet of KGaA as of December 31, 2017, 24:00 hours, contains *Intangible assets* with a carrying amount totaling 489,733,565 Euros. These include (i) concessions, (ii) industrial property rights and similar rights and values, as well as (iii) licenses to such rights and values, (iv) goodwill, and (v) advance payments. According to the Operational Hive-down Agreement, intangible assets with a carrying amount totaling 297,903,883 Euros are transferred to the OpCos. These include essentially industrial property rights, copyrights, ancillary copyrights, and other legally protected intangible legal positions (further details on the transfer and or granting of beneficial ownership of intangible assets are listed in section C.V.4.b)). Software that is accounted for as intangible assets will be transferred to the OpCos only as regards local software that can be clearly allocated to one Business Sector. Global software or software not exclusively used by one Business Sector remains in the balance sheet of KGaA to support their Group management function. The respective OpCo will be granted an irrevocable and permanent right of use in the software that is free of charge (“duplication of beneficial ownership”).
- In the balance sheet of KGaA as of December 31, 2017, 24:00 hours, the *Tangible assets* include (i) land, leasehold rights and buildings, including buildings on third-party land, (ii) technical plants and machinery, (iii) other facilities, operating and office equipment, as well as (iv) advance payments and construction in progress with a total carrying amount totaling 1,172,949,403 Euros. Land, leasehold rights and buildings, including the essential components related to the land and/or the buildings, remain with KGaA (see section C.II.7) so that their carrying amount totaling 821,592,331 Euros will be shown unchanged, also after implementation of the Operational Hive-down, as tangible assets in the balance sheet of KGaA on the assets side. The remaining reported tangible assets of KGaA with a carrying amount of 351,357,072 Euros will be hived down (in part) to the OpCos pursuant to the allocations in the Operational Hive-down Agreement.
- The *Financial assets* shown in the balance sheet of KGaA as of December 31, 2017, 24:00 hours, with a carrying amount totaling 16,485,746,674 Euros, comprise shares in affiliated companies and other investments, as well as loans to companies in which an equity interest is held. KGaA transfers to the OpCos pursuant to the allocations of the Operational Hive-down Agreement only three minority interests with a total carrying amount of 358,195 Euros. These are the investments in (i) PharmLog Pharma Logistik GmbH headquartered in

Bönen, registered in the Commercial Register of the Hamm District Court under HRB 3673, (ii) Azelis Deutschland Kosmetik GmbH headquartered in Moers, registered in the Commercial Register of the Kleve Local Court under HRB 8255, and (iii) PrintCity GmbH & Co. KG headquartered in Neuried, registered in the Commercial Register of the Munich Local Court under HRA 93911. The remaining financial assets with a carrying amount totaling 16,485,388,480 Euros – and thus the great majority of the company’s assets – remain with KGaA.

- The balance sheet of KGaA as of December 31, 2017, 24:00 hours, contains *Current assets* with a carrying amount totaling 1,762,639,712 Euros.

Of this amount, a carrying amount of 688,334,300 Euros relates to *Inventories*, including raw materials and supplies, unfinished goods, finished goods, and merchandise, as well as advance payments.

Furthermore, the current assets contain *Trade accounts receivable* due from affiliated and other companies at a carrying amount totaling 181,335,895 Euros, as well as *Other receivables* due from affiliated and other companies, tax receivables, as well as *Other assets* at a total carrying amount of 891,567,470 Euros.

Moreover, *Cash and cash equivalents* with a carrying amount totaling 1,402,046 Euros are also included in the current assets.

In the course of the Operational Hive-down, the current assets with a carrying amount totaling 1,175,355,387 Euros are transferred to the OpCos in accordance with the Hive-down Agreement. These are essentially inventories, trade accounts receivable, and other receivables and other assets, including fixed deposits at Merck Financial Services GmbH, Darmstadt, Germany, an affiliated company of Merck KGaA, Darmstadt, Germany (in-house bank, hereinafter **MFS GmbH**). In particular, accounts receivable due from affiliated companies from internal cash pooling, other balances in banking accounts, tax receivables, and cash balances with a total carrying amount totaling 589,583,504 Euros remain with KGaA.

- The balance sheet of KGaA as of December 31, 2017, 24:00 hours, also contains *Prepaid expenses* with a carrying amount totaling 28,514,984 Euros. This essentially comprises expenses for IT services and a discount. In the course of the Operational Hive-down, prepaid expenses with a carrying amount totaling 1,954,980 Euros pursuant to the allocations in the Operational Hive-down Agreement will be “transferred for accounting purposes” to the OpCos (by hiving down the claims on which these prepaid expenses are based).

In addition, on the basis of the Operational Hive-down – without taking the subsequent leaseback into account – the equity and liabilities side of the balance sheet of KGaA will be affected as follows:

- The balance sheet of KGaA as of December 31, 2017, 24:00 hours, contains *Liabilities* totaling 13,281,350,460 Euros that comprise (i) financial liabilities totaling 1,500,000,000 Euros, (ii) trade accounts payable totaling 292,115,447 Euros, and (iii) other liabilities totaling 11,489,235,013 Euros. By way of the Operational Hive-down, liabilities totaling 226,305,254 Euros pursuant to the allocations in the Operational Hive-down Agreement will be transferred from KGaA to the OpCos. These are trade accounts payable totaling 222,295,408 Euros and other liabilities totaling 4,009,846 Euros. In particular, all financial liabilities totaling 1,500,000,000 Euros remain with KGaA.
- The balance sheet of KGaA as of December 31, 2017, 24:00 hours, contains *Provisions* with a carrying amount totaling 1,312,502,509 Euros comprising (i) provisions for pensions and other post-employment benefits with a carrying amount totaling 200,413,696 Euros, (ii) tax provisions with a carrying amount totaling 201,405,942 Euros and (iii) other provisions with a carrying amount totaling 910,682,870 Euros. In particular, other provisions in conjunction with certain responsibilities relating to conduct and condition under private and public law and the assumption of liability for certain environmental liabilities remain with KGaA. The remaining provisions are transferred to the OpCos in accordance with the Hive-down Agreement.
- In the course of the Operational Hive-down, *Deferred income* with a carrying amount totaling 2,366,336 Euros pursuant to the allocations in the Operational Hive-down Agreement will also be “transferred for accounting purposes” to the OpCos (by hiving down the claims on which this deferred income is based).
- The *Equity* of KGaA as of December 31, 2017, 24:00 hours, is 5,327,900,369 Euros. The Operational Hive-down will not have any effects on the amount of the equity as shown in the balance sheet of KGaA.

b) Effects on the balance sheets of the OpCos

Pursuant to Sec. 24 in conjunction with Sec. 125 (1) *UmwG*, the annual balance sheets of the acquiring entity can also include, as acquisition cost in terms of Sec. 253 (1) *HGB*, the values recorded in the closing balance sheet of a Transferring Entity (*option of continuing the carrying amounts under German commercial law*). The OpCos continue the carrying amounts of the acquired assets (***continuation of carrying amounts under German commercial law***). Thus, the carrying amounts from the closing balance sheet of the Transferring Entity are considered as acquisition cost at the acquiring entity. The acquisition cost determined in this way is to be shown as addition in the statement of changes in fixed assets of the OpCos. The acquiring entity is not authorized to exceed the values transferred according to Sec. 253 (1) (1) *HGB*, even if the values at the Transferring Entity result from an impairment loss. The carrying amount connection in accordance with this concept leads only to capitalization of in-

tangible assets of the fixed assets internally generated by the Transferring Entity pursuant to Sec. 248 (2) *HGB* if these were already recorded by the Transferring Entity.

The option granted in Sec. 24 *UmwG* will be exercised in the course of the compilation and approving of the financial statements of the OpCos. It may only be uniformly exercised for the assets and liabilities (see *IDW RS HFA 43*, Effects of a spin-off on the financial statements under German commercial law, lit. 5 referring to *IDW RS HFA 42*, Effects of a merger on the financial statements under German commercial law, lit. 35).

The OpCos are to record the transfer of assets and liabilities occurring as a result of the Hive-down as a current transaction in their accounting. For this purpose, it is decisive as of which point in time the assets and liabilities are attributed economically to the OpCos (see *IDW RS HFA 43*, Effects of a spin-off on the financial statements under German commercial law, lit. 5 referring to *IDW RS HFA 42*, Effects of a merger on the financial statement under German commercial law, lit. 32). The balance of the assets and liabilities to be accounted for as an addition at the OpCos, as a general rule, is determined based on the closing balance sheet in conjunction with Sec. 17 (2) *UmwG*, even if the prerequisites of the allocation of assets to the OpCos are met later. This results in the fact that, at the latest in the first financial statements of the OpCos after registration of the Operational Hive-down in the Commercial Register, the transactions carried out for account of the OpCos since the Economic Effective Date (either by recognizing the individual expenses and income or by recognizing a balance, for instance designated as “Earnings generated by the transferring entity for the account of others”) shall be recorded at the OpCos (see *IDW RS HFA 43*, lit. 5 in conjunction with *IDW RS HFA 42*, lit. 32).

The following overviews (pp. 63 to 65) contain an overall representation of the effects of the transaction with regard to the balance sheets of the OpCos. The additional remarks in this section refer primarily to the balance sheet effects of the Operational Hive-down.

(figures in thousand EUR)	HC OpCo (before hive-down of the Operating Unit KGaA Healthcare) Dec. 31, 2017	HC OpCo (after hive-down of the Operating Unit KGaA Healthcare) Jan. 1, 2018	HC OpCo (after hive-down and temporary leaseback of the Operating Unit KGaA Healthcare) Jan. 1, 2018	(figures in thousand EUR)	HC OpCo (before hive-down of the Operating Unit KGaA Healthcare) Dec. 31, 2017	HC OpCo (after hive-down of the Operating Unit KGaA Healthcare) Jan. 1, 2018	HC OpCo (after hive-down and temporary leaseback of the Operating Unit KGaA Healthcare) Jan. 1, 2018
<u>ASSETS</u>				<u>EQUITY AND LIABILITIES</u>			
Fixed assets				Equity			
Intangible assets		287,769	287,769	Subscribed capital	25	1,000	1,000
Tangible Assets		82,896	82,896	Capital reserves		355,663	355,663
Financial assets		230	230	Profit/loss carryforward	-1	-1	-1
<i>Total fixed assets</i>	0	370,895	370,895	<i>Total equity</i>	24	356,662	356,662
Current assets				Provisions			
Inventories		203,439		Provisions for pensions and other post-employment benefits		29,692	29,692
Receivables and other assets				Other provisions	0	275,134	48,478
Trade accounts receivable	0	116,390	0	<i>Total provisions</i>	0	304,826	78,170
Other receivables and other assets		120,444	100,000	Liabilities			
Cash and cash equivalents	25	25	25	Financial liabilities			
<i>Subtotal</i>	25	236,858	100,025	Trade accounts payable	1	149,152	1
<i>Total current assets</i>	25	440,298	100,025	Other liabilities		519	36,086
Prepaid expenses		1,720		<i>Total liabilities</i>	1	149,672	36,087
	25	812,913	470,920	Deferred income		1,753	
					25	812,913	470,920

(figures in thousand EUR)	LS OpCo (before hive-down of the Operating Unit KGaA Life Science) Dec. 31, 2017	LS OpCo (after hive-down of the Operating Unit KGaA Life Science) Jan. 1, 2018	LS OpCo (after hive-down and temporary leaseback of the Operating Unit KGaA Life Science) Jan. 1, 2018	(figures in thousand EUR)	LS OpCo (before hive-down of the Operating Unit KGaA Life Science) Dec. 31, 2017	LS OpCo (after hive-down of the Operating Unit KGaA Life Science) Jan. 1, 2018	LS OpCo (after hive-down and temporary leaseback of the Operating Unit KGaA Life Science) Jan. 1, 2018
<u>ASSETS</u>				<u>EQUITY AND LIABILITIES</u>			
Fixed assets				Equity			
Intangible assets		2,784	2,784	Subscribed capital	25	1,000	1,000
Tangible Assets		84,157	84,157	Capital reserves		293,442	293,442
Financial assets				Profit/loss carryforward			
<i>Total fixed assets</i>	0	86,941	86,941	<i>Total equity</i>	25	294,442	294,442
Current assets				Provisions			
Inventories		176,961		Provisions for pensions and other post-employment benefits		25,424	25,424
				Other provisions	0	65,599	28,172
Receivables and other assets				<i>Total provisions</i>	0	91,023	53,596
Trade accounts receivable	7	57,692	7	Liabilities			
Other receivables and other assets		106,045	261,072	Financial liabilities			
Cash and cash equivalents	36	36	36	Trade accounts payable	17	39,332	17
<i>Subtotal</i>	43	163,773	261,114	Other liabilities		3,114	
<i>Total current assets</i>	43	340,734	261,114	<i>Total liabilities</i>	17	42,446	17
Prepaid expenses		235		Deferred Income			
	43	427,910	348,056		43	427,910	348,056

(figures in thousand EUR)	PM OpCo (before hive-down of the Operating Unit KGaA Performance Materials) Dec. 31, 2017	PM OpCo (after hive-down of the Operating Unit KGaA Performance Materials) Jan. 1, 2018	PM OpCo (after hive-down and temporary leaseback of the Operating Unit KGaA Performance Materials) Jan. 1, 2018	(figures in thousand EUR)	PM OpCo (before hive-down of the Operating Unit KGaA Performance Materials) Dec. 31, 2017	PM OpCo (after hive-down of the Operating Unit KGaA Performance Materials) Jan. 1, 2018	PM OpCo (after hive-down and temporary leaseback of the Operating Unit KGaA Performance Materials) Jan. 1, 2018
<u>ASSETS</u>				<u>EQUITY AND LIABILITIES</u>			
Fixed assets				Equity			
Intangible assets		7,351	7,351	Subscribed capital	25	1,000	1,000
Tangible Assets		184,304	184,304	Capital reserves		373,320	373,320
Financial assets		128	128	Profit/loss carryforward			
<i>Total fixed assets</i>	0	191,783	191,783	<i>Total equity</i>	25	374,320	374,320
Current assets				Provisions			
Inventories		283,265		Provisions for pensions and other post-employment benefits		34,629	34,629
				Other provisions		142,431	89,305
Receivables and other assets				<i>Total provisions</i>	0	177,060	123,934
Trade accounts receivable	5	8,262	5	Liabilities			
Other receivables and other assets		102,870	306,446	Financial liabilities			
Cash and cash equivalents	38	38	38	Trade accounts payable	18	33,848	18
<i>Subtotal</i>	43	111,170	306,489	Other liabilities		377	
<i>Total current assets</i>	43	394,435	306,489	<i>Total liabilities</i>	18	34,224	18
Prepaid expenses				Deferred income		614	
	43	586,218	498,273		43	586,218	498,273

The first column of the overviews (assets and equity and liabilities) contains the balance sheets of HC OpCo, LS OpCo and PM OpCo as of December 31, 2017, 24:00 hours. They show in each case the situation before the Operational Hive-down (and the leaseback) becomes effective.

The second column of the overviews (assets and equity and liabilities) “HC OpCo (after hiving down the Operating Unit KGaA Healthcare) Jan. 1, 2018,” “LS OpCo (after hiving down the Operating Unit KGaA Life Science) Jan. 1, 2018,” “PM OpCo (after hiving down the Operating Unit KGaA Performance Materials) Jan. 1, 2018” contains pro forma balance sheets of the OpCos at the Economic Effective Date after the Operational Hive-down becomes effective on the basis of the continuation of carrying amounts under German commercial law pursuant to Sec. 24 *UmwG*. This column shows the legal entity “HC OpCo / LS OpCo / PM OpCo” after hive-down, and thus contains both the assets and liabilities existing in the company before the Operational Hive-down (net assets totaling 23,752 Euros (HC OpCo), 25,000 Euros (LS OpCo) and 25,000 Euros (PM OpCo)) and assets and liabilities that are added through the Operational Hive-down (net assets totaling 356,638,352 Euros (HC OpCo), 294,416,941 Euros (LS OpCo), and 374,294,652 Euros (PM OpCo)). The presentation of the equity took into account that, as consideration for the Hive-down, an additional share will be issued to KGaA and, for this purpose, the share capital will be increased by 975,000 Euros to 1,000,000 Euros. With this, this “legal depiction” differs only from the Hive-down Balance Sheets shown on pages 40 (HC OpCo), 42 (LS OpCo), and 44 (PM OpCo) of the Combined Report only due to the inclusion of the assets and liabilities already existing in the company before the Operational Hive-down.

The third column of the overviews (assets and equity and liabilities) “HC OpCo (after hive-down and temporary leaseback of the Operating Unit KGaA Healthcare) Jan. 1, 2018,” “LS OpCo (after hive-down and temporary leaseback of the Operating Unit KGaA Life Science) Jan. 1, 2018,” “PM OpCo (after hive-down and temporary leaseback of the Operating Unit KGaA Performance Materials) Jan. 1, 2018” contains the respective pro forma balance sheets of the OpCos at the Economic Effective Date after the Operational Hive-down and leaseback go into effect at the Economic Effective Date or the Beginning Of The Lease (in each case January 1, 2018). As a result of the Operational Hive-down, the OpCos become the owners of the Operating Assets To Be Transferred based on the amount of the balance sheet items shown in the respective pro forma balance sheet (for details regarding the balance sheet representation of the Operating Assets To Be Transferred see section C.IV.1.a)(2), and there are the corresponding balance sheet additions. The Operating Assets To Be Transferred are shown in the balance sheets of the OpCos at carrying amounts (continuation of carrying amounts under German commercial law, see above in this section). As a result of the Operational Hive-down, in each case the equity of the OpCos increases by the amount of the increase of share capital (975,000 Euros), in addition to the respective increase in the capital reserves of the specific OpCo. Thus, the equity increases in total by the total of the transferred assets less the transferred liabilities.

As a result of the stipulations of the respective Business Lease Agreement, KGaA leases all fixed assets (*Anlagevermögen*) from the OpCos and acquires at carrying amount the current assets and liabilities and/or contingent and uncertain liabilities, as well as provisions (at the total carrying amount of 331,431,064 Euros), with the exception of the provisions for pensions, as well as certain other provisions. The plan assets in terms of Sec. 246 (2) s. 2 *HGB* will be attributed to the OpCos for accounting purposes during the Business Lease. During the Business Lease, KGaA – temporarily and with retroactive economic effect as of the Economic Effective Date – will continue in its own name and for its own account the business operations of the hived-down Operating Units KGaA Healthcare, Life Science, and Performance Materials, so that the expenses and income resulting therefrom are attributed to KGaA. In the scope of the Business Lease Agreement, the OpCos receive rent that is calculated, *inter alia*, based on the scheduled depreciation on the leased fixed assets. The additional details on the balance sheet effects of the leaseback at the level of KGaA are explained in detail in section E.I.4.b)(2).

2. Company law consequences

The effects of the Operational Hive-down arising under corporate law arise from the provisions of the German Reorganization Act. The registration of the Hive-down in the Commercial Register of KGaA has the following effects under company law:

a) Partial universal succession

With the exception of the items for which alternative measures are envisaged (see below), the Operating Assets To Be Transferred of KGaA as the Transferring Entity described in detail in the Operational Hive-down Agreement are transferred to the respective OpCo as acquiring entity in accordance with Sec. 131 (1) (1) *UmwG* as a whole by way of partial universal succession in accordance with the allocation in the Operational Hive-down Agreement. The material transfer takes place upon registration of the Operational Hive-down in the Commercial Register of the Transferring Entity (KGaA). The transfer of each Asset And Liability Item by way of a separate transfer instrument can thus be dispensed with. Also, the approval of contractual partners for the legal transfer of contracts is not required in principle. Only in exceptional cases, e.g., if an item to be transferred is located abroad or a contract to be transferred is subject to foreign law and the relevant jurisdiction does not recognize partial universal succession, additional instruments of transfer may be required. It is indeed planned in the subsequent leaseback of the Operating Units to KGaA (cf. section E.) that contractual relationships will be retransferred to KGaA temporarily by way of singular succession with the consent of the contractual partners. In the scope of the Operational Hive-down, however, partial universal succession initially leads to a reliable transfer of the contractual relationships to the OpCos as legal entities planned permanently in the future for the operation of the Operating Units.

However, in cases where a transfer in rem by way of universal succession is not legally permissible or does not appear practicable, the “transfer” is also planned in the Op-

erational Hive-down Agreement of (only) beneficial ownership of Asset And Liability Items, such as (i) granting a permanent and free right of use that is irrevocable through ordinary termination or (ii) establishing fiduciary relationships in the form of a trust agreement that in each case meets the tax requirements for recognition of a fiduciary relationship pursuant to Sec. 39 (2) (1) AO. The legal title of ownership or the formal ownership rights in these objects will remain in these cases with KGaA. The above exception applies in particular to property rights in which the transfer by way of disposal or partial universal succession would have resulted in an unreasonable expense, e.g., for the re-registration due to the change in legal ownership, for example in the case of patents, trademarks or domains. Certain trademarks, whose use is still to be managed Group-wide and centrally by KGaA, are not covered by the material transfer or rights by way of universal succession. For example, this applies to the trademark “Merck” and the logo of the Group (so-called umbrella brands). Also, software of KGaA not exclusively used by KGaA but also by other companies of the Group will not be transferred by way of universal succession. Instead, KGaA shall grant the respective OpCo a permanent and free-of-charge right of use not revocable by ordinary termination. In addition, approvals under public law that can be assigned to KGaA Group Functions and KGaA Site Operations as well as all plant-related permits and permits under environmental, pharmaceutical and product law are not covered by the in rem transfer either but, if they can be attributed to the Operating Units (if required, on a prorated basis), by mutual agreement, will be managed by KGaA during the term of the respective Business Lease Agreement as a trustee for the respective OpCo (for further details of this trust agreement see section C.V.2). The legal transfer of the approvals then takes place upon termination of the respective Business Lease.

The details on the items transferred to the OpCos outside of the partial universal succession and the respective alternative measures are described in the comments on the Operational Hive-down Agreement under C.V.

b) Retroactive economic effect

The Operating Assets To Be Transferred shall be transferred in the relationship between KGaA and the OpCos with economic (retroactive) effect as of January 1, 2018, 0:00 hours (Economic Effective Date as defined in Sec. 126 (1) (6) *UmwG*). As of the Economic Effective Date, the operational business activities relating to the Operating Assets To Be Transferred will therefore in the relationship between KGaA and the OpCos will each be pursued for the account of the OpCos (“for the account of” phase). The statutory provisions on the effective date of the Operational Hive-down and the transfer under civil law and/or material transfer of the Assets and Liabilities Items to OpCos as the acquiring entities remain unaffected.

Otherwise, if the Operational Hive-down has not become effective by February 28, 2019, KGaA and the OpCos may revoke this Operational Hive-down Agreement.

c) **Joint and several liability**

The assets of the Transferring Entity will change once the Hive-down takes effect. To protect the creditors of the hived-down entity, Sec. 133 (1) *UmwG* prescribes that the entities involved in the Hive-down are initially liable in full as joint and several debtors for all liabilities of the Transferring Entity incurred until the effective date of the hive-down. Thus, the former creditors of KGaA may choose to hold KGaA or the respective OpCo liable. This applies regardless of whether or not the respective liability is assigned to an OpCo in the Operational Hive-down Agreement. This statutory provision is intended to prevent the former creditors of KGaA from being deprived of their liabilities by the Operational Hive-down. However, the assignment of a liability to an OpCo as the acquiring entity is significant insofar as the OpCo thereby becomes the “primary debtor” of the liability and is liable for an indefinite period. On the other hand, the liability of KGaA, which has joint liability pursuant to Sec. 133 *UmwG*, expires after five years, or ten years after public disclosure of the registration in the Commercial Register of KGaA, if the claims have not been settled either in a manner pursuant to Sec. 197 (1) nos. 3-5 *BGB* or by a judicial or administrative act of enforcement being taken or applied for; in the case of public law liabilities, it is sufficient for an administrative enactment to be adopted (so-called “limitation of extended liability” pursuant to Sec. 133 (3) *UmwG*). On the other hand, if a liability under the Operational Hive-down Agreement remains with KGaA as the hiving-down entity, then it is the “principal debtor” of the liability. In this case, KGaA and the respective OpCo are also initially liable in full, but the OpCo as an acquiring entity will be discharged from joint liability after five or ten years, respectively.

In addition, the creditors of the entities involved in the hive-down whose claims are not yet due may, as circumstances warrant, in accordance with Sec. 133 (1) s. 2, Sec. 125 in conjunction with Sec. 22 *UmwG*, hold the entity against which the claim is directed liable for granting collateral.

Apart from the liability aspects in the external relationship, which initially affect both entities involved in the hive-down, the question is to distinguish which of the two entities is to bear the liability internally. For this purpose, § 59 of the Operational Hive-down Agreement provides for the customary provision that only the company to which the liability has been allocated according to the Operational Hive-down Agreement shall bear any liabilities in the internal relationship. Therefore, if an OpCo is held liable for liabilities arising from legal relationships that have not been transferred to OpCo under the Operational Hive-down Agreement, KGaA is obliged under § 59.3 of the Operational Hive-down Agreement to immediately notify the relevant OpCo of the respective obligation and to indemnify it for all related expenses and costs. The same applies if an OpCo is held liable by the creditors of such liabilities for granting collateral.

Vice versa, under § 59.2 of the Operational Hive-down Agreement, each OpCo shall immediately indemnify KGaA for any liabilities, expenses and costs, if and to the extent that KGaA is held liable for liabilities from legal relationships that were trans-

ferred to this OpCo under the Operational Hive-down Agreement. The same applies in turn if KGaA is held liable by the creditors of such liabilities for granting collateral.

The indemnity obligations corresponding to the above statements will also exist under the OpCos pursuant to § 59.4 of the Operational Hive-down Agreement.

From an economic perspective, KGaA does not experience any change, even if liabilities are transferred to an OpCo, since KGaA and each of the OpCos have concluded a domination and profit and loss transfer agreement (see section C.IV.4). Any claim for reimbursement by KGaA against an OpCo regarding the liabilities transferred to this OpCo by way of the Operational Hive-down would be expensed to the OpCo under the provisions of § 59.2 of the Operational Hive-down Agreement and would thus either reduce the profit to be transferred to KGaA or increase an annual net loss to be settled by KGaA.

The leaseback immediately following the Operational Hive-down has no impact on the statutory joint and several liability.

d) Consequences for the shareholders of KGaA

The Operational Hive-down does not result in a change in the number of shares issued by KGaA, nor are the rights of these shares affected directly. Following the effective date of the Operational Hive-down, the shareholders of KGaA hold an indirect investment in the hived-down assets via the investment of KGaA in the OpCos (and, after execution of the Holding Hive-down, also via the additional tier of the HoldCos). On a consolidated basis, however, the hived-down assets remain in full within the Group.

Due to the domination and profit and loss transfer agreements between KGaA and OpCos, direct access of KGaA to the management and profits of OpCos is maintained even after the Hive-down has been completed, so that any mediation effect in relation to the operating business of KGaA is virtually neutralized. Like other subsidiaries, the OpCos are integrated into the management and reporting structures of KGaA and the respective Business Sector.

As a result of the leaseback, KGaA temporarily manages the previously hived-down business operations “in its own name and for its own account,” so that – for the duration of the leaseback – the effects of the Operational Hive-down (see above in section E) are essentially neutralized. The details on the impact of the Business Lease on the shareholders of KGaA are shown in E.I.4.a).

The Operational Hive-down has no impact on the listing or tradability of KGaA shares.

e) Consequences for KGaA as the (sole) shareholder of the OpCos

As the Transferring Entity, KGaA – as consideration for the transfer of the Operating Assets To Be Transferred – will receive a new share in the nominal amount of

975,000 Euros in each of the OpCos as the acquiring entities pursuant to s. 3 of Sec. 131 (1) (3) *UmwG*. There will be no changes in the percentage shares of KGaA as the sole shareholder of the OpCos as a result of the Operational Hive-down. Influence on the management of the OpCos is ensured by way of domination and profit and loss transfer agreements between the OpCos and KGaA. Also as a result of the domination and profit and loss transfer agreements between the OpCos and KGaA, the profits generated at the OpCos level will be transferred directly to KGaA.

3. Impact on the financial situation and results of operations and effects on the future dividend policy of KGaA

The Operational Hive-down will have no material effects on the Group's balance sheet or its income statement. The attribution of mixed-use fixed assets to the individual OpCos results in only slight asset shifts between the three global Business Sectors in the segment reporting. The main structural effects of the Operational Hive-down (without taking into account the Business Lease or after its termination, respectively) on the assets and liabilities, results of operation, and financial situation of KGaA can be described as follows:

- **Assets and liabilities:** The Asset And Liability Items transferred to the OpCos will no longer be held by KGaA, but by the OpCos instead. KGaA has, in the scope of the Operational Hive-down, received shares in affiliated companies the (carrying) amount of which will reflect the net assets (assets less liabilities) transferred to the OpCos (on the continuation of carrying amounts under German commercial law based on exchange principles at the level of KGaA, see section C.IV.1.a)(2)). Thus, while the Operational Hive-down will result in a change in the composition of KGaA's assets, it will not reduce the net assets.
- **Results of operations:** The expenses and income affected by the Operational Hive-down – in particular net sales and license income, cost of materials, personnel expenses, depreciation and amortization, and other operating expenses and income – will no longer be included in KGaA's income statement after the termination of the Business Lease Agreements, since in the future they will be shown in the OpCos. Only KGaA's expenses and income related to the functions it has retained will remain after the termination of the Business Lease Agreements (this affects in particular KGaA Group Functions and KGaA Site Operations). Moreover, KGaA will report income and/or expenses from the (domination and) profit and loss transfer agreements concluded with the OpCos (disclosure of profit transfers and/or loss absorptions pursuant to Sec. 302 *AktG*, see Sec. 277 (3) s. 2 *HGB*), along with additional income from rendering services to the OpCos. KGaA's net income for the year will basically not change in this respect in terms of amount due to the Operational Hive-down – only the composition in the individual items of the income statement will change.

- Financial situation: KGaA will mainly generate cash inflows by rendering services and collecting income, particularly from the transfer of profits from the OpCos. Due to the Operational Hive-down, however, cash inflows and outflows from the business activities of the Operating Units will no longer be shown.

The Operational Hive-down will also not affect KGaA's ability to pay dividends and the dividend policy (cf. the explanations on the overall representation of the effects of the transaction on KGaA in this regard in section F.1.c)).

4. Impact on the existing domination and profit and loss transfer agreements between KGaA and the OpCos

Domination and profit and loss transfer agreements have each been entered into between KGaA as the controlling company and each of the OpCos as controlled companies. Following approval by the Annual General Meeting of KGaA and the respective shareholders' meetings of the OpCos, the respective domination and profit and loss transfer agreement (i) was entered into the Commercial Register of HC OpCo on August 24, 2017, (ii) into the Commercial Register of LS OpCo on July 20, 2015 and (iii) into the Commercial Register of PM OpCo on June 25, 2015. Under the domination and profit and loss transfer agreements, the respective OpCo assigns the management of the company to KGaA. KGaA has the right to give instructions to the managing directors of the OpCos regarding the management of the company (Sec. 291 (1) s. 1 Var. 1 *AktG*). In addition, the OpCos undertake to transfer their entire profits to KGaA during the term of the agreement (Sec. 291 (1) s. 1 Var. 2 *AktG*). In return, KGaA must compensate for any annual deficits of the OpCos (Sec. 302 (1) *AktG*).

The agreements remain unaffected by the transaction measures and are an essential component of the structure of the Group in Germany.

In terms of taxation, there are fiscal units with KGaA for corporation tax and trade tax on the basis of the domination and profit and loss transfer agreement and the indirect so-called financial integration of the OpCos (Sec. 14 *KStG*, Sec. 2 (2) s. 2 *GewStG*). The income and/or trade income of the OpCos will be assigned to KGaA. This gives KGaA the option to include the OpCos in the taxable reconciliation of earnings. For VAT purposes, there is a fiscal unit consisting of KGaA as the controlling company and the respective OpCo pursuant to Sec. 2 (2) *UStG* (see above in section B.II).

5. Tax consequences of the Operational Hive-down

Pursuant to Sec. 20 *UmwStG*, the Operational Hive-down of KGaA takes place upon request at carrying amount with retroactive tax-neutral effect on the Transfer Date for Tax Purposes, i.e., December 31, 2017, 24:00 hours. Pursuant to Sec. 20 (1), (2) s. 2 *UmwStG*, this is admissible provided that the combination of the assets and liabilities to be transferred as per the applicable tax laws (i) in each case form a so-called "separable part of an operation" (*Teilbetrieb*) for tax purposes, i.e., a unit that can function

from its own resources, (ii) the hive-down takes place against granting new corporate rights (in the respective OpCo), and (iii) the other requirements of Sec. 20 (2) s. 2 nos. (1)-(4), s. 4 *UmwStG* for continuing the carrying amounts are met in full.

With binding ruling issued upon request pursuant to Sec. 89 (2) *AO* on October 17, 2017, and January 16, 2018, the Darmstadt Tax Office confirmed that the requirements for the tax-neutral transfers of the separable parts of operations (*Teilbetriebe*) to the OpCos pursuant to Sec. 20 (1), (2) *UmwStG* have all been met. With respect to income tax, the transfer of these separable parts of operations pursuant to Sec. 20 (1), (2) *UmwStG* in the course of the Operational Hive-down thus take place without disclosing built-in gains.

The value at which the acquiring entity recognizes the transferred (net) assets will apply as the selling price for the Transferor and as acquisition cost of the company shares received in connection with the transfer of the separable parts of operations by the Transferor (Sec. 20 (3) s. 1 *UmwStG*). Due to the transfer at carrying amounts pursuant to Sec. 22 (1) *UmwStG*, the new shares of the OpCo that KGaA receives as (exclusive) consideration for the Operational Hive-down (“other considerations” in addition to the granting of new shares in terms of Sec. 20 (2) s. 2 (4), s. 4 *UmwStG* are not being granted in the present case) will be subject to a seven-year so-called blocking period. When selling these shares or performing activities representing a so-called “replacement realization situation” (e.g., intra-group restructuring) in terms of Sec. 22 (1) s. 6 (1) – (6) *UmwStG* within seven years of December 31, 2017, 24:00 hours (Transfer Date for Tax Purposes in terms of Sec. 20 (6) s. 2 *UmwStG*), part of the built-in gains in the transferred assets as of the date of the Operational Hive-down will be subject to income taxation on the level of KGaA (trade tax and prorated corporation tax plus solidarity surcharge) and – due to the so-called partial fiscal transparency of KGaA in relation to the family shareholders and General Partners investing via EM KG and EMB KG – pro rata in proportion to income taxation in full plus solidarity charge on the amount of the so-called “Contribution Profit I”). Contribution Profit I is the amount by which the fair market value of the transferred business assets at the time of the transfer less the costs for transferring the assets exceeds the value at which the acquiring entity has recognized the value of these transferred business assets (Sec. 22 (1) s. 3 half-s. 1 *UmwStG*). The portion of these built-in gains subject to retroactive taxation is reduced for each twelve months after the transfer date for tax purposes by one seventh (*Siebtelregelung*, one-seventh rule) (Sec. 22 (1) s. 3 half-s. 2 *UmwStG*).

If, for instance, KGaA as the Transferor sells the shares in the HoldCo within twelve months after the effective date of the tax-neutral Operational Hive-down, this will result in retroactive full taxation of the built-in gains existing on the Transfer Date for Tax Purposes (trade tax, corporation tax, income tax, and solidarity surcharge) on the transfer date for tax purposes. However, if the sale does not take place until after 3.5 years, then only 4/7 of the built-in gains pertaining to the transferred assets at the time of the Operational Hive-down are to be taxed retroactively (legal reduction of the Contribution Profit I by 3/7 pursuant to Sec. 22 (1) s. 3 half-s. 2 *UmwStG*). The acqui-

sition cost of KGaA for the newly received shares (in the OpCo and then – as a result of the Holding Hive-down – in the HoldCo) increases accordingly in the amount of Contribution Profit I. Pursuant to Sec. 23 (2) *UmwStG* and upon application, the OpCo can increase the carrying amounts of the transferred assets in the amount of any Contribution Profit I in a tax-neutral manner if KGaA has demonstrably paid the tax on the Contribution Profit I and the hived-down assets are still part of the business assets of the respective OpCo. If the assets have been derecognized at fair market value, and thus are no longer business assets of the OpCo, then the pro rata increase can be expensed directly. Due to the corresponding increase in the acquisition cost of the shares, an actually realized gain from the sale of the shares in the OpCo is reduced by the amount of the portion of built-in gains that is taxed retroactively.

Furthermore, pursuant to Sec. 22 (3) *UmwStG*, KGaA as the “Transferor” must continue to provide annual proof concerning beneficial ownership of the shares received in the course of the Operational Hive-down during the seven-year blocking period. The proof for a year that has elapsed is to be provided each year at the latest by May 31. If KGaA does not fulfill this annual obligation to provide proof, then the shares in the OpCo will be regarded as sold (fictitious sale), meaning the built-in gains would be subject to full trade taxation, corporation taxation or income taxation, and solidarity charge according to the one-seventh rule. According to the opinion of the fiscal authorities, the shares themselves are also deemed sold, and thus their built-in gains are taxed as well.

Finally, it must be emphasized that the OpCos are currently still inactive “shelf companies” within the context of the Operational Hive-down and, thus, the shares in these companies cannot, on the transfer date for tax purposes of December 31, 2017, be considered a “functionally significant operational basis” nor can they be “assets that can be attributed in economic context” to the operations to be transferred to each of the OpCos that would actually have to be transferred to the respective OpCo (as treasury stock). An application pursuant to lit. 20.09 of the *UmwSt-Erlass* of the German Federal Finance Ministry of 2011, Federal Tax Gazette I 2011, 1314 (**2011 UmwSt-Erlass**) can thus be dispensed with in this case. However, these “old” shares in the OpCos are proportionately “entangled” (*mitverstrickt*) as a result of the Operational Hive-down at carrying amounts pursuant to Sec. 22 (7) *UmwStG* for the purposes of Contribution Profit I.

With respect to VAT, the Operational Hive-down is a non-taxable sale of a business as a whole within the meaning of Sec. 1 (1a) *UStG*.

Real estate transfer taxes are not incurred as a result of the Operational Hive-down since all of KGaA’s real estate and buildings remain with KGaA. Only the corresponding sublease agreements with MRE GmbH are being hived down to the respective OpCo (see section C.II.7).

6. Consequences for the employees and their representatives

a) Consequences of the Operational Hive-down and subsequent Business Lease

In the course of the Operational Hive-down, KGaA transfers the employment relationships of the employees to be allocated to the Operating Units KGaA Healthcare, Life Science, and Performance Materials to the respective OpCo at the time when the hive-down takes effect unless such employees have been in the passive phase of partial retirement on the Closing Balance Effective Date (jointly, the ***Transitioning Employees***). Furthermore, KGaA transfers to the OpCos the rights and obligations arising from employment relationships with employees of KGaA who leave in the time period after the Closing Balance Effective Date until (and including) the date at which the Operational Hive-down goes into effect, and who were to be allocated to the Operating Units Healthcare, Life Science, and Performance Materials at the time of the Closing Balance Effective Date and/or their respective time of departure (collectively, the ***Former Employees***).

Upon the Operational Hive-down becoming effective, the employment relationships of the Transitioning Employees, including the pension entitlements granted to them as defined by the German Company Pensions Act (*Betriebsrentengesetz*) are transferred from KGaA to the respective OpCo (Sec. 123 (3) (1) *UmwG*). Immediately thereafter, the employment contracts of the Transitioning Employees as a consequence of the Business Lease Agreements as detailed in Sec. 613a *BGB* are retransferred from the respective OpCo to KGaA with all rights and obligations (collectively, the ***Transitions Contingent On The Lease***).

The years of service rendered at or recognized by KGaA will not be interrupted by the transfer of the employment relationships to the OpCos and of the Transitions Contingent On The Lease to KGaA. The Protection Against Dismissal Act (*Kündigungsschutzgesetz*) continues to be applicable. In addition, Sec. 323 (1) *UmwG* provides that the Transitioning Employees' position under the German dismissal law due to the Operational Hive-down shall not deteriorate for the period of two years from the Operational Hive-down becoming effective. According to the details of the position paper concluded with the Works Council Of Joint Works dated June 26, 2017, in addition, notices of termination for operational reasons and notices of termination for the deterioration of material working conditions are generally excluded until December 31, 2021. Furthermore, the Transitioning Employees' employment relationships cannot be terminated by KGaA or the respective acquiring entity due to the Transitions Contingent On The Lease (Sec. 613a (4) *BGB*).

KGaA will remain liable for all obligations arising from the employment relationships of the Transitioning Employees even after the Operational Hive-down and the Transitions Contingent On The Lease become effective. Apart from that, the OpCos are jointly and severally liable with KGaA for liabilities arising from the Transitioning Employees' employment relationships transferred to them pursuant to Sec. 123 (3) (1) *UmwG* if the liabilities arose before the respective transition contingent on the lease

and fall due within one year of the respective transition contingent on the lease. If such liabilities fall due after the date of the respective transition contingent on the lease, the OpCo shall only be liable for them to the extent that corresponds to the assessment period that ended on the date of the transition contingent on the lease (Sec. 613a (2) s. 2 *BGB*). The assumptions of joint liability declared by the OpCos in the course of the respective Business Lease Agreements described below in this Combined Report remain unaffected.

The Operational Hive-down and the Transitions Contingent On The Lease will not have any effect on the office or responsibilities of the existing employee representative bodies. Following the Operational Hive-down and the Operational Transitions Contingent On The Lease, the Works Council Of Joint Works remain in charge and continue to be the competent body for the employees and apprentices of KGaA and the OpCos of the Joint Operation Darmstadt/Gernsheim, particularly for the Transitioning Employees as well. The same applies to the youth and apprentices council, as well as the representative body for severely disabled employees and the economic committee constituted on the basis of the Collective Bargaining Agreement On Works Structure. The office and the responsibility of the Group Works Council of KGaA and the Euroforum established at KGaA (MEF) shall also remain unaffected by the Operational Hive-down and the Operational Transitions Contingent On The Lease. The Group Works Council and the Euroforum will continue to be responsible for the Transitioning Employees even after the Operational Hive-down and the Transitions Contingent On The Lease. The committee representing the executive employees of KGaA will remain in charge and continue to represent the executive employees of KGaA even after the Operational Hive-down and the Transitions Contingent On The Lease.

The Operational Hive-down and the Transitions Contingent On The Lease have no impact on the company agreements concluded with the Works Council Of Joint Works, on the Group company agreements concluded with the Group Works Council of KGaA, and on the agreements concluded with the committee representing the executive employees. Said agreements continue to apply to the Transitioning Employees under collective bargaining laws without any changes even after the Operational Hive-down and the Transitions Contingent On The Lease.

The collective bargaining agreements applicable to the Transitioning Employees' employment relationships before the Operational Hive-down shall also continue to apply under collective bargaining laws without any changes even after the Operational Hive-down and the Transitions Contingent On The Lease, provided that this was also the case previously. If the corresponding collective agreements are applicable to the employment relationships with the Transitioning Employees on the basis of individual agreements (in particular due to a reference clause in the respective employment contract), they shall continue to apply even after the Operational Hive-down and the Transitions Contingent On The Lease.

Upon transfer of the employment relationships of the Transitioning Employees, all pension commitments as defined by the German Company Pensions Act made to the

Transitioning Employees shall be transferred to the OpCos. Immediately thereafter, the pension commitments, together with the Transitioning Employees' employment relationships, will be transferred back to KGaA as a result of the Transitions Contingent Upon the Lease as specified in greater detail in Sec. 613a *BGB*.

After the Operational Hive-down and upon the Transitions Contingent On The Lease taking effect, the OpCos will each declare – in the context of the respective Business Lease Agreement – an assumption of joint liability with an obligation to perform in the internal relationship for the pension commitments provided as direct commitments, for time account claims and for a number of other personnel-related commitments (in particular, related to certain bonus claims, claims to jubilee payments or vacation provisions) that are transferred to the acquiring entities within the context of the Operational Hive-down and then to KGaA within the context of the Transitions Contingent On The Lease (collectively, the ***Assumptions Of Joint Liability***) (cf. the detailed explanation under E.II.3.u)).

KGaA secures part of the direct commitments to the Transitioning Employees and the Former Employees in the form of a Contractual Trust Arrangement (***CTA***) via MP e.V. (***CTA-Secured Direct Commitments***). Each of the OpCos has, for its part, concluded a CTA-trust agreement with MP e.V., under which this protection shall be continued in the future. These trust agreements secure the CTA-Secured Direct Commitments that in each case are transitioning to the OpCos. The securing of the CTA-Secured Direct Commitments will also be continued by the CTA concluded by the OpCos during the term of the Assumptions Of Joint Liability. The trust assets from the CTA of KGaA attributable to the CTA-Secured Direct Commitments will be allocated to the new CTA of the OpCos and will be available for further safeguarding there. MP e.V. is bound to service provision at the time of the occurrence of the contractually agreed insured event and subject to the other prerequisites of the trust agreement in the scope of the existing trust assets.

With regard to the company pension scheme, which is implemented via direct insurance or the Pension Fund for the German Economy VVaG (*Pensionskasse für die Deutsche Wirtschaft VVaG - PKDW*), the employment relationships of the Transitioning Employees shall not be affected. In particular, KGaA shall, for the term of the Business Lease Agreements, continue to pay the amounts to the respective pension provider in accordance with the pension provider's regulations and the respective pension entitlement. As part of the hive-down, KGaA transfers its legal position with regard to the direct insurances and the PKDW (position as policy holder ,position as member firm of the pension fund (*Kassenfirma*)) to the OpCos only with economic effect by way of a trust agreement. This results in KGaA holding its legal position in trust vis-à-vis external pension providers (position as insured party under the direct insurance contracts and position as treasury entity (*Kassenfirma*) with regard to the pension fund) in the scope of the existing trust agreement. On the basis of this, KGaA is obliged to follow the instructions of the respective OpCo in connection with the

legal position concerned vis-à-vis the external pension providers, and to exercise all duties according to the trust agreement with the greatest possible care.

The time account agreements of the Transitioning Employees are secured in the same manner as the securing of CTA-Secured Direct Commitments (see above) by a CTA with the Metzler Trust e.V. and the Höchster Pensions Benefits Services GmbH (*CTA-secured Time Account Claims*). Once the Operational Hive-down and the Transitions Contingent On The Lease have taken effect, the OpCos will furthermore each declare – in the scope of the respective Business Lease Agreement – an assumption of joint liability for the time account agreements that are transferred to the OpCos within the context of the Operational Hive-down and then to KGaA within the context of the Transitions Contingent On The Lease. In addition, there will be a pro-rata allocation of trust assets from the CTA of KGaA to the CTA of the acquiring entities with the Metzler Trust e.V. and the Höchster Pensions Benefits Services GmbH. The CTA-secured Time Account Claims shall be secured even during the existence of the assumption of joint liability by way of the CTA of the OpCos with the Metzler Trust e.V. and the Höchster Pensions Benefits Services GmbH.

As explained above in this section, the OpCos also declare an assumption of joint liability as well as an obligation to perform not only for pension commitments provided as direct commitments and for time account claims, but also for other staff-related provisions (in particular, jubilee payments and vacation provisions) after the Operational Hive-down goes into effect and upon the Operational Transitions Contingent On The Lease going into effect – in the scope of the respective Business Lease Agreement. In this respect, the above regarding securing time account agreements applies *mutatis mutandis* subject, however, to the special provision that there is no CTA protection for these other staff-related provisions at KGaA nor is such a CTA protection planned at the OpCos.

The Operational Hive-down and the Transitions Contingent On The Lease have no other effects on the employment and apprenticeships. In particular, no special measures are currently planned in respect of the Operational Hive-down and the Operational Transitions Contingent On The Lease. The consequences of the termination of the Business Lease Agreements are outlined in the following section C.IV.6.b). The Consequences of the Holding Hive-down for employees and their representative bodies are explained separately in section D.V.5.

b) Consequences of the termination of the Business Lease Agreements for the employees and their representative bodies

Upon termination of the respective Business Lease Agreement, the employment relationships allocated in each case to the Operating Units KGaA Healthcare, KGaA Life Science, and KGaA Performance Materials are transferred to the respective OpCo at the respective termination date, including the pension entitlements granted under the German Company Pensions Act, including all rights and obligations, as specified in greater detail in Sec. 613a *BGB*. The years of service rendered at KGaA or recognized

by KGaA shall apply in full as performed at the specific OpCo. Furthermore, the employment relationships transferred pursuant to Sec. 613a *BGB* cannot be terminated due to the transfer of undertaking (Sec. 613a (4) *BGB*).

The apprenticeships of the apprentices shall not be covered by the transfers of undertaking upon termination of the Business Lease Agreements, even if they were deployed in the respective Operating Unit at the respective termination date. The apprenticeships exist even after the termination of the Business Lease Agreements with KGaA and do not transfer to the OpCos. As a result, there will be no adverse effects on the apprenticeships. The existing structure of the apprenticeships will be continued by the Parties.

Pursuant to Sec. 613a *BGB*, the respective OpCo shall be liable for all obligations arising from the employment relationships transferred in the course of the termination of the Business Lease Agreement. In addition to the respective OpCos, KGaA shall be liable for obligations arising from the transferred obligations if the liabilities arose before the respective transfer of undertaking and fall due within one year of the respective transfer of undertaking. If such liabilities fall due after the effective date of the respective transfer of undertakings, KGaA will be liable only to that extent that such liabilities relate to the assessment period that has expired at the effective date of the transfer of the undertaking (Sec. 613a (2) s. 2 *BGB*).

The termination of the Business Lease Agreements shall have no impact on the position and responsibilities of the existing employee representatives. The OpCos shall accede to the Collective Bargaining Agreement On Works Structure no later than upon the termination of the respective Business Lease Agreement becoming effective. The Works Council Of Joint Works thus remains in charge and will continue to be responsible for the employees whose employment relationships transition to the OpCos even after termination of the Business Lease Agreements. The same applies to the youth and apprentices council, as well as the representative body for severely disabled employees and the economic committee constituted on the basis of the Collective Bargaining Agreement On Works Structure. The office and the responsibility of the Group Works Council of KGaA and the Euroforum established at KGaA shall also remain unaffected by the termination of the Business Lease Agreements. The Group Works Council and the Euroforum will continue to be responsible also for those employees whose employment relationships transition to the OpCos. The committee representing the executive employees of KGaA shall remain in charge and continue to represent the executive employees whose employment relationships are transferred to the OpCos even after the termination of the Business Lease Agreements.

The termination of the Business Lease Agreements has no impact on the company agreements concluded with the Works Council Of Joint Works, the group company agreements concluded with the Group Works Council of KGaA, and the agreements concluded with the committee representing the executive employees. These shall apply without any changes under collective bargaining laws to the employees whose employment contracts are transferred to the respective OpCo as a result of the termi-

nation of the Business Lease Agreements even after the termination of the Business Lease Agreements.

The OpCos shall join the employers' association which is a party to collective bargaining agreements, at the latest effective upon termination of the Business Lease Agreements. The relevant collective bargaining agreements will apply without any changes under the collective bargaining laws to the employees whose employment relationships are transferred to the respective OpCo as a result of the termination of the Business Lease Agreements, even after the termination of the Business Lease Agreements, if this was the case previously. If the corresponding collective bargaining agreements apply based on individual agreements (in particular due to a reference clause in the respective employment contract), this shall also apply after termination of the Business Lease Agreements.

KGaA currently has a Supervisory Board that is staffed in accordance with the provisions of the *Mitbestimmungsgesetz* equally with shareholder representatives and employee representatives. The termination of the Business Lease Agreements does not have any impact on the existence, composition, and time in office of the Supervisory Board. The employees whose employment relationships are transferred to the respective OpCos as a result of the termination of the Business Lease Agreements will remain entitled to be voted into the Supervisory Board of KGaA.

Currently, the acquiring entities do not have supervisory boards. Upon termination of the respective Business Lease Agreement, HC OpCo and PM OpCo are expected to each employ more than 2,000 employees in Germany, so that for the companies, after the termination of the respective Business Lease Agreement, a Supervisory Board shall be formed in accordance with the German Co-Determination Act. Upon termination of the Business Lease Agreement, LS OpCo is expected to employ more than 500 but not more than 2,000 employees in Germany, so that for the company, after termination of the Business Lease Agreement, a Supervisory Board shall be formed in accordance with the German One-Third Participation Act (*Drittelbeteiligungsgesetz*).

If, upon termination of the respective Business Lease Agreement, the direct commitments and time accounts, as well as other staff-related commitments that are subject to the assumption of joint liability, are transferred to the respective acquiring entity in the course of the Operational Transitions Contingent On The Lease, the assumption of joint liability for the individual direct commitments, time accounts and other personnel-related provisions declared by the respective OpCo in the course of the Operational Transitions Contingent On The Lease lapses. KGaA and the respective OpCo shall otherwise ensure that the Asset And Liability Items to finance the transfer of pension entitlements are provided to the acquiring entity, and that the agreements in this regard can be continued with the previous pension providers at the same terms and conditions.

The obligation specified above includes in particular the transfer of the direct insurances as regards the employment relationships transitioning to the OpCos and the ap-

plication for a status as the treasury entity for the OpCos with PKDW, unless such status already exists.

The termination of the Business Lease Agreements has no other effects on the employment and apprenticeships. In particular, no special measures are currently planned relating to the termination of the Business Lease Agreements.

The other details of the transfers of undertakings to the OpCos are governed in a position paper dated June 26, 2017 and in an implementation agreement with the Works Council Of Joint Works dated November 1, 2017.

7. Other effects of the Operational Hive-down on KGaA and the OpCos

a) Other effects on KGaA

The Operational Hive-down has no effect on the structure and composition of the Executive Board and Supervisory Board of KGaA. Following the Operational Hive-down, KGaA will continue to act as the parent company managing the entire Group with its three global Business Sectors: Healthcare, Life Science, and Performance Materials. Even after the transaction, KGaA will continue to hold the central Group and management functions (cf. above under B.I.4 and C.II.7 in this regard). Furthermore, KGaA will also continue to operate the infrastructure facilities through KGaA Site Operations at the Darmstadt and Gernsheim sites and render the corresponding services for the future OpCos (cf. above under B.I.4 and C.II.7). During the Business Lease phase (see on details of the leaseback section E.), KGaA will initially carry on the business operations of the hived-down Operating Units KGaA Healthcare, Life Science, and Performance Materials in its own name and for its own account in its role as lessee. The employees of the Operating Units KGaA Healthcare, Life Science, and Performance Materials will continue to be employed by KGaA during this phase. The transaction before the termination of the Business Lease will have no effect on the operational processes or on the external representation of KGaA. The operational management of the business will be permanently transferred to the OpCos upon introduction of the ERP systems and termination of the Business Lease, and KGaA will also become the Group holding company in relation to the German business activities that are hived down to the OpCos in the scope of the Operational Hive-down. However, even in this phase – particularly due to the indirect 100% investment of KGaA in the OpCos and the existing domination and profit and loss transfer agreement with the OpCos – the OpCos are closely bound to KGaA economically and organizationally (including because of the direct rights of KGaA to issue instructions to the Executive Boards of the OpCos).

b) Other effects on the OpCos

During the phase of the Business Lease, the respective OpCos will remain without any operational business activities and only earn rent for the respective ceded operation (cf. on this section E.I.4.b)(1)). The OpCos will also not have any employees of

their own during this phase (on the possible exceptional case due to the potential premature termination of the Performance Materials Business Lease Agreement as regards the Distribution and Sales Function see sections E.IV and E.IV.3.x)); instead, they will continue to be employed by KGaA as a result of the Business Lease. After the termination of the Business Lease (cf. section F. in this regard), the OpCos will then take over and run the respective hived-down operating business in their own name and for their own account. The scope of the business activity is limited to the previous business activities of KGaA in the Operating Units KGaA Healthcare, Life Science, and Performance Materials, which were described in more detail in B.I.4.b). With regard to the global Business Sectors, the OpCos – as well as the HoldCos – will have no “cross-company” Group management function. Such management will continue to be exercised by KGaA for the global Business Sectors. The OpCos themselves will be integrated into the functional management and reporting structure of the Business Sectors. As a result of the Operational Hive-down, the OpCos will not appoint any new managing directors nor will those managing directors currently in office and listed in sections B.II.1, B.II.2 and B.II.3 be dismissed. The domination and profit and loss transfer agreements concluded between KGaA and the OpCos will remain unaffected by the Operational Hive-down (see the comments in section C.IV.4). A depiction of the target structure is contained in section A.II.4. Supervisory Boards are not initially set up at the level of the OpCos. Since the OpCos do not employ any staff in the Business Lease phase (however, on the possible exception due to the possibility of premature partial termination of the Performance Materials Business Lease Agreement as regards the distribution and sales function, see sections E.IV and E.IV.3.x)), the OpCos are not subject to co-determination, neither are they subject to the German One-Third Participation Act (third-party co-determination) or the German Co-Determination Act (parity co-determination). See section E.I.4.e) on the effects of terminating the Business Lease on the co-determination situation of the OpCos. The overall impact of the transaction is summarized in F. Reference is made to that section.

V. Explanation of the Operational Hive-down Agreement and its Annexes

The Operational Hive-down Agreement was signed on March 2, 2018, pursuant to Sec. 125 (1), Sec. 6 *UmwG*, with the content specified in Sec. 126 (1) *UmwG* notarized by the Notary Public Andreas von Werder, with his office situated in Frankfurt am Main (Deed No. 92/2018, Part A.). The Transferring Entity is KGaA, and the acquiring entities are HC OpCo, LS OpCo, and PM OpCo. In detail, the Operational Hive-down Agreement and its annexes contain the following detailed provisions.

The Operational Hive-down Agreement is divided into eight sections. Following a preamble, which is part of the agreement pursuant to § 64.2, section A. (§ 1 and § 2) contains general regulations on the Operational Hive-down, the Economic Effective Date, the Transfer Date for Tax Purposes, the closing balance sheet, the Legal Effective Date, and on the continuation of the carrying amounts. Subsequently, section B. (§ 3 to § 38) describes for each Operating Unit separately the items of the Operating

Assets To Be Transferred in greater detail that KGaA is transferring to HC OpCo, LS OpCo, and PM OpCo by way of a hive-down and as specified by the Operational Hive-down Agreement. Section C. (§ 39) gives an overview of the assets excluded from the Operational Hive-down. Section D. (§ 40 and § 41) contains provisions regarding the consideration for the transfer of KGaA's assets to the OpCos and governs the associated capital increases, including their related provisions. In section E. (§ 42 and § 43), it is laid down that special rights and benefits are not granted pursuant to Sec. 126 (1) (7) and (8) *UmwG*. Section F. (§ 44) explains the intended temporary leaseback of the operations being transferred between the parties, with reference to the drafts of the Business Lease Agreements appended as an Annex. Section G. (§ 45 to § 47) contains an overall presentation of the consequences of the Operational Hive-down and subsequent Business Lease along with the Holding Hive-down for the employees and their representative bodies and deals with the individual legal consequences for employees and the measures specified for this purpose on the one hand and the consequences of the termination of the Business Lease Agreements for the employees and their representative bodies on the other, along with the impact on collective bargaining agreements and company agreements. The final section H. (§ 48 to § 65) contains further joint provisions of the Parties concerning the Operational Hive-down. These additional joint provisions include in particular stipulations regarding the treatment of public law permits and approvals, as well as cross-sector agreements.

The terms defined in the Operational Hive-down Agreement are, in principle, used in the following description and explanation of the Operational Hive-down Agreement. Insofar as annexes are referred to, these are Annexes of the Operational Hive-down Agreement. Sections that do not specify a law or act refer to sections of the Operational Hive-down Agreement.

1. Preamble

The Preamble of the Operational Hive-down Agreement provides a brief overview of the planned restructuring of KGaA and the measures planned in this respect. For this purpose, the entities involved and the background to the hive-downs and leasebacks are described briefly. In addition, both the Operating Assets To Be Transferred, including the asset allocation to the OpCos, and the assets remaining with KGaA are designated in an overview. The Preamble also defines and explains some basic terms of the Operational Hive-down Agreement, in particular for the redefining of the three Operating Units KGaA to be hived down. Furthermore, the Preamble clarifies that the Operational Hive-down, the Holding Hive-down, and the Business Lease Agreements are a joint entrepreneurial concept that is to be jointly submitted to the Annual General Meeting for approval. Finally, the Preamble contains comments on the planned sequence of registration of the measures in the respective Commercial Register and thus on the effectiveness of the individual transaction steps.

2. Operational Hive-down (§ 1)

§ 1.1 contains the central clause of the Operational Hive-down Agreement, according to which KGaA, as the Transferring Entity, will transfer the Operating Units KGaA Healthcare / KGaA Life Science / KGaA Performance Materials (with the assets described separately in § 3 to § 38 of the Operational Hive-down Agreement) by way of hive-down by absorption pursuant to Sec. 123 (3) (1) *UmwG* and as specified by the provisions of the Operational Hive-down Agreement, including the stipulations on the transfer or granting of beneficial ownership, to HC OpCo, LS OpCo, respectively PM OpCo as the acquiring entities against new shares (Sec. 126 (1) (2) *UmwG*). § 1.1 specifies that, as a rule, the transfer shall take place by way of partial universal succession pursuant to Sec. 123 (3) (1), Sec. 131 (1) (1) *UmwG*; the OpCos will by law accordingly become the universal successor to KGaA with respect to the assets and liabilities transferred by way of the Operational Hive-down. An individual transfer of rights in each Asset And Liability Item can thus be dispensed with. For the avoidance of doubt, § 1.1 stipulates that the OpCos, besides granting new shares, shall not grant Merck KGaA any additional (other) considerations that are relevant under tax law in terms of Sec. 20 (2) s. 2 No. 4, s. 4 *UmwStG*. Moreover, § 1.1 at the end also defines the term “Operating Assets To Be Transferred.”

§ 1.2 stipulates that the Operational Hive-down and the Operating Assets To Be Transferred shall only cover the Asset And Liability Items of KGaA. The provision is intended to clearly distinguish between the global Business Sectors and the activities carried out within KGaA at the Darmstadt and Gernsheim locations and the associated assets and liabilities. Only the latter are included in the Operational Hive-down. In the event that reference is made in the Operational Hive-down Agreement to a Group-wide Business Sector for determining the Operating Assets To Be Transferred, § 1.2 also clarifies that any transfer by way of the Operational Hive-down will be limited to the Asset And Liability Items of KGaA attributable to this Group-wide Business Sector. In addition, § 1.2 defines the meaning of the terms “Asset And Liability Item” and “Asset And Liability Items” for the entire Operational Hive-down.

§ 1.3 clarifies that the Operating Assets To Be Transferred shall basically be transferred by way of the hive-down and partial universal succession pursuant to Sec. 123 (3) (1), Sec. 131 (1) (1) *UmwG*. Moreover, in derogation from the transfer by way of a hive-down or partial universal succession for individual Asset And Liability Items, § 1.3 also specifies other measures, such as the transfer or granting of beneficial ownership pursuant to Sec. 39 (2) (1) *AO* in conjunction with lit. 20.01 s. 1 and lit. 15.07 s. 2 2011 *UmwSt-Erlass*, e.g., by establishing a trust agreement or by granting a right of use that is irrevocable through ordinary termination, permanent, and free of charge. Insofar as this is the case, pursuant to § 1.3, legal title of ownership or formal ownership of rights remains with KGaA, while beneficial ownership of the specific asset shall be transferred to the respective OpCo or “duplicated” by granting a right of use. The same applies pursuant to § 1.3 to the so-called plan assets within the meaning of Sec. 246 (2) (2) *HGB* for securing the CTA-Secured Direct Commitments and the time account agreements, insofar as they are part of the Operating Assets To Be

Transferred. The pension law aspects are described in detail in section C.IV.6 and the treatment of the plan assets, in addition, in section C.II.6.

§ 1.4 stipulates that KGaA and the OpCos agree that the trust agreements concluded under the Operational Hive-down Agreement are deemed to be justified by the Operational Hive-down Agreement and in each case meet the requirements of Sec. 39 (2) (1) AO for a “trust agreement“, as well as case law of the Federal Fiscal Court of July 15, 1997 – Case No. VIII R 56/93 that provides specific guidance on this determination. In § 1.4, the essential content of the trust agreement is explained again and it is clarified that KGaA acts as a trustee and the OpCos act as the trustor in such a trust agreement. The transfer of beneficial ownership by way of the Trust Agreement has the effect described in § 1.4 at the end, namely that the trust assets are attributable for tax purposes to the trustor (i.e., the OpCos) from the end of the Transfer Date for Tax Purposes (for a definition see section C.V.3) and are also accounted for at the OpCos accordingly.

3. Economic Effective Date, Transfer Date for Tax Purposes, closing balance sheet, Legal Effective Date, continuation of the carrying amounts (§ 2)

§ 2 defines the terms Economic Effective Date, Transfer Date for Tax Purposes, Closing Balance Effective Date, closing balance sheet, and Legal Effective Date.

In § 2.1, the Economic Effective Date is defined as January 1, 2018, 0:00 hours. The Economic Effective Date is the time from which the actions and business activities of KGaA in relation to the Operating Assets To Be Transferred are deemed being undertaken for account of the respective OpCo as the acquiring entity in the internal relationship between KGaA and the OpCos (Sec. 126 (1) (6) *UmwG*). This means that, for commercial balance sheet purposes, the Operational Hive-down will have a retroactive economic effect as of January 1, 2018, 0:00 hours, and that the parties will be positioned as if the Operating Assets To Be Transferred to the respective OpCo had already been transferred on the Economic Effective Date. The same applies to the appropriation of profit/loss between KGaA and the respective OpCo. In a binding ruling issued on October 17, 2017 and on January 16, 2018, the Darmstadt Tax Office confirmed that the Operational Hive-down from KGaA to the respective OpCo is in each case to be qualified as a contribution in kind in terms of Sec. 20 (1) *UmwStG*. Given these facts, the Closing Balance Effective Date (see the remarks in the following paragraph for information on the definition) can be chosen as the Transfer Date for Tax Purposes upon application in accordance with Sec. 20 (5) s. 1, (6) s. 1 and 2 *UmwStG*. The Transfer Date for Tax Purposes is the point in time at which, for (income) tax purposes (determining the income and the assets each of KGaA and the OpCos), the Operating Assets To Be Transferred are deemed to have been transferred to the respective OpCo. The OpCos intend to make use of this option in a timely manner, so that in § 2.1 the Transfer Date for Tax Purposes is defined as December 31, 2017, 24:00 hours.

Sec. 125 s. 1 in conjunction with Sec. 17 (2) *UmwG* prescribes that a so-called closing balance sheet needs to be attached to the registration of the hive-down for the Commercial Register of the Transferring Entity (here, KGaA). Thus, § 2.2 stipulates that the closing balance sheet shall be based on the annual balance sheet of KGaA that is part of the financial statements of KGaA as of December 31, 2017, 24:00 hours, which was audited and granted an unqualified audit opinion by KPMG AG Wirtschaftsprüfungsgesellschaft, Berlin (Closing Balance Effective Date). The registration court of the Transferring Entity (KGaA) may only register the Operational Hive-down if the closing balance sheet has been compiled as of a (balance sheet) effective date no earlier than eight months prior to the registration: Sec. 125 s. 1 in conjunction with Sec. 17 (2) s. 4 *UmwG*. The Operational Hive-down must be registered in the Commercial Register no later than August 31, 2018.

§ 2.3 specifies that the OpCos shall continue to record the Operating Assets To Be Transferred in their accounting under German commercial law (Sec. 24 *UmwG*) and in their tax balance sheet at the respective applicable carrying amounts. For the continuation of carrying amounts under tax law, the OpCos will submit a corresponding application to the competent fiscal authorities in accordance with Sec. 20 (2) (2) *UmwStG*.

In line with sentence 1 of Sec. 130 (1) and Sec. 131 (1) (1) *UmwG*, § 2.4 stipulates that the Operational Hive-down will take effect upon registration in the Commercial Register of KGaA and that the Operating Assets To Be Transferred will be transferred to the OpCos in rem at that date. This point in time is referred to in the Operational Hive-down Agreement as the Legal Effective Date. On the Legal Effective Date, not only the rights in rem, but also ownership and surrender claims relating to the transferred movable assets are transferred to the OpCos. The Legal Effective Date must be distinguished from the Economic Effective Date, which concerns the timing of the economic transfer of the Operating Assets To Be Hived Down in the internal relationship.

4. Description of Healthcare (§ 3 to § 14), Life Science (§ 15 to § 26), and Performance Materials (§ 27 to § 38) Assets To Be Transferred

§§ 3 to 14, 15 to 26 and 27 to 38 describe the assets and liabilities to be transferred respectively to HC OpCo, LS OpCo, or PM OpCo. The wording used to describe the Healthcare, Life Science, and Performance Materials Assets To Be Transferred is essentially identical; thus, for the sake of clarity and to avoid unnecessary repetition, the explanation of the relevant parts of the Agreement is summarized in this section. Relevant deviations in the respective description are indicated and will be explained and presented separately in the following sections. The annexes to which the relevant sections of the Operational Hive-down Agreement refer describe each of the Assets To Be Transferred in individualized form.

a) Transfer of assets and liabilities of the Operating Units KGaA Healthcare, Life Science, and Performance Materials (§ 3 / § 15 / § 27)

§ 3 / § 15 / § 27 contain the key provisions of the Operational Hive-down Agreement for the identification of all the assets and liabilities of the Operating Units KGaA Healthcare, Life Science, and Performance Materials to be transferred to the respective OpCo.

§ 3.1 / § 15.1 / § 27.1 initially describe in general the assets to be transferred to the respective OpCo. Accordingly, KGaA will transfer to HC OpCo, LS OpCo, and PM OpCo the Operating Unit KGaA Healthcare, the Operating Unit KGaA Life Science, or the Operating Unit KGaA Performance Materials, respectively, with all Asset And Liability Items that are attributable directly or indirectly, legally or economically to the respective Operating Unit. The Operating Units KGaA Healthcare, Life Science, and Performance Materials have already been described in detail in the Preamble in the Operational Hive-down Agreement (and the supplementary Annex V.3).

§ 3.2 / § 15.2 / § 27.2 contain the clauses required under Sec. 126 (1) (9) *UmwG* to describe the operations and parts of operations transferred in the course of the Operational Hive-down and assigned to the acquiring entities. According to § 3.2, the hive-down of the Operating Unit KGaA Healthcare comprises the transfer of the “KGaA Healthcare Darmstadt” operation at the Darmstadt site that exists as part of the Darmstadt/Gernsheim Joint Operation. According to § 15.2, the hive-down of the Operating Unit KGaA Life Science comprises the transfer of the “KGaA Life Science Darmstadt” operation at the Darmstadt site that exists as part of the Darmstadt/Gernsheim Joint Operation. According to § 27.2, the hive-down of the Operating Unit KGaA Performance Materials comprises the “KGaA Performance Materials Darmstadt” and “KGaA Performance Materials Gernsheim” operations at the Darmstadt and Gernsheim sites as parts of the Darmstadt/Gernsheim Joint Operation.

Apart from that, § 3.2 / § 15.2 / § 27.2 refer to the detailed provisions in § 11 / § 23 / § 35 for the precise provisions regarding the transfer of the employment relationships assigned to the respective Operating Unit.

§ 3.3 / § 15.3 / § 27.3 contain the reference to a so-called Hive-down Balance Sheet common in hive-down agreements. In addition to the description of the Operating Assets To Be Transferred contained in the Operational Hive-down Agreement and in order to more precisely determine the items that must be recorded in the closing balance sheets pursuant to § 3.3 / § 15.3 / § 27.3, reference is made to the Healthcare Hive-down Balance Sheet, the Life Science Hive-down Balance Sheet, and the Performance Materials Hive-down Balance Sheet as of the Economic Effective Date; these are attached to the Operational Hive-down Agreement as Annex 3.3 / Annex 15.3 / Annex 27.3 and derived from the closing balance sheet of KGaA. Referring to balance sheets in order to determine and/or define the assets to be hived down is expressly governed in Sec. 126 (2) (3) *UmwG*. Furthermore, § 3.3 / § 15.3 / § 27.3 also stipulate that the recording of an item in the Healthcare Hive-down Balance Sheet, the Life Science Hive-down Balance Sheet, or the Performance Materials Hive-down

Balance Sheet is not a prerequisite for it to be transferred to HC OpCo, LS OpCo, or PM OpCo. Unless otherwise provided in the Operational Hive-down Agreement, all items that are not required to be or cannot be recognized or are actually off-balance sheet items include rights and obligations from the Healthcare Assets To Be Transferred, the Life Science Assets To Be Transferred, and the Performance Materials Assets To Be Transferred to be assigned to them from an economic perspective. § 3.3 / § 15.3 / § 27.3 furthermore describe tax parameters that justify the attribution to Healthcare Assets To Be Transferred / Life Science Assets To Be Transferred / Performance Materials Assets To Be Transferred from an economic perspective.

§ 3.4 / § 15.4 / § 27.4 refer to the more detailed definition of Operating Assets To Be Transferred for the respective Operating Unit, in particular to §§ 4 to 14 (Healthcare) / §§ 16 to 26 (Life Science) / §§ 28 to 38 (Performance Materials). In these provisions, the Asset And Liability Items transferred respectively are described in more detail. § 3.4 / § 15.4 / § 27.4 clarify in addition that the Healthcare Assets To Be Transferred / Life Science Assets To Be Transferred / Performance Materials Assets To Be Transferred include the plant-related and environmental-law approvals attributable to the Operating Unit KGaA Healthcare / Operating Unit KGaA Life Science / Operating Unit KGaA Performance Materials and specified in § 48.2, as well as drug and product approvals which KGaA holds in trust for HC OpCo for the duration of the Business Lease. For more detailed provisions on the approvals, § 3.4 / § 15.4 / § 27.4 refer to § 48 (cf. section C.V.12).

b) Intangible Assets (§ 4 / § 16 / § 28)

According to § 4 / § 16 / § 28, KGaA transfers to the respective OpCo all intangible assets attributable to the Healthcare, Life Science and Performance Materials Business Sectors.

§ 4 initially defines certain terminology used throughout the Operational Hive-down Agreement to describe the intangible assets to be transferred.

In accordance with § 4.1 / § 16.1 / § 28.1, the intangible assets to be transferred – if not otherwise specified in § 4.2 / § 16.2 / § 28.2 – include in particular all patent rights, trademarks and brands, and copyrights and ancillary copyrights exclusively attributable to the Healthcare, Life Science, and Performance Materials Business Sectors, including the intangible assets listed in Annex 4.2.a and Annex 4.2.b / Annex 16.2.a and Annex 16.2.b / Annex 28.2.a and Annex 28.2.b, along with rights of use of KGaA in third-party intangible assets, including the license agreements listed in Annex 10.2 / Annex 22.2 / Annex 34.2.

Pursuant to § 4.2 / § 16.2 / § 28.2, copyrights or rights of use in software that is used not only by KGaA but also by other companies of the Group (e.g., ERP systems and associated software) will not be transferred. This also applies according to § 4.2 / § 16.2 / § 28.2 if such copyrights or rights of use in software are attributable exclusively to one of the (global) Business Sectors. Instead of a legal transfer, these copy-

rights and rights of use that remain with KGaA will be licensed pursuant to § 4.4 / § 16.4 / § 28.4.

Insofar as the Transferred Intellectual Property Rights in the Business Sectors Healthcare, Life Science, and Performance Materials are held by third parties in trust for KGaA, the respective trust agreements pursuant to § 4.3.a) / § 16.3.a) / § 28.3.a) will be transferred to the respective OpCo by way of partial universal legal succession pursuant to Sec. 123 (3) (1) and Sec. 131 (1) (1) *UmwG*, and according to § 10 / § 22 / § 34 of the Operational Hive-down Agreement.

Pursuant to § 4.3.b) / § 16.3.b) / § 28.3.b), all registered property rights that have been registered or entered in the name of KGaA (in particular, the trademarks and brands listed in Annex 4.2.a / Annex 16.2.a / Annex 28.2.a) are transferred by entering into a trust agreement pursuant to Annex 4.3.b / Annex 16.3.b / Annex 28.3.b between KGaA and the respective OpCo, according to which KGaA holds these registered property rights in trust for the respective OpCo as of the Economic Effective Date. Under the trust agreement, KGaA will be obligated to comply with all instructions issued by the respective OpCo in connection with the registered property rights. In particular, it will be obligated to register, manager, maintain, and monitor the registered property rights in all countries specified by the respective OpCo and must act in the best interests of the respective OpCo at all times and operate in such a way that the business transactions of the respective OpCo are protected in a way that is economically viable. The respective OpCo will have the exclusive right to use and exploit the registered property rights in any way. Moreover, it must bear all costs and expenses incurred by KGaA in relation to fulfilling the obligations arising from the Trust Agreement.

§ 4.3.c) / § 16.3.c) / § 28.3.c) require for the remaining Transferred Healthcare Property Rights / Transferred Life Science Property Rights / Transferred Performance Materials Property Rights to be transferred by way of partial universal succession pursuant to Sec. 123 (3) (1), Sec. 131 (1) (1) *UmwG*.

Pursuant to § 4.4 / § 16.4 / § 28.4, intangible assets of KGaA that are also but not exclusively attributed to the respective Business Sector, as well as software that is used not only by KGaA but also by other companies of the Group, shall not be transferred. Instead, KGaA will grant the respective OpCo a permanent right of use that is not revocable by ordinary termination and is free of charge by granting a perpetual, irrevocable, non-exclusive, royalty-free and non-transferable (sub-)license pursuant to Annex 4.4 / Annex 16.4 / Annex 28.4. This right of use will be restricted for use within the respective Business Sector in the course of ordinary business operations. It will also apply to all future intangible assets that KGaA applies for or registers when expanding, changing, or further developing the licensed rights. During the term of the license agreement, KGaA alone will be obligated to take necessary measures for

maintaining and managing the licensed rights and ensure them against current or potential infringers. The respective OpCo will reimburse KGaA pro rata for all costs incurred by KGaA in relation to registering, administering, maintaining, defending, and enforcing under the license agreement. In the event of a change of control at the respective OpCo or its legal successors, KGaA may terminate the issued license without giving notice, whereby all rights and obligations of the license will cease with immediate effect and without any compensation.

§ 4.5 / § 16.5 / § 28.5 provide for specific provisions for the transfer of software.

§ 4.6 / § 16.6 / § 28.6 contain provisions for obtaining third-party consent, which is required for the transfer or licensing of intangible assets, and provisions applicable in the event such consent is not granted.

§ 4.7 / § 16.7 / § 28.7 provide that the respective OpCo shall pay the proportionate fees allocable to them for the use of the intangible assets or rights of use, and that KGaA may pass on to the respective OpCo any costs for the use of the intangible assets or rights of use by the respective OpCo.

According to § 4.8 / § 16.8 / § 28.8, third-party rights remain intangible assets in the scope to which they exist at the Legal Effective Date.

c) Know-How (§ 5 / § 17 / § 29)

According to § 5.2 / § 17.2 / § 29.2, KGaA transfers to the respective OpCo all know-how of KGaA attributable exclusively to the Healthcare Business Sector / Life Science Business Sector / Performance Materials Business Sector, and in particular the KGaA know-how more precisely defined in § 5.1 / § 17.1 / § 29.1. If know-how is also but not exclusively assigned to the Healthcare Business Sector / Life Science Business Sector / Performance Materials Business Sector, KGaA will grant to the respective OpCo an unlimited, irrevocable, non-exclusive, free-of-charge, and non-transferable (sub-)license pursuant to § 4.4 / § 16.4 / § 28.4, just as with the intangible assets.

§ 5.3 / § 17.3 / § 29.3 govern the treatment of know-how, which may be attributable to the respective Business Sector and shall be transferred or licensed to the corresponding OpCo according to § 5 / § 17 / § 29, but is included in records, documents, on data carriers, or other embodiments or storage media not attributable to the respective Business Sector. According to this, KGaA is obliged to grant ownership of these embodiments or storage media or, in the case of databases, also to grant access rights in favor of the respective OpCo.

The provisions contained in § 4.6 / § 16.6 / § 28.6 for the possible obtaining of third-party consent for the transfer or licensing of intangible assets shall also apply according to § 5.4 / § 17.4 / § 29.4 to the respective transferred or licensed know-how.

§ 5.5 / § 17.5 / § 29.5 require, in particular, that the respective OpCo must pay the prorated fees allocable to them for the use of the respectively transferred or licensed know-how. This also applies under certain circumstances to any costs incurred for the know-how transferred or licensed pursuant to § 5.

§ 5.6 / § 17.6 / § 29.6 stipulate that the respective OpCo is also obligated to comply with restrictions on the use of the respectively transferred or licensed know-how that exist on the basis of agreements with third parties.

d) Tangible assets (§ 6 / § 18 / § 30)

Pursuant to § 6.1 / § 18.1 / § 30.1, KGaA transfers to the respective OpCo all items of tangible assets attributable to the Operating Unit KGaA Healthcare / Operating Unit KGaA Life Science / Operating Unit KGaA Performance Materials. These include, in particular, all technical equipment and machinery, assets under construction, other items of movable tangible assets attributable exclusively or based on their use predominantly to the Operating Unit KGaA Healthcare / Operating Unit KGaA Life Science / Operating Unit KGaA Performance Materials, along with operating and office equipment and low-value assets attributable exclusively or based on their use predominantly to Operating Unit KGaA Healthcare / Operating Unit KGaA Life Science / Operating Unit KGaA Performance Materials. However, the real estate and buildings owned by KGaA are excepted from the Operational Hive-down and the tangible assets to be transferred to the respective OpCo (cf. also the explanations in sections C.II.7 and C.V.5). In particular, the tangible assets of KGaA to be transferred to the respective OpCo include the items listed in the corresponding internal cost centers, in particular those detailed in Annex 6.1 / Annex 18.1 / Annex 30.1.

§ 6.2 / § 18.2 / § 30.2 stipulate that – in the event that the items of tangible assets specified in § 6.1 / § 18.1 / § 30.1 are classified as essential components of land or a building of KGaA as defined by Sec. 94 *BGB* – KGaA does not transfer (legal) ownership, but only beneficial ownership by granting a right of use that is irrevocable by ordinary termination, permanent, and free of charge. The reason for this provision is the principle derived from Sec. 93, Sec. 94 *BGB* according to which essential components of land, in principle, cannot be subject to special rights.

§ 6.3 and § 6.4 / § 18.3 and § 18.4 / § 30.3 and § 30.4 are clauses common in hive-down agreements that govern the treatment of special scenarios related to KGaA's ownership position. The stipulations contain in particular the exact process of transferring items that are subject to reservation of ownership in which KGaA has only co-ownership or joint ownership or that are not free of third-party rights.

§ 6.5 / § 18.5 / § 30.5 set forth an obligation on the part of HC OpCo, LS OpCo, and PM OpCo to conclude an agreement with KGaA or another OpCo under certain circumstances for the granting of rights of use in transferred tangible assets. This obliga-

tion applies to each OpCo to which is (only) transferred an item of tangible assets as the “predominant user” within the meaning of § 6.1. The provision allows the use of the item by KGaA or another OpCo to be continued even after the Operational Hive-down has been implemented.

e) Receivables (§ 7 / § 19 / § 31) and financial assets (§ 7 / § 31)

§ 7.1 / § 19.1 / § 31.1 stipulate that KGaA transfers to the respective OpCo in particular the receivables attributable to the Operating Unit KGaA Healthcare / Operating Unit KGaA Life Science / Operating Unit KGaA Performance Materials. § 7.1 / § 19.1 / § 31.1 contain a non-exhaustive list of receivables that KGaA is transferring to the respective OpCo, including trade accounts receivable and receivables from employees who have left or retired. § 7.1 / § 19.1 / § 31.1 clarify furthermore that even in the event of a pro-rated transfer of receivables, only a pro-rated transfer to the respective OpCo shall take place. § 7.1 / § 19.1 / § 31.1 also stipulate that such items and rights (if needed on a pro-rata basis) serving to secure the transferred receivables be transferred to the respective OpCo.

§ 7.2 / § 19.2 / § 31.2 serve to further specify the receivables attributable to the respective Assets To Be Transferred. Accordingly, the Assets To Be Transferred each include in particular the receivables attributable completely or in part to the respective Operating Unit via KGaA’s accounting system on the basis of receipt numbers, including the receivables listed in Annex 7.2 / Annex 19.2 / Annex 31.2.

The “Financial assets“, i.e. the investments of KGaA in affiliated companies as well as other shareholdings of KGaA, are not included in the Operational Hive-down. The only exception is for the shareholdings of KGaA named in Annex 7.2 / Annex 31.2. The investments listed there are transferred to HC OpCo (§ 7.2 and/or Annex 7.2) and PM OpCo (§ 31.2 and/or Annex 31.2). For this reason, § 7.1 and § 31.1 refer to the transfer of receivables and also of financial assets.

f) Inventories and other current assets (§ 8 / § 20 / § 32)

§ 8.1 / § 20.1 / § 32.1 stipulate the transfer of the inventories and other current assets attributable to the assets to be transferred to the respective OpCo and specify the items recorded based on the balance sheet items under German commercial law.

§ 8.2 / § 20.2 / § 32.2 govern the treatment of inventories that are attributable to the respective Operating Unit KGaA and subject to a retention of title. In those cases, § 8.2 / § 20.2 / § 32.2 prescribe that instead of the title the existing entitlement right should be included in the respective Assets To Be Transferred.

§ 8.3 / § 20.3 / § 32.3 serves to further specify the inventories and other current assets attributable to the Assets To Be Transferred. Accordingly, the respective Assets To Be Transferred include in particular the inventories and other current assets in the accounting system of KGaA on the basis of certain item numbers, the so-called stock keeping units, and attributed to the respective Operating Unit of KGaA, and other

current assets, particularly those listed in detail in Annex 8.3 / Annex 20.3 / Annex 32.3.

§ 8.4 / § 20.4 / § 32.4 also require the transfer of fixed-term deposits, which are shown in the respective Hive-down Balance Sheet under the item “additional assets.” These are time deposits with MFS GmbH.

g) Liabilities and provisions (§ 9 / § 21 / § 33)

§ 9.1 / § 21.1 / § 33.1 relate to the assets of KGaA that are allocated to the respective assets to be transferred and transferred to the corresponding OpCo. The transfer comprises, in particular, all liabilities and provisions recognized in the respective Hive-down Balance Sheet as well as all other liabilities attributable to the respective Operating Unit of KGaA, which are specified in § 9.1 / § 21.1 / § 33.1, including liabilities that cannot be reported in the balance sheet. § 9.1 / § 21.1 / § 33.1 clarify in addition that in the event of a pro rata transfer of liabilities, contingent liabilities, or future liabilities, a pro rata allocation to the respective OpCo takes place.

§ 9.2 / § 21.2 / § 33.2 serve to further specify the liabilities and provisions attributable to the respective assets to be transferred. The non-exhaustive list in § 9.2 / § 21.2 / § 33.2 includes liabilities and provisions, as well as deferred income.

§ 9.3 / § 21.3 / § 33.3 stipulate, based on the balance sheet categories of Sec. 251 *HGB*, that the liabilities to be transferred to the respective OpCo also include warranty risks and contingent liabilities attributable to the respective Operating Unit of KGaA.

In § 9.4 / § 21.4 / § 33.4, the details of the liabilities attributable to the assets to be transferred are further specified in Annex 9.4.a / Annex 21.4.a / Annex 33.4.a as well as in Annex 9.4.b / Annex 21.4.b / Annex 33.4.b for uncertain liabilities attributable to the Assets To Be Transferred. In addition, § 9.4 / § 21.4 / § 33.4 clarify that the transfer of the balance sheet items “provisions” or “deferred income” refers to the transfer of the underlying legal relationships and risk positions. Moreover, § 9.4 / § 21.4 / § 33.4 require, in the event that a transfer of liabilities in the course of the hive-down is not admissible or feasible, that the respective OpCo agrees to an assumption of joint liability with discharging effect. The modalities of the assumption of joint liability with discharging effect are explained in more detail in § 9.4 / § 21.4 / § 33.4.

h) Contractual relationships (§ 10 / § 22 / § 34)

§ 10.1 / § 22.1 / § 34.1 require the transfer of the contractual relationships exclusively attributable to the respective Business Sector and describe abstractly the contractual relationships to be transferred and the related rights and obligations, including pre-contractual or post-contractual legal relationships and other obligations and legal relationships of KGaA that are exclusively attributable to the respective Business Sector. § 10.1 / § 22.1 / § 34.1 at the end refer to the special provision in § 11 / § 23 / 35 (cf. section C.V.4.i)) relating to the transfer of the employment relationships and employee-related assets and liabilities.

§ 10.2 / § 22.2 / § 34.2 contain a non-exhaustive list of contractual relationships that are transferred to the respective OpCo in accordance with § 10.1 / § 22.1 / § 34.1. According to § 10.2 / § 22.2 / § 34.2 in particular all contractual relationships are transferred to the respective OpCo which in the contract databases of KGaA are assigned exclusively to the respective Business Sector on the basis of contract numbers. The contractual relationships to be transferred to the respective OpCo comprise in particular all those listed in Annex 10.2 / Annex 22.2 / Annex 34.2.

The so-called Shared Agreements Healthcare / Shared Agreements Life Science / Shared Agreements Performance Materials are governed in § 10.3 / § 22.3 / § 34.3. These are contractual relationships that cannot be allocated exclusively to one Business Sector, but also to at least one other Business Sector. This is the case, for example, when raw material ordered on the basis of a vendor agreement with KGaA is to be used by several Business Sectors. Pursuant to § 10.3 / § 22.3 / § 34.3, such agreements will remain with KGaA. The further treatment of the Shared Agreements Healthcare / Shared Agreements Life Science / Shared Agreements Performance Materials is governed in § 49, to which § 10.3 / § 22.3 / § 34.3 refer explicitly (see the explanations in section C.V.13). Moreover, § 10.3 / § 22.3 / § 34.3 clarify that the provision in the last paragraph of § 4.2 / § 16.2 / § 28.2 (provisions regarding the copyrights and rights of use remaining with KGaA, cf. section C.V.4.b)) remains unaffected.

§ 10.4 / § 22.4 / § 34.4 relate to the contractual obligations to tolerate and cease-and-desist obligations of KGaA, which are attributable to the respective Business Sector of KGaA, and which the respective OpCo also agrees to comply with.

In § 10.5 / § 22.5 / § 34.5, certain trust agreements on the securing of company time account claims and the securing of pension entitlements are expressly excluded from the Operational Hive-down or transfer to the respective OpCo.

§ 10.6 / § 22.6 / § 34.6 contain usual provisions relating to the treatment of internal service agreements after the Operational Hive-down becomes effective. These shall be continued as of the Legal Effective Date as at arm's length contractual arrangements (i.e., at standard market conditions) and treated internally between the respective OpCo and (i) KGaA or (ii) another OpCo as having been concluded with retroactive effect as of the Economic Effective Date. § 10.6 / § 22.6 / § 34.6 also clarify that it is at the Parties' discretion to agree on deviating provisions after the Operational Hive-down becomes effective.

i) Employment relationships, personnel-related assets and liabilities (§ 11 / § 23 / § 35)

§ 11.1 governs the transfer to HC OpCo of the employment relationships with all employees (i) attributable to the "KGaA Healthcare Darmstadt" part of the operation at the Closing Balance Effective Date (except for the employees that were in the passive phase of partial retirement at that date) provided that they are attributable to the "KGaA Healthcare Darmstadt" part of the operation also at the date at which the Op-

erational Hive-down becomes effective, or (ii) have entered or enter into an employment relationship with the “KGaA Healthcare Darmstadt” part of the operation during the period between the Closing Balance Sheet Date until (and including) the effective date of the Operational Hive-down or are attributable to that part of the operation, in each case provided that they continue to be attributable to the “KGaA Healthcare Darmstadt” part of the operation when the Operational Hive-down becomes effective. § 23.1 governs the transfer to LS OpCo of the employment relationships with all employees (i) attributable to the “KGaA Life Science Darmstadt” part of the operation at the Closing Balance Sheet Date (except for the employees that were in the passive phase of partial retirement at that date) provided that they are attributable to the “KGaA Life Science Darmstadt” part of the operation also at the date at which the Operational Hive-down becomes effective, or (ii) have entered or enter into an employment relationship with the “KGaA Life Science Darmstadt” part of the operation during the period between the Closing Balance Sheet Date until (and including) the effective date of the Operational Hive-down or are attributable to that part of the operation, in each case provided that they continue to be attributable to the “KGaA Life Science Darmstadt” part of the operation when the Operational Hive-down becomes effective. § 35.1 governs the transfer to PM OpCo of the employment relationships with all employees (i) attributable to the “KGaA Performance Materials Darmstadt” and/or “KGaA Performance Materials Gernsheim” parts of the operation at the Closing Balance Sheet Date (except for the employees that were in the passive phase of partial retirement at that date) provided that they are attributable to the “KGaA “KGaA Performance Materials Darmstadt” and/or “KGaA Performance Materials Gernsheim” parts of the operation also at the date at which the Operational Hive-down becomes effective, or (ii) have entered or enter into an employment relationship with the “KGaA Performance Materials Darmstadt” and/or “KGaA Performance Materials Gernsheim” parts of the operation during the period between the Closing Balance Sheet Date until (and including) the effective date of the Operational Hive-down or are attributable to that part of the operation, in each case provided that they continue to be attributable to the “KGaA Performance Materials Darmstadt” and/or “KGaA Performance Materials Gernsheim” parts of the operation when the Operational Hive-down becomes effective.

Furthermore, pursuant to § 11.2 / § 23.2 / § 35.2 KGaA will transfer to the OpCos the rights and obligations arising from employment relationships with employees of KGaA who leave during the period between the Closing Balance Effective Date and (including) the date at which the Operational Hive-down becomes effective and who were attributable to the parts of the operation at the closing balance sheet date or at the time of their departure. In addition, it is specified that rights and obligations arising from (terminated) employment relationships with employees of KGaA who departed until (and including) the Closing Balance Effective Date will not be subject to the Operational Hive-down.

§ 11.3 / § 23.3 / § 35.3 stipulate that, when transferring the employment relationships, KGaA will also transfer to the respective OpCo all of KGaA’s other agreements and

legal relationships in relation to the employment relationships of the Transitioning Healthcare, Life Science, and Performance Materials Employees. The same applies *mutatis mutandis* to rights and obligations from employment relationships transferred to the OpCos.

Pursuant to § 11.4 / § 23.4 / § 35.4, rights and obligations from certain reinstatement commitments vis-à-vis employees are transferred from KGaA to the respective OpCo when and if they (i) left the company before the Operational Hive-down became effective and were assigned to the respective Operating Unit of KGaA or they (ii) departed prior to (and including) the Closing Balance Effective Date and, at the time of their departure, were assigned to the respective Operating Units of KGaA.

§ 11.5 / § 23.5 / § 35.5 contain a clarifying provision according to which rights and obligations arising from the apprenticeships of (active or former) apprentices of KGaA are not subject to the Operational Hive-down.

§ 11.6 to § 11.11 / § 23.6 to § 23.11 / § 35.6 to § 35.11 contain provisions regarding pension obligations, time account agreements, and other personnel-related provisions. The relevant regulatory concept has been described in section IV.6.a).

j) Litigation and legal proceedings (§ 12 / § 24 / § 36)

§ 12.1 / § 24.1 / § 36.1 stipulate that KGaA in principle transfers all litigation and other procedural legal relationships to the respective OpCo insofar as they (i) exclusively affect the respective assets to be transferred or (ii) are exclusively attributable to the respective Operating Unit of KGaA in any other way. § 12.1 / § 24.1 / § 36.1 also contain further details regarding the procedural and procedural relationships covered by § 12.1 / § 24.1 / § 36.1 and associated rights and obligations. In derogation of this principle, § 12.1 / § 24.1 / § 36.1 accurately stipulate with regard to litigation law relationships relating to the Registered Property Rights subject to the trust agreement pursuant to § 4.3 b / § 16.3 b / § 28.3 b that such relationships shall be continued by KGaA in accordance with a trust agreement.

In accordance with § 12.2 / § 24.2 / § 36.2 – in derogation of the provision in § 48.6 and the operator's position of KGaA during the leaseback phase specified therein – administrative and other public law proceedings as well as administrative and constitutional disputes proceedings will also be transferred to the respective OpCo to the extent that they are exclusively attributable to the respective Operating Unit in a manner other than through the respective assets to be transferred.

The procedural legal relationships to be transferred according to § 12.1 / § 24.1 / § 36.1 and § 12.2 / § 24.2 / § 36.2 comprise in particular those listed in Annexes 12.3 / 24.3 / 36.3.

§ 12.4 / § 24.4 / § 36.4 and § 12.5 / § 24.5 / § 36.5 govern, in particular, the transfer and allocation of other procedural legal positions as well as contract and consulting

relationships that are linked to the procedural legal relationships and other procedural legal relationships to be transferred.

§ 12.6 / § 24.6 / § 36.6 contain provisions common in hive-down agreements according to which KGaA and the respective OpCo will work to obtain the third-party consent required for the transfer of a procedural law relationship or the change of party. In the absence of such consent, KGaA will continue the respective proceedings as the institution of legal standing in accordance with § 12.7 / § 24.7 / § 36.7 in accordance with civil and administrative procedure law. § 12.7 / § 24.7 / § 36.7 provide additional clauses applicable in the internal relationship between KGaA and the respective OpCo in the event of litigation by KGaA and, in particular, prescribes the assumption of ongoing litigation by the respective OpCo.

§ 12.8 / § 24.8 / § 36.8 govern the treatment of litigation and other procedural legal relationships that – unlike the requirements of § 12.1 and § 12.2 / § 24.1 and § 24.2 / § 36.1 and § 36.2 – are not exclusively, but only partially attributable to the respective Operating Unit of KGaA, and stipulates that they shall in principle remain with KGaA and continue to be managed by it. § 12.8 / § 24.8 / § 36.8 prescribe the corresponding validity of § 12.7 / § 24.7 / § 36.7 insofar as the procedural law relationship or the other legal relationship under procedural law concerns the respective Operating Unit of KGaA.

k) Memberships (§ 13 / § 25 / § 37)

Pursuant to § 13 / § 25 / § 37, KGaA and the respective OpCo will come to an agreement on the future allocation of KGaA's memberships in associations, organizations and other institutions listed in § 13 / § 25 / § 37 that relate to the respective Operating Unit by the Legal Effective Date. In the event that the respective OpCo is to assume a membership from KGaA or hold it in addition to KGaA, § 13 / § 25 / § 37 stipulate that the respective OpCo and KGaA will make every effort to split or transfer the membership or that the respective OpCo will reapply for membership if necessary.

l) Insurance policies (§ 14 / § 26 / § 38)

Since the Group-wide insurance coverage maintained by KGaA is governed by master agreements, § 14 / § 26 / § 28 stipulate that the inclusion of the respective OpCo in the insurance master agreements be ensured and that the latter reimburse KGaA for the proportionate costs for this insurance protection in return. Moreover, § 14 / § 26 / § 28 also specify that the respective OpCo also obtains its own insurance contracts insofar as this is necessary or appropriate.

5. Functions and assets and liabilities not transferred (§ 39)

The Operating Assets To Be Transferred have been finalized in the Operational Hive-down Agreement. It is merely for clarification and explanation that certain functions and Asset And Liability Items that are to remain with KGaA are listed once again in § 39. Accordingly, the following functions and assets and liabilities items are excepted

from the Operational Hive-down and will remain with KGaA (see also the explanations concerning the assets not to be transferred in section C.II.7):

- With the exception of a few financial assets and/or minority interests (cf. section C.IV.1.a)(2)), all shares in affiliated companies and other shareholdings owned by KGaA (§ 39.1 a)). Global “sub-groups” will not be formed in the course of the Operational Hive-down (see also the explanations in the Preamble and in sections D.V.6.a) and F.1.a)).
- KGaA Group Functions and the Innovation Center operated at the Darmstadt site, KGaA Site Operations, as well as KGaA Local Functions (§ 39.1 b) to d)). In particular, KGaA Group Functions shall support KGaA in the consistent management of the Group (see section C.II.7).
- All land and buildings owned by KGaA and leased to MRE GmbH, including the items leased to MRE GmbH, such as technical building equipment and building-related service master agreements (§ 39.1 e). KGaA – and thus the Business Sectors – use the buildings and land necessary for performing their business via sublease agreements with MRE GmbH. The sublease agreements are part of the assets that are to be hived down in the course of the Operational Hive-down (cf. the explanations in section C.II.7).
- Selected agreements existing between KGaA and MRE GmbH, such as the general lease agreement regarding the lease of the land and buildings owned by KGaA to MRE GmbH (§ 39.1 f)). Also, all rental, lease and other usage agreements that KGaA has concluded or has yet to conclude with third parties for either (i) the lease of buildings or land as a lessee or (ii) the lease of buildings or land as a lessor (§ 39.1 f)).
- All liabilities, provisions, and receivables of KGaA specified in § 39.1 g) in conjunction with (i) a responsibility for the conduct and/or condition of KGaA under private law or public law or (ii) a liability or claim contractually assumed for any contaminations of the soil or the groundwater, insofar as these contaminations were caused before December 31, 2017. The provision serves the purpose of allocating the liability for contaminations of the soil or the groundwater according to the cause.
- The position of KGaA as a partner in Merck Schuchardt OHG, Darmstadt, Germany, an affiliated company of Merck KGaA, Darmstadt, Germany (**MS OHG**), a trust agreement on the investment of EMB KG in MS OHG (§ 39.1 h)), and the assets and liabilities of MS OHG recognized at KGaA. On the basis of this trust agreement, all shares are united in the hand of KGaA when considering the commercial balance sheet. The Operational Hive-down does not result in any change to the structure of the investments in MS OHG.
- The hybrid bond of 1.5 billion Euros issued in 2014, receivables and liabilities from internal cash pooling, bank balances and liabilities, and cash balances

and certain guarantee assumptions of KGaA (§ 39.1 i) to l)). These items are part of central Group financing and are therefore to remain with KGaA.

- The (i) domination and profit and loss transfer agreements and (ii) Business Lease Agreements concluded between KGaA and the OpCos, along with the intercompany agreements concluded between KGaA and its direct and indirect subsidiaries, including the existing Business Lease Agreement between Merck Consumer Health GmbH, Darmstadt, Germany, an affiliated company of Merck KGaA, Darmstadt, Germany, as the lessor and KGaA as the lessee and the associated business assets, unless these are among the Operational Assets To Be Transferred pursuant to the provisions of § 3 to § 38 and § 48 to § 51 of the Operational Hive-down Agreement (§ 39.1 lit. m)). The provision is intended to prevent the Operational Hive-down from affecting these intercompany agreements and ensures the establishment of the desired target structure (see also the overview on the target structure in section A.II.4).
- The agreements under public law and relevant for the environment listed in Annex 39.1n and the obligations from the official orders mentioned therein.
- The applicable insurance contracts for KGaA Group-wide. The stipulation is related to § 14, § 26, and § 38, whereby KGaA ensures the inclusion of the OpCos under the respective insurance master agreements (§ 39.1 o)).

For clarification, § 39.2 stipulates that the shares issued to KGaA by the OpCos as consideration in the course of the Operational Hive-down are not included in the Operating Assets To Be Transferred, but instead are transferred by way of the Holding Hive-down (cf. the explanations in section D).

6. Consideration for the Operating Assets To Be Transferred, effective date of the profit entitlement (§ 40)

According to the requirements of Sec. 126 (1) (2) and (5) *UmwG*, § 40.1 a) to c) govern the consideration for the transfer of the Operating Assets To Be Transferred to the OpCos. Thus, KGaA will be granted one share each with serial number 2 in HC OpCo, LS OpCo, and PM OpCo at a nominal amount respectively of 975,000 Euros for transferring the Healthcare Assets To Be Transferred, the Life Science Assets To Be Transferred, and the Performance Materials Assets To Be Transferred.

Pursuant to § 40.2, the shares to be granted to KGaA by the OpCos shall be entitled to profits for the financial years beginning on (and including) January 1, 2018.

7. Capital increases to implement the Operational Hive-down, contribution to the capital reserves (§ 41)

§ 41.1 governs how the shares to be granted to KGaA as consideration pursuant to § 40 are created by HC OpCo, LS OpCo, and PM OpCo. Accordingly, for the purpose of executing the Operational Hive-down and granting the consideration, the OpCos will increase their share capital by 975,000 Euros from currently 25,000 Euros to

1,000,000 Euros by issuing one share in the respective OpCo in the nominal amount of 975,000 Euros each. The shareholders' meeting of the respective OpCo will pass a resolution concerning this capital increase at the same time at which the approval of the Operational Hive-down Agreement is resolved.

§ 41.2 clarifies that the shares granted to KGaA by the OpCos are to be provided as a contribution in kind by transferring the assets to be transferred to the respective OpCo. If the value at which the contribution in kind provided by KGaA is taken over by the respective OpCo – according to § 2.3, this is the carrying amount – exceeds the amount of the respective increase in the share capital, this excess amount will be transferred according to § 41.3 to the capital reserves of the respective OpCo pursuant to Sec. 272 (2) (1) *HGB*.

8. Granting of special rights within the meaning of Sec. 126 (1) (7) *UmwG* (§ 42)

§ 42 clarifies that no special rights within the meaning of Sec. 126 (1) (7) *UmwG* will be granted to individual shareholders or holders of special rights and that no special measures are planned in respect of such persons. In cases in which no special rights within the meaning of Sec. 126 (1) (7) *UmwG* are granted, the negative statement contained in § 42 is customary for clarification.

9. Granting of special benefits within the meaning of Sec. 126 (1) (8) *UmwG* (§ 43)

§ 43 clarifies that no special benefits will be granted to members of a representative or supervisory body of the entities involved in the Hive-down or to any managing partner, partner, statutory auditor, or other auditor within the meaning of Sec. 126 (1) (8) *UmwG*. This negative statement is also customary for clarification in hive-down agreements.

10. Business Lease Agreements between KGaA and the OpCos (§ 44)

§ 44.1 stipulates that the Business Lease Agreements between HC OpCo, LS OpCo, and PM OpCo, respectively, as the lessor and KGaA as the lessee, attached as a draft as Annex 44.1.a, Annex 44.1.b, and 44.1.c, respectively – for implementing the lease-back to KGaA of the hived-down Operating Units KGaA Healthcare, Life Science, and Performance Materials described in (8) of the Preamble of the Operational Hive-down Agreement – shall be concluded in notarized form.

More information in this regard, including a description of the agreements, can be found in section E.II for the Healthcare Business Lease Agreement, in section E.III for the Life Science Business Lease Agreement, and in section E.IV for the Performance Materials Business Lease Agreement.

§ 44.2 clarifies that the Business Lease Agreements must be registered in the Commercial Register of the respective OpCo in order to take effect. The Business Lease Agreements shall be recorded in the Commercial Register of the OpCos immediately

after the Operational Hive-down becomes effective (i.e., after the Operational Hive-down has been registered in the Commercial Register of KGaA). The order of the entries in the Commercial Register is for the purpose of ensuring that the Asset And Liability Items leased to KGaA by the OpCos are also transferred to the OpCos beforehand by way of the Operational Hive-down.

11. Consequences of the Operational Hive-down and the subsequent Business Lease for the employees and their representatives and the measures planned in this respect (§ 45 to § 47)

Pursuant to Sec. 126 (1) (11) *UmwG*, a hive-down agreement must contain information on the consequences of the hive-down for the employees and their representatives and the measures planned in this respect. Accordingly, § 45 to § 47 describe the consequences of the Operational Hive-down and the subsequent Business Lease for the employees and their representatives and the measures planned in this respect according to the specifications of Sec. 126 (1) (11) *UmwG*. In addition, the consequences of the Holding Hive-down and the termination of the Business Lease Agreements for the employees and their representative bodies and the measures planned in this respect are shown. These explanations are not contractual agreements, but only a description of the consequences of the Operational Hive-down as well as the Holding Hive-down and the leaseback (including their termination). The explanations are explained in greater detail in section C.IV.6.

12. Permits and licenses required under public law, operator responsibility (§ 48)

According to § 48.1, licenses, permits, approvals, announcements, registrations, or permissions under public law that are attributable to KGaA Group Functions permanently remaining with KGaA and to KGaA Site Operations are not subject to the Operational Hive-down. In particular, the permits that are not subject to the Operational Hive-down according to § 48.1 are listed in Annex 48.1. Given these facts, § 48.1 clarifies in addition that unrestricted physical control and the right of disposition regarding relevant facilities and the operator's position remain with KGaA permanently.

According to § 48.2, the permits allocated in each case exclusively or in part to one of the Operating Units are an integral part of the Operating Assets To Be Transferred. However, due to the temporary leaseback of the hived-down Operating Units to KGaA immediately after the Operational Hive-down takes effect, these permits, pursuant to § 48.2, will initially remain with KGaA for the duration of the respective Business Lease Agreement. Pursuant to § 48.2, KGaA will maintain and administer the permits listed in § 48.2 during the term of the respective Business Lease Agreements within the framework of a trust agreement as specified in § 1.4 as trustee for the respective OpCo.

§ 48.3 a) and b) divide the permits described above that are essentially to be transferred but shall initially remain with KGaA for the duration of the respective Business Lease Agreement into two categories (plant-related and environmental-law permits,

on the one hand, and product law approvals on the other). The Approvals To Be Transferred include in particular those listed in Annex 48.3.a and Annex 48.3.b. § 42.3 also specifies at the end of the paragraph that the attribution of permits to one or several Operating Units was made exclusively with regard to the future termination of the trust agreement described in § 48.2. To this extent, § 42.3 clarifies that this attribution does not provide any information about the beneficial co-ownership of another Operating Unit or OpCo of these permits.

According to § 48.4, the trustor rights and obligations resulting from the trust agreement regarding the Approvals To Be Transferred are therefore attributed to KGaA consistent with the provision in § 48.2 for the duration of the Business Lease, as KGaA is operating the operational business in this phase.

§ 48.5 clarifies that during the term of the relevant Business Lease, KGaA shall remain the operator and owner of the Approvals To Be Transferred for the plants, land, and equipment of the Leased Operation, and shall exercise as before in its previous scope the unrestricted physical control and right of disposition. Furthermore, § 48.5 also contains a fallback provision in the event that an Approval To Be Transferred has already been transferred to an OpCo and, contrary to the principle specified in § 48.2, has become owner of the approval.

Corresponding with KGaA's position as operator during the Business Lease, § 48.6 specifies that KGaA is also responsible for complying with all the environmental and public law provisions and requirements applicable to this function of the relevant Approvals To Be Transferred and governs further details in this regard.

§ 48.7 stipulates that, during the relevant Business Lease Agreements, KGaA will remain the legal owner of all medical and product liability Approvals To be Transferred and as such will continue to exercise all obligations under pharmaceutical law as the entrepreneur and manufacturer of medical products and other products and also ensure quality management.

§ 48.8 contains provisions regarding the consequences for permits due to termination of the Business Lease Agreements. Accordingly, when the respective Business Lease Agreement is terminated, the unrestricted physical control and right of disposition in all plants, land, and equipment assigned to the OpCos, and thus the corresponding position as operator, including the associated permits pursuant to § 48.3a, §48.5 and the corresponding rights and obligations, are transferred to the respective OpCo (§ 48.8 a)). In this context, the Operational Hive-down Agreement specifies that the contractual parties must undertake all necessary steps for ensuring the transfer of the permits in a timely fashion. The Operational Hive-down Agreement also stipulates that the Parties, with a view to the nascent multi-operator situation after termination of the Business Lease Agreements, must commit to collaborating and mutually considering the site-wide requirements (§ 48.8 b)). § 48.8 c) mandates that, when the respective Business Lease is terminated, the Approvals To Be Transferred that temporarily remain with KGaA and are listed in § 48.3 b) and the rights and obliga-

tions pursuant to § 48.7 according to the allocation specified in Annex 48.3.b shall be transferred to the respective OpCo. § 48.8 c) governs to this extent in particular handling pharmaceuticals and product law permits (cf. § 48.3 b)) upon termination of the respective Business Lease Agreement.

To the extent that the legal transfer of permits and the corresponding rights and obligations to the OpCos has not already taken place pursuant to § 48.8 a) and § 48.7 c) and therefore needs to be implemented in the form of a separate transfer, KGaA hereby commits to transferring the permits that are allocable to the respective OpCo and to undertaking all steps in a timely manner that are necessary for ensuring the transfer at the relevant time and for carrying out the required official procedures (§ 48.7 d)). § 48.7 d) also governs in this context the further details in this context of a separate transfer to Approvals To Be Transferred that are used by several OpCos. Insofar as Approvals To Be Transferred cannot be transferred and therefore need to be newly applied for, KGaA – in close coordination with the respective OpCo – must also make sure that all non-transferable permits are newly applied for to the extent that this is required for the operation of the respective OpCo after the Business Lease is terminated (§ 48.8 e)). Under certain circumstances, § 48.8 f) mandates a permanent and free-of-charge usage right on behalf of KGaA to permit-relevant Asset And Liability Items if KGaA or the corresponding OpCo is dependent on these items in connection with an allocated Approval To Be Transferred to it pursuant to § 48.1 or § 48.2. § 48.8 f) mandates corresponding rights of use in comparable cases in favor of the OpCos. § 48.8 g) prescribes a general obligation on the part of KGaA and the OpCos to undertake all steps that are necessary for a legally certain permit situation upon termination of the Business Lease Agreements and taking into consideration site-wide requirements.

In order to ensure a legally secure approval situation upon termination of the respective Business Lease Agreements, § 48.9 stipulates that the trust agreement as per § 48.2 continues until the transitioning of the operator position at the plants or until the transfer, transitioning, or re-application for the respective permits to the respective OpCo.

13. Treatment of Shared Agreements (§ 49)

§ 49 governs the treatment of so-called Shared Agreements, i.e., agreements attributable not exclusively to one, but to several Business Sectors at the same time (cf. the explanations in section C.V.4.h)). § 49 is to be seen in the context of § 10.3, § 22.3, and § 34.3, whereby the rights and obligations arising from contractual relationships that are not exclusively assigned to one of the three Business Sectors Healthcare, Life Science, and Performance Materials will remain with KGaA.

§ 49.1 governs the exceptional case of the Shared Agreements Healthcare, Shared Agreements Life Science, or Shared Agreements Performance Materials that at the same time are master agreements of KGaA for the purchase and procurement of goods

and services and are managed by the “Group Procurement” function. For such agreements, KGaA shall ensure the inclusion of the affected OpCo in the master agreement.

§ 49.2 clarifies that the other master agreements remain in full with KGaA and, in addition, specifies also relating to § 10.3, § 22.3, and § 34.3 that KGaA holds these agreements – to the extent that the hived-down Operating Unit is respectively affected – in trust for the affected OpCo as set forth in a trust agreement in accordance with § 1.4. The specific form of the rights and obligations arising from this trust agreement is also determined in § 49.2. Otherwise, § 49.2 stipulates that, on a case-by-case basis, KGaA and the respective OpCos may also undertake to obtain approval from the respective counterparty to divide up a Shared Agreement in such manner that one or more separate agreements are established for the affected contractual party.

14. Effective date for the assignment of assets and scope of use (§ 50)

§ 50 initially determines a general principle for the assignment of assets to the Operating Units or OpCos. Thus, for the allocation to the Operating Units of the Asset And Liability Items already existing on the Closing Balance Effective Date, the circumstances on the Closing Balance Effective Date are decisive. Insofar as, according to the Operational Hive-down Agreement, the scope of use of the Asset And Liability Items by a Business Sector or an Operating Unit is the decisive factor, the scope of use at the Closing Balance Effective Date shall be authoritative. In this regard, § 50 also contains a supplementary provision regarding the determination of the scope of use, under which, if appropriate, the scope of use from a relevant Assets and Liabilities Item can be derived for a reasonable time period before the Closing Balance Effective Date. Therefore, § 50 supplements various stipulations in the Operational Hive-down Agreement, whereby the question of whether an item is used “exclusively” or “predominantly” by an Operating Unit is one of the aspects taken as a basis for the relevant allocation of the assets.

15. Asset additions and disposals between the Economic Effective Date and the Legal Effective Date (§ 51)

§ 51 contains a so-called “surrogation clause,” which is customary for hive-down agreements. This is intended to govern the treatment of changes in the portfolio of the assets affected by the Operational Hive-down in the period between the Economic Effective Date and the Legal Effective Date. This takes into account the fact that the Operating Assets To Be Transferred do not involve an asset situation that is static, but rather an asset situation that changes during ongoing business operations.

In this respect, § 51 specifies that the additions and disposals of Asset And Liability Items during the period between the Economic Effective Date and the Legal Effective Date of the Operational Hive-down (including surrogates, either in rem or under the law of obligations, of an Asset And Liability Item) shall be taken into account in the transfer and identification of the Operating Assets To Be Transferred.

The scope of the Asset And Liability Items to be taken into account is defined more precisely in § 51 a) and b). Pursuant to § 51 a), KGaA will transfer those assets or rights and obligations that, based on their origin and purpose, are attributable in the broadest sense to an Operating Unit that have been added or created in an Operating Unit in the time between the Economic Effective Date and the Legal Effective Date. Conversely, § 51 b) clarifies that the Asset And Liability Items that, based on their origin and purpose, are attributable in the broadest sense to an Operating Unit that are sold or otherwise transferred during the period between the Economic Effective Date and the Legal Effective Date or that simply no longer exist on the Legal Effective Date will not be transferred to the OpCos. Pursuant to § 51 b), however, the surrogates in rem or under the law of obligations that exist on the Legal Effective Date will take their place. In clarification, § 50 c) stipulates that the surrogation clause contained in § 51 shall not affect the provisions in § 2.1, whereby the business operations of the respective OpCo are to be conducted by KGaA as of the Economic Effective Date for the account of the respective OpCo.

16. Economic compensation in case of a change in the assignment of employees (§ 52)

§ 52 contains a rule in the event that the allocation of employees changes in the time after the Closing Balance Effective Date until (and including) the Legal Effective Date of the Operational Hive-down. Pursuant to § 52.1, economic compensation is provided for internally between the Parties for the transferred obligations. § 52.2 also contains other matters for which economic compensation according to § 52.1 shall be applied accordingly.

17. Doubts in attributing Asset And Liability Items (§ 53)

§ 53 specifies a right of determination within the meaning of Sec. 315 *BGB* in favor of KGaA in case it cannot be determined to which Party an Asset And Liability Item is attributable when interpreting the Operational Hive-down Agreement and its annexes. In this regard, § 53 establishes that KGaA's decision on the allocation must be in line with s. 1 of lit. 20.06 in conjunction with lit. 15.02 2011 *UmwSt-Erlass*. This fallback clause is intended to ensure that the prerequisites for a tax-neutral transfer are met within the context of KGaA's exercising its right of determination.

18. Deeds, books, records, operational data, and other documents (§ 54)

§ 54.1 stipulates that all business documents that are exclusively or predominantly attributed to the respective Asset And Liability Items to be transferred and are managed by KGaA exclusively or predominantly in connection with these items be transferred to the OpCos as well. § 54.1 also contains a non-exhaustive list of documents and data that can be classified as business documents within the meaning of § 54 and are summarized under this term.

§ 54.2 is intended to ensure that KGaA has the opportunity to access for a limited period of time the transferred business documents, since they may be relevant for KGaA

and its business activities after the Operational Hive-down has become effective. Given these facts, § 54.2 stipulates that the respective OpCo must retain the business documents for the duration of the legal retention obligations and ensure that KGaA can inspect the business documents at any time and make copies. In addition, § 54.2 also specifies that trade and business secrets are to be protected and that, in particular, the rules of data protection and privacy law are to be observed.

In § 54.3, the OpCos grant each other inspection rights and rights of use relating to the transferred business documents insofar as their own assets – acquired by way of the Operational Hive-down – are involved and if this is necessary for properly managing the business operations. Since the Operating Units transferred to the OpCos were previously operated uniformly by KGaA, there may be overlaps in the business documentation. The corresponding inspection rights and rights of use are intended to ensure that the respective OpCo will also be able to access business documents that, while transferred to another OpCo, are nevertheless relevant to its own acquired assets or the business activities it has taken over.

§ 54.4 stipulates a special provision for the retention of business documents relating to the plant-related and environmental-law Approvals To Be Transferred pursuant to § 48.3 a). The retention of these documents takes place in trust for the respective OpCos by KGaA or by KGaA Site Operations, managed within KGaA (Permit Department). This provision serves the purpose of joint administration of the respective approvals by the central Permit Department of KGaA.

19. Transfer of possession (§ 55)

Ownership and the change of title with regard to the Asset And Liability Items transferred to the OpCos by way of the hive-down and the universal succession pursuant to Sec. 123 (3) (1) *UmwG* will be transferred by law on the Legal Effective Date pursuant to Sec. 131 (1) (1) *UmwG* (see also the explanations in section C.V.3).

Pursuant to § 55, possession of the moveable assets pertaining to the Operating Assets To Be Transferred will be transferred by law to the respective OpCo on the Legal Effective Date. Insofar as individual Asset And Liability Items are in the possession of a third party, § 55 stipulates that KGaA is to transfer the corresponding legal surrender claim as a substitute for transferring title. In the event that further measures or explanations are necessary for the respective OpCo to acquire possession, KGaA hereby already commits to undertaking/providing them in § 55.

20. Fallback clause; transfer obstacles, ineffectiveness of the transfer, retransfer (§ 56)

The clause in § 56.1 serves the purpose of maintaining the prerequisites for acknowledging the transfer of a “separable part of the operations” for tax purposes in the event that certain Asset And Liability Items were not assigned to the Healthcare Assets To Be Transferred, the Life Science Assets To Be Transferred, or the Performance Materials Assets To Be Transferred by being referred to in the Operational Hive-down

Agreement or its annexes, even though from an economic perspective it is necessary to assign them. In this case, § 56.1 stipulates that these Asset And Liability Items must also be transferred to the respective OpCo by way of the Operational Hive-down, provided that nothing to the contrary has been explicitly specified in the Operational Hive-down Agreement and these items have not been explicitly excluded from the transfer. As clarified again in § 56.1 as well, the latter applies for instance to assets not to be transferred according to Sec. 131 (1) (1) *UmwG* by way of partial universal succession, but for which beneficial ownership – such as by way of a trust agreement (cf. the explanations in section C.V.2) – is to be established for the purposes of a “contribution” for tax purposes pursuant to Sec. 20 *UmwStG*.

§ 56.1 is made more specific by the provision of § 56.2, taking tax aspects into account. According to § 56.2, § 56.1 applies in particular to all Asset And Liability Items of the Operating Assets To Be Transferred in each case that are attributed as “functionally essential operational basis” or as “attributable assets based on economic contexts” within the meaning of lit. 20.06 s. 1 in conjunction with lit. 15.02 s. 2 of the 2011 *UmwSt-Erlass* to a separable part of the operations of the respective hived-down Operating Unit KGaA Healthcare, Operating Unit KGaA Life Science, or Operating Unit KGaA Performance Materials transferred to the respective OpCo pursuant to Sec. 20 (1) *UmwStG*. In clarification, § 56.2 a) to c) establishes certain circumstances that may not prevent a transfer of the Asset And Liability Items listed above.

§ 56.3 contains a customary provision with regard to the treatment of transfer obstacles that prevent Asset And Liability Items to be transferred to an OpCo under the Operational Hive-down Agreement from being transferred to the respective OpCo at all or in the scope prescribed by law in the course of the partial universal succession (Sec. 131 (1) (1) *UmwG*) upon registration of the Operational Hive-down in the Commercial Register of KGaA. For example, such transfer obstacles may relate to the fact that highly personal legal positions of the Operational Hive-down are affected or that an item to be hived down is subject to a foreign jurisdiction (e.g., because it is located abroad or because the application of foreign law was agreed upon for contracts) and the respective jurisdiction does not recognize partial universal succession pursuant to the *UmwG* or only under additional conditions. For these cases, § 56.3 stipulates that KGaA must transfer such Asset And Liability Items to the respective OpCo by way of singular succession and that the respective OpCo must commit to approving the transfer of individual rights.

In addition, § 56.3 also stipulates that the Parties must position themselves with regard to their internal relationship until the time of the (re-)transfer by way of singular succession as if the respective Asset And Liability Item had been transferred in the external relationship with effect as of the Economic Effective Date. In this respect, the risks, rights, and obligations are deemed to have been transferred on the Economic Effective Date for the purpose of establishing beneficial ownership in accordance with s. 1 of lit. 20.06 in conjunction with s. 2 of lit. 15.07 of the 2011 *UmwSt-Erlass*.

Furthermore, § 56.3 establishes certain rights and obligations with respect to each Asset And Liability Item that has not been transferred, which are to apply to the internal relationship between the contractual parties until the (re-)transfer date. In particular, what is important in this regard is the establishment of a trust agreement between KGaA and the respective OpCo, according to which KGaA is to hold the respective Asset And Liability Item in its own name for the account of the respective OpCo or, in case of a legal relationship, continue to do so in trust and, if legally admissible, permanently transfer Asset And Liability Items or the benefits from such items to the respective OpCo for its use. Furthermore, § 56.3 stipulates that, if legally permitted, KGaA shall grant a power of attorney to the respective OpCo to exercise its rights concerning the respective Asset And Liability Item and to transfer the corresponding rights to it so that it can exercise them. The respective OpCo agrees in turn to satisfy the associated obligations or, alternatively, to compensate KGaA internally accordingly. To the extent that the respective OpCo cannot exercise a legal right effectively vis-à-vis third parties, § 56.3 also sets forth that KGaA shall act, by way of a trust agreement, as the agent or trustee for the respective OpCo so that expenses and income relating to the Asset And Liability Item not transferred affect only the respective OpCo internally.

In respect of Asset And Liability Items used by more than one OpCo, KGaA grants the respective OpCo pursuant to § 56.4 an irrevocable, permanent and free-of-charge right to use these Asset And Liability Items if such right is required functionally with regard to the included separable part of the operation (*Teilbetrieb*). In a sense, the right of use described above and referred to in the Operational Hive-down Agreement as a “field-of-use license” leads to a “duplication” of beneficial ownership and ensures that the prerequisites for the transfer of a “separable part of the operations” (*Teilbetrieb*) for tax purposes are met in the event of any transfer obstacles. Otherwise, § 56.4 mandates the corresponding application of § 4.4.

§ 56.5 expands the scope of the internal relationship provisions in § 56.3 to include cases where the transfer (of individual rights) to the respective OpCo mandated by § 56.3 is not feasible or expedient in the external relationship or only with unreasonable efforts and expense and where the respective Asset And Liability Item therefore remains permanently with KGaA.

§ 56.6 stipulates that KGaA and the respective OpCo will endeavor to obtain any third-party approvals or permits under public law that are necessary for the transfer of certain Asset And Liability Items. Moreover, § 56.6 mandates the corresponding application of the internal relationship provisions in § 56.3 in the relationship between KGaA and the respective OpCo if the approval or permit cannot be obtained or only with an unreasonable amount of effort and expense.

§ 56.7 mandates a retransfer obligation from the respective OpCo to KGaA or a third party designated by KGaA in case that certain Asset And Liability Items are not transferred according to the Operational Hive-down Agreement, yet are transferred for legal reasons once the Operational Hive-down Agreement takes effect. Pursuant to §

56.7, KGaA is obligated to approve the retransfer or to release the respective OpCo if applicable – particularly when a liability or a contract is transferred. Moreover, the Parties also agree in § 56.7 to take all necessary or expedient measures and to work together on all necessary or expedient legal actions in order to retransfer the assets to KGaA. Otherwise, § 56.7 mandates the corresponding application of the internal relationship provisions in § 56.3.

§ 56.8 contains a so-called wrong pockets clause to handle Asset And Liability Items that were wrongly allocated to an OpCo and have also been transferred after the Operational Hive-down has taken effect, but should actually not be transferred to this OpCo. The internal relationship regulations of § 56.3 shall apply accordingly.

§ 56.9 requires KGaA to bear the costs and expenses in relation to any transfers by way of singular succession.

21. Obligations to cooperate (§ 57)

As already explained in section C.V.2 concerning § 1.3, beneficial ownership for certain items will be transferred in the Operational Hive-down Agreement by way of entering into a trust agreement or of by rights of use. These items are not included in the hive-down and the partial universal succession mandated by law pursuant to Sec. 131 (1) (1) *UmwG*. Given these facts, the Parties hereby, as a precautionary measure, again in § 57.1 issue all declarations that are necessary for the granting of beneficial ownership, trust relationships, or rights of use relating to items that, pursuant to Sec. 131 (1) (1) *UmwG*, are not transferred to the respective OpCo.

§ 57.2 clarifies that the Parties have the mutual obligation to undertake all actions that may be necessary or expedient in connection with the transfer of the Operating Assets To Be Transferred to the relevant OpCo under the Hive-down Agreement.

§ 57.3 imposes cooperation obligations in administrative proceedings, as well as in tax litigation and other litigation that affect the Operating Assets To Be Transferred, or where a Party or its affiliated entities are otherwise specifically able to provide support due to their shared past as operations of KGaA. Moreover, § 57.3 prescribes that, in particular, certain information and documents shall be provided within the context of the above obligations to cooperate and that efforts are to be made to enlist sufficient support by the employees of the Parties.

22. Disclaimer of Warranty (§ 58)

In § 58, to the extent legally admissible, the Parties agree on the exclusion of all claims and rights on the part of the OpCos against KGaA due to the condition and existence of the Asset And Liability Items to be transferred by KGaA under the Operational Hive-down Agreement and of the Operating Assets To Be Transferred, irrespective of their nature and regardless of the legal basis. Such a clause is customary in intra-group hive-downs.

23. Protection of creditors and internal settlement (§ 59)

Initially, § 59.1 stipulates that the provisions in § 59.2 to § 59.4 apply only to the internal relationship between the Parties if no other attribution of obligations and liabilities arising from the Operational Hive-down Agreement results from or in relation to the Operating Assets To Be Transferred.

Pursuant to Sec. 133 (1) and (3) *UmwG*, KGaA and the OpCos will be liable as joint and several debtors for liabilities of KGaA established before the Operational Hive-down becomes effective for a period of five years once the Operational Hive-down has been registered in the Commercial Register of KGaA (or ten years for benefit obligations according to the German Company Pensions Act).

In this context, § 59.2 specifies that the respective OpCos must indemnify KGaA upon first request from claims arising from liabilities, obligations, or contingent liabilities to be transferred to the respective OpCo according to the Operational Hive-down Agreement if and to the extent that KGaA is held liable by these creditors based on the provisions in Sec. 133 *UmwG* or any other regulations. The OpCos will also have a corresponding obligation to indemnify KGaA if KGaA is held liable for future contractual obligations that are in relation to previous and future business activities of the Healthcare, Life Science, and Performance Materials Business Sectors. The same applies if KGaA is held liable by creditors of the liabilities, obligations, or contingent liabilities described above to claim security. Pursuant to § 59.2 at the end, this includes a release from environmental liabilities triggered by the OpCos after the Economic Effective Date as set forth in § 39 (1) g) of the Operational Hive-down Agreement if claims are brought forward against KGaA by third parties (including authorities).

As the inverse of § 59.2, § 59.3 sets forth an obligation on the part of KGaA to indemnify the OpCos if and to the extent that the affected OpCo is held liable for liabilities, obligations, or contingent liabilities based on the provisions in Sec. 133 *UmwG* or any other provisions not to be transferred according to the Operational Hive-down Agreement. KGaA will also have a corresponding obligation to indemnify the OpCos if the OpCos are held liable for future contractual obligations that relate to the previous and future business activity remaining with KGaA or functions remaining with KGaA. The same applies if KGaA is held liable by creditors of the liabilities, obligations, or contingent liabilities described above to claim security.

Moreover, Sec. 59.4 specifies reciprocal indemnification claims by the OpCos if and to the extent that an OpCo is held liable by creditors for liabilities, obligations, or contingent liabilities based on the provisions of Sec. 133 *UmwG* or any other provisions to be transferred to another OpCo according to the Operational Hive-down Agreement or if an OpCo is held liable for liabilities arising from future contractual obligations that relate to the previous or future business activity of the Operating Units hived down to the other OpCos.

The provisions of § 59 correspond to the customary approach to governing the internal relationship between the legal entities involved in the operational hive-down and represent an admissible internal contractual agreement according to Sec. 133 (1) and (3) *UmwG*. Liability vis-à-vis third parties will not be affected by this. § 59 ensures that the respective liabilities, obligations, or contingent liabilities are borne by the entity that they are economically allocated to under the Operational Hive-down.

24. Reservations of consent (§ 60)

§ 60 clarifies that, in order to be effective, the Operational Hive-down Agreement will require (i) the approval of the Annual General Meeting of KGaA and (ii) the approval of the shareholders' meetings of the OpCos. The details on the reservations of consent are explained in detail in D.IV.2 and D.IV.3.

25. Costs and taxes, rescission, written form, partial ineffectiveness, preliminary remarks, annexes, applicable law, and jurisdiction (§ 61 to § 65)

§ 61 to § 65 involve various customary final provisions for a hive-down agreement.

§ 61.1 governs the allocation of the costs and taxes incurred in connection with the Operational Hive-down. Subject to agreements to the contrary in the Operational Hive-down Agreement, § 61.1 specifies that KGaA shall bear all costs and any taxes incurred in conjunction with the preparation and implementation of the Operational Hive-down. § 61.1 states in particular the costs incurred in relation to the notarization and implementation of the Operational Hive-down Agreement. This includes in particular external consultation costs, notarization costs, and other costs (fees for the issuing of the binding ruling pursuant to Sec. 89 *AO*, translation costs, etc.).

In derogation of § 61.1, however, § 61.2 stipulates that each Party shall bear its costs incurred for the 2018 Annual General Meeting and the respective shareholders' meetings, as well as the costs for the application and registration of the resolutions passed. Therefore, pursuant to § 61.1, the OpCos shall also bear the costs of the respective in-kind capital increase that are incurred when executing such increase, and any taxes.

§ 62 contains a withdrawal clause according to which each Party may withdraw from the Operational Hive-down by submitting a written declaration to the other Party if the Operational Hive-down Agreement has not become effective by February 28, 2019. This clause is intended to give the Parties the option to discontinue the implementation of the Operational Hive-down if the effectiveness of the Operational Hive-down is prevented due to unforeseen circumstances that greatly delay the effectiveness.

§ 63 contains a customary written form clause.

§ 64.1 contains a standard so-called severability clause for the purpose of maintaining the effectiveness of the Operational Hive-down Agreement if individual provisions are ineffective and for corresponding substitution of any ineffective or unenforceable

provision. § 64.2 stipulates that the Preamble and Annexes to the Operational Hive-down Agreement are integral parts of the agreement.

§ 65 stipulates that the Operational Hive-down Agreement is subject to German law (§ 65.1) and that the place of jurisdiction for all disputes arising from the Operational Hive-down Agreement is Darmstadt (§ 65.2).

D. Hive-down of the Company Shares held by KGaA in OpCos to HoldCos

I. Participating entities

1. KGaA as the Transferring Entity

In the Holding Hive-down as well, KGaA acts as the Transferring Entity. With regard to the presentation of KGaA, reference is made to the statements in section B.I.

2. HoldCos as the acquiring entities

The HoldCos will act as acquiring entities in the scope of the Holding Hive-down. KGaA transfers

- the shares held by KGaA in HC OpCo to HC HoldCo;
- the shares held by KGaA in LS OpCo to LS HoldCo;
- the shares held by KGaA in PM OpCo to PM HoldCo.

With regard to the description of the HoldCos, reference is made to the above explanations in B.III.

II. Economic reasoning for and explanation of the Holding Hive-down

1. Business objectives of the Holding Hive-down

The business considerations underlying the transaction as a whole have already been explained in section A.III, and reference is made to these statements. The Holding Hive-down is closely related to the Operational Hive-down and serves the purpose of establishing an intermediate holding level between KGaA and the OpCos. This intermediate holding level is used to align the structure of the German business to the Group's globally applicable structural principles. Where possible (i.e., subject to conflicting legal or economic considerations), within the Group, the principle applies to establish business sector-specific local legal entities. These holdings are predominantly held via either German or other holding companies. With this structural principle, the Group aims, even today, at strengthening the Business Sectors' adaptability to market changes and the continued strategic development of their businesses (see above under section A.III.2).

Through the Holding Hive-down, the structural principle of incorporating local legal entities via an intermediate holding company has been implemented for the OpCos.

The intermediate holding companies established in the course of the Holding Hive-down can, *inter alia*, serve as a platform for future business sector-specific acquisitions in line with the general structural principles of the Group. A comparable platform function can be exercised by the intermediate holding companies when entering into joint ventures or other portfolio transactions as well. The use of intermediate holding companies as acquisition vehicles provides benefits, particularly in terms of taxation, over a direct acquisition by, for example, KGaA, in particular because any (intra-group) restructuring following the integration of an acquired entity in the Group, e.g., mergers, due to the intermediate holding structure, can in principle be carried out without any direct tax impact for KGaA and its capital owners. The same applies to any share transfers by an intermediate holding company that – after a seven-year so-called “blocking period” has elapsed – are subject to what results in being a 95% tax exemption of Sec. 8b *KStG* for corporation and trade tax purposes, which also has a beneficial effect on the company and its shareholders (for details regarding the seven-year tax “blocking period” of a so-called “Contribution Profit I” according to Sec. 22 (1) *UmwStG* or (pro rata) according to Sec. 22 (2) *UmwStG*, see section C.IV.5).

The Holding Hive-down is therefore a beneficial measure when considered based on Group organization and tax perspectives and one that strengthens the Business Sectors’ adaptability to market changes and the continued strategic development of their businesses.

2. Alternatives to the hive-down

Other transaction structures have also been examined as potential alternatives to the hive-down pursuant to Sec. 123 (3) (1) *UmwG*, such as contributing the shares in the OpCos by way of singular succession in a capital increase in kind at the level of the HoldCos. While transferring the OpCo shares by way of singular succession would certainly be possible from the perspective of KGaA’s Executive Board due to its lower complexity and the lack of a requirement for third-party consent, yet due to the close factual relation between the Operational Hive-down and the Holding Hive-down and the transparency intended anyway vis-à-vis the Annual General Meeting in this context, the Executive Board of KGaA and the managements of the HoldCos believe it makes more sense to implement the transfer of the shares to the OpCos by way of a hive-down pursuant to the German Reorganization Act. That way, the Holding Hive-down is incorporated seamlessly into the overall transaction and can be presented to the 2018 Annual General Meeting for approval as one element of a complete and coherent overall measure.

3. Decision in favor of the hive-down “by absorption”

The Holding Hive-down is intended to be implemented as a hive-down by absorption pursuant to Sec. 123 (3) (1) *UmwG*. The reasons for this are the same as those for the Operational Hive-down. Reference is made to section C.II.3.

4. Risks and disadvantages of the Holding Hive-down

From the perspective of KGaA's Executive Board, there are no relevant risks for KGaA, its subsidiaries, or its capital owners as a result of the Holding Hive-down. While the transfer of the shares in the OpCos to the HoldCos results in an additional mediatization of KGaA's operation previously hived down to the OpCos (so-called "grandfathering"), since the OpCos are, however, bound to KGaA via domination and profit and loss transfer agreements, the income generated at the level of the OpCos is transferred directly to KGaA, meaning that no adverse effects result from the Holding Hive-down with regard to either management, profitability or the financing capability, let alone to the rating of the Group. Nor does the Holding Hive-down have any effects on KGaA's ability to distribute dividends (cf. the statements on the overall representation of the effects of the transaction on KGaA in section F.1.c)). Any remaining potential adverse effects and costs for the Holding Hive-down will be more than outweighed by the benefits of an intermediate holding level with respect to the OpCos, particularly due to the increased flexibility when executing portfolio transactions (an intermediate holding as a potential "acquisition platform").

As described in section C.II.4 concerning the Operational Hive-down, the Hive-down according to Sec. 123 (3) (1) *UmwG* entails the subsequent liability of the entities involved in the hive-down pursuant to Sec. 133 *UmwG* for the liabilities incurred before the hive-down becomes effective. However, this does not result in any adverse effects for KGaA and its capital owners, since KGaA would be liable for these liabilities even without the hive-down. Moreover, the HoldCos will also not transfer any liabilities that KGaA would be liable for. Due to the domination and profit and loss transfer agreement with the OpCos, KGaA has an obligation to compensate any losses incurred at the level of the OpCos anyway.

The Executive Board of KGaA and the managements of the HoldCos are of the opinion that the benefits of the Holding Hive-down described in sections A.III and D.II.1 clearly outweigh any adverse effects, costs, and risks triggered by the measure.

5. Costs of the transaction

For the overall transaction, i.e., the Operational Hive-down, the Holding Hive-down, and the Business Lease, costs between 25 million Euros to 30 million Euros are expected according to current estimates. At the time of the issuance of this report, the costs actually incurred amount to approximately eight million Euros. The total costs consist mainly of external consultancy costs (including legal advisors, tax consultants, and auditors), costs for the precautionary review of the Business Lease Agreements by an external auditor, notarization fees, and other costs (Commercial Register filings, fees for the issuance of the binding ruling pursuant to Sec. 89 *AO*, translation costs, etc.). Since this is a uniformly prepared and executed overall transaction, the total costs cannot be properly broken down into the individual transaction steps. With regard to the costs, reference is made to the explanation in the Holding Hive-down Agreement in section D.VI.16.

Real estate transfer tax, income tax, and sales tax are not incurred as a result of the implementation of the Holding Hive-down. The details on the tax effects of the Holding Hive-down are described in more detail in section D.V.4.

III. Assets to be hived down and relevant effective dates

The hive-down of shares in the OpCos held by KGaA to the HoldCos is implemented as a hive-down by absorption pursuant to Sec. 123 (3) (1) *UmwG*. The assets to be hived down will be transferred to the relevant HoldCos with all rights and obligations by way of partial universal succession (Sec. 131 (1) (1) *UmwG*). The Holding Hive-down also includes the new shares in the OpCos issued to KGaA in the course of the Operational Hive-down.

The relevant effective dates of the Holding Hive-down correspond in principle to the effective dates described in section C.II.6 on the Operational Hive-down. The transfer of the shares will also become effective with (retroactive) economic effect as of January 1, 2018, 0:00 hours (Economic Effective Date within the meaning in Sec. 126 (1) (6) *UmwG*), and the Closing Balance Effective Date of the Holding Hive-down – as for the Operational Hive-down – is December 31, 2017, 24:00 hours. Only the Transfer Date for Tax Purposes for the Holding Hive-down differs from that of the Transfer Date for Tax Purposes of the Operational Hive-down. Since the applicable tax laws do not provide for any retroactive effective of a “share swap” pursuant to Sec. 21 *UmwStG* (see also the explanations on the Holding Hive-down Agreement in section D.VI.3 as well as the tax consequences of the Holding Hive-down in section D.V.4), the Transfer Date for Tax Purposes of the Holding Hive-down is the date on which legal ownership (Sec. 39 (2) (1) *AO*) in the shares in the OpCos is transferred to the relevant HoldCo. This is essentially the Legal Effective Date of the Holding Hive-down, that is, the point in time at which the Holding Hive-down is registered in the Commercial Register of KGaA and thus goes into effect. Moreover, reference is made to the respective effective dates of the Operational Hive-down in sections C.II.6 and C.III.5.

The allocation of the shares to the respective HoldCo is described in section D.VI.4 with the explanations of the Holding Hive-down Agreement.

IV. The legal implementation of the Holding Hive-down and the course of the hive-down procedure

The legal implementation of the Holding Hive-down and the sequence of the hive-down process run parallel to the Operational Hive-down pursuant to Sec. 123 et seq. *UmwG*.

1. Conclusion of the Holding Hive-down Agreement, deliveries, and public disclosure

The basis for the legal implementation of the Holding Hive-down is the Operational Hive-down Agreement, which was concluded in notarized form on March 2, 2018

before the Notary Public Dr. Andreas von Werder, with his office situated in Frankfurt am Main, together with the other transaction measures. The Holding Hive-down Agreement contains all mandatory information required under Sec. 126 (1) *UmwG*. A review of the Operational Hive-down by expert auditors in accordance with Sec. 9 to Sec. 12 *UmwG* is not required pursuant to Sec. 125 s. 2 *UmwG*.

Before the date of the 2018 Annual General Meeting, the Holding Hive-down Agreement will be submitted to the Darmstadt Local Court in accordance with Sec. 125 s. 1 in conjunction with Sec. 61 *UmwG*. In addition, the Holding Hive-down Agreement must be forwarded to the relevant works councils no later than one month before the date of the 2018 Annual General Meeting or the shareholders' meetings of the OpCos in accordance with Sec. 126 (3) *UmwG*.

2. Approval of the Holding Hive-down Agreement by the Annual General Meeting of KGaA and the shareholders' meetings of HoldCos

According to Sec. 125 s. 1, Sec. 13 (1) *UmwG*, the Holding Hive-down Agreement becomes effective only if the shareholders of the entities participating in the Holding Hive-down agree to it in a resolution. The resolution of the 2018 Annual General Meeting requires a simple majority pursuant to Sec. 133 (1) *AktG*, as well as, pursuant to Sec. 125 (1), 13 (1), 65 (1) *UmwG*, a majority of at least three quarters of the share capital represented at the passing of the resolution. Since the Holding Hive-down together with the Operational Hive-down and the Business Lease Agreements forms a joint entrepreneurial concept, the Holding Hive-down together with the other measures will be subject to joint voting.

The resolutions by the shareholders' meetings of the HoldCos require a majority of at least three quarters of the votes (HC HoldCo, LS HoldCo, PM HoldCo) pursuant to Sec. 125 (1), 13 (1), 50 (1) *UmwG*. It is intended that KGaA – as the sole shareholder of the HoldCos – will agree to the Holding Hive-down Agreement prior to the 2018 Annual General Meeting.

3. Approval of the Holding Hive-down Agreement and the resolution at the Annual General Meeting by EM KG and all General Partners of KGaA

The Holding Hive-down is a transaction that goes beyond the ordinary business operations of KGaA, so that the conclusion of the Holding Hive-down Agreement by the Executive Board of KGaA as well as the additional transaction measures pursuant to Article 13 (4) s. 1 of the articles of association require the approval of EM KG as the General Partner with a majority interest in the equity. This approval was already granted on February 28, 2018. The Board of Partners and the Family Council previously approved the transaction.

Furthermore, the resolution by the 2018 Annual General Meeting on the approval of the Holding Hive-down Agreement and the additional measures pursuant to Sec. 125 s. 1, Sec. 78 s. 3 first half-s. *UmwG* and Sec. 285 (2) s. 1 *AktG* and Article 25 (1) of the Articles of Association requires the consent of the General Partners, i.e., the Exec-

utive Board members of KGaA as the General Partners without an equity interest and EM KG as General Partner with an equity interest. As has been customary in the last few years, this approval is to be declared immediately after the 2018 Annual General Meeting on April 27, 2018, pursuant to s. 3 of Article 25 (2) of the Articles of Association. It will also be notarized in the minutes of the Annual General Meeting pursuant to s. 2 of Sec. 285 (3) *AktG*.

4. Capital increase at the HoldCos

In respect of the resolution on the approval for the Holding Hive-down Agreement, the shareholders' meetings of the HoldCos will each decide on a capital increase of their current share capital of 25,000 Euros by 1,000 Euros to 26,000 Euros in order to create one new share in the nominal amount of 1,000 Euros each, which KGaA will accept as consideration for the transfer of the holding in the respective OpCo. The capital increases take place against a contribution in kind, with the contribution consisting of the company shares held by KGaA in HC OpCo, LS OpCo, and PM OpCo. It is planned for KPMG AG Wirtschaftsprüfungsgesellschaft, Berlin, to submit a certificate confirming that the value of the respective hived-down assets covers the nominal amount of the newly issued company share (so-called valuation certificate (*Werthaltigkeitsbescheinigung*)). The company shares in the HoldCos to be granted to KGaA shall be entitled to profits for the financial years beginning on (and including) January 1, 2018. Insofar as the value at which the contribution in kind provided by KGaA is accepted by the respective HoldCo exceeds the nominal amount of the respective new company share, the amount will be transferred to the capital reserves of the respective HoldCo pursuant to Sec. 272 (2) (1) *HGB*.

5. Registration in the Commercial Register and the Holding Hive-down becoming effective

The Holding Hive-down as well as the capital increase at the level of the HoldCos for the granting of shares in connection with the Operational Hive-down require their registration in the Commercial Register in order to become effective. The registration process with respect to the Holding Hive-down consists of (i) priority registration of the increase in share capital of the HoldCos in the Commercial Register of the respective HoldCo's registered office (s. 1 of Sec. 125, Sec. 53, and Sec. 130 *UmwG*), followed by the Holding Hive-down, and (ii) subsequent registration of the Holding Hive-down in the Commercial Register of KGaA's registered office. The application of the Holding Hive-down in the Commercial Register of KGaA is to be accompanied by a balance sheet of KGaA as the closing balance sheet in accordance with Sec. 125 s. 1 in conjunction with Sec. 17 (2) *UmwG*. The balance sheet of KGaA as of December 31, 2017, which was prepared by the auditor as part of the financial statements of KGaA, is used as the closing balance sheet. The Holding Hive-down and the capital increases of the HoldCos shall be registered with the Commercial Register in connection with the Operational Hive-down.

The Holding Hive-down becomes effective upon registration in the Commercial Register of the registered office of KGaA as the Transferring Entity in accordance with Sec. 130 (1) *UmwG*. At this time, KGaA's shares in the OpCos in rem will be transferred to the HoldCos as the acquiring entities. Since the Holding Hive-down is subject to the condition precedent of the effectiveness of the Operational Hive-down, KGaA, together with the OpCos and the HoldCos, will ensure that the Operational Hive-down is registered first (cf. section C.III.5), and thereafter the Holding Hive-down. In accordance with Sec. 10 *HGB*, the register court (Darmstadt) will publicly disclose the registrations of the Hive-down in the Commercial Register in the electronic information and communication system designated by the state justice administration (www.registerbekanntmachungen.de).

For comments regarding the effectiveness of the Holding Hive-down and any approval proceedings initiated with respect to the Holding Hive-down pursuant to Sec. 125 s. 1, Sec. 16 (3) *UmwG* in case of any legal actions, see the explanatory comments regarding the Operational Hive-down in section C.III.5. The Executive Board of KGaA is of the opinion that delayed effectiveness of the Holding Hive-down – and thus delayed effectiveness of the entire transaction – would result in significant adverse effects for KGaA and the respective HoldCo and would oppose the interests of the shareholders of KGaA, since the realization of the benefits anticipated from the Holding Hive-down (see sections D.II.1 and A.III) would be delayed and additional costs would be incurred.

V. Balance sheet, corporate law, tax and other consequences of the Holding Hive-down

1. Balance sheet impacts

The balance sheet effects of the Holding Hive-down are shown in the overviews, balance sheets, and pro forma balance sheets below of KGaA and the HoldCos as of December 31, 2017, 24:00 hours, and January 1, 2018, 0:00 hours. The representation was derived from the balance sheet, which is part of the financial statements of KGaA as of December 31, 2017, 24:00 hours, which were audited and granted an unqualified audit opinion by KPMG AG Wirtschaftsprüfungsgesellschaft, Berlin. The pro forma balance sheets were each compiled on the basis of these balance sheet figures as of December 31, 2017, 24:00 hours, and refer to the Economic Effective Date January 1, 2018, 0:00 hours. The balance sheet of KGaA as of December 31, 2017, 24:00 hours, is also the closing balance sheet for the Operational Hive-down in accordance with Sec. 125 s. 1 in conjunction with Sec. 17 (2) *UmwG*.

Since the Holding Hive-down in accordance with Sec. 126 (1) (6) *UmwG* also has a retroactive economic effect as of January 1, 2018, 0:00 hours (for details on the economic retroactive effect of the Holding Hive-down see section D.V.2.b)), the dates December 31, 2017 or January 1, 2018 were used as the basis for the relevant balance sheets and pro forma balance sheets (on the basis of the continuation of carrying amounts under German commercial law pursuant to Sec. 24 *UmwG*, the explanations

on the Operational Hive-down in section C.IV.1.b) apply accordingly to the Holding Hive-down and the HoldCos, respectively). The increase in the share capital at the HoldCos to carry out the Holding Hive-down was taken into account.

The balance sheets were each compiled based on the accounting and measurement principles set forth in the *HGB*. Due to rounding, individual figures in the annual balance sheets and in the pro forma balance sheets may not exactly add up to the totals indicated.

a) Effects on the balance sheet of KGaA

The Holding Hive-down has no effects on the balance sheet of KGaA. It is only an internal reclassification or share swap within the item “Financial assets” (and there within the line item “Shares in affiliated companies”) shown in the balance sheet of KGaA. By hiving down the shares in the OpCos, share capital and capital reserves simply increase in the balance sheets of the HoldCos (cf. the section below). For the overall presentation of the effects of all transaction measures on the balance sheet of KGaA, in particular taking the Holding Hive-down into account, reference is made to the explanations and the overview in section C.IV.1.a) on the Operational Hive-down.

b) Effects on the balance sheets of the HoldCos

The following overviews (p. 120 to p. 122) contain the representation of the effects of the Holding Hive-down on the balance sheets of the HoldCos.

(figures in thousand EUR)	HC HoldCo (before the Holding Hive-down) Dec. 31, 2017	HC HoldCo (after the Holding Hive-down) Jan. 1, 2018
<u>ASSETS</u>		
Fixed assets		
Intangible assets		
Tangible assets		
Financial assets		356,663
<i>Total fixed assets</i>	0	356,663
Current assets		
Inventories		
Receivables and other assets		
Trade accounts receivable		
Other receivables and other assets		
Cash and cash equivalents	25	25
<i>Subtotal</i>	25	25
<i>Total current assets</i>	25	25
Prepaid expenses		
	25	356,688

(figures in thousand EUR)	HC HoldCo (before the Holding Hive-down) Dec. 31, 2017	HC HoldCo (after the Holding Hive-down) Jan. 1, 2018
<u>EQUITY AND LIABILITIES</u>		
Equity		
Subscribed capital	25	26
Capital reserves		356,662
Profit/loss carryforward	-4	-4
<i>Total equity</i>	21	356,685
Provisions		
Provisions for pensions and other post-employment benefits		
Other provisions		
<i>Total provisions</i>	0	0
Liabilities		
Financial liabilities		
Trade accounts payable	4	4
Other liabilities		
<i>Total liabilities</i>	4	4
Deferred income		
	25	356,688

(figures in thousand EUR)	LS HoldCo (before the Holding Hive-down) Dec. 31, 2017	LS HoldCo (after the Holding Hive-down) Jan. 1, 2018
<u>ASSETS</u>		
Fixed assets		
Intangible assets		
Tangible assets		
Financial assets		294,442
<i>Total fixed assets</i>	0	294,442
Current assets		
Inventories		
Receivables and other assets		
Trade accounts receivable		
Other receivables and other assets		
Cash and cash equivalents	25	25
<i>Subtotal</i>	25	25
<i>Total current assets</i>	25	25
Prepaid expenses		
	25	294,467

(figures in thousand EUR)	LS HoldCo (before the Holding Hive-down) Dec. 31, 2017	LS HoldCo (after the Holding Hive-down) Jan. 1, 2018
<u>EQUITY AND LIABILITIES</u>		
Equity		
Subscribed capital	25	26
Capital reserves		294,441
Profit/loss carryforward	-4	-4
<i>Total equity</i>	21	294,463
Provisions		
Provisions for pensions and other post-employment benefits		
Other provisions		
<i>Total provisions</i>	0	0
Liabilities		
Financial liabilities		
Trade accounts payable	4	4
Other liabilities		
<i>Total liabilities</i>	4	4
Deferred income		
	25	294,467

(figures in thousand EUR)	PM HoldCo (before the Holding Hive-down) Dec. 31, 2017	PM HoldCo (after the Holding Hive-down) Jan. 1, 2018
ASSETS		
Fixed assets		
Intangible assets		
Tangible assets		
Financial assets		374,320
<i>Total fixed assets</i>	0	374,320
Current assets		
Inventories		
Receivables and other assets		
Trade accounts receivable		
Other receivables and other assets		
Cash and cash equivalents	25	25
<i>Subtotal</i>	25	25
<i>Total current assets</i>	25	25
Prepaid expenses		
	25	374,345

(figures in thousand EUR)	PM HoldCo (before the Holding Hive-down) Dec. 31, 2017	PM HoldCo (after the Holding Hive-down) Jan. 1, 2018
EQUITY AND LIABILITIES		
Equity		
Subscribed capital	25	26
Capital reserves		374,319
Profit/loss carryforward	-4	-4
<i>Total equity</i>	21	374,341
Provisions		
Provisions for pensions and other post-employment benefits		
Other provisions		
<i>Total provisions</i>	0	0
Liabilities		
Financial liabilities		
Trade accounts payable	4	4
Other liabilities		
<i>Total liabilities</i>	4	4
Deferred income		
	25	374,345

The first column of the respective overviews (assets and equity and liabilities) contains the balance sheets of HC OpCo, LS OpCo, and PM OpCo as of December 31, 2017, 24:00 hours. They show in each case the state before the Holding Hive-down becomes effective.

The second column “HC HoldCo (after the Holding Hive-down) Jan. 1, 2018,” “LS HoldCo (after the Holding Hive-down) Jan. 1, 2018,” “PM HoldCo (after the Holding Hive-down Jan. 1, 2018” of the respective overviews (assets and equity and liabilities) contains pro forma balance sheets of the HoldCos after the Holding Hive-down goes into effect.

The HoldCos become owners of the company shares in the OpCos as a result of the Holding Hive-down in accordance with the allocations in the Holding Hive-down Agreement. For this reason, there are balance sheet additions in the item “Financial assets” in the amounts shown in the respective pro forma balance sheet under this item (cf. on the balance sheet explanation of the company shares to be transferred to the OpCos section D.V.1.a)).

Due to the assumption of the company shares of the OpCos on the basis of the carrying amounts, both, the share capital – as a result of the capital increase to implement the Holding Hive-down – and the reserves of the HoldCos increase by the amounts each shown in the above pro forma balance sheets.

2. Company law consequences

The effects of the Holding Hive-down under corporate law result from the provisions of the German Reorganization Act. The registration of the Holding Hive-down in the Commercial Register of KGaA has the following effects under company law:

a) Partial universal succession

The shares in the OpCos held by KGaA as the Transferring Entity pursuant to Sec. 131 (1) (1) *UmwG* are transferred as a whole by way of partial universal succession to the respective HoldCo as the acquiring entity in accordance with the allocation specified in the Holding Hive-down Agreement. The material transfer takes place upon registration of the Holding Hive-down in the Commercial Register of the Transferring Entity (KGaA). A separate transfer of the shares by way of singular succession can thus be dispensed with.

b) Retroactive economic effect

The Company Shares shall be transferred to the OpCos in the relationship between KGaA and the HoldCos with economic (retroactive) effect as of January 1, 2018, 0:00 hours (Economic Effective Date as defined in Sec. 126 (1) (6) *UmwG*). Therefore, as of the Economic Effective Date, in the relationship between KGaA and the HoldCos, the business activities that involve the company shares in the OpCos to be hived down will each be pursued for the account of the HoldCos (“for the account of” phase). The

statutory provisions relating to the effective date of the Holding Hive-down and the transfer under civil law and/or material transfer of the Asset And Liability Items to HoldCos as the acquiring entities remain unaffected.

Moreover, if the Operational Hive-down has not become effective by February 28, 2019, KGaA and the HoldCos may withdraw from the Holding Hive-down Agreement.

c) Consequences for the shareholders of KGaA

The Holding Hive-down does not result in a change in the number of shares issued by KGaA, nor are the rights of these shares affected directly. Upon the Holding Hive-down becoming effective, the shareholders of KGaA will only hold indirect investments in the HoldCos via the investment of KGaA. Even after the Holding Hive-down, however, the influence of KGaA on the Executive Board of the OpCos will continue to be secured by way of the domination and profit and loss transfer agreements continuing between KGaA and OpCos. The profits earned at the level of the OpCos will be transferred to KGaA on the basis of these agreements. After the Holding Hive-down, KGaA will continue to hold 100% of the investments in the HoldCos. The shareholders will be indirectly involved in any increase in value of the hived-down OpCo shares via their shareholdings in KGaA. The Holding Hive-down has no impact on the listing or tradability of KGaA shares.

d) Consequences for KGaA as the shareholder of the HoldCos and of the OpCos

As the Transferring Entity, KGaA – as consideration for the transfer of the shares to the respective HoldCo – will receive a new share in the nominal amount of 1,000 Euros in each of the HoldCos as the acquiring entities pursuant to s. 3 of Sec. 131 (1) (3) *UmwG*. There will be no changes to the percentage shares of KGaA as the sole shareholder of the HoldCos as a result of the Holding Hive-down. The influence on the Executive Board of the HoldCos will be ensured by the GmbH's existing right to issue instructions to the managing directors. The KGaA will also still hold – indirectly via the HoldCos – a 100% interest in the OpCos. The domination and profit and loss transfer agreements existing between the KGaA and the OpCos continue to exist even after the Holding Hive-down becomes effective. Due to the 100% interest of the KGaA in HoldCos, the HoldCos are not considered as outside shareholders according to Sec. 307 AktG. Due to the domination and profit and loss transfer agreements, the KGaA continues to have direct right to issue instructions to the managing directors of the OpCos. Because of the domination and profit and loss transfer agreements, the profits generated at the level of the OpCos level will not be distributed to the HoldCos, but transferred directly to KGaA.

e) Joint and several liability

The assets of the Transferring Entity will change once the hive-down takes effect. To protect the creditors of the hived-down entity, Sec. 133 (1) *UmwG* prescribes that the

entities involved in the hive-down are initially liable in full as joint and several debtors for all liabilities of the Transferring Entity incurred until the effective date of the hive-down. Thus, the former creditors of KGaA may choose to hold KGaA or the respective HoldCo liable. The liability of the HoldCos, which have joint liability, to which no liabilities are attributed within the scope of the Operational Hive-down and Holding Hive-down, expires after five years, or, for pension obligations under the German Company Pensions Act, ten years after public disclosure of the registration of the Holding Hive-down in the Commercial Register of KGaA unless the claims have either been settled pursuant to Sec. 197 (1) (3) to (5) *BGB* or by way of a judicial or administrative act of enforcement taken or applied for; in case of public law liabilities, it is sufficient to adopt an administrative enactment (so-called “limitation of extended liability“ pursuant to Sec. 133 (3) *UmwG*). Since only all shares in the OpCos and no liabilities will be transferred to the HoldCos by way of the Holding Hive-down, the effectiveness of the Holding Hive-down will result in the HoldCos being liable for all liabilities of KGaA incurred before the Holding Hive-down becoming effective based on the criteria set forth in section 133 (1), (3) *UmwG* as referred to above.

In addition, the creditors of the entities involved in the hive-down whose claims are not yet due may, as circumstances warrant, in accordance with Sec. 133 (1) s. 2, Sec. 125 in conjunction with Sec. 22 *UmwG*, hold the entity against which the claim is directed liable for granting collateral. Since no liabilities are transferred to the HoldCos in the course of Holding Hive-down, any claim for the granting of collateral security would only be directed against KGaA.

The distribution of the liability in the internal relationship between KGaA and the HoldCos is based on the corresponding provisions of the Holding Hive-down Agreement. Indemnity of the HoldCos will be arranged by KGaA with respect to the liabilities remaining with KGaA for which the HoldCos will be subsequently liable pursuant to section 133 *UmwG* (cf. section D.VI.13). Therefore, there will be no change for KGaA and its shareholders in this respect.

3. Impact on the financial situation and results of operations and effects on the future dividend policy of KGaA

In the course of the Holding Hive-down, only the shares of the OpCos will be transferred to the HoldCos, which will increase the assets of the latter accordingly. The other financial effects of the Holding Hive-down will be very limited for both KGaA as well as the HoldCos, especially since the HoldCos will not utilize any financing of their own, and the profits generated at the level of the OpCos will be transferred directly to KGaA under the domination and profit and loss transfer agreements.

Hence, the Holding Hive-down will not have any effects on KGaA’s ability to distribute dividends or its dividend policy (cf. the statements on the overall representation of the effects of the transaction on KGaA in section F.1.c)).

4. Tax consequences of the Holding Hive-down

The hive-down of the shares in the OpCos takes place from a tax perspective at carrying amounts pursuant to Sec. 21 (1) and (2) *UmwStG* at the request of the HoldCos. The respective carrying amounts of the hived-down shares are deemed acquisition cost of the new shares in the HoldCos each to be granted as consideration. The hive-down of the shares to the OpCos against new shares in the HoldCos is deemed a “qualified share swap” (the transfer of majority-granting shares for tax purposes) within the meaning of Sec. 21 (1) s. 1 and 2 *UmwStG* (cf. lit. 21.09 of the 2011 *UmwSt-Erlass*). In a binding ruling issued upon request pursuant to Sec. 89 (2) *AO* on October 17, 2017, and January 16, 2018, the Darmstadt Tax Office confirmed that the requirements for a tax-neutral transfer of the shares in the OpCos to the HoldCos pursuant to Sec. 21 (1), (2) *UmwStG* at their carrying amounts in the scope of the Holding Hive-down have all been met. The majority-granting shares in the OpCos will be transferred exclusively against new shares in the HoldCos (section 21 (1) s. 1 *UmwStG*), whereas a “damaging” “other consideration” in terms of Sec. 21 (1) s. 2 (2) *UmwStG* is not being granted. Furthermore, pursuant to Sec. 21 (2) s. 2 *UmwStG*, the right of the Federal Republic of Germany to tax the gains from the sale of the transferred shares must neither be excluded nor restricted by the transfer. This requirement has also been met in the present case. On the basis of the continuation of carrying amounts, there is no capital gain at the level of KGaA (cf. lit. 21.07 to 21.13 2011 *UmwSt-Erlass*). Any retroactive effect of the share swap for tax purposes is not permitted (cf. lit. 21.17 of the 2011 *UmwSt-Erlass*).

In a binding ruling issued upon request pursuant to Sec. 89 (2) *AO* on October 17, 2017, and January 16, 2018, the Darmstadt Tax Office also confirmed that the Holding Hive-down is not deemed a “Contribution Profit I blocking period violation” for the transfer of the separable parts of the operations to the OpCos in the course of the Operational Hive-down that immediately precedes it. Due to the qualified share swap at the carrying amount pursuant to Sec. 21 *UmwStG* in the course of the Holding Hive-down, no (retroactive) “Contribution Profit I” taxation within the context of the Holding Hive-down will be triggered in step 2 pursuant to the legal counter-exception in Sec. 22 (1) s. 6 (2) half-s. 2 *UmwStG* for transfer of separable parts of the operations (cf. lit. 22 (1) and lit. 22.23 (1) of the 2011 *UmwSt-Erlass*). The transfer takes place at carrying amounts, since no built-in gains are disclosed in the transferred assets at the Transferor within the scope of the Holding Hive-down due to the option to continue the carrying amount in a qualified share swap (cf. s. 3 of lit. 22.22 (1) of the 2011 *UmwSt-Erlass*). The “old” shares in the HoldCos become proportionately “entangled” (*mitverstrickt*) as a result of the Holding Hive-down at carrying amounts pursuant to Sec. 22 (7) *UmwStG* for purposes of Contribution Profit I pursuant to Sec. 22 (1) s. 6 (5) *UmwStG* for seven years.

Pursuant to Sec. 22 (1) s. 6 (5) *UmwStG*, the seven-year “blocking period” with respect to Contribution Profit I (see section C.IV.5) will continue in a derivative manner as a result of the Holding Hive-down in the new shares in the HoldCo and in the other shares in the HoldCo that are “entangled” (*mitverstrickt*) pursuant to Sec. 22 (7) *UmwStG*.

wStG, so that the HoldCo shares will also be completely “Contribution Profit I blocking period entangled” as a result of the seven-year blocking period. Moreover, the shares transferred to the HoldCo as a result of the Holding Hive-down according to Sec. 21 *UmwStG* at carrying amount will also be completely “Contribution Profit I blocking period entangled” for seven years at the level of the HoldCo (pursuant to Sec. 22 (1) s. 6 (4) *UmwStG*).

Due to the partial transparency of KGaA for tax purposes with respect to its General Partners, the shares in the OpCos transferred to the HoldCos at carrying amounts upon request within the scope of the Holding Hive-down pursuant to Sec. 21 *UmwStG* (in the amount of the percentage share of EM KG in KGaA) are proportionately “Contribution Profit II blocking period entangled” pursuant to Sec. 22 (2) s. 1 *UmwStG* for seven years at the level of the HoldCos. If the HoldCo directly or indirectly sells shares in the OpCo within the seven-year “blocking period,” the share swaps will be subject to proportionate retroactive taxation at the level of KGaA at the time of the transfer of the shares, so-called “Contribution Profit II.” Contribution Profit II is the amount by which the fair market value of the transferred shares at the time of the transfer less the costs for the transfer of the shares exceeds the value at which the Transferor recognized the shares received, reduced by one seventh for each period of twelve months that has elapsed since the time of the contribution (Sec. 22 (2) s. 3 *UmwStG*). Contribution Profit II is deemed subsequent acquisition cost of the shares received (Sec. 22 (2) s. 4 *UmwStG*). The same applies if a replacement realization situation (e.g., intra-group restructuring occurs) pursuant to Sec. 22 (2) s. 6 *UmwStG*. In individual cases, checks should be made considering the provisions of Sec. 22 (1) s. 6 (1) – (6) or (2) *UmwStG* to determine whether any subsequent transfers at carrying amount of the shares contributed to the HoldCos or shares in the HoldCos received to other companies limited by shares trigger a (subsequent) disclosure of built-in gains in the shares transferred or received.

Furthermore, pursuant to Sec. 22 (3) s. 1 (1) *UmwStG*, KGaA as the “Transferor” must continue to provide annual proof concerning beneficial ownership of the shares in the HoldCos received in the course of the Holding Hive-down during the seven-year blocking period and regarding the attribution of ownership of the OpCo shares (to the business assets of the HoldCo) pursuant to Sec. 22 (3) s. 1 (2) *UmwStG*. The proof is to be provided each year by the end of May 31 for the financial year that has elapsed. The comments in section C.IV.5 apply accordingly.

The Holding Hive-down is a taxable service for VAT purposes that is, however, tax-free pursuant to Sec. 4 (8) (f) *UStG*. Real estate transfer taxes are not incurred as a result of the Holding Hive-down since all of KGaA’s real estate and buildings remain with KGaA (cf. section C.II.7.e)).

5. Consequences for the employees and their representatives

The HoldCos do not have any employees or employee representatives. Since, under the Holding Hive-down Agreement, only company shares of the OpCos are hived

down, the Holding Hive-down has no effect on the employment relationships existing at the OpCos. In particular, the transfer of the company shares in the OpCos to the HoldCos does not meet the prerequisites of a transfer of undertaking within the meaning of Sec. 613a *BGB*. Therefore, no employment relationships are transferred from the OpCos to the HoldCos in the course of the Holding Hive-down. Overall, the Holding Hive-down has no impact on the employees and their representations, and no special measures are planned because of the Holding Hive-down. The consequences of the Operational Hive-down and the subsequent Business Lease (including its termination) are described above in section C.IV.6. Reference is made to these statements.

6. Other effects of the Holding Hive-down on KGaA and the HoldCos

a) Other effects on KGaA

The Operational Hive-down has no effect on the structure and composition of the Executive Board and Supervisory Board of KGaA. Following the Holding Hive-down, KGaA will continue to act as the parent company managing the entire Group with its three global Business Sectors Healthcare, Life Science, and Performance Materials. The formation of global “sub-groups” that are combined under the management of a segment holding is not subject to either the Operational Hive-down or the Holding Hive-down. Even though the OpCo shares are held by the respective HoldCo after the Holding Hive-down has been executed, the OpCos are controlled directly by KGaA due to the continuing domination and profit and loss transfer agreements.

b) Other effects on the HoldCos

As a result of the Holding Hive-down, the HoldCos receive 100% of the shares in the OpCos. Their business activity is therefore to hold and manage the OpCo shares. Since the OpCos are linked directly to KGaA via the domination and profit and loss transfer agreements and also controlled directly from there by the Group management, the HoldCos’ business activities are essentially limited to formal administrative measures at the level of the OpCos (e.g., approval of financial statements, appointment of managing directors or – after termination of the Business Lease – appointment of members of the Supervisory Board on the capital owners’ side). In the future, it will also be possible to use the HoldCos as a “platform” for acquisitions or other portfolio measures, so that their holding functions may expand if necessary. The management of the HoldCos (cf. section B.III) will not change as a result of the Holding Hive-down. The establishment of permanent supervisory boards is not planned at the level of the HoldCos. Since the HoldCos neither employ employees of their own nor – for instance, as a so-called “head office of a sub-group” with independent management authority – are they suitable subjects of attribution for employees of subordinate group levels, there is also no co-determination at the level of the HoldCos.

The impact of the entire restructuring on KGaA and the HoldCos is described in section F., to which reference is made.

VI. Explanation of the Holding Hive-down Agreement and its annexes

The Holding Hive-down Agreement was signed on March 2, 2018 in accordance with Sec. 125 s. 1, Sec. 6 *UmwG* with the content required under Sec. 126 (1) *UmwG* notarized by the Notary Public Andreas von Werder with his office situated in Frankfurt am Main (Deed No. 92/2018). The Transferring Entity is KGaA, and the acquiring entities are (i) HC OpCo, (ii) LS OpCo, and (iii) PM OpCo. In detail, the Holding Hive-down Agreement and its annexes, which are integral parts of the Holding Hive-down Agreement in accordance with § 22, contain the following detailed provisions:

The Holding Hive-down Agreement is divided into six sections. Following a preamble, which is part of the contract pursuant to § 22, section A. (§ 1 and § 2) contains general provisions relating to the Holding Hive-down, the Economic Effective Date, the Transfer Date for Tax Purposes, the closing balance sheet, and the Legal Effective Date. Section B. (§ 3 to § 6) then describes in greater detail the OpCo Company Shares To Be Hived Down by KGaA to (i) HC OpCo, (ii) LS OpCo, and (iii) PM OpCo by way of the Holding Hive-down and in accordance with the Holding Hive-down Agreement. Section C. (§ 7 and § 8) contains provisions regarding the consideration for the OpCo Company Shares To Be Hived Down to the HoldCos and governs the associated capital increases and other terms and conditions. Section D. (§ 9 and § 10) contains information on the granting of special rights and benefits in accordance with Sec. 126 (1) (7) and (8) *UmwG*. Section E. (§ 11 to § 13) comprises an overall presentation of the consequences of the (i) Operational Hive-down and (ii) subsequent Business Lease as well as the (iii) Holding Hive-down for the employees and their representatives, and discusses the individual legal consequences for employees and measures provided for this purpose and the consequences of the measures, as well as the consequences of termination of the Business Lease Agreements for the employees and their representatives, as well as the impact on collective agreements and company agreements. Section F. (§ 14 to § 24) contains further joint provisions concerning the Holding Hive-down.

The agreed-upon defined terms are, in principle, used in the context of the following description and explanation of the Holding Hive-down Agreement. Insofar as annexes are referred to, these are Annexes of the Holding Hive-down Agreement. Sections that do not specify a law or act refer to sections of the Holding Hive-down Agreement

1. Preamble

The Preamble of the Holding Hive-down Agreement provides a brief overview of the planned restructuring of KGaA and the measures planned in this respect. For this purpose, the entities involved and the background to the hive-downs and leasebacks are described briefly. In addition, both the respective assets to be transferred, including the asset allocation to the OpCos and/or the HoldCos, and the assets remaining with KGaA are summarized. The Preamble also defines and explains the basic terms of the Holding Hive-down Agreement. Furthermore, the Preamble clarifies that the Operational Hive-down, the Holding Hive-down, and the Business Lease Agreements are a

joint entrepreneurial concept that is also to be jointly submitted to the Annual General Meeting for approval. Finally, the Preamble contains comments on the planned sequence of registration of the measures in the respective Commercial Register and thus on the effectiveness of the individual transaction steps.

2. Holding Hive-down (§ 1)

§ 1 contains the key provision of the Holding Hive-down Agreement, according to which KGaA, as the Transferring Entity, will transfer KGaA shares in HC OpCo, LS OpCo, and PM OpCo by way of the hive-down by absorption pursuant to Sec. 123 (3) (1) *UmwG* to HC OpCo, LS OpCo, and PM OpCo as the acquiring entities against new shares (Sec. 126 (1) (2) *UmwG*). The OpCo shares to be transferred to each of the HoldCos are described in § 3 to § 5 (cf. the explanations in section D.VI.4), and the shares to be granted to the HoldCos as consideration are described in § 7 (cf. the explanations in section D.VI.6).

3. Economic Effective Date, Transfer Date for Tax Purposes, closing balance sheet, Legal Effective Date (§ 2)

§ 2 governs the Economic Effective Date, the Transfer Date for Tax Purposes, the closing balance sheet, and the Legal Effective Date.

Pursuant to § 2.1, the Economic Effective Date will be January 1, 2018, 0:00 hours. The Economic Effective Date is the time from which the actions and business activities of KGaA relating to each of the shares to be hived down in the internal relationship between KGaA and the HoldCos are deemed being undertaken for the account of the respective HoldCo as the acquiring entity (Sec. 126 (1) (6) *UmwG*). This means that, for commercial balance sheet purposes, the Holding Hive-down will have a retroactive economic effect as of January 1, 2018, 0:00 hours, and that the Parties will be positioned as if the OpCo Healthcare Company Shares, the OpCo Life Science Company Shares, and the OpCo Performance Materials Company Shares had already been transferred to the respective HoldCo on the Economic Effective Date. The transfer date for tax purposes is the date at which beneficial ownership (Sec. 39 (2) (1) *AO*) in the shares to be hived down is transferred to the respective HoldCo. This is generally the Legal Effective Date for tax purposes (registration of the Holding Hive-down in the Commercial Register of KGaA); retroactive effect of the qualified share swap for tax purposes is not legally stipulated in Sec. 21 *UmwStG*.

Sec. 125 s. 1 in conjunction with Sec. 17 (2) *UmwG* prescribes that a so-called closing balance sheet needs to be attached to the registration of the Holding Hive-down in the Commercial Register of the Transferring Entity (here, KGaA). Thus, § 2.2 stipulates that the closing balance sheet shall be based on the annual balance sheet of KGaA that is part of the financial statements as of December 31, 2017, 24:00 hours, which was audited and granted an unqualified audit opinion by KPMG AG Wirtschaftsprüfungsgesellschaft, Berlin. The register court of the Transferring Entity (KGaA) may only register the Holding Hive-down if the closing balance sheet has

been compiled as of a (closing balance sheet) effective date no earlier than eight months prior to the registration: Sec. 125 s. 1 in conjunction with Sec. 17 (2) s. 4 *UmwG*. Registration of the Holding Hive-down must be completed no later than by August 31, 2018.

§ 2.3 specifies that the HoldCos shall continue to record the OpCo Company Shares To Be Hived Down in their accounting under German commercial law and in their tax balance sheet at the respective applicable carrying amounts. Pursuant to Sec. 21 (1) (2) *UmwStG*, the HoldCos will submit a corresponding application to the competent fiscal authorities for continuing the carrying amounts for tax purposes (see above in section D.V.1). More details on the continuation of carrying amounts under German commercial law pursuant to Sec. 24 *UmwG* can be found in section C.IV.1.b).

In line with Sec. 130 (1) s. 1, Sec. 131 (1) (1) *UmwG*, § 2.4 stipulates that the Holding Hive-down will become effective upon registration in the Commercial Register of KGaA, and that the OpCo Company Shares To Be Hived Down will be transferred to the HoldCos in rem at that time. This point in time is referred to in the Holding Hive-down Agreement as the Legal Effective Date. The Legal Effective Date must be distinguished from the Economic Effective Date, which only affects the time for the economic transfer of the OpCo Company Shares To Be Hived Down in the internal relationship. Moreover, § 2.4 stipulates that the Legal Effective Date of the Holding Hive-down must be after the registration date of the Operational Hive-down in the Commercial Register of KGaA. This clause is to ensure that the newly created OpCo company shares in the course of the Operational Hive-down are included in the Holding Hive-down.

§ 2.5 is a customary clause in hive-down agreements and mandates that KGaA only manages and disposes of the OpCo Company Shares to Be Hived Down in the proper course of business and with due diligence between the period of the notarized conclusion of the Holding Hive-down Agreement and the Legal Effective Date of the Holding Hive-down, while meeting the requirements of the Holding Hive-down Agreement in the process.

4. Hive-down of the OpCo Healthcare Company Shares (§ 3), the OpCo Life Science Company Shares (§ 4), and the OpCo Performance Materials Company Shares (§ 5)

The shares of KGaA in the OpCos to be transferred to the respective HoldCos are described in § 3 / § 4 / § 5. Thus, both OpCo Share Number 1 with a nominal value of 25,000 Euros (§ 3 a) / § 4 a) / § 5 a)) currently each held by KGaA, as well as OpCo Share Number 2 with a nominal value of 975,000 Euros yet to be granted as consideration in the course of the Operational Hive-down are part of the OpCo Healthcare Company Shares / OpCo Life Science Company Shares / OpCo Performance Materials Company Shares (see also the explanations in section C.V.6). The transfer according to § 4 / § 5 / § 6 will take place in each instance together with all rights and obligations associated with the respective OpCo shares. The profit participation right will apply as of the Economic Effective Date.

5. Hive-down Balance Sheets (§ 6)

§ 6 refers – as is customary in hive-down agreements – to hive-down balance sheets to specify the assets to be transferred. Sec. 126 (2) (3) *UmwG* provides this option. For this purpose, in the case of the Holding Hive-down, three pro forma segment balance sheets (Annex 6.a, Annex 6.b, and Annex 6.c) were compiled on the basis of the carrying amounts as of December 31, 2017, 24:00 hours, referring to the Economic Effective Date January 1, 2018, 0:00 hours. The basis for the hive-down balance sheets in each case is the assumption that the Operational Hive-down has become effective and KGaA hives down to the respective HoldCo both the company shares already existing on December 31, 2017, 24:00 hours, and the new company shares in the respective OpCo received in the scope of the Operational Hive-down as consideration.

6. Consideration for the transfer of the OpCo Company Shares to be hived down and effective date of the profit entitlement (§ 7)

According to the requirements of Sec. 126 (1) (2) and (5) *UmwG*, § 7.1 a) to c) govern the consideration for the transfer of the OpCo Company Shares To Be Hived Down to the HoldCos. Hence, KGaA will be granted one share each in HC HoldCo, LS HoldCo, and PM HoldCo with a nominal value of 1,000 Euros for the transfer of the OpCo Healthcare shares, the OpCo Life Science shares, and the OpCo Performance Materials shares, respectively.

Pursuant to § 7.2, the shares to be granted to KGaA by the HoldCos will be entitled to the profits for the financial years beginning on (and including) January 1, 2018 (Sec. 126 (1) (5) *UmwG*).

§ 7.3 points out that the shares being granted pursuant to § 7.1 will be newly created by way of a capital increase of the respective HoldCo as described in § 8.

7. Capital increase for the purpose of the Holding Hive-down, contribution to the capital reserves (§ 8)

§ 8.1 governs how the shares to be granted to KGaA as consideration pursuant to § 7.1 are created by HC HoldCo, LS HoldCo, and PM HoldCo. Thus, for the purpose of executing the Holding Hive-down and granting the consideration, the HoldCos will increase their share capital by 1,000 Euros from currently 25,000 Euros to 26,000 Euros by issuing a share (each with the serial number 2) to the respective OpCo in the nominal amount of 1,000 Euros each. The shareholders' meetings of the HoldCos will pass a resolution regarding this capital increase together with the approval of the Holding Hive-down Agreement.

§ 8.2 clarifies that KGaA is to provide a contribution in kind in the form of the OpCo shares to be transferred to the respective HoldCo for the shares granted by the HoldCos.

If the value at which the contribution in kind provided by KGaA is accepted by the respective OpCo – according to § 2.3 of the Holding Hive-down Agreement, this is

the carrying amount – exceeds the amount of the respective increase in the share capital, this excess amount will be contributed according to § 8.3 to the capital reserves of the respective HoldCo pursuant to Sec. 272 (2) (1) *HGB*.

8. Granting of special rights within the meaning of Sec. 126 (1) (7) *UmwG* (§ 9)

§ 9 clarifies that no special rights within the meaning of Sec. 126 (1) (7) *UmwG* will be granted to individual shareholders or holders of special rights and that no special measures are planned in respect of such persons. In the event that no special rights within the meaning of Sec. 126 (1) (7) *UmwG* are granted, the negative statement contained in § 9 is customary for clarification.

9. Granting special benefits within the meaning of Sec. 126 (1) (8) *UmwG* (§ 10)

In § 10, it is clarified that no special benefits will be granted to members of a representative or supervisory body of the entities involved in the Holding Hive-down or to any managing partner, partner, statutory auditor, or other auditor within the meaning of Sec. 126 (8) *UmwG*. This negative statement is also customary for clarification in hive-down agreements.

10. Consequences of the Operational Hive-down and subsequent Business Lease, the Holding Hive-down, and the termination of the Business Lease Agreements for the employees and their representatives, and the measures planned in this respect (§ 11 to § 13)

Pursuant to Sec. 126 (1) (11) *UmwG*, a hive-down agreement must contain information on the consequences of the hive-down for the employees and their representatives and the measures planned in this respect. Accordingly, § 11 to § 13 describe the consequences of the Holding Hive-down for the employees and their representatives and the measures planned in this respect according to the specifications of Sec. 126 (1) (11) *UmwG*. In addition, due to the close correlation between the measures and their joint implementation, the consequences of the Operational Hive-down and subsequent Business Lease and the consequences of the termination of the Business Lease Agreements for the employees and their representative bodies and the measures planned in this respect are also described as a precautionary measure. These provisions are not contractual arrangements, but only a description of the consequences of the Holding Hive-down and the Operational Hive-down, as well as the leaseback (including their termination). The explanatory statements can be found in section D.V.5 which is referred to in this respect.

11. Obligations to cooperate (§ 14)

§ 14 clarifies that the Parties have the mutual obligation to undertake all actions that may be necessary or expedient for the transfer of the OpCo Company Shares To Be Hived Down to the HoldCos.

12. Disclaimer of Warranty (§ 15)

In § 15, KGaA represents vis-à-vis the HoldCos that it is the holder of the OpCo Company Shares To Be Hived Down and that these company shares are free of any third-party rights. Moreover, to the extent legally admissible, the Parties agree on the exclusion of all claims and rights on the part of the HoldCos against KGaA due to the condition and existence of the OpCo Company Shares To Be Hived Down by KGaA under the Holding Hive-down Agreement, irrespective of their nature and regardless of the legal basis. Such a clause is common in intercompany arrangements.

13. Protection of creditors and internal settlement (§ 16)

§ 16 governs the internal settlement between the Parties in the event that creditors assert claims for liabilities and/or collateral security pursuant to Sec. 133 *UmwG*.

First, § 16.1 stipulates that the provisions in § 16.2 and § 16.3 only apply to the internal relationship between the contractual parties if no other attribution of obligations and liabilities arising from the Holding Hive-down Agreement results from or in relation to the OpCo Company Shares To Be Hived Down.

Pursuant to Sec. 133 (1) and (3) *UmwG*, KGaA and the HoldCos will be liable as joint and several debtors for liabilities of KGaA established before the Holding Hive-down becomes effective for a period of five years once the Holding Hive-down has been registered in the Commercial Register of KGaA (or ten years for benefit obligations according to the German Company Pensions Act).

In this context, § 16.2 specifies that the respective HoldCo must indemnify KGaA upon first request from claims arising from liabilities, obligations, or contingent liabilities to be transferred to the respective HoldCo according to the Holding Hive-down Agreement if and to the extent that KGaA is held liable by these creditors based on the provisions in Sec. 133 *UmwG* or any other regulations. The respective HoldCos will also have a corresponding obligation to indemnify KGaA if KGaA is held liable for liabilities arising from future contractual obligations that are in relation to the OpCo Healthcare shares, the OpCo Life Science shares, or the OpCo Performance Materials shares. The same applies pursuant to § 16.2 if the affected HoldCo is held liable by creditors of the liabilities, obligations, or contingent liabilities described above to claim security.

As the inverse of § 16.2, § 16.3 sets forth an obligation on the part of KGaA to indemnify the HoldCos if and to the extent that the affected HoldCo is held liable for liabilities, obligations, or contingent liabilities based on the provisions in Sec. 133 *UmwG* or any other provisions not to be transferred to the HoldCos or the affected HoldCo according to the Holding Hive-down Agreement. The same applies pursuant to § 16.3 if the affected HoldCo is held liable by creditors of the liabilities, obligations, or contingent liabilities for demanding collateral security as described above.

14. Reservations of consent (§ 17)

§ 17 clarifies that, in order to be effective, the Holding Hive-down Agreement will require (i) the approval of the Annual General Meeting of KGaA and (ii) the approval of the shareholders' meetings of the HoldCos. The details of the approval requirements with regard to the Holding Hive-down are explained in detail in sections D.IV.2 and D.IV.3.

15. Effective date of the Agreement (§ 18)

In correspondence with Sec. 130 (1) and Sec. 131 (1) *UmwG*, § 18.1 clarifies that the Holding Hive-down Agreement will not become effective until registration in the Commercial Register of KGaA.

Moreover, in line with the planned registration sequence of the measures already described in section D.IV.5, § 18.2 also stipulates that the Parties shall ensure that the Holding Hive-down Agreement will not become effective until the Operational Hive-down is registered in the Commercial Register of KGaA. This is to ensure that the new OpCo shares granted in the course of the Operational Hive-down – which will not be transferred until the Operational Hive-down to KGaA takes effect – are included in the Holding Hive-down. Another condition precedent of the Holding Hive-down becoming effective pursuant to § 18.2 is the registration of the Operational Hive-down in the Commercial Register of KGaA.

16. Costs and taxes (§ 19)

§ 19.1 governs the allocations of the costs and taxes incurred in connection with the Holding Hive-down. Subject to agreements to the contrary in the Operational Hive-down Agreement, § 19.1 specifies that KGaA shall bear all costs and any taxes incurred in conjunction with the preparation and implementation of the Holding Hive-down. § 19.1 states in particular the costs incurred in relation to the notarization and implementation of the Operational Hive-down Agreement. This includes in particular external consultation costs, notarization costs, and other costs (fees for the issuing of the binding ruling pursuant to Sec. 89 *AO*, translation costs, etc.).

In derogation of § 19.1, however, § 19.2 stipulates that each Party shall bear the costs of the 2018 Annual General Meeting and the respective shareholders' meetings, as well as the costs for the application and registration of the resolutions passed. Therefore, pursuant to § 19.2, the HoldCos shall also bear the costs of the respective in-kind capital increase that are incurred when executing such increase, and any taxes.

17. Revocation (§ 20)

§ 20 contains a withdrawal clause, according to which each Party may withdraw from the Holding Hive-down Agreement by submitting a written declaration to the other Party if the Holding Hive-down has not become effective by February 28, 2019. This clause is intended to give the Parties the option to discontinue the implementation of

the Holding Hive-down if the effectiveness of the Holding Hive-down is prevented due to unforeseen circumstances that significantly delay the effectiveness.

18. Written form requirement (§ 21)

§ 21 contains a customary written form clause.

19. Preamble, annexes (§ 22)

§ 22 clarifies that the Preamble and annexes are integral parts of the Holding Hive-down Agreement.

20. Severability (§ 23)

§ 23 contains a standard so-called severability clause for the purpose of maintaining the effectiveness of the Holding Hive-down Agreement if individual provisions are ineffective and for corresponding replacement of any ineffective or unenforceable provision.

21. Applicable law; jurisdiction (§ 24)

§ 24.1 stipulates that the Holding Hive-down Agreement is governed by German law.

§ 24.2 prescribes that the place of jurisdiction for all disputes arising from the Holding Hive-down Agreement is Darmstadt.

E. Temporary leaseback of the hived-down Operating Units by the OpCos to KGaA

I. Common explanatory comments on all Business Lease Agreements

The leaseback of the Operating Units hived down to the OpCos is executed in each case by concluding a Business Lease Agreement between the affected OpCo and KGaA, which is deemed an enterprise agreement within the meaning of Sec. 292 (1) (3) Var. 1 *AktG* (the ***Healthcare Business Lease Agreement***, the ***Life Science Business Lease Agreement***, and the ***Performance Materials Business Lease Agreement***). The Healthcare, Life Science, and Performance Materials Business Lease Agreements are directly related to one another. They are based on the same entrepreneurial logic and concluded simultaneously. The economic reasoning and the procedure for concluding the agreements, and the consequences of the business lease are therefore basically the same for all three Business Lease Agreements. For that reason, they are presented in summary below for better clarity and to avoid repetition.

1. Parties of the Business Lease Agreements

The Business Lease Agreements are each concluded between the following parties:

- The Healthcare Business Lease Agreement is concluded between HC OpCo as the lessee and KGaA as the lessor;

- The Life Science Business Lease Agreement is concluded between LS OpCo as the lessee and KGaA as the lessor;
- The Performance Materials Business Lease Agreement is concluded between PM OpCo as the lessee and KGaA as the lessor.

Reference is made to B.I for details regarding KGaA and to B.II for details regarding the OpCos.

2. Economic explanation and reasoning of the Business Lease Agreements

a) Background information and business objectives of the temporary leaseback of the Operating Units hived down to KGaA by the OpCos

The business considerations underlying the transaction as a whole have already been explained in section A.III, and reference is made to these statements. The Business Lease Agreements between the OpCos and KGaA are an integral part of the overall transaction and directly related to the Operational Hive-down of the Operating Units KGaA Healthcare, Life Science, and Performance Materials. The Operational Hive-down is primarily to support the introduction and operation of the global ERP systems for the German business (cf. section A.III.1) and to facilitate the integration of the German business activities of KGaA into the global ERP system of the respective Business Sector (see section A.III.1). The ERP introduction is expected in early 2019 for the Operating Unit KGaA Healthcare, and for the Operating Unit KGaA Life Science and the Operating Unit Performance Materials during 2020. Until the respective dates of the ERP introduction, the affected OpCos cannot yet independently map the extensive and complex business processes of the Operating Units transferred to them in the system (including their depiction in financial reporting). In order to avoid a multi-year “gradual” reorganization under corporate law – including all associated information and approval procedures – the Executive Board of KGaA considered the uniform implementation of the hive-down measures with economic effect as of January 1, 2018 to be advantageous. The implementation in 2018 will result in the establishment of the new legal entity structure in time for the first ERP introduction at HC OpCo in early 2019. The preparation and implementation of the Operational Hive-down as a joint measure for all OpCos in 2018 will also result in KGaA’s Annual General Meeting dealing with the issue only once and to full extent. A gradual hive-down of the Operating Units in accordance with the German Reorganization Act – depending on when the ERP is introduced – would, however, lead to a sequence of costly transaction measures over the next two or three years. This would lead to significant additional costs, including costs related to tying up considerable internal resources at KGaA. Furthermore, the “blocking period” under the applicable tax laws will be initiated simultaneously at a uniform date and time (see also the comments in section C.IV.5). Furthermore, the Business Lease provides a suitable option to bridge the period between the Economic Effective Date and the effective implementation of the respective ERP system.

On the basis of the concluded Business Lease Agreements, KGaA manages the operations of the OpCos as a lessee – in this respect as before – in its own name and for its own account. This will initially make it possible to continue the operations transferred to the respective OpCo in the course of the Operational Hive-down with the joint ERP system previously used at the level of KGaA. Hence, the OpCos are for now companies pure “rent recipients” that merely manage their own assets with correspondingly low requirements regarding the ERP systems. Initially, it will not be necessary to record business transactions from operating activities separately at the level of the OpCos in this respect.³ As a result, there will *de facto* not be any changes for the employees and the business partners of the Operating Units KGaA Healthcare, Life Science, and Performance Materials until after the respective Business Lease Agreement has been terminated. KGaA will continue to be the employer and contractual partner. With the introduction of the respective final business sector-specific ERP system, the Business Lease is terminated with regard to the OpCo concerned, and management of the operation is transferred to the OpCo completely and permanently (as retransfer of the Leased Item). By concluding the Business Lease Agreements, the transition of the actual management to the OpCos for the respective operational business activities, and depicting them in the external accounting system can be accomplished flexibly and individually in accordance with the progress of the implementation of the respective ERP systems.

Ultimately, the Business Lease provides beneficial flexibility in terms of time with regard to the timing of the introduction of the ERP systems: Since the Business Lease Agreements can be terminated each with two-month notice as per the end of the month (§ 24.1 of the Healthcare, Life Science, and Performance Materials Business Lease Agreements), it is also possible to introduce the respective ERP system and thus the “operational activation” of the respective OpCos later than the planned date if necessary. This can be particularly useful if the introduction of an ERP system is delayed for technical reasons.

b) Alternatives to the Business Lease

As outlined above, the leaseback instrument enables the bridging of the period until the introduction of the ERP systems, while at the same time separating the Operating Units in the OpCos in the scope of a single transaction. After considering various options, the conclusion of Business Lease Agreements has proven to be the most preferable solution in practice since the objectives described could not have been achieved in a similar or even better fashion by other means.

Before the business sector-specific ERP systems are introduced, it is virtually impossible to manage the hived-down Operating Units in the name of and for the account of

³ For comments regarding the possible exceptional case due to the potential premature termination of the Performance Materials Business Lease Agreement as regards the Distribution and Sales Function, however, see sections E.IV and E.IV.3.x).

the OpCos. The prerequisite would be that the operations of the respective OpCo can be mapped in an ERP system geared towards the business of the respective OpCo. In theory, this would have been possible by adapting the ERP system previously used at the level of KGaA. However, adapting the system to separate entities for a transitional period until the introduction of global ERP systems, if even feasible, would have entailed significant technical effort, significant costs and also been associated with operational risks. Before the introduction of the global, business sector-specific ERP systems at OpCo level, the management of the hived-down operations by the OpCos for their own account therefore did not appear to be a viable solution.

Consequently, the conclusion of company management contracts, in which KGaA would manage the hived-down companies in its own name, but for the account of the OpCos, would also be ruled out, since this solution would also require the mapping of the three companies in the (separate) ERP systems of the OpCos. Similarly, a business cession agreement in which KGaA would have to manage the operations in its own name for its own account is not an option. In such a scenario, KGaA would have to act in the external relationship for the respective OpCos which would not have been feasible for the OpCos from a system technology perspective without an ERP system tailored to the entity.

The Executive Board deems a complete deferment of the hive-down until after the “operational readiness” of all new ERP systems to have adverse effects since it would not have been possible to make use of the time-related and organizational advantages of a “stepwise” introduction of the ERP systems. In addition, the seven-year “blocking period” for tax purposes of a so-called “Contribution Profit I” would have been triggered according to Sec. 22 *UmwStG* (see section C.IV.5).

c) Risks and disadvantages of the Business Lease

The Executive Board of KGaA believes that the leaseback of the Operating Units KGaA Healthcare, Life Science, and Performance Materials hived down to KGaA does not involve any risks relevant to KGaA or OpCos. For the duration of the Business Lease, there are *de facto* no changes in the management of the operational business of the Operating Units KGaA Healthcare, Life Science, and Performance Materials, including employees and business partners, since KGaA will continue to manage the operational business of the hived-down operations in its own name and for its own account until the introduction of the respective ERP system.

A certain adverse effect of the Business Lease can at most be seen in the fact that with the Operational Hive-down the contractual relationships transferred by KGaA to the OpCos by way of universal succession must be retransferred to KGaA by the OpCos by way of singular succession in the scope of the leaseback. Upon termination of the respective Business Lease, repeated transfers of individual rights from KGaA to the respective OpCo are required. Singular succession required for the establishment and upon termination of the Business Lease results in additional administrative efforts and expenditure, for example when recording individual assets or contacting the contrac-

tual partners to obtain approval, etc.). Compared to the primary goal of flexibly introducing ERP systems in a timely manner, the effort is of subordinate importance, especially as the risk of obstacles to the transfer and the transfer expenditure relating to the drafting of the transaction documents has already been taken into account and mitigated by various mechanisms (e.g., the continuation of regulatory authorizations at KGaA until the termination of the respective Business Lease, the fiduciary continuation of contracts on the part of the OpCo if the contractual partner does not grant consent to the temporary transfer of the contractual relationship).

In the opinion of the Executive Board, the adverse effect mentioned above is more than outweighed by the benefits of a uniform Operational Hive-down with flexible leaseback (see above E.I.2.a)).

d) Stipulation of the lease payment

KGaA and the OpCos have each agreed on a lease payment for the lease of the operations. For all Business Lease Agreements, this payment uniformly comprises the reimbursement of the scheduled depreciation incurred by the respective OpCo in accordance with the principles of commercial law accounting for the leased objects and interest of 7.0% p.a. on the average tied-up German commercial law equity of the OpCo. The rent is based on the concept of a combination of reimbursement for the depreciation on the Leased Items under German commercial law and interest on the average tied-up equity. In addition, KGaA reimburses the expenses relating to the Leased Operation (e.g., additions to pension provisions; cf. explanatory comments in sections II.3.u), III.3.u) and IV.3.u)) which the OpCo bears despite the fact that these expenses are economically attributable to KGaA.

The interest on the average tied-up equity (capital employed) for accounting purposes as an additional component of the lease payment is based on the idea that the OpCo is left with a reasonable return on capital for ceding its business, as compensation for the fact that KGaA as the lessee can enjoy the “benefits” of the leased operations, so to speak. This premium is provided as annual interest on the average tied-up equity according to German commercial law (equity at the beginning of the year plus equity at the end of the year divided by two). As a return on equity, KGaA and the OpCos have agreed on a fixed rate of 7.0% p.a., with regard, *inter alia*, to the foreseeable term of the Business Lease. This value falls within a customary range for a reasonable interest for business activities in the chemical and pharmaceuticals industry, and is based on benchmarks within the Group for capital costs.

The Executive Board and managements believe that the rent calculated in accordance with the above principles overall represents an appropriate and suitable consideration for the relevant Business Lease. It should further be borne in mind that due to the respective existing domination and profit and loss transfer agreements, the lease payment paid to the OpCos will in any case be returned to KGaA via the profit transfer pursuant to Sec. 301 *AktG*. The loss compensation provision provided for in Sec. 302 (2) *AktG* in the event of an “unreasonably low” rent, from the OpCos’ perspective,

does not have any particular significance due to the loss compensation obligation under Sec. 302 (1) *AktG* on the basis of the respective domination and profit and loss transfer agreement.

Insofar as items are sold in the course of the respective leaseback, the purchase price is based on the relevant carrying amounts under German commercial law. The reference to the carrying amount for the sale of receivables, liabilities, and inventories is a common arrangement in intercompany business lease agreements that, in practical terms, can be implemented at no great expense. Also, the resale of the respective items at Lease End is at carrying amount, determined using the same principles as those in a sale. From the Parties' perspective, transferring and retransferring the items affected at carrying amounts is therefore a suitable, pragmatic, and relatively easy-to-implement solution that ensures proper compensation of value for the purposes of the going and froing nature of the disposal as part of this Business Lease. To this extent as well, the domination and profit and loss transfer agreements between the OpCos and KGaA are referred to, on the basis of which KGaA and the OpCos are practically managed as one economic unit anyway.

The details of the contractual arrangements are specified in the respective contract description in section E.II.3.v), E.III.3.v) and E.IV.3.v).

e) Costs of the transaction

For the overall transaction, i.e., the Operational Hive-down, the Holding Hive-down, and the Business Lease, costs between 25 million Euros to 30 million Euros are expected according to current estimates. At the time of the issuance of this report, the costs actually incurred amount to approximately eight million Euros. The total costs consist mainly of external consultancy costs (including legal advisors, tax consultants, and auditors), costs for the precautionary review of the Business Lease Agreements by an external auditor, notarization fees, and other costs (Commercial Register registrations, fees for the issuance of the binding ruling pursuant to Sec. 89 *AO*, translation costs, etc.). Since this is a uniformly prepared and executed overall transaction, the total costs cannot be properly broken down into the individual transaction steps. With regard to the costs, reference is made to the explanation of the Business Lease Agreements in sections E.II.3.z), E.III.3.z), and E.IV.3.z).

3. Explanation of the procedure for the conclusion of the Business Lease Agreements

The procedure for the conclusion of the Healthcare, Life Science and Performance Materials Business Lease Agreements is based on the principles for the conclusion of enterprise contracts in accordance with Sec. 293 et seq. *AktG*, which, in the prevailing opinion, applies *mutatis mutandis* on the conclusion of business lease agreements covering the entire business operations by German limited liability companies.

a) Closing of the Business Lease Agreements

The basis for the Business Lease is the Business Lease Agreement concluded between KGaA and HC OpCo, LS OpCo, and PM OpCo in notarized form on March 2, 2018. Although a business lease agreement does not require notarization, the Parties nonetheless opted for notarization due to the close correlation with the Operational Hive-down Agreement to be notarized. With regard to the determination of the business assets to be leased, the Business Lease Agreements refer to the Operational Hive-down Agreement and its Annexes.

b) Precautionary audit by expert auditor

With regard to the submission of the Business Lease Agreements to the Annual General Meeting, KGaA – even though the shares in OpCos are held by KGaA when the Business Lease becomes effective (and thus is actually considered a case as set forth in Sec. 293b (1) last half-s. *AktG*) – decided as a precaution to request an audit of the Business Lease Agreements by a court-selected and court-appointed statutory auditor. At the joint request of the Executive Board of KGaA and the management of HC OpCo (at that time still operating under the company name Merck 23. Allgemeine Beteiligungs-GmbH, Darmstadt, Germany, an affiliated company of Merck KGaA, Darmstadt, Germany), LS OpCo (at that time still operating under the company name Merck 19. Allgemeine Beteiligungs-GmbH, Darmstadt, Germany, an affiliated company of Merck KGaA, Darmstadt, Germany), and PM OpCo (at that time still operating under the company name Merck 18. Allgemeine Beteiligungs-GmbH, Darmstadt, Germany, an affiliated company of Merck KGaA, Darmstadt, Germany), the Regional Court Frankfurt am Main, by way of decision dated October 10, 2017, pursuant to Sec. 293c (1) *AktG*, ruled that Warth & Klein Grant Thornton Wirtschaftsprüfungsgesellschaft, based in Düsseldorf, is selected and appointed as expert auditor within the meaning of Sec. 293b (1) *AktG*. Warth & Klein Grant Thornton Wirtschaftsprüfungsgesellschaft has audited the Business Lease Agreements and prepared separate audit reports on the Healthcare Business Lease Agreement, the Life Science Business Lease Agreements, and the Performance Materials Business Lease Agreement. These audit reports will be available on the KGaA website on and after the date at which the 2018 Annual General Meeting is convened and will also be presented during the Annual General Meeting for inspection by the shareholders of KGaA.

c) Submission to the Commercial Register and to the competent works councils

Prior to the convening of the 2018 Annual General Meeting, the Business Lease Agreements Healthcare, Life Science, and Performance Materials will be submitted to the Commercial Register at the Darmstadt Local Court due to the direct legal and economic correlation with the Operational Hive-down. For the same considerations, at the latest one month prior to the day of the 2018 Annual General Meeting or the

shareholders' meetings of the OpCos, the Business Lease Agreements will be forwarded to the relevant works councils.

d) Approval of the shareholders' meetings of the OpCos

The conclusion of the Business Lease Agreements, in accordance with Sec. 293 (1) *AktG*, requires the approval of the shareholders' meeting of the respective OpCos in order to be effective. KGaA – as the sole shareholder of each of the OpCos – will agree to the Business Lease Agreements prior to the 2018 Annual General Meeting. These approval resolutions shall be passed after the expiration of the one-month period for the submission of the draft agreements to the competent works councils (Sec. 126 (3) *UmwG*), and thus presumably mid-April 2018.

e) Approval of the Annual General Meeting of KGaA

According to Sec. 293 (1) in conjunction with Sec. 292 (1) (3) *AktG*, a business lease agreement requires only the approval of the shareholders of the lessor to be effective – in this case the approval of the shareholders' meeting of the respective OpCo. Approval by the Annual General Meeting of KGaA as a lessee would thus not be required. In the present case, however, the conclusion of the Business Lease Agreements is part of a joint entrepreneurial measure. The Business Lease Agreements are, in particular, linked directly to the Operational Hive-down. For this reason, as a precautionary measure and in accordance with the principles in case law of the German Federal Supreme Court (*Bundesgerichtshof - BGH*) in the case “Hoesch/Hoogovens” (BGH dated November 16, 1981 – Case No. II ZR 150/80), together with the resolution regarding the Operational Hive-down, the approval of the Annual General Meeting of KGaA regarding the Healthcare Business Lease Agreement, the Life Science Business Lease Agreement, and the Performance Materials Business Lease Agreement shall also be obtained. The resolution requires a simple majority (Sec. 133 (1) *AktG*) and, in accordance with Sec. 292 (1) (3) in conjunction with Sec. 293 (1) (2) *AktG*, a majority of at least three quarters of the share capital represented at the time of the resolution. Since the Business Lease Agreements form a joint entrepreneurial concept together with the Operational Hive-down and the Holding Hive-down, the Operational Hive-down together with the other measures will be subject to joint voting.

f) Approval of the Business Lease Agreements and the resolution of the Annual General Meeting by EM KG and by all General Partners of KGaA

The leaseback linked to the respective Operational Hive-down is a transaction that goes beyond the ordinary business operations of KGaA, so that conclusion of the respective Business Lease Agreement by the Executive Board of KGaA and the additional transaction measures pursuant to Article 13 (4) s. 1 of the Articles of Association require the approval of EM KG as the General Partner with a majority equity interest. This approval was already granted on February 28, 2018. The Board of Part-

ners and the Family Council have previously given their approval for the transaction and for the agreements to be concluded in this context.

The resolution passed at the 2018 Annual General Meeting on the approval of the Business Lease Agreements and on the additional transaction measures pursuant to Sec. 285 (2) (1) *AktG* and Article 25 (1) of the Articles of Association requires the consent of the General Partners, i.e., the Executive Board members of KGaA as the General Partners without an Equity Interest and EM KG as the General Partner with Equity Interest. As has been customary in the last few years, this approval is to be declared immediately after the 2018 Annual General Meeting on April 27, 2018, pursuant to s. 3 of Article 25 (2) of the Articles of Association and will also be notarized in the minutes of the Annual General Meeting pursuant to Sec. 285 (3) s. 2 *AktG*.

g) Effectiveness of the Business Lease Agreements upon registration in the Commercial Register of the OpCos

According to Sec. 294 (2) *AktG*, in order to become effective, the Healthcare Business Lease Agreement requires registration in the Commercial Register of HC OpCo, the Life Science Business Lease Agreement registration in the Commercial Register of LS OpCo, and the Performance Materials Business Lease Agreement registration in the Commercial Register of PM OpCo. As the effectiveness of the Business Lease Agreements are subject to the condition precedent of the effectiveness of the Operating Hive-down, the representative bodies of KGaA and the OpCos will work together to ensure that the Business Lease Agreements only become effective after the Operational Hive-down has become effective (for details on the registration of the Operational Hive-down in the Commercial Register see the comments in section C.III.5). In accordance with Sec. 10 *HGB*, the Darmstadt registration court will publicly disclose the registration of the Business Lease Agreements in the Commercial Register of the respective OpCo in the electronic information and communication system designated by the state justice administration (www.registerbekanntmachungen.de).

Assuming that no action for annulment or nullity is filed against the uniform resolution of the 2018 Annual General Meeting on the approval of the Business Lease Agreements and the entire transaction, it is expected that the Business Lease Agreements will be registered in the first half of 2018. If such actions are filed, this would first delay the effectiveness of the Business Lease Agreements and/or the overall measure (for additional details see section C.III.5). If legal actions against the approval of the Business Lease Agreements and the entire transaction are filed, clearance proceedings pursuant to Sec. 125 s. 1, Sec. 16 (3) *UmwG* in conjunction with Sec. 246a (1) s. 1 *AktG* are initiated with the objective of having the Higher Regional Court in Frankfurt am Main rule that the filing of the action does not prevent the registration of the measure. Reference is made in this respect to the explanatory comments in section C.III.5.

4. Consequences of the Business Lease Agreements

a) Company law consequences

The leaseback of the previously hived-down operations does not affect the legal status of the shareholders of KGaA. Neither the number of shares issued by KGaA nor the rights of the shareholders are affected by the leaseback of the previously hived-down operations.

As a result of the leaseback, KGaA temporarily manages the previously hived-down business operations “in its own name and for its own account,” so that – for the duration of the leaseback – the effects of the Operational Hive-down (see above in section C.IV) are essentially neutralized. During the term of the Business Lease, the management of the respective business operation is ultimately approximated to the state that existed prior to the Operational Hive-down. There are no adverse effects resulting from this for the shareholders; they participate in the previously hived-down assets via their investment in KGaA to the same extent as prior to the Business Lease and participate in the profit of the respective business operation to the same extent as prior to the Business Lease.

The economic affiliation between KGaA and the OpCos is additionally secured by the respectively existing domination and profit and loss transfer agreements (see above in the representation of the respective OpCo in section B.II). As a result of the domination and profit and loss transfer agreements, the OpCos undertake to transfer their entire profits to KGaA. This profit transfer also includes the profits generated by the respective OpCo as a result of the leaseback – in particular also profits from the rent payments by KGaA. From the perspective of the shareholders of KGaA, the Business Lease Agreements Healthcare, Life Science, and Performance Materials are therefore “economically neutral,” irrespective of the fee agreements made in the Business Lease Agreements.

b) Balance sheet impacts

The balance sheet effects of the respective leaseback are shown in the overviews, balance sheets and pro forma balance sheets below of KGaA and the OpCos as of December 31, 2017, 24:00 hours, and January 1, 2018, 0:00 hours. The representation was derived from the balance sheet, which is part of the financial statements of KGaA as of December 31, 2017, 24:00 hours, which were audited and granted an unqualified audit opinion by KPMG AG Wirtschaftsprüfungsgesellschaft, Berlin. The pro forma balance sheets were each compiled on the basis of these balance sheet figures as of December 31, 2017, 24:00 hours, and refer to the Economic Effective Date January 1, 2018, 0:00 hours.

The temporary leaseback involves the previously hived-down Operating Units KGaA Healthcare, Life Science, and Performance Materials and is thus closely related to the Operational Hive-down. For further information, the overviews below also contain presentations of the balance sheet effects of the Operational Hive-down. At the level

of KGaA, for the sake of completeness, the effects of the Holding Hive-down are also included. For additional details on the balance sheet effects of the Operational Hive-down see section C.IV.1 and on the Holding Hive-down section D.V.1.

Since all transaction measures take effect, from an economic perspective, retroactively as of January 1, 2018, 0:00 hours (for details on the economic retroactive effect of the Healthcare Business Lease see section E.II.3.b)), the Life Science Business Lease see section E.III.3.b), and the Performance Materials Business Lease see section E.IV.3.b)), the dates December 31, 2017 and January 1, 2018, respectively, were used as the basis for the relevant balance sheets and pro forma balance sheets (on the basis of the continuation of carrying amounts under German commercial law pursuant to Sec. 24 *UmwG*).

The balance sheets were each compiled based on the accounting principles set forth in the *HGB*. Due to rounding, individual figures in the annual balance sheets and in the pro forma balance sheets may not exactly add up to the totals indicated.

(1) Effects on the balance sheets of the OpCos as the lessors

The following overviews (p. 147 to p. 149) contain an overall representation of the effects of the Operational Hive-down and the temporary leaseback on the balance sheet of HC OpCo, LS OpCo, and PM OpCo. The additional remarks in this section refer primarily to the balance sheet effects of the temporary leaseback.

(figures in thousand EUR)	HC OpCo (before (i) hive-down of the Operating Unit KGaA Healthcare and (ii) temporary leaseback of the Operating Unit KGaA Healthcare) Dec. 31, 2017	HC OpCo (after hive-down of the Operating Unit KGaA Healthcare) Jan. 1, 2018	HC OpCo (after (i) hive-down of the Operating Unit KGaA Healthcare and (ii) temporary leaseback of the Operating Unit KGaA Healthcare) Jan. 1, 2018	(figures in thousand EUR)	HC OpCo (before (i) hive-down of the Operating Unit KGaA Healthcare and (ii) temporary leaseback of the Operating Unit KGaA Healthcare) Dec. 31, 2017	HC OpCo (after hive-down of the Operating Unit KGaA Healthcare) Jan. 1, 2018	HC OpCo (after (i) hive-down of the Operating Unit KGaA Healthcare and (ii) temporary leaseback of the Operating Unit KGaA Healthcare) Jan. 1, 2018
<u>ASSETS</u>				<u>EQUITY AND LIABILITIES</u>			
Fixed assets				Equity			
Intangible assets		287,769	287,769	Subscribed capital	25	1,000	1,000
Tangible Assets		82,896	82,896	Capital reserves		355,663	355,663
Financial assets		230	230	Profit/loss carryforward	-1	-1	-1
<i>Total fixed assets</i>	0	370,895	370,895	<i>Total equity</i>	24	356,662	356,662
Current assets				Provisions			
Inventories		203,439		Provisions for pensions and other post-employment benefits		29,692	29,692
Receivables and other assets				Other provisions	0	275,134	48,478
Trade accounts receivable	0	116,390	0	<i>Total provisions</i>	0	304,826	78,170
Other receivables and other assets		120,444	100,000	Liabilities			
Cash and cash equivalents	25	25	25	Financial liabilities			
<i>Subtotal</i>	25	236,858	100,025	Trade accounts payable	1	149,152	1
<i>Total current assets</i>	25	440,298	100,025	Other liabilities		519	36,086
Prepaid expenses		1,720		<i>Total liabilities</i>	1	149,672	36,087
	25	812,913	470,920	Prepaid expenses		1,753	
					25	812,913	470,920

(figures in thousand EUR)				(figures in thousand EUR)			
	LS OpCo (before (i) hive-down of the Operating Unit KGaA Life Science and (ii) temporary leaseback of the Operating Unit KGaA Life Science) Dec. 31, 2017	LS OpCo (after hive-down of the Operating Unit KGaA Life Science) Jan. 1, 2018	LS OpCo (after (i) hive-down of the Operating Unit KGaA Life Science and (ii) temporary leaseback of the Operating Unit KGaA Life Science) Jan. 01, 2018		LS OpCo (before (i) hive-down of the Operating Unit KGaA Life Science and (ii) temporary leaseback of the Operating Unit KGaA Life Science) Dec. 31, 2017	LS OpCo (after hive-down of the Operating Unit KGaA Life Science) Jan. 1, 2018	LS OpCo (after (i) hive-down of the Operating Unit KGaA Life Science and (ii) temporary leaseback of the Operating Unit KGaA Life Science) Jan. 01, 2018
<u>ASSETS</u>				<u>EQUITY AND LIABILITIES</u>			
Fixed assets				Equity			
Intangible assets		2,784	2,784	Subscribed capital	25	1,000	1,000
Tangible Assets		84,157	84,157	Capital reserves		293,442	293,442
Financial assets				Profit/loss carryforward			
<i>Total fixed assets</i>	0	86,941	86,941	<i>Total equity</i>	25	294,442	294,442
Current assets				Provisions			
Inventories		176,961		Provisions for pensions and other post-employment benefits		25,424	25,424
Receivables and other assets				Other provisions	0	65,599	28,172
Trade accounts receivable	7	57,692	7	<i>Total provisions</i>	0	91,023	53,596
Other receivables and other assets		106,045	261,072	Liabilities			
Cash and cash equivalents	36	36	36	Financial liabilities			
<i>Subtotal</i>	43	163,773	261,114	Trade accounts payable	17	39,332	17
<i>Total current assets</i>	43	340,734	261,114	Other liabilities		3,114	
Prepaid expenses		235		<i>Total liabilities</i>	17	42,446	17
	43	427,910	348,056	Prepaid expenses			
					43	427,910	348,056

(figures in thousand EUR)	PM OpCo (before (i) hive-down of the Operating Unit KGaA Performance Materials and (ii) temporary leaseback of the Operat- ing Unit KGaA Perform- ance Materials) Dec. 31, 2017	PM OpCo (after hive- down of the Operating Unit KGaA Performance Materials) Jan. 1, 2018	PM OpCo (after (i) hive- down of the Operating Unit KGaA Performance Materi- als and (ii) temporary leaseback of the Operating Unit KGaA Performance Materials) Jan. 01, 2018	(figures in thousand EUR)	PM OpCo (before (i) hive-down of the Operating Unit KGaA Performance Materials and (ii) temporary leaseback of the Operat- ing Unit KGaA Perform- ance Materials) Dec. 31, 2017	PM OpCo (after hive- down of the Operating Unit KGaA Performance Materials) Jan. 1, 2018	PM OpCo (after (i) hive- down of the Operating Unit KGaA Performance Materi- als and (ii) temporary leaseback of the Operating Unit KGaA Performance Materials) Jan. 01, 2018
ASSETS				EQUITY AND LIABILITIES			
Fixed assets				Equity			
Intangible assets		7,351	7,351	Subscribed capital	25	1,000	1,000
Tangible Assets		184,304	184,304	Capital reserves		373,320	373,320
Financial assets		128	128	Profit/loss carryforward			
<i>Total fixed assets</i>	0	191,783	191,783	<i>Total equity</i>	25	374,320	374,320
Current assets				Provisions			
Inventories		283,265		Provisions for pensions and other post-employment benefits		34,629	34,629
Receivables and other assets				Other provisions		142,431	89,305
Trade accounts receivable	5	8,262	5	<i>Total provisions</i>	0	177,060	123,934
Other receivables and other assets		102,870	306,446	Liabilities			
Cash and cash equivalents	38	38	38	Financial liabilities			
<i>Subtotal</i>	43	111,170	306,489	Trade accounts payable	18	33,848	18
<i>Total current assets</i>	43	394,435	306,489	Other liabilities		377	
Prepaid expenses				<i>Total liabilities</i>	18	34,224	18
	43	586,218	498,273	Prepaid expenses		614	
					43	586,218	498,273

The first column of the respective overview (assets and equity and liabilities) contains the balance sheets of the OpCos as of December 31, 2017, 24:00 hours. They show in each case the situation before the Operational Hive-down and the leaseback become effective.

The second column of the respective overview (assets and equity and liabilities) “HC OpCo (after hiving down the Operating Unit KGaA Healthcare) Jan. 1, 2018,” “LS OpCo (after hiving down the Operating Unit KGaA Life Science) Jan. 1, 2018,” “PM OpCo (after hiving down the Operating Unit KGaA Performance Materials) Jan. 1, 2018” contains the pro forma balance sheets of the OpCos after the Operational Hive-down goes into effect. The additional details on the balance sheet effects of the Operational Hive-down at the level of the OpCos are explained in detail in section C.IV.1.b).

The third column of the respective overview (assets and equity and liabilities) “HC OpCo (after Hive-down and temporary leaseback of the Operating Unit KGaA Healthcare) Jan. 1, 2018,” “LS OpCo (after Hive-down and temporary leaseback of the Operating Unit KGaA Life Science) Jan. 1, 2018,” “PM OpCo (after Hive-down and temporary leaseback of the Operating Unit KGaA Performance Materials) Jan. 1, 2018” shows the pro forma balance sheets of the OpCos after the Operational Hive-down goes into effect.

The respective OpCo as the lessor of its entire company receives the rental payments during the duration of the lease. These are offset at the OpCo against the depreciation and amortization of fixed assets (details regarding exceptions see above in section C.IV.1.a)). At the Beginning Of The Lease, certain Asset And Liability Items will additionally – if customary in business lease agreements – be resold to KGaA (for details see in relevant clauses on the description of the respective Business Lease Agreements under sections E.II.3, E.III.3, and E.IV.3). KGaA as the lessee under the Business Lease Agreement generates, in its own name and for its own account, expenses and income from the Leased Item (usufruct); these are offset at KGaA against expenses for the rent paid to the OpCos.

As a result of the stipulations of the respective Business Lease Agreement, KGaA leases all fixed assets (*Anlagevermögen*) from the OpCos and acquires at carrying amount the current assets and liabilities and/or contingent and uncertain liabilities, as well as provisions (at the total carrying amount of 331,431,064 Euros), with the exception of the provisions for pensions, as well as certain other provisions. The plan assets in terms of Sec. 246 (2) s. 2 *HGB* will be attributed to the OpCos for accounting purposes during the Business Lease. During the Business Lease, KGaA – temporarily and with retroactive economic effect as of the Economic Effective Date – will continue in its own name and for its own account the business operations of the hived-down Operating Units KGaA Healthcare, Life Science, and Performance Materials, so that the expenses and income resulting therefrom are attributed to KGaA. In the scope of the Business Lease Agreement, the OpCos receive rent that is calculated, *inter alia*, based on the depreciation on the leased fixed assets.

HC OpCo

In detail, the temporary leaseback after the Operational Hive-down has been completed will have the following effects on the assets side of the balance sheet of HC OpCo:

- The pro forma balance sheet “HC OpCo (after Hive-down of the Operating Unit KGaA Healthcare) Jan. 1, 2018” contains *Intangible assets* with a carrying amount totaling 287,768,662 Euros. These include (i) concessions, (ii) industrial property rights and similar rights and values, as well as (iii) licenses to such rights and values, (iv) goodwill, and (v) advance payments that in the course of the transfer of beneficial ownership through the Operational Hive-down are transferred to HC OpCo. The intangible assets referred to above will be assigned to KGaA only for use in accordance with the Healthcare Business Lease Agreement. Formal legal title is not transferred, so that they will continue to remain with HC OpCo and recorded on the balance sheet in the scope of the Business Lease.
- The pro forma balance sheet “HC OpCo (after Hive-down of the Operating Unit KGaA Healthcare) Jan. 1, 2018” contains *tangible assets* with a carrying amount totaling 82,895,788 Euros. These include (i) technical equipment and machinery, (ii) assets under construction, and (iii) items of other moveable tangible assets, as well as plant and office equipment, and low-value assets.
- The pro forma balance sheet “HC OpCo (after Hive-down of the Operating Unit KGaA Healthcare) Jan. 1, 2018” contains *Financial assets* with a carrying amount totaling 230,081 Euros. These include the investment in PharmLog Pharma Logistik GmbH, which will be transferred to HC OpCo in the course of the Operational Hive-down. This investment remains with HC OpCo, and thus will be recorded in the HC OpCo balance sheet.
- The pro forma balance sheet “HC OpCo (after Hive-down of the Operating Unit KGaA Healthcare) Jan. 1, 2018” contains *Current assets* with a carrying amount totaling 440,272,792 Euros, which will be transferred to HC OpCo in the course of the Operational Hive-down.

Of this amount, a carrying amount of 203,439,437 Euros relates to *Inventories*, including raw materials and supplies, unfinished goods, finished goods, and merchandise, as well as advance payments. The inventories will, in accordance with the Healthcare Business Lease Agreement, be sold by HC OpCo to KGaA at a carrying amount totaling 203,439,437 Euros.

Furthermore, the current assets contain *Trade accounts receivable* due from affiliated and other companies at a carrying amount totaling 116,389,693 Euros, as well as *Other receivables* due from affiliated and other companies, and *Other assets* at a total carrying amount of 120,443,662 Euros. In accordance with the Healthcare Business Lease Agreement, HC OpCo will sell to KGaA

receivables at a carrying amount totaling 116,389,693 Euros as well as other assets at a carrying amount totaling 20,443,662 Euros.

- After implementing the leaseback, HC OpCo will retain as current assets only cash and cash equivalents as well as receivables due from MFS GmbH.
- The pro forma balance sheet “HC OpCo (after Hive-down of the Operating Unit KGaA Healthcare) Jan. 1, 2018” contains *Prepaid expenses* with a carrying amount totaling 1,720,250 Euros. These include predominantly prepaid expenses for purchased research and maintenance services which represent expenditure for a certain period after the Closing Balance Effective Date. In the course of the leaseback, all deferred items will be reduced to zero.

In addition, as a result of the temporary leaseback after the Operational Hive-down, the following aspects will affect the equity and liabilities side of the balance sheet of HC OpCo:

- The pro forma balance sheet “PM OpCo (after Hive-down of the Operating Unit KGaA Performance Materials) Jan. 1, 2018” contains *Liabilities* totaling 149,671,062 Euros that comprise (i) trade accounts payable totaling 149,151,571 Euros, and (ii) other liabilities totaling 519,491 Euros that are transferred to PM OpCo as a result of the Operational Hive-down. In the course of the leaseback, KGaA will assume liabilities totaling 149,671,062 Euros as set forth in the Healthcare Business Lease Agreement. These are (i) trade accounts payable totaling 149,151,571 Euros and (ii) other liabilities totaling 519,491 Euros.
- The pro forma balance sheet “PM OpCo (after Hive-down of the Operating Unit KGaA Performance Materials) Jan. 1, 2018” contains *Provisions* to be transferred in the course of the Operational Hive-down at a carrying amount totaling 304,825,324 Euros that comprise (i) provisions for pensions and other post-employment benefits at a carrying amount totaling 29,692,103 Euros, and (ii) other provisions at a carrying amount totaling 275,133,220 Euros. Pursuant to the Healthcare Business Lease Agreement, KGaA will assume provisions from HC OpCo at a carrying amount totaling 226,655,375 Euros. Pension provisions, time account claims, and other personnel-related obligations (in particular, jubilee payments and vacation provisions), as well as specific other provisions with a total carrying amount of 78,169,949 Euros remain with HC OpCo. These will continue to be recorded in the HC OpCo balance sheet.
- The pro forma balance sheet “HC OpCo (after Hive-down of the Operating Unit KGaA Healthcare) Jan. 1, 2018” contains *Deferred income* with a carrying amount totaling 1,752,836 Euros. It includes predominantly deferred royalty income which represents income relating to a specific period after the Closing Balance Effective Date. In the course of the leaseback, all deferred items will be reduced to zero.

- The *Equity*, according to the pro forma balance sheet “HC OpCo (after Hive-down of the Operating Unit KGaA Life Science) Jan. 1, 2018,” totals 356,638,352 Euros. The leaseback will not have any impact on the amount of the equity as shown in the balance sheet of HC OpCo.

LS OpCo

In detail, the temporary leaseback after the Operational Hive-down has been completed will have the following effects on the assets side of the balance sheet of LS OpCo:

- The pro forma balance sheet “LS OpCo (after Hive-down of the Operating Unit KGaA Life Science) Jan. 1, 2018” contains *Intangible assets* at a carrying amount totaling 2,784,342 Euros. These include (i) concessions, (ii) industrial property rights and similar rights and values, as well as (iii) licenses to such rights and values, (iv) goodwill, and (v) advance payments that in the course of the transfer of beneficial ownership through the Operational Hive-down are transferred to LS OpCo. The intangible assets referred to above will be assigned to KGaA only for use in accordance with the Life Science Business Lease Agreement. Formal legal title is not transferred, so that they will continue to remain with LS OpCo and recorded on the balance sheet in the scope of the Business Lease.
- The pro forma balance sheet “LS OpCo (after Hive-down of the Operating Unit KGaA Life Science) Jan. 1, 2018” contains *tangible assets* at a carrying amount totaling 84,156,919 Euros. These include (i) technical equipment and machinery, (ii) assets under construction, and (iii) items of other moveable tangible assets, as well as plant and office equipment, and low-value assets.
- The pro forma balance sheet “LS OpCo (after Hive-down of the Operating Unit KGaA Life Science) Jan. 1, 2018” does not contain any *Financial assets*.
- The pro forma balance sheet “LS OpCo (after Hive-down of the Operating Unit KGaA Life Science) Jan. 1, 2018” contains *Current assets* at a carrying amount totaling 340,691,544 Euros, which will be transferred to LS OpCo in the course of the Operational Hive-down.

Of this amount, a carrying amount of 176,961,303 Euros relates to *Inventories*, including raw materials and supplies, unfinished goods, finished goods, and merchandise, as well as advance payments. The inventories will, in accordance with the Life Science Business Lease Agreement, be sold by LS OpCo to KGaA at a carrying amount totaling 176,961,303 Euros.

Furthermore, the current assets contain *Trade accounts receivable* due from affiliated and other companies at a carrying amount totaling 57,685,560 Euros, as well as *Other receivables* due from affiliated and other companies, tax receivables, as well as *Other assets* at a total carrying amount of 106,044,682 Euros. In accordance with the Life Science Business Lease Agreement, LS

OpCo will sell to KGaA receivables in a carrying amount totaling 57,685,560 Euros as well as other assets in a carrying amount totaling 6,044,682 Euros.

After implementing the leaseback, LS OpCo will retain as current assets only cash and cash equivalents as well as receivables due from MFS GmbH.

- The pro forma balance sheet “LS OpCo (after Hive-down of the Operating Unit KGaA Life Science) Jan. 1, 2018” also contains *Prepaid expenses* at a carrying amount totaling 234,730 Euros. These include prepaid expenses that represent expenditure for a specific period after the Closing Balance Effective Date. In the course of the leaseback, all deferred items will be reduced to zero.

In addition, as a result of the temporary leaseback after the Operational Hive-down, the following aspects will affect the equity and liabilities side of the balance sheet of LS OpCo:

- The pro forma balance sheet “LS OpCo (after Hive-down of the Operating Unit KGaA Life Science) Jan. 1, 2018” contains *Liabilities* totaling 42,428,308 Euros that comprise (i) trade accounts payable totaling 39,314,670 Euros, and (ii) other liabilities totaling 3,113,638 Euros that are transferred to LS OpCo as a result of the Operational Hive-down. In the course of the leaseback, KGaA will assume liabilities totaling 42,428,308 Euros as set forth in the Life Science Business Lease Agreement. These are (i) trade accounts payable totaling 39,314,670 Euros and (ii) other liabilities totaling 3,113,638 Euros.
- The pro forma balance sheet “LS OpCo (after Hive-down of the Operating Unit KGaA Performance Materials) Jan. 1, 2018” contains *Provisions* to be transferred in the course of the Operational Hive-down at a carrying amount totaling 91,022,287 Euros that comprise (i) provisions for pensions and other post-employment benefits at a carrying amount totaling 25,424,000 Euros, and (ii) other provisions at a carrying amount totaling 65,598,287 Euros. Pursuant to the Life Science Business Lease Agreement, KGaA will assume provisions from LS OpCo at a carrying amount totaling 37,426,377 Euros. Pension provisions, time account claims, and other personnel-related obligations (in particular, jubilee payments and vacation provisions), as well as specific other provisions at a total carrying amount of 53,595,910 Euros remain with LS OpCo. These will continue to be recorded in the LS OpCo balance sheet.
- The *Equity*, according to the pro forma balance sheet “LS OpCo (after Hive-down of the Operating Unit KGaA Life Science) Jan. 1, 2018,” totals 294,416,941 Euros. The leaseback will not have any impact on the amount of the equity as shown in the balance sheet of LS OpCo.

PM OpCo

In detail, the temporary leaseback after the Operational Hive-down has been completed will have the following effects on the assets side of the balance sheet of PM OpCo:

- The pro forma balance sheet “PM OpCo (after Hive-down of the Operating Unit KGaA Performance Materials) Jan. 1, 2018” contains *Intangible assets* at a carrying amount totaling 7,350,878 Euros. These include (i) concessions, (ii) industrial property rights and similar rights and values, as well as (iii) licenses to such rights and values, (iv) goodwill, and (v) advance payments that in the course of the transfer of beneficial ownership through the Operational Hive-down are transferred to PM OpCo. The intangible assets referred to above will be assigned to KGaA only for use in accordance with the Business Lease Agreement Performance Materials. Formal legal title is not transferred, so that they will continue to remain with PM OpCo and recorded on the balance sheet in the scope of the Business Lease.
- The pro forma balance sheet “PM OpCo (after Hive-down of the Operating Unit KGaA Performance Materials) Jan. 1, 2018” contains *tangible assets* at a carrying amount totaling 184,304,365 Euros. These include (i) technical equipment and machinery, (ii) assets under construction, and (iii) items of other moveable tangible assets, as well as plant and office equipment, and low-value assets.
- The pro forma balance sheet “PM OpCo (after Hive-down of the Operating Unit KGaA Performance Materials) Jan. 1, 2018” contains *financial assets* with a carrying amount totaling 128,113 Euros. These are the investments in Azelis Deutschland Kosmetik GmbH and PrintCity GmbH & Co. KG, which will be transferred to PM OpCo in the course of the Operational Hive-down. These investments remain with PM OpCo, and thus will be recorded in the PM OpCo balance sheet.
- The pro forma balance sheet “PM OpCo (after Hive-down of the Operating Unit KGaA Performance Materials) Jan. 1, 2018” contains *current assets* at a carrying amount totaling 394,391,051 Euros, which will be transferred to PM OpCo in the course of the Operational Hive-down.
- Of this amount, a carrying amount of 283,264,913 Euros relates to *Inventories*, including raw materials and supplies, unfinished goods, finished goods, and merchandise, as well as advance payments. The inventories will, in accordance with the Business Lease Agreement Performance Materials, be sold by PM OpCo to KGaA at a carrying amount totaling 283,264,913 Euros.

Furthermore, the current assets contain *Trade accounts receivable* due from affiliated and other companies at a carrying amount totaling 8,256,393 Euros, as well as *Other receivables* due from affiliated and other companies, tax receivables, as well as *Other assets* at a total carrying amount of 102,869,745 Euros. In accordance with the Performance Materials Business Lease Agreement, PM OpCo will sell to KGaA receivables at a carrying amount totaling 8,256,393 Euros as well as other assets at a carrying amount totaling 2,869,745 Euros.

After implementing the leaseback, PM OpCo will retain as current assets only cash and cash equivalents as well as receivables due from MFS GmbH.

In addition, as a result of the temporary leaseback after the Operational Hive-down, the following aspects will affect the equity and liabilities side of the balance sheet of PM OpCo:

- The pro forma balance sheet “PM OpCo (after Hive-down of the Operating Unit KGaA Performance Materials) Jan. 1, 2018” contains *Liabilities* totaling 34,205,884 Euros that comprise (i) trade accounts payable totaling 33,829,167 Euros, and (ii) other liabilities totaling 376,717 Euros that are transferred to PM OpCo as a result of the Operational Hive-down. In the course of the leaseback, KGaA will assume liabilities totaling 34,205,884 Euros as set forth in the Performance Materials Business Lease Agreement. These are (i) trade accounts payable totaling 33,829,167 Euros and (ii) other liabilities totaling 376,717 Euros.
- The pro forma balance sheet “PM OpCo (after Hive-down of the Operating Unit KGaA Performance Materials) Jan. 1, 2018” contains *Provisions* to be transferred in the course of the Operational Hive-down at a carrying amount totaling 177,060,371 Euros that comprise (i) provisions for pensions and other post-employment benefits at a carrying amount totaling 34,629,033 Euros, and (ii) other provisions at a carrying amount totaling 142,431,338 Euros. Pursuant to the Business Lease Agreement Performance Materials, KGaA will assume provisions from PM OpCo at a carrying amount totaling 53,125,963 Euros. Pension provisions, time account claims, and other personnel-related obligations (in particular, jubilee payments and vacation provisions), as well as specific other provisions at a total carrying amount of 123,934,408 Euros remain with PM OpCo. These will continue to be recorded in the PM OpCo balance sheet.
- The pro forma balance sheet “PM OpCo (after Hive-down of the Operating Unit KGaA Performance Materials) Jan. 1, 2018” contains *Deferred income* at a carrying amount totaling 613,500 Euros. It includes deferred income relating to a specific period after the Closing Balance Effective Date. In the course of the leaseback, all deferred items will be reduced to zero.
- The *Equity*, according to the pro forma balance sheet “PM OpCo (after Hive-down of the Operating Unit KGaA Life Science) Jan. 1, 2018,” totals 374,294,652 Euros. The leaseback will not have any impact on the amount of the equity as shown in the balance sheet of PM OpCo.

(2) Effects on the balance sheet of KGaA as the lessee

The following overview (p. 157) contains an overall representation of the effects of the transaction measures on the balance sheet of KGaA. The additional remarks in this section refer primarily to the effects of the leaseback on the KGaA balance sheet.

(figures in thousand EUR)	KGaA (before (i) Operational Hive-down, (ii) Holding Hive-down, and (iii) leaseback) Dec. 31, 2017	KGaA (after Operational Hive-down) Jan. 1, 2018	KGaA (after (i) Operational Hive-down and (ii) Holding Hive-down) Jan. 1, 2018	KGaA (after (i) Operational Hive-down, (ii) Holding Hive-down, and (iii) temporary leaseback) Jan. 1, 2018	(figures in thousand EUR)	KGaA (before (i) Operational Hive-down, (ii) Holding Hive-down, and (iii) leaseback) Dec. 31, 2017	KGaA (after Operational Hive-down) Jan. 1, 2018	KGaA (after (i) Operational Hive-down and (ii) Holding Hive-down) Jan. 1, 2018	KGaA (after (i) Operational Hive-down, (ii) Holding Hive-down, and (iii) temporary leaseback) Jan. 1, 2018
ASSETS					EQUITY AND LIABILITIES				
Fixed assets					Equity				
Intangible assets	489,734	191,830	191,830	191,830	Subscribed capital	168,015	168,015	168,015	168,015
Tangible Assets	1,172,949	821,592	821,592	821,592	General partner's equity	397,196	397,196	397,196	397,196
Financial assets	16,485,747	17,510,738	17,510,738	17,510,738	Capital reserves	3,813,733	3,813,733	3,813,733	3,813,733
<i>Total fixed assets</i>	18,148,430	18,524,160	18,524,160	18,524,160	Retained earnings	701,645	701,645	701,645	701,645
					Profit carried forward EM KG	60,266	60,266	60,266	60,266
Current assets					Net retained profit limited liability shareholders	187,045	187,045	187,045	187,045
Inventories	688,334	23,516	23,516	688,334	<i>Total equity</i>	5,327,900	5,327,900	5,327,900	5,327,900
					Provisions				
Receivables and other assets					Provisions for pensions and other post-employment benefits	200,414	110,669	110,669	110,669
Trade accounts receivable	181,336	2,456	2,456	181,336	Other provisions	1,112,089	627,773	627,773	946,134
Other receivables and other assets	891,567	562,209	562,209	591,567	<i>Total provisions</i>	1,312,503	738,442	738,442	1,056,802
Cash and cash equivalents	1,402	1,402	1,402	1,402	Liabilities				
<i>Subtotal</i>	1,074,305	566,068	566,068	774,305	Financial liabilities	1,500,000	1,500,000	1,500,000	1,500,000
<i>Total current assets</i>	1,762,640	589,584	589,584	1,462,640	Trade accounts payable	292,115	73,272	73,272	292,115
					Other liabilities	11,489,235	11,485,225	11,485,225	11,820,666
Prepaid expenses	28,515	26,560	26,560	28,515	<i>Total liabilities</i>	13,281,350	13,058,497	13,058,497	13,612,782
	19,939,584	19,140,304	19,140,304	20,015,315	Prepaid expenses	17,831	15,465	15,465	17,831
						19,939,584	19,140,304	19,140,304	20,015,315

The first column of the respective overview (assets and equity and liabilities) contains the balance sheet of KGaA as of December 31, 2017, 24:00 hours. It shows the state before the Operational Hive-down (and all other measures) become(s) effective.

The second column “KGaA (after Operational Hive-down) Jan. 1, 2018” of the respective overview (assets and equity and liabilities) contains the pro forma balance sheet of KGaA after the Operational Hive-down (without Holding Hive-down and leaseback) becomes effective. The third column “KGaA (after (i) Operational Hive-down and (ii) Holding Hive-down) Jan. 1, 2018“ of the respective overview contains the pro forma balance sheet of KGaA after the Operational Hive-down and the Holding Hive-down become effective. The additional details on the balance sheet effects of the Operational Hive-down and the Holding Hive-down at the level of KGaA are explained in detail in section C.IV.1.a) and in section D.V.1.a).

The fourth column “KGaA (after (i) Operational Hive-down, (ii) Holding Hive-down, and (iii) temporary leaseback) Jan. 1, 2018” contains a pro forma balance sheet of KGaA at the point in time immediately after the (retroactive) effective date of the leaseback by the OpCos, however, without showing any tax effects triggered by the sale of inventories (for details regarding the tax consequences of the leaseback see section E.I.4.d)).

As a result of the stipulations of the respective Business Lease Agreement, KGaA leases all fixed assets from the OpCos and acquires at carrying amount the current assets and liabilities and provisions (in a total carrying amount of 331,431,064 Euros), with the exception of the contingent liabilities, the pension provisions, and certain other provisions.

During the Business Lease, KGaA – temporarily and with retroactive economic effect as of the Economic Effective Date – will continue in its own name and for its own account the business operations of the hived-down Operating Units KGaA Healthcare, Life Science, and Performance Materials, so that the expenses and income resulting therefrom are attributed to KGaA. In the scope of the Business Lease Agreement, the OpCos receive rent that is calculated, *inter alia*, based on the depreciation on the leased fixed assets. The additional details on the balance sheet effects of the leaseback at the level of KGaA are explained in detail in section E.I.4.b)(2).

The profit or loss of the respective OpCo will be transferred in full to KGaA on the basis of the domination and profit and loss transfer agreements concluded (cf. section C.IV.4) and recorded in the investment income.

c) Balance sheet impacts of the termination of the Business Lease

Upon termination of the respective Business Lease between KGaA and the OpCos, the right of use in the Leased Items is retransferred to the respective OpCo. The items sold in the scope of the respective Business Lease Agreement – such as inventories, receivables, liabilities, and provisions – will be resold to the respective OpCo at carry-

ing amounts then applicable and compensated on the basis of the respective carrying amount.

Since the termination of the Business Lease Agreements is planned only for the time period from early 2019 to 2020, the specific balance sheet impacts of the dissolution of the respective Business Lease cannot yet be described in detail.

d) Tax consequences

The Business Lease between KGaA and the respective OpCo results in a so-called “reverse split of operation” in which the operating company (KGaA) controls the asset holding company (OpCo). KGaA will manage and operate the respective Leased Operation in its own name and for its own account. The profits and losses generated or incurred by KGaA in doing so are subject to the general principles of income taxation applicable to a partnership limited by shares (*Kommanditgesellschaft auf Aktien*). During the Business Lease, the OpCos generate income only from the leasing of the Leased Operation against rent payments that, as a result of the fiscal units for income tax purposes comprising KGaA (controlling company) and the OpCos (controlled companies) (Sec. 14 et seq. *KStG*, Sec. 2 (2) s. 2 *GewStG*) is subject to tax at the level of the KGaA under application of the general income tax principles applicable to a partnership limited by shares. Due to the fiscal units for trade tax purposes comprising KGaA and the OpCos (Sec. 2 (2) s. 2 *GewStG*), the rent paid by KGaA to the OpCo is not subject to the trade tax increase pursuant to Sec. 8 (1) d), e), f) *GewStG*.

The Business Lease basically does not have any effect on the balance sheet attribution of the assets and liabilities that are subject to the Business Lease. These continue in principle – after the Operational Hive-down – to be recognized in the balance sheet at the level of the OpCos. This does not apply in principle if assets and liabilities are transferred by the OpCos to KGaA with economic effect at the Beginning Of The Lease (e.g., receivables and payables, as well as inventories). These are attributed to KGaA for accounting purposes. If the assets sold by the OpCos to KGaA at carrying amounts contain built-in gains (e.g., finished products and goods), these will be realized for income tax purposes and transferred in advance to KGaA by the OpCos (so-called hidden profit transfer). The profits incurred at the OpCos in this process that are, however, attributed to KGaA for income tax purposes due to the fiscal unit for income tax purposes are (partly) offset by an expense of KGaA incurred in part in the 2018 financial year, reducing the taxable income of KGaA accordingly.

The respective OpCo shall economically bear the expense incurred for replacement and expansion investments; it is subject, at the level of the OpCos, to general accounting rules (capitalization as acquisition cost or cost of production as set forth in Sec. 255 *HGB*). As far as the OpCos agree on an assumption of joint liability regarding certain liabilities and provisions transitioning to KGaA and, in the internal relationship with KGaA, completely assume the obligation to perform (particularly in respect of provisions for pensions and other staff-related provisions), the liabilities and provisions shall be recognized as liabilities at the level of the respective OpCo. The as-

sumption of joint liability with an obligation to perform also usually refers to the liabilities (*wirtschaftliche Lasten*) arising after the Beginning Of The Lease. In this regard, however, KGaA is obligated to reimburse the OpCos for the liabilities (*wirtschaftliche Lasten*) incurred after the Beginning Of The Lease. The reimbursement is deemed an expense at the level of the KGaA and income at the level of the respective OpCo. The plan assets in terms of Sec. 246 (2) s. 2 *HGB* will be attributed to the OpCos during the Business Lease for accounting purposes.

Insofar as assets and liabilities are transferred from KGaA to the OpCos at the Lease End, these shall be attributed to the respective OpCo after the termination of the Business Lease for accounting purposes. If the transferred assets and liabilities contain built-in gains, these shall be realized by KGaA. If the transferred assets and liabilities contain built-in losses, these shall be realized by KGaA. The respective OpCo is the exclusive beneficial owner of any goodwill (*Goodwill*) attributed to the Leased Operation (including goodwill that is generated during the Business Lease) during the term of the Business Lease (Sec. 39 (2) (1) *AO*), so that no profit is realized from a transfer of such goodwill at the Beginning Of The Lease and at Lease End. The same applies to the Leased IP, including the Foreground IP, that is generated during the term of the Business Lease or as of the effectiveness of beneficial ownership of the respective OpCo.

The lease takes place within the existing fiscal unit for VAT purposes comprising the OpCos (controlled companies) and KGaA (controlling company) (Sec. 2 (2) (2) *UStG*), so that the lease, including the associated transfer processes, represents internal services within a fiscal group which are not subject to VAT.

e) Consequences for employees

(1) Consequences of the Operational Hive-down and subsequent Business Lease

In the course of the Operational Hive-down, KGaA transfers the employment relationships of the Transitioning Employees as well as the rights and obligations from the employment relationships of the Former Employees to the OpCos. Upon the Operational Hive-down becoming effective, the employment relationships of the Transitioning Employees, including the pension entitlements granted to them as defined by the German Company Pensions Act (*Betriebsrentengesetz*) are transferred from KGaA to the respective OpCo (Sec. 123 (3) (1) *UmwG*). Immediately thereafter, the employment relationships of the Transitioning Employees as detailed in Sec. 613a *BGB* are retransferred with all rights and obligations from the respective acquiring entity to KGaA.

The years of service rendered at or recognized by KGaA will not be interrupted by the transfer of the employment relationships to the OpCos and of the Transitions Contingent On The Lease to KGaA. The Protection Against Dismissal Act (*Kündigungsschutzgesetz*) continues to be applicable. In addition, Sec. 323 (1) *UmwG* provides that

the Transitioning Employees' position under German dismissal law due to the Operational Hive-down shall not deteriorate for the period of two years from the Operational Hive-down becoming effective. According to the details of the position paper concluded with the Works Council Of Joint Works dated June 26, 2017, in addition, notices of termination for operational reasons and notices of termination for the deterioration of material working conditions are generally excluded until December 31, 2021. Furthermore, the Transitioning Employees' employment relationships cannot be terminated by KGaA or the respective acquiring entity due to the Transitions Contingent On The Lease (Sec. 613a (4) *BGB*).

KGaA will remain liable for all obligations arising from the employment relationships of the Transitioning Employees even after the Operational Hive-down and the Transitions Contingent On The Lease become effective. Apart from that, the OpCos are jointly and severally liable with KGaA for liabilities arising from the Transitioning Employees' employment relationships transferred to them pursuant to Sec. 123 (3) (1) *UmwG* if the liabilities arose before the respective transition contingent on the lease and fall due within one year of the respective transition contingent on the lease. If such liabilities fall due after the date of the respective transition contingent on the lease, the OpCo shall only be liable for them to the extent that corresponds to the assessment period that ended on the date of the transition contingent on the lease (Sec. 613a (2) s. 2 *BGB*). The Assumptions Of Joint Liability described below and declared by the OpCos in the respective Business Lease Agreement remain unaffected.

The Operational Hive-down and the Transitions Contingent On The Lease will not have any effect on the office or responsibilities of the existing employee representative bodies. These remain in charge and continue to be the competent body for the employees and apprentices of KGaA and for the OpCos of the Joint Operation Darmstadt/Gernsheim, particularly also for the Transitioning Employees, after the Operational Hive-down and the Transitions Contingent On The Lease. The same applies to company agreements and agreements relating to the committee representing the executive employees. Said agreements continue to apply to the Transitioning Employees under collective bargaining laws without any changes even after the Operational Hive-down and the Transitions Contingent On The Lease. The collective bargaining agreements applicable to the Transitioning Employees' employment relationships before the Operational Hive-down will also continue to apply under collective bargaining laws without any changes even after the Operational Hive-down and the Transitions Contingent On The Lease, provided that this was also the case previously. If the corresponding collective agreements are applicable to the employment relationships with the Transitioning Employees on the basis of individual agreements (in particular due to a reference clause in the respective employment contract), they shall continue to apply even after the Operational Hive-down and the Transitions Contingent On The Lease. With regard to the details, reference is made to the explanations in section C.IV.6.a).

Upon transfer of the employment relationships of the Transitioning Employees, all pension commitments as defined by the German Company Pensions Act made to the Transitioning Employees are transferred to the OpCos. Immediately thereafter, the pension obligations, together with the Transitioning Employees' employment contracts as a result of the Transitions Contingent On The Lease as detailed in Sec. 613a *BGB* will be retransferred to KGaA.

After the Operational Hive-down becomes effective and upon the Transitions Contingent On The Lease becoming effective, the OpCos will each declare – in the scope of the respective Business Lease Agreement – an assumption of joint liability with an obligation to perform in the internal relationship for the direct commitments that are transferred to the OpCos in the course of the Operational Hive-down and then to KGaA within the context of the Transitions Contingent On The Lease. In addition, there shall be a pro-rata allocation of trust assets from the Contractual Trust Agreement (CTA) of KGaA to the CTA of the respective OpCo at MP e.V. in the course of the Operational Hive-down. Thus, security of the CTA-Secured Direct Commitments is continued during the Assumptions Of Joint Liability as well.

With regard to the company pension scheme which is implemented via direct insurance or PKDW, the employment relationships of the Transitioning Employees shall not be affected. In particular, KGaA shall, for the term of the Business Lease Agreements, continue to pay the amounts to the respective pension provider in accordance with the pension provider's regulations and the respective pension entitlement. As part of the hive-down, KGaA transfers its legal position with regard to the Transitioning Employees vis-à-vis the external pension provider (position as policy holder, member firm of the pension fund (Kassenfirma))) only with economic effect by way of a trust agreement to the OpCos.

The time account agreements of the Transitioning Employees are secured in the same manner as the securing of CTA-Secured Direct Commitments. Once the Operational Hive-down and the Transitions Contingent On The Lease have taken effect, the OpCos will furthermore each declare – in the scope of the respective Business Lease Agreement – an assumption of joint liability for the time account agreements that are transferred to the OpCos within the context of the Operational Hive-down and then to KGaA within the context of the Transitions Contingent On The Lease. In addition, there shall be a pro-rata allocation of trust assets from the CTA of KGaA to the CTA of the OpCos with the Metzler Trust e.V. and Höchster Pensions Benefits Services GmbH in the course of the Operational Hive-down. For the duration of the assumption of joint liability, the time accounts shall be secured by way of the CTA between the OpCos with the Metzler Trust e.V. and the Höchster Pensions Benefits Services GmbH.

In addition, the OpCos also agree on the assumption of joint liability as well as an obligation to perform for other staff-related provisions (in particular, jubilee payments and vacation provisions) after the effective date of the Operational Hive-down and the Transitions Contingent On The Lease – in the scope of the respective Business Lease

Agreement. In this respect, the above regarding securing time account agreements applies *mutatis mutandis* subject, however, to the special provision that there is no CTA protection for these other staff-related provisions at KGaA nor is such a CTA protection planned at the OpCos.

The Operational Hive-down and the Transitions Contingent On The Lease have no other effects on the employment and apprenticeships. In particular, no special measures are currently planned in respect of the Operational Hive-down and the Transitions Contingent On The Lease. The consequences of terminating the Business Lease Agreements are outlined in section E.I.4.e)(2) below. The consequences of the Holding Hive-down for employees and their representative bodies were explained in D.V.5.

(2) Consequences of the termination of the Business Lease Agreements for the employees and their representative bodies

Upon termination of the respective Business Lease Agreement, the employment relationships attributed in each case to the Operating Units KGaA Healthcare, Life Science, and Performance Materials are transferred at the respective termination date, including the pension entitlements granted under the German Company Pensions Act as detailed in Sec. 613a *BGB*, including all rights and obligations, to the respective OpCo. The years of service rendered at KGaA or recognized by KGaA shall apply in full as performed at the specific OpCo. Furthermore, the employment relationships transferred pursuant to Sec. 613a *BGB* cannot be terminated due to the transfer of undertaking (Sec. 613a (4) *BGB*).

The apprenticeships of the apprentices shall not be covered by the transfers of undertaking upon termination of the Business Lease Agreements, even if they were deployed in the respective Operating Unit at the respective termination date. The apprenticeships exist even after the termination of the Business Lease Agreements with KGaA and do not transfer to the OpCos. As a result, there will be no adverse effects on the apprenticeships. The existing structure of the apprenticeships will be continued by the Parties.

As detailed in Sec. 613a *BGB*, the respective OpCo shall be liable for all obligations arising from the employment relationships transferred in the course of the termination of the Business Lease Agreement. In addition to the respective OpCos, KGaA shall be liable for obligations arising from the transferred obligations if the liabilities arose before the respective transfer of undertaking and fall due within one year of the respective transfer of undertaking. If such liabilities fall due after the effective date of the respective transfer of undertakings, KGaA will be liable only to that extent that such liabilities relate to the assessment period that has expired at the effective date of the transfer of the undertaking (Sec. 613a (2) s. 2 *BGB*).

The termination of the Business Lease Agreements shall have no impact on the position and responsibilities of the existing employee representatives. The employee representatives thus remain in charge and will continue to be responsible for the em-

employees even after termination of the Business Lease Agreements. The termination of the Business Lease Agreements has no other effects on the company agreements and agreements relating to the committee representing the executive employees. These shall apply without any changes under collective bargaining laws to the employees whose employment contracts are transferred to the respective OpCo as a result of the termination of the Business Lease Agreements even after the termination of the Business Lease Agreements. With regard to the details, reference is made to the explanations in section C.IV.6.b).

The OpCos shall join the employers' association which is a party to collective bargaining agreements, at the latest effective upon termination of the Business Lease Agreements. The relevant collective bargaining agreements will apply without any changes under the collective bargaining laws to the employees whose employment relationships are transferred to the respective OpCo as a result of the termination of the Business Lease Agreements, even after the termination of the Business Lease Agreements, if this was the case previously. If the corresponding collective bargaining agreements apply based on individual agreements (in particular due to a reference clause in the respective employment contract), this shall also apply after termination of the Business Lease Agreements.

KGaA currently has a Supervisory Board that is staffed in accordance with the provisions of the German Co-Determination Act (*Mitbestimmungsgesetz*) equally with shareholder representatives and employee representatives. The termination of the Business Lease Agreements does not have any impact on the existence, composition, and time in office of the Supervisory Board. The employees whose employment relationships are transferred to the respective OpCos as a result of the termination of the Business Lease Agreements will remain entitled to be voted into the Supervisory Board of KGaA.

Currently, the acquiring entities do not have supervisory boards. Upon termination of the respective Business Lease Agreements, HC OpCo and PM OpCo are expected to each employ more than 2,000 employees in Germany, so that for these companies, after the termination of the respective Business Lease Agreement, a Supervisory Board shall be formed in accordance with the German Co-Determination Act. Upon termination of the Business Lease Agreement, LS OpCo is expected to employ more than 500 but not more than 2,000 employees in Germany, so that for the company, after termination of the Business Lease Agreement, a Supervisory Board shall be formed in accordance with the German One-Third Participation Act (*Drittelbeteiligungsgesetz*).

As far as, upon termination of the respective Business Lease Agreement, the direct commitments, the time accounts, as well as other staff-related commitments that are subject to the assumption of joint liability are transferred to the respective OpCo in the course of the Operational Transitions Contingent On The Lease, the assumption of joint liability for the individual direct commitments, time accounts, and the other personnel-related provisions declared by the respective OpCo in the course of the Opera-

tional Transitions Contingent On The Lease lapses. KGaA and the respective OpCo shall otherwise ensure that the Asset And Liability Items to finance the transfer of pension entitlements are provided to the acquiring entity, and that the agreements in this regard can be continued with the previous pension providers at the same terms and conditions. The obligation specified above shall include in particular the transfer of the direct insurances as regards the employment relationships transitioning to the acquiring entity and the application for a status as the “*Kassenfirma*” (treasury entity) for the OpCo with PKDW if such status has not yet been achieved.

The termination of the Business Lease Agreements has no other effects on the employment and apprenticeships. In particular, no special measures are currently planned relating to the termination of the Business Lease Agreements.

The other details of the transfers of undertakings to the OpCos are governed in a position paper dated June 26, 2017 and in an implementation agreement with the Works Council Of Joint Works dated November 1, 2017.

f) Other effects of the Business Lease on KGaA and the OpCos

(1) Other effects on KGaA

During the Business Lease phase (see section A.II.3 and section E.I), KGaA will initially continue the business operations of the hived-down Operating Units KGaA Healthcare, Life Science, and Performance Materials in its own name and for its own account. The employees of the Operating Units KGaA Healthcare, Life Science, and Performance Materials will continue to be employed by KGaA during this phase. The transaction before the termination of the Business Lease will have no effect on the operational processes or on the external representation of KGaA. Upon introduction of the ERP systems and the termination of the Business Lease, the operational management of the business will be permanently transferred to the OpCos, and KGaA will also become the Group holding company in relation to the German business activities of the Healthcare, Life Science and Performance Materials Business Sectors.

The Business Lease does not result in any changes at the level of the Executive Board or the Supervisory Board of KGaA. Both during the Business Lease phase and after the termination of the Business Lease, KGaA employees continue to be attributed to the hived-down Operating Units of KGaA for the purpose of co-determination, so that the Supervisory Board of KGaA continues unchanged in size and parity of composition.

(2) Other effects on the OpCos

During the Business Lease phase, the respective OpCos will remain without any operational business and only earn rent for the respective leased operation. The OpCos will also not have any employees of their own during this phase (on the possible exceptional case due to the potential premature termination of the Performance Materials Business Lease Agreement as regards the Distribution and Sales Function, howev-

er, see sections E.IV and E.IV.3.x)); instead, they will continue to be employed by KGaA as a result of the Business Lease. After the termination of the Business Lease (cf. section F.2.a)), the OpCos will then take over and run the respective hived-down operating business. The scope of the business activity is limited to the previous business activities of KGaA in the Operating Units KGaA Healthcare, Life Science, and Performance Materials, which were described in more detail in B.I.4.b). With regard to the global Business Sectors, the OpCos – as well as the HoldCos – will have no “cross-company” Group management function. Such management will continue to be exercised by KGaA for the global Business Sectors. The OpCos themselves will be integrated into the functional management and reporting structure of the Business Sectors. As a result of the Business Lease, the OpCos will not appoint any new managing directors nor will those managing directors currently in office and listed in sections B.II.1, B.II.2, and B.II.3 be dismissed. The domination and profit and loss transfer agreements concluded between KGaA and the OpCos remain unaffected by the Business Lease (see the explanations in section C.IV.4). Supervisory Boards are not set up at the level of the OpCos during the phase of the Business Lease. Since the OpCos do not employ any staff in this phase (however, on the possible exception due to the possibility of premature termination of the Performance Materials Business Lease Agreement as regards the distribution and sales function, see sections E.IV and E.IV.3.x)), the OpCos are not subject to co-determination, neither are they subject to the German One-Third Participation Act (third-party co-determination) or the German Co-Determination Act (parity co-determination). Upon termination of the Business Lease, the employment relationships of the employees assigned to the hived-down Operating Units will be transferred to the OpCos by way of a transfer of undertaking pursuant to Sec. 613a *BGB*. As a result, supervisory boards must be formed at the level of the OpCos, which – in the case of HC OpCo (approx. 2,700 employees) and PM OpCo (approx. 2,500 employees) – are subject to the German Co-Determination Act and – in the case of LS OpCo (approx. 1,680 employees) – to the German One-Third Participation Act. Hence, HC OpCo and PM OpCo would each have a parity co-determined Supervisory Board with 12 members, while LS OpCo would have a Supervisory Board one-third of which is co-determined, the size of which should be determined in due course in the Articles of Association of LS OpCo. For further explanatory comments regarding the future structure of the OpCos see section C.IV.6.b). For the time after the termination of the respective Business Lease, KGaA and the OpCos, and the OpCos among themselves, will conclude a series of intra-group agreements. This applies in particular to the services rendered by KGaA-based KGaA Group Functions and KGaA Site Operations, such as services in the area of accounting and controlling, legal and tax consultancy and human resources, as well as waste disposal and plant safety. The OpCos will conclude intercompany agreements among themselves, e.g., with regard to product production or stock-keeping. The services are provided at standard market conditions (arm’s length principle). Previously existing intercompany agreements between KGaA and other group companies – insofar as the hived-down Operating Units KGaA Healthcare, Life Science, and Performance Materials are affected (if required, by splitting the agreement) – are hived down to the Op-

Cos and are also the subject of the temporary Business Lease. If necessary, the inter-company agreements are split or duplicated if the subject of an agreement affects several Operating Units. The substantive content of this Agreement will not be affected by the transaction. Internal service agreements existing until now between the Operating Units will be continued as external “intercompany agreements.” As already mentioned, upon introduction of the new ERP systems, the OpCos shall be integrated into the planning and control system of the respective global Business Sectors (cf. section A.I). The overall impact of the transaction is summarized in F. Reference is made to that section.

In § 24a, the Performance Materials Business Lease Agreement governs the option of premature termination of the leaseback with regard to the Performance Materials Distribution and Sales Function. The reason for this provision is the reorganization of distribution and sales in the Operating Unit KGaA Performance Materials and the introduction of an ERP Commercial Template for the Operating Unit KGaA Performance Materials (according to current planning at the earliest as of October 1, 2018). In the course of this reorganization, it is intended that the Performance Materials Distribution and Sales Function of KGaA and/or Merck Chemicals GmbH, Darmstadt, Germany, an affiliated company of Merck KGaA, Darmstadt, Germany, shall be transferred to PM OpCo. As a result of the partial termination of the Business Lease, PM OpCo will become operationally active as relates to the Performance Materials Distribution and Sales Function even before the overall termination of the Performance Materials Business Lease. This also means that PM OpCo from this time onwards no longer leases its company as a whole to KGaA. In the event of any termination, a decision must be made as to whether the legal prerequisites of an enterprise agreement within the meaning of Sec. 292 (1) (3) *AktG* are still met. If the status of an enterprise agreement was to lapse, the OpCo would report the termination of the Business Lease as an enterprise agreement in terms of Sec. 292 (1) (3) *AktG* with declaratory effect to the Commercial Register. The continuation of the Business Lease Agreement in terms of the other activities and asset items of the Leased Operation remains unaffected by this and the lease would continue until its complete termination.

II. Temporary leaseback of the Operating Unit KGaA Healthcare hived down to HC OpCo

1. Participating entities

The leaseback of the Operating Unit KGaA Healthcare hived down to HC OpCo (the *Healthcare Business Lease*) is leased back by way of a Business Lease Agreement pursuant to Sec. 292 (1) (3) Var. 1 *AktG* between KGaA and HC OpCo (the *Healthcare Business Lease Agreement*).

a) HC OpCo as the lessor

HC OpCo acts as a lessor under the Healthcare Business Lease Agreement. With regard to the description of HC OpCo, reference is made to the above explanations in section B.II.1.

b) KGaA as the lessee

KGaA OpCo acts as a lessee under the Healthcare Business Lease Agreement. With regard to the presentation of KGaA, reference is made to the statements in section B.I.

2. Economic reasoning, legal implementation, and consequences of the Healthcare Business Lease

The Healthcare Business Lease Agreement is directly related to and is executed simultaneously with the conclusion of the Business Lease Agreements for the Operating Units KGaA Life Science (cf. section E.III) and KGaA Performance Materials (cf. section E.IV). The economic reasoning, the procedure for concluding the agreements and the consequences of the Business Lease Agreement are the same for all three Business Lease Agreements and are therefore presented in summary in section E.I to avoid repetition and enhance readability. Reference is made to these statements.

3. Explanation of the main content of the Healthcare Business Lease Agreement

The Healthcare Business Lease Agreement is divided into a preamble and six sections.

In the preamble, background information relating to the leaseback and the hive-down measures is explained in an overview. In this context, the entities involved in the measures are also listed and the essence of the Operational Hive-down and the Holding Hive-down is summarized. In addition, the economic reasons for the conclusion of the Healthcare Business Lease Agreement are outlined and fundamental concepts of the Healthcare Business Lease Agreement are defined.

The preamble is followed by section A. (§ 1 and § 2), which contains general provisions regarding the Leased Operation, the Legal Effective Date, and the Beginning Of The Lease. Section B. then describes the individual items and specifies in detail those that HC OpCo leases or transfers, respectively, to KGaA (§ 3 to § 12). Section C. (§ 13 to § 19) discusses the legal status of KGaA. It specifies, *inter alia*, its rights and obligations with regard to the maintenance and modification of the leased items, as well as the investments, goodwill, IP, and warranty and liability. Section D. (§ 20 and § 21) discusses provisions on the transfer of employment relationships and pension obligations. Section E. (§ 22 to § 25) sets forth the consideration to be paid by KGaA and the term of the agreement, including the options and consequences of termination of the agreement. The final provisions in section F. (§ 26 to § 32) include agreements on the notification of third parties and the cooperation of the Parties, as well as a sev-

erability clause, agreement on the jurisdiction and applicable law, and bearing of the costs.

In the following presentation and explanation of the Healthcare Business Lease Agreement, the terms defined in the Healthcare Business Lease Agreement are used. Sections that do not specify a law or act refer to sections of the Healthcare Business Lease Agreement.

The provisions of the Healthcare Business Lease Agreement have the following essential content:

a) Leased Operation (§ 1)

§ 1.1 contains the key provisions of the Healthcare Business Lease Agreement according to which HC OpCo leases its entire operation in accordance with the Business Lease Agreement to KGaA for the purpose of operating the business in its own name and for its own account (Sec. 292 (1) (3) *AktG mutatis mutandis*). It is also clarified that the provisions of Sec. 581 et seq. *BGB* apply, unless the Healthcare Business Lease Agreement specifies otherwise.

The domination and profit and loss transfer agreement existing between HC OpCo and KGaA (see also the explanations in sections B.II.1 and C.IV.4) remains unaffected as set forth in § 1.2 of the Healthcare Business Lease Agreement.

b) Legal Effective Date, Beginning Of The Lease (§ 2)

§ 2 states that, in accordance with Sec. 294 (2) *AktG*, the Healthcare Business Lease Agreement will become effective upon registration in the Commercial Register of HC OpCo (see E.I.3.g) above for the effective date). In addition, § 2 specifies that the lease shall have a retroactive economic effect as of January 1, 2018, 0:00 hours. That means that, for commercial balance sheet purposes, the Healthcare Business Lease Agreement will have retroactive economic effect as of January 1, 2018, 0:00 hours, and that HC OpCo and KGaA will act economically as if the operation had already been transferred to the respective OpCo on January 1, 2018, 0:00 hours. Pursuant to § 2, this applies in particular to the payment of the rent and the enjoyment of the benefits from the Leased Operation. The retroactive economic effect of the Healthcare Business Lease Agreement has been reconciled with the Economic Effective Date of the Operational Hive-down and the Holding Hive-down (see also sections C.V.3 and D.VI.3).

c) Description of the Leased Items, general principles, granting possession (§ 3)

In § 3.1 the Leased Item is described in general terms. The description refers in general to § 3 to § 14 and § 48 to § 51 of the Operational Hive-down Agreement. The subject of the Healthcare Business Lease, and thus the Leased Operation in terms of § 1.1, is generally the Operating Unit KGaA Healthcare hived down to HC OpCo, in-

cluding the related items and legal relationships of the assets and liabilities required to manage the Leased Operation which were transferred from KGaA to HC OpCo in the scope of the Operational Hive-down and/or which were described or referred to in § 3 to § 14 and in § 48 to § 51. For this reason, in the further course of the Healthcare Business Lease Agreement, for the specific description of the Leased or Transferred Items reference is made in principle to the respective provisions and annexes of the Operational Hive-down Agreement to describe the Operating Unit KGaA Healthcare. § 3.1 also clarifies that certain asset components are excluded from the lease in technical terms, in particular because they are to be sold and transferred to KGaA with effect from the Beginning Of The Lease (this applies, e.g., to the receivables described in § 6.1 s. 1 or the inventories described in § 7). § 3.1 and the other provisions of the agreement therefore differentiate conceptually between “Leased Items” and “Transferred Items.” Upon termination of the Business Lease, the stock that then exists of the “Transferred Items” will be resold or retransferred. Apart from that, § 3.1 determines that the receivables and liabilities to employees assigned to the Leased Operation are subject to the special provisions of § 20 and § 21.

§ 3.2 stipulates that the Leased Items recognizable in the balance sheet and the Transferred Items recognizable in the balance sheet within the scope of the Lease are included in the Hive-down Balance Sheet of the Operating Unit KGaA Healthcare as of January 1, 2018, 0:00 hours, which is derived from KGaA’s audited closing balance sheet as of December 31, 2017, 24:00 hours, and attached to the Operational Hive-down Agreement as Annex 3.3. In order to record all relevant assets, § 3.2 also clarifies that – subject to special provisions in the Healthcare Business Lease Agreement and unless exempted from any lease or transfer – HC OpCo’s assets that are not required to be or cannot be recorded in the balance sheet, or items which are actually not recorded in the balance sheet are also subject to the lease or transfer.

§ 3.3 contains a so-called surrogation clause. Through this, the treatment of changes in the portfolio of the assets affected by the Healthcare Business Lease in the period between the Beginning Of The Lease and the Legal Effective Date is governed. This takes into account the fact that the assets covered by the Healthcare Business Lease are not static assets, but assets that change in the course of ongoing business operations. § 3.3 stipulates in this context that the additions and disposals of Leased Items and Transferred Items (including surrogates in rem or under the law of obligations for a Leased Item) in the period between the Beginning Of The Lease and the Legal Effective Date of the Healthcare Business Lease are taken into account in the lease in accordance with the provisions detailed in § 3.3. A specification of the scope of the assets and liabilities to be taken into account in accordance with this provision is provided in § 3.3 (a) and (b). According to § 3.3 (a), HC OpCo leases the Asset And Liability Items attributable to the Leased Operation in the broadest sense which are added during the period from the Beginning Of The Lease to the Legal Effective Date or were created during said period and still exist at the Legal Effective Date. Conversely, § 3.3 (b) clearly specifies that the Asset And Liability Items attributable to the Leased Operation in the broadest sense which were terminated, sold, or otherwise transferred

during the period from the Beginning Of The Lease to the Legal Effective Date or that simply no longer exist on the Legal Effective Date, will not be leased to KGaA. However, instead, they shall be superseded by the surrogates in rem or under the law of obligations existing at the Legal Effective Date pursuant to § 3.3 (b).

§ 3.4 governs the actual transfer of the Leased Items and the Transferred Items to KGaA on the Legal Effective Date and stipulates that HC OpCo is obliged to grant KGaA possession or physical control over these items on the Legal Effective Date and to ensure that KGaA earns the benefits from the Leased Items in its own name and for its own account.

§ 3.5 stipulates that HC OpCo acts in accordance with the instructions of KGaA with regard to the Leased Items, the lease of which to KGaA is not permitted or otherwise possible, and will internally treat KGaA as if it were the lessee of the items.

d) Intangible assets and know-how (§ 4)

§ 4.1 defines the Leased IP with reference to § 4.2 and § 5 of the Operational Hive-down Agreement. This includes all industrial property rights and the transferred know-how transferred to HC OpCo as part of the Operational Hive-down Agreement.

The lease of the Leased IP will be carried out in accordance with the licensing stipulations governed in § 4.2.

Trustor rights and obligations arising between KGaA and HC OpCo within the meaning of § 4.3 (b) of the trust agreement entered into in respect of registered property rights in the Operational Hive-down Agreement are assigned to KGaA by § 4.3 for the duration of the Business Lease since KGaA will also manage the business of HC OpCo in this regard during the Business Lease.

Furthermore, in § 4.4, the obligation of HC OpCo to reimburse the costs and indemnify KGaA in accordance with § 4.6 and § 4.7 of the Operational Hive-down Agreement is suspended for the term of the Business Lease in respect of the fees payable to third parties for intangible assets or rights of use and, in accordance with § 4.5, the rights of use transferred under the Operational Hive-down Agreement transfer back to KGaA for the duration of the Business Lease.

§ 4.6. governs the treatment of HC OpCo's rights of use in Shared IP Healthcare and know-how that cannot be exclusively attributed to the Healthcare Business Sector that were granted to HC OpCo on the basis of the Operational Hive-down Agreement. § 4.6. prescribes that, for the duration of the Business Lease, KGaA exercises these rights of use in its own right.

Reference is made to the explanations of § 4 and § 5 of the Operational Hive-down Agreement in sections C.V.4.b) and C.V.4.c).

e) Tangible Assets (§ 5)

According to § 5.1, HC OpCo leases to KGaA all tangible assets that are included in § 6.1 to § 6.3 of the Operational Hive-down Agreement and in Annex 6.1 to the Operational Hive-down Agreement, including low-value assets. The lease or transfer of the physical control of the tangible assets for use shall be independent of possible third-party retention of title or transfer as collateral.

The rights arising from intercompany service agreements between KGaA and HC OpCo within the meaning of § 6.4 of the Operational Hive-down Agreement governing the rights of use of mixed-use tangible assets are specified in § 5.2 for the duration of KGaA's Business Lease, since such service agreements will have no relevance for HC OpCo as lessor during the leaseback phase.

Reference is made to the explanations of § 6 of the Operational Hive-down Agreement in section C.V.4.d).

f) Receivables (§ 6)

§ 6.1 governs the transfer of the receivables at the Beginning Of The Lease assigned to the Leased Operation and transferred by way of sale and assignment in the course of the Operational Hive-down by HC OpCo to KGaA, and refers to § 7 and Annex 7.2 of the Operational Hive-down Agreement for further specification of the receivables to be sold. § 6.1 also contains, as relates to the sale and transfer of the receivables by HC OpCo, the declaration of acceptance by KGaA. Pursuant to § 6.1, the sale shall become effective with retroactive economic effect as of the Beginning Of The Lease (January 1, 2018, 0:00 hours) and at the carrying amounts stated under German commercial law in the Healthcare Hive-down Balance Sheet. The purchase price falls due pursuant to § 6.1 within four weeks of the Legal Effective Date. The sale of the current assets or the lessor's receivables to the lessee is a standard provision. It is intended to take account of the fact that the current assets are continuously turned over and renewed during the period of the Business Lease in the course of continuing the Leased Operation and thus a transfer and "enjoyment of benefits" for a limited time thus does not make sense.

Insofar as an assignment of the sold receivables is not feasible or permissible, the contracting parties shall position themselves internally, in accordance with § 6.2, as if the assignment had been effective. According to § 6.2, HC OpCo shall, in this case, provide KGaA with a direct debit authorization for the respective receivable. § 6.2 refers to the provisions in § 1.4 in the Operational Hive-down Agreement and to the trust agreement described there in more detail to specify the provisions that are to apply in the internal relationship between the Parties (see the explanations in C.V.2).

After the termination of the Healthcare Business Lease Agreement, KGaA is entitled according to § 6.3 (and also obligated at the request of HC OpCo) to (re-)sell to HC OpCo the receivables attributable to the lessee and to the Leased Operation, according to which the carrying amount of the receivables at Lease End, which is determined

according to the same principles as the sale according to § 6.1, is adjusted to determine the purchase price.

§ 6.4 governs the settlement of prepaid expenses that may exist at the Beginning Of The Lease or Lease End in the context of the respective payment of the purchase price in accordance with § 6.1 and § 6.3.

According to § 6.5, § 6.1 does not apply to receivables and payables due to employees, as the special provisions on employment relationships and pension obligations pursuant to § 20 and § 21 apply to those.

Reference is made to the explanations in § 7 of the Operational Hive-down Agreement in section C.V.4.e).

g) Inventories (§ 7)

§ 7.1 governs the sale of the inventories attributable to the Leased Operation from HC OpCo to KGaA and refers to § 8 and Annex 8.3 of the Operational Hive-down Agreement for further specification of the inventories to be sold. The reason for the sale rather than the lease of inventories is that – as in the case of receivables – the current assets are continuously carried over during the period of the Business Lease, and thus a lease for a limited time does not make sense. The sale takes place on the Legal Effective Date and with economic effect as of the Beginning Of The Lease. Accordingly, the Parties, pursuant to § 7.1, deem themselves to be in such position as if the transfer of the inventories had taken place at the Beginning Of The Lease (January 1, 2018, 0:00 hours). § 7.1 also specifies the purchase price amount and due date (four weeks after the Legal Effective Date) and contains the standard stipulation for business lease agreements that the sale will be at carrying amounts under German commercial law that result from the sale and assignment of the receivables attributable to the Leased Operation from the Healthcare Hive-down Balance Sheet (see explanations in section E.II.3.f)).

It is clarified in § 7.2 that, upon sale of the inventories, title of ownership, possession, as well as all other rights in the items sold pursuant to § 7.1, such as entitlement rights and surrender claims, transition to KGaA at the Legal Effective Date as required.

In order to also record inventories held by third parties, HC OpCo assigns any and all surrender claims to KGaA in § 7.3.

§ 7.4 obliges the Parties to carry out any further actions and declarations necessary for the transfer of ownership or granting of possession.

In case of the termination of the Healthcare Business Lease Agreement, § 7.5 stipulates the right and, in the case of a request by HC OpCo, KGaA's obligation to sell back any inventories that still exist at Lease End and are attributable to the Leased Operation. According to § 7.5, the provisions of § 7.1 to § 7.4 shall apply to the resale, provided that the carrying amount applicable at the Lease End is taken into account (whereby this carrying amount is to be determined according to the same prin-

ciples as for the original sale pursuant to § 7.1). Furthermore, the due date of the purchase price is set at four weeks after the termination date, and HC OpCo has the right to limit the inventories to be transferred to KGaA upon termination of the Business Lease to the amount required to continue the previously Leased Operation. For clarification, § 7.5 at the end stipulates that KGaA may freely dispose of its remaining assets at its sole discretion.

Finally, § 7.6 excludes warranty claims both for the sale of the inventories at the Beginning Of The Lease and for the sale of the inventories at the Lease End and clarifies that the inventories to be sold are sold in each case in the condition in which they are at the time of sale. Such a clause is common in intercompany arrangements.

Reference is made to the explanations of § 8 of the Operational Hive-down Agreement in section C.V.4.f).

h) Liabilities and provisions (§ 8)

According to § 8.1, KGaA, in principle, assumes all liabilities and/or contingent liabilities and uncertain liabilities of HC OpCo subject to § 9 of the Operational Hive-down Agreement and its Annex 9.4.a and Annex 9.4.b and receives compensation (the so-called negative purchase price) as defined in § 8.3, which, in accordance with § 8.3, is based on the commercial law carrying amounts of these items in the Healthcare Hive-down Balance Sheet and is due within four weeks of the Legal Effective Date.

§ 8.2 sets forth in respect to certain liabilities and/or contingent liabilities that they, as an exception, remain with HC OpCo. § 8.2 governs assumption of joint liability and the obligation to perform by HC OpCo (with economic effect as of the Beginning Of The Lease) described in more detail in § 8.2 in case of a transfer of the legal basis of the liability to KGaA.

§ 8.4 prescribes the right (and obligation, upon request of HC OpCo) of KGaA to sell to HC OpCo any liabilities that exist upon termination of the Healthcare Business Lease Agreement at Lease End and that are attributable to the Leased Operation. In accordance with § 8.4, the provisions of § 8.1 to § 8.2 apply *mutatis mutandis* to the resale; furthermore, the negative purchase price to be paid by KGaA to HC OpCo must be based on the carrying amount applicable at Lease End determined in accordance with the same principles that apply to the sale pursuant to § 8.3, and is due within four weeks of Lease End.

§ 8.5 sets forth the settlement of any deferred income that may exist at the Beginning Of The Lease or the Lease End in the context of the respective payment of the negative purchase price pursuant to § 8.3 and § 8.4.

For liabilities due to employees, § 8.6 refers to the special provisions in § 20 and § 21.

Reference is made to the explanations of § 9 of the Operational Hive-down Agreement in section C.V.4.g).

i) Entering into contracts and contract offers (§ 9)

According to § 9.1, KGaA assumes all Transferred Contractual Relationships Life Science attributable to the Leased Operation in the course of the Business Lease by way of assumption of the contract with debt-discharging effect. In principle, this includes all contractual relationships described in more detail in § 10 of the Operational Hive-down Agreement and in particular in Annex 10.2. With regard to the effective date of the assumption of the contract, the principle of retroactive economic effect also applies as of January 1, 2018, 0:00 hours, whereby § 9.1 clarifies that the contracts are assumed in terms of form and content as they exist at the Legal Effective Date. As for the retransfer, § 9.1 refers to § 9.5 of the Healthcare Business Lease Agreement.

According to § 9.2, contractual relationships, particularly partnership agreements, domination and profit and loss transfer agreements, or agreements about silent partnerships, are not attributable to the Leased Operation and shall not be leased.

Since the contracts, unlike by way of partial universal succession (see the explanations in section C.IV.2.a)) in the Operational Hive-down, are assumed by KGaA in the course of the leaseback by way of singular succession, the consent of the respective contractual party is required for the transfer of the respective contract.

§ 9.3 therefore clearly states that, in the event third-party consent is required for the transfer of the contractual relationships, the Parties will make their best efforts to obtain such consent.

With regard to contracts that cannot be assumed with debt-discharging effect, or if this cannot be done in a timely fashion, § 9.4 stipulates a trust agreement according to which the Parties, in any case internally, act in fact as if the assumption had taken place in an effective and timely manner. The specific legal structure of the trust agreement is described in more detail in § 9.4.

Upon termination of the Healthcare Business Lease Agreement, according to § 9.5, HC OpCo again assumes the contractual relationships then existing and attributable to the Leased Operation from KGaA with economic effect as of the Lease End. These contractual relationships are also transferred by way of singular succession, so that § 9.5 stipulates the corresponding validity of § 9.3 and § 9.4 for the retransfer of the contractual relationships from KGaA to the HC OpCo upon termination of the Healthcare Business Lease.

§ 9.6 contains provisions to simplify the processing of the Healthcare Business Lease and stipulates in particular that the contracting parties shall endeavor, even when obtaining the consent of the contracting party, to transfer the contract to KGaA on leaseback, to obtain the consent to the (re-)transfer to HC OpCo after the termination of the Business Lease.

As a result of the leaseback, the rights arising from a trust agreement that may be concluded between KGaA and HC OpCo in accordance with § 49.2 of the Operational

Hive-down Agreement are of no relevance to HC OpCo during the term of the Healthcare Business Lease (see also the explanations in sections C.V.4.h) and C.V.13. § 9.7 therefore clarifies that, for the duration of the Healthcare Business Lease, KGaA is entitled to the trustor rights (of HC OpCo) from any trust agreement that may exist.

Reference is made to the explanations of § 10 of the Operational Hive-down Agreement in section C.V.4.h).

j) Litigation and legal proceedings (§ 10)

The litigation and legal proceedings related to Leased Items or Transferred Items in accordance with the Business Lease Agreement and described in more detail in § 12.1 to § 12.4 of the Operational Hive-down Agreement and in particular in Annex 12.3 of the Operational Hive-down Agreement shall be retransferred by HC OpCo to KGaA in accordance with § 10.1 and § 10.5 for the duration of the Business Lease.

In order to ensure the effective enforcement of the respective rights after the transfer, according to § 10.2, the contracting and consulting relationships with third parties related to these litigation and legal proceedings are also transferred.

Insofar as there are additional requirements for the transfer (such as the consent of persons involved in the process), the Parties will work towards their fulfillment in accordance with § 10.3. If no change of party takes place, § 10.4 clarifies that HC OpCo will continue the corresponding legal proceedings as the litigant on behalf of KGaA. Sec. 10.4 contains special provisions which apply in the internal relationship between HC OpCo and KGaA in the event of litigation involving HC OpCo and, in particular, stipulates that KGaA is internally responsible for the ongoing litigation.

§ 10.5 specifies the procedure in respect of litigation and legal proceedings upon termination of the Healthcare Business Lease. According to § 10.5, KGaA undertakes to (re-)transfer to HC OpCo all litigation and legal proceedings newly attributable to the Operating Unit KGaA Healthcare and retransferred to KGaA pursuant to § 10.1 and newly established until termination of the Healthcare Business Lease Agreement. According to § 10.5, the provisions in § 10.2 to § 10.4 apply to this process *mutatis mutandis*.

Reference is made to the explanations on § 12 of the Operational Hive-down Agreement in section C.V.4.j).

k) Memberships (§ 11)

Pursuant to § 11.1, HC OpCo retransfers any memberships transferred to HC OpCo to KGaA in accordance with the provision in § 13 of the Operational Hive-down Agreement. Any terminations or reinstatement of memberships between the Beginning Of The Lease and the Legal Effective Date will also be taken into account pursuant to § 11.1.

Memberships within the meaning of § 13 of the Operational Hive-down Agreement which have not transitioned or been transferred or only partially transitioned or been transferred to HC OpCo, will remain with KGaA for the duration of the Business Lease in full or to the extent of the affected portion, pursuant to § 11.2, and will only be transferred to HC OpCo upon termination of the Business Lease. If a transfer of such memberships should not be feasible, KGaA shall support HC OpCo in re-applying for these memberships, assuming that the OpCo's membership is required and desired.

Reference is made to the explanations of § 13 of the Operational Hive-down Agreement in section C.V.4.k).

l) Permits and approvals required under public law, operator's responsibility (§ 12)

§ 12.1 refers to the trust agreement entered into by the contractual parties in the scope of the Operational Hive-down as regards the permits affecting the operations of HC OpCo and specified in Annex 48.2 of the Operational Hive-down Agreement in the meaning of § 1.4 of the Operational Hive-down. § 12.1 determines that the trustor rights and obligations arising from this trust agreement are assigned to KGaA during the term of the Healthcare Business Lease Agreement. This is logical since the trust agreement has no relevance for HC OpCo during the phase of the Healthcare Business Lease.

§ 12.2 specifies that physical control of all facilities, land, and equipment of the Leased Operation shall remain with KGaA during the Business Lease, so that KGaA is also the owner of the plant-related permits and exercises unrestricted physical control and right of disposition in the Leased Plants in the prior scope. Consistent with the operator position of KGaA during the Business Lease, § 12.2 clarifies that KGaA is responsible for the associated compliance with the relevant regulations and requirements and in particular continues to be the sole point of contact towards the competent authorities. According to § 12.2, KGaA also retains legal ownership of all product-related approvals pursuant to § 48.7 of the Operational Hive-down Agreement during the period of the Business Lease; for this it continues to fulfill all obligations under product law and to ensure quality management.

Under § 12.3, re-applications for permits after the termination of the Business Lease shall be based on the provisions in § 48.8 and § 48.9 of the Operational Hive-down Agreement.

Reference is made to the explanations of § 48 of the Operational Hive-down Agreement in section C.V.12.

m) General rights and obligations of KGaA (§ 13)

§ 13 sets out general principles for the continued operation of the Leased Operation by KGaA.

The legal status of KGaA as a lessee is governed by § 13.1. KGaA shall manage the Leased Operation as the lessee from the Legal Effective Date in its own name and for its own account. This also includes, in particular, that all products from the Leased Operation are at KGaA's free disposition.

§ 13.2 stipulates that KGaA shall manage and operate the Leased Operation with the due diligence of a responsible and prudent manager and is to comply with and heed all statutory requirements for the operation. Insofar as the Leased Operation is impaired by third parties and claims are therefore asserted against HC OpCo, KGaA as the lessee must indemnify HC OpCo for these claims. The provision takes account of the fact that KGaA as the lessee during the leaseback phase is responsible for the operational management of the leased operation.

Pursuant to § 13.3, KGaA shall be responsible for all measures necessary to ensure the legal obligation to maintain safety and all other obligations associated with the possession of the Leased Operation as regards public traffic. In this regard as well, KGaA is to indemnify HC OpCo for any claims of third parties. § 13.4 defines the obligation of KGaA to pay all public and private charges, duties and contributions during the term of the Business Lease.

§ 13.5 determines that shareholder rights according to which, pursuant to § 7.1 and § 7.2 of the Operational Hive-down Agreement, financial assets are transferred from KGaA to HC OpCo (and also remaining with the OpCo during the leaseback) are exercised by HC OpCo upon instruction from KGaA.

HC OpCo's status as lessor is ensured in § 13.6, in that the sublease is admissible only with its prior written consent.

n) Maintenance and repair, alterations (§ 14)

According to § 14.1, KGaA is obliged to maintain the Leased Items and to bear the corresponding costs.

In order to ensure proper and effective management of the operation by KGaA, KGaA may carry out certain measures (changes, closures, etc.) to the Leased Items in accordance with § 14.2 as well as dispose of the Leased Items in accordance with § 14.3.

Corresponding to the powers of KGaA in § 14.2 and § 14.3, in order to protect HC OpCo, § 14.4 assigns a requirement for HC OpCo to consent to measures of material economic significance.

§ 14.5 contains a so-called value adjustment agreement. The stipulation is intended to compensate KGaA and HC OpCo for unscheduled and thus "unfavorable" change in value not taken into account upon concluding the agreement. The prerequisite for the existence of an indemnification claim pursuant to § 14.5 is that a "materiality threshold" as regards the change in value is exceeded. This value threshold is exceeded if (i) according to the applicable provisions in German commercial law, the measurement

of the other accrued liabilities and contingent liabilities shall be corrected in an individual case by at least 100,000.00 Euros or more compared to the respective value on which it was based at the Beginning Of The Lease, and (ii) when netting all value changes as per (i) in a financial year in favor of one of the Parties, a positive balance totaling 2,000,000.00 Euros or more results. The indemnification amount to be paid by the respective Party is, pursuant to § 14.5, based on the amount of the positive balance determined in favor of the respective Party. § 14.5 stipulates furthermore that the corresponding calculation for each lease year should be made by March 31 of the following year.

§ 14.6 clarifies that the special provision of § 17 prevails in respect to changes as regards the Leased IP during the term of the Lease.

o) Investments (§ 15)

§ 15.1 defines the term of investments with reference to the accounting standards of the German Commercial Code (*Handelsgesetzbuch - HGB*) and empowers KGaA in accordance with § 15 to make replacement and expansion investments for the account of HC OpCo during the Business Lease.

The main principles for the implementation of replacement and expansion investments are set forth in § 15.2. Hence, investments shall be made according to the principles of proper management. According to § 15.2, the decision on expansion investments lies, in principle, with KGaA, while, according to § 15.2, major expansion investments require the consent of HC OpCo, for its protection. A major expansion investment would be, for example, the construction of a new production building.

§ 15.3 stipulates that items purchased as part of replacement and expansion investments for account of HC OpCo are part of the Leased Items and are transferred to HC OpCo, and it stipulates a duty of documentation of KGaA for the transfer of ownership, observing the principle of legal certainty.

The scheduled depreciation according to the *HGB* attributable to replacement and expansion investments increases the rent in accordance with § 15.4. The stipulation takes into account the fact that KGaA completes the expansion investments for account of HC OpCo and thus at their expense, although KGaA derives the benefits from these items during the term of the lease. It is thus appropriate that KGaA indemnify HC OpCo for the amount of the corresponding depreciation.

§ 15.5 contains the obligation of both Parties to carry out all actions or declarations necessary for the investments; in order to ensure the direct acquisition of title of ownership of HC OpCo, KGaA is authorized to represent HC OpCo when making investments.

p) Goodwill (§ 16)

§ 16.1 clarifies that any goodwill attributable to the Leased Operation remains in the sole beneficial ownership of HC OpCo during and after the Lease; it will be transferred to KGaA as part of the Leased Item for the duration of the Lease only temporarily for use. This also applies if the goodwill is increased during the Business Lease or replaced by new goodwill. The clarification reflects the basic concept repeatedly confirmed by the case law of the highest courts, according to which the lessor is entitled to an increase in goodwill or intangible assets of the operation during the Business Lease, even if it was the lessee who increased the value during the lease term. This basic concept is intended to apply also in the present case. § 16.2 explicitly stipulates the agreement of the contracting parties that KGaA should not receive reimbursement from HC OpCo after the termination of the Business Lease for any appreciation in the value of the Leased Items, including goodwill. The implementation of the concept also simplifies the unwinding of the Business Lease, which is already created for a relatively short period of time.

q) IP Rights (§ 17)

Analogous to § 16.1, § 17.1 stipulates that HC OpCo shall at all times remain the sole beneficial owner of the entire Leased IP and that such items are deemed transferred solely for use to KGaA as part of the Leased Operation for the term of the lease.

§ 17.2 establishes the comprehensive administration of the IP by KGaA during the Business Lease and standardizes the approval of HC OpCo for certain measures (sale or pledging, encumbrance or surrender). In addition, § 17.2 clarifies in particular that in the event of contradictions between the Healthcare Business Lease and the trust agreement, which, pursuant to § 4.3 b) of the Operational Hive-down Agreement, was concluded with regard to the Healthcare Registered Property Rights (which are also part of the Leased IP) (cf. the comments in C.V.4.b), the provisions of the Healthcare Business Lease Agreement take precedence.

§ 17.3, based on the provisions on the increase in goodwill during the Business Lease, specifies that the IP (Foreground IP) arising or created during the Healthcare Business Lease will be attributed to HC OpCo. In order to prevent conflicts with the provisions in § 15, § 17.3 states that Foreground IP which at the same time fulfills the requirements for a replacement or expansion investment is primarily subject to the provisions of § 15, including the provision relating to an increase in the rent. The essential principles for increasing the rent are also more closely specified in § 17.3.

§ 17.4 governs employee inventions, and § 17.5 deals with newly created trademarks and brands. Both provisions assign sole beneficial ownership in each case to HC OpCo. Incidentally, § 17.4 and § 17.5 also refer to the provisions in § 17.3.

§ 17.6 contains the obligation of KGaA to arrange everything necessary in order to enable HC OpCo to exercise the proprietary rights in the Foreground IP and in the

trademarks and brands named in more detail in § 17.5, corresponding to the provision in § 17.1 and § 17.5.

r) Insurance policies (§ 18)

§ 18 stipulates that KGaA must bear the costs of the insurance coverage required for the inclusion of HC OpCo in the group insurance policy and for the Leased Operation for the duration of the Business Lease (see the explanations in section C.V.4.1)), and also governs further details relating to the scope and maintenance of the insurance coverage. Pursuant to § 18.2, direct insurance policies and pension fund commitments are not covered by the clause; these are subject to the (special) provisions governing pension obligations and time account agreements (§ 21).

s) Warranties and liability (§ 19)

According to § 19, warranty claims and rights of cancellation of KGaA against HC OpCo in relation to the Leased Operation, the Leased Items, and the Transferred Items are excluded to the extent legally permissible. Such a clause is customary when concluding intercompany business lease agreements.

t) Transfer of the employment relationships (§ 20)

§ 20 clarifies that the employment relationships of the Transitioning Healthcare Employees will be retransferred from HC OpCo to KGaA after their transfer as part of the Operational Hive-down upon the Business Lease Agreement becoming effective. KGaA therefore remains the employer of the employees working in the Leased Operation until the termination of the Business Lease. The provision also clarifies that KGaA is held liable by HC OpCo for HC OpCo not being subject to any claims arising from or relating to the employment relationships transferred to KGaA for the duration of the Business Lease and thus provides for an indemnification claim. Furthermore, the provision sets forth an indemnification obligation of HC OpCo for the obligations arising from the employment relationships that are transferred to KGaA. The relevant provisions apply *mutatis mutandis* to the termination of the Business Lease Agreement and the associated transfer of employment relationships from KGaA to HC OpCo.

u) Pension obligations, time account claims and assumption of joint liability (§ 21)

§ 21 primarily specifies the effects of the Business Lease Agreement for the pension obligations and time account agreements, as well as other staff-related obligations. In particular, it is stipulated that HC OpCo will declare assumption of joint liability and the obligation to perform for the pension obligations that are retransferred to KGaA in the course of the Business Lease. It is also intended that protection against insolvency will be provided for these commitments via the CTA of HC OpCo. The same applies to time account agreements. As a result of the assumption of joint liability, the employees affected by the Transitions Contingent On The Lease have an independent

and enforceable claim against the HC OpCo to settle said claims. This obligation to perform that is also declared results in HC OpCo being obligated vis-à-vis KGaA to bear the costs of the obligations referred to above. Claims that are not earned prior to the beginning of the leaseback will also be recorded.

As for external pension commitments, these shall in principle be continued by KGaA during the Business Lease Agreement in the external relationship with external pension providers. At the Lease End, any existing policyholder position of KGaA shall be transferred to the HC OpCo or a position as a member firm of the pension fund (*Kassenfirma*) shall be granted, insofar as the external pension provider agrees. The pension is intended to then be continued via HC OpCo.

In addition, it is stipulated that HC OpCo will also declare assumption of joint liability with the obligation to perform in respect of other personnel-related provisions (in particular, jubilee payments and vacation provisions). To this extent, the above summary on assumption of joint liability as relates to the pension commitments and time account agreements in principle applies accordingly; however, as in the past, other personnel-related provisions are not additionally covered by a CTA.

For secured claims that are still to be accrued, KGaA shall pay compensation to HC OpCo GmbH. This compensation mechanism is governed in Annex 21.3 to the Business Lease Agreement in Section III. (4). Such a compensation for the addition to the provisions occurs, since the addition to provisions is undertaken within the company of the lessor, although the corresponding employees, who earned the additional claims, in fact worked for the lessee.

v) Rent (§ 22)

Pursuant to § 22.1, the rent consists of the reimbursement of the scheduled depreciation incurred by the HC OpCo in accordance with the principles of German commercial law accounting for the Leased Items and interest of 7.0% p.a. on the average equity of the HC OpCo recorded on the commercial balance sheet. The rent is based on the concept of a combination of credit for scheduled depreciation of the Leased Items and interest on the average tied-up equity, which corresponds to a standard remuneration methodology for relationships within a group. In addition, KGaA compensates the expenses relating to the Leased Operation (e.g., additions to the pension provisions, cf. details on this in section E.II.3.u)), which the OpCo bears despite the fact that these expenses are economically attributable to KGaA. § 22.1 also contains, for the purposes of clarification, the following calculation formula for classification of the “equity under German commercial law”: Equity at the beginning of the year plus equity at the end of the year divided by two. Details explaining the calculation of the amount of the rent are already included in section E.I.2.d), which is hereby referenced.

§ 22.2 clarifies that all provisions in the Business Lease Agreement regarding Assumptions Of Joint Liability, assumptions of obligations to perform, and adjustments

of the rent remain unaffected by the obligation of KGaA to pay the rent stipulated in § 22.1.

The rent payment terms and conditions are set forth in § 22.3. KGaA shall pay monthly installments, with final billing being due on March 31 of the following year. § 22.3 also specifies the more detailed procedure for determining the amount of the advance payments.

w) Effective date of the Agreement (§ 23)

§ 23.1 clarifies – with regard to Sec. 294 (2) *AktG* – that the registration in the Commercial Register of HC OpCo is the prerequisite for the effectiveness of the Healthcare Business Lease Agreement (cf. above under section E.I.3.g)). Since the lease by HC OpCo relates to the assets and liabilities transferred to HC OpCo by way of the Operational Hive-down, the Parties will endeavor to make the Healthcare Business Lease Agreement become effective immediately after the Operational Hive-down has become effective. In addition, the Parties agree that the Business Lease Agreement is subject to the condition precedent of the Operational Hive-down becoming effective upon registration in the Commercial Register of KGaA.

Finally, § 23.2 contains a cancellation right for each Party if the Healthcare Business Lease Agreement has not become effective by February 28, 2019. This is intended to provide the opportunity for the dissolution of the Business Lease Agreement in the event of unforeseen delays.

x) Term of contract and termination (§ 24)

§ 24 contains the provisions of the Healthcare Business Lease Agreement regarding the contract term. According to § 24.1, the Healthcare Business Lease Agreement is concluded for an indefinite period and may be terminated ordinarily giving two-month notice as per the end of the month.

§ 24.2 provides each Party the possibility to terminate the Healthcare Business Lease Agreement also without notice and lists, in a non-exhaustive form, reasons for a termination for cause that justify termination by HC OpCo.

y) Consequences of the termination of the Agreement, unwinding (§ 25)

§ 25 governs the termination of the Healthcare Business Lease Agreement and prescribes in § 25.1 that, at the end of the Business Lease, KGaA must transfer the Leased Operation and all Leased Items (back) to HC OpCo. The provision also specifies the terms and conditions of the transfer; upon termination of the Business Lease, HC OpCo resumes operational management.

As for the retransfer of the Leased Operation, § 25.2 and § 25.4 provide the provisions according to which the Leased Operation was transferred or transitioned from HC OpCo to KGaA at the Beginning Of The Lease and refer for this purpose to the corresponding provisions of the Healthcare Business Lease Agreement.

§ 25.3 stipulates that, for the Healthcare Business Lease and the final settlement of the rent, etc., KGaA and HC OpCo must prepare financial accounts as of the effective date and a pro forma balance sheet of the Leased Operation as per the Lease End.

z) Final provisions (§ 26 to § 32)

In § 26, the final provisions include information and disclosure obligations vis-à-vis third parties, as well as arrangements for joint cooperation and mutual information and support of the parties in the context of the transfer of the Leased Items.

§ 27.1 contains a so-called severability clause, according to which the possible invalidity of individual provisions of the Healthcare Business Lease Agreement does not affect the validity of the remaining provisions and the contracting parties undertake to replace incomplete or ineffective provisions with new provisions. § 27.2 governs the procedure in the event that the achievement of the purpose of the agreement is essentially no longer feasible or no longer reasonable with the necessary sustainability and provides that the Parties in such cases seek a solution ensuring that the purpose can be achieved in another way.

§ 27.3 clarifies that the preamble and annexes are integral parts of the Healthcare Business Lease Agreement.

In order to ensure smooth implementation of the Healthcare Business Lease Agreement, § 28 obliges the parties to reciprocal loyalty and § 29 obliges them to carry out all actions that are necessary and expedient in connection with the Healthcare Business Lease Agreement or the lease of the Leased Operation.

§ 30 contains a standard written form clause. § 31 sets forth the allocation of the costs incurred as a result of the Healthcare Business Lease Agreement and assigns these as regards the preparation, notarization, and implementation of the Business Lease Agreement to KGaA. However, HC OpCo bears the costs relating to the shareholders' meeting and the costs incurred for the application and registration of the Business Lease Agreement in the Commercial Register of HC OpCo. § 32.1 clarifies that the Business Lease Agreement is governed by German law. § 32.2 contains a standard agreement on the place of jurisdiction according to which the place of jurisdiction is Darmstadt for all disputes arising from the Business Lease Agreement.

III. Temporary leaseback of the Operating Unit KGaA Life Science hived down to LS OpCo

1. Participating entities

The leaseback of the Operating Unit KGaA Life Science to KGaA hived down to LS OpCo (*Life Science Business Lease*) is leased back by way of a Business Lease Agreement pursuant to Sec. 292 (1) (3) Var. 1 *AktG* between KGaA and LS OpCo.

a) LS OpCo as the lessor

LS OpCo acts as a lessor under the Life Science Business Lease Agreement. With regard to the description of LS OpCo, reference is made to the above explanations in section B.II.2.

b) KGaA as the lessee

LS OpCo acts as a lessor under the Life Science Business Lease Agreement. With regard to the presentation of KGaA, reference is made to the statements in section B.I.

2. Economic reasoning, legal implementation, and consequences of the Life Science Business Lease

The Life Science Business Lease Agreement is directly related to and is executed simultaneously with the conclusion of the Business Lease Agreements for the Operating Units KGaA Healthcare (cf. section E.II) and KGaA Performance Materials (cf. section E.IV). The economic reasoning, the procedure for concluding the agreements and the consequences of the Business Lease are the same for all three Business Lease Agreements and were therefore presented in summary in section E.I to avoid repetition and enhance readability. Reference is made to these statements.

3. Explanation of the main content of the Life Science Business Lease Agreement

The structure and contents of the Life Science Business Lease Agreement largely correspond to those of the Healthcare Business Lease, which has already been explained in detail.

The Life Science Business Lease Agreement is divided into a preamble and six sections.

In the preamble, background information relating to the leaseback and the hive-down measures is explained in an overview. In this context, the entities involved in the measures are also listed and the essence of the Operational Hive-down and the Holding Hive-down is summarized. In addition, the economic reasons for the conclusion of the Life Science Business Lease Agreement are outlined and fundamental concepts of the Life Science Business Lease Agreement are defined.

The preamble is followed by section A. (§ 1 and § 2), which contains general provisions regarding the Leased Operation, the Legal Effective Date, and the Beginning Of The Lease. Section B. then describes the individual items and specifies in detail those that LS OpCo leases to KGaA (§ 3 to § 12). Section C. (§ 13 to § 19) discusses the legal status of KGaA. It specifies, *inter alia*, its rights and obligations with regard to the maintenance and modification of the leased items, as well as the investments, goodwill, IP, and warranty and liability. Section D. (§ 20 and § 21) discusses provisions on the transfer of employment relationships and pension obligations. Section E. (§ 22 to § 25) sets forth the consideration to be paid by KGaA and the term of the

agreement, including the options and consequences of termination of the agreement. The final provisions in section F. (§ 26 to § 32) include agreements on the notification of third parties and the cooperation of the Parties, as well as a severability clause, agreement on the jurisdiction and applicable law, and bearing of the costs.

In the following presentation and explanation of the Life Science Business Lease Agreement, the terms defined in the Life Science Business Lease Agreement are used. Sections below that do not specify a law or act are those of the Life Science Business Lease Agreement.

The provisions of the Life Science Business Lease Agreement have the following essential content:

a) Leased Operation (§ 1)

§ 1.1 contains the key provisions of the Life Science Business Lease Agreement according to which LS OpCo leases the entire operation of its company in accordance with the Business Lease Agreement to KGaA for the purpose of operating the business in its own name and for its own account (Sec. 292 (1) (3) *AktG mutatis mutandis*). It is also clarified that the provisions of Sec. 581 et seq. *BGB* apply, unless the Life Science Business Lease Agreement specifies otherwise.

The domination and profit and loss transfer agreement existing between LS OpCo and KGaA (see also the explanations in sections B.II.2 and C.IV.4) remains unaffected as set forth in § 1.2 of the Life Science Business Lease Agreement.

b) Legal Effective Date, Beginning Of The Lease (§ 2)

§ 2 states that, in accordance with Sec. 294 (2) *AktG*, the Life Science Business Lease Agreement will become effective upon registration in the Commercial Register of LS OpCo (see E.I.3.g) above for the effective date). In addition, § 2 specifies that the lease shall have a retroactive economic effect as of January 1, 2018, 0:00 hours. That means that, for commercial balance sheet purposes, the Life Science Business Lease Agreement will have retroactive economic effect as of January 1, 2018, 0:00 hours, and that LS OpCo and KGaA will act economically as if the operation had already been transferred to the respective OpCo on January 1, 2018, 0:00 hours. Pursuant to § 2, this applies in particular to the payment of the rent and the enjoyment of the benefits from the Leased Operation. The retroactive economic effect of the Life Science Business Lease Agreement has been reconciled with the Economic Effective Date of the Operational Hive-down and the Holding Hive-down (see also sections C.V.3 and D.VI.3).

c) Description of the Leased Items, general principles, granting possession (§ 3)

In § 3.1 the Leased Item is described in general terms. The description refers in general to § 15 to § 26 and § 48 to § 51 of the Operational Hive-down Agreement. The

subject of the Life Science Business Lease, and thus the Leased Operation in terms of § 1.1, is generally the Operating Unit KGaA Life Science hived down to LS OpCo, including the related items and legal relationships of the assets and liabilities required to manage the Leased Operation which were transferred from KGaA to LS OpCo in the scope of the Operational Hive-down and/or which were described or referred to in § 3 to § 14 and in § 48 to § 51. For this reason, in the further course of the Life Science Business Lease Agreement, for the specific description of the Leased or Transferred Items reference is made in principle to the respective provisions and annexes of the Operational Hive-down Agreement to describe the Operating Unit KGaA Life Science. § 3.1 also clarifies that certain asset components are excluded from the lease in technical terms, in particular because they are to be sold and transferred to KGaA with effect from the Beginning Of The Lease (this applies, e.g., to the receivables described in § 6.1 s. 1 or the inventories described in § 7). § 3.1 and the other provisions of the agreement therefore differentiate conceptually between “Leased Items” and “Transferred Items.” Upon termination of the Business Lease, the stock that then exists of the “Transferred Items” will be resold or retransferred. Apart from that, § 3.1 determines that the receivables and liabilities to employees assigned to the Leased Operation are subject to the special provisions of § 20 and § 21.

§ 3.2 stipulates that the Leased Items recognizable in the balance sheet and the Transferred Items recognizable in the balance sheet within the scope of the Lease are included in the Hive-down Balance Sheet of the Operating Unit KGaA Life Science as of January 1, 2018, 0:00 hours, which is derived from KGaA’s audited closing balance sheet as of December 31, 2017, 24:00 hours, and attached to the Operational Hive-down Agreement as Annex 15.3. In order to record all relevant assets, § 3.2 also clarifies that – subject to special provisions in the Life Science Business Lease Agreement and unless exempted from any lease or transfer – LS OpCo’s assets that are not required to be or cannot be recorded in the balance sheet, or items which are actually not recorded in the balance sheet are also subject to the lease or transfer. § 3.3 contains a so-called surrogation clause. Through this, the treatment of changes in the portfolio of the assets affected by the Life Science Business Lease during the period between the Beginning Of The Lease and the Legal Effective Date is governed. This takes into account the fact that the assets covered by the Life Science Business Lease are not static assets, but assets that change in the course of ongoing business operations. § 3.3 stipulates in this context that the additions and disposals of Leased Items and Transferred Items (including surrogates in rem or under the law of obligations for a Leased Item) in the period between the Beginning Of The Lease and the Legal Effective Date of the Life Science Business Lease are taken into account in the lease in accordance with the provisions detailed in § 3.3. A specification of the scope of the assets and liabilities to be taken into account in accordance with this provision is provided in § 3.3 (a) and (b). According to § 3.3 (a), LS OpCo leases the Asset And Liability Items attributable to the Leased Operation in the broadest sense which are added during the period from the Beginning Of The Lease to the Legal Effective Date or were created during said period and still exist at the Legal Effective Date. Conversely, § 3.3 (b) clearly specifies that the Asset And Liability Items attributable to the Leased

Operation in the broadest sense which were terminated, sold, or otherwise transferred during the period from the Beginning Of The Lease to the Legal Effective Date or that simply no longer exist on the Legal Effective Date, will not be leased to KGaA. However, instead, they shall be superseded by the surrogates in rem or under the law of obligations existing at the Legal Effective Date pursuant to § 3.3 (b).

§ 3.4 governs the actual transfer of the Leased Items and the Transferred Items to KGaA on the Legal Effective Date and stipulates that LS OpCo is obliged to grant KGaA possession or physical control over these items on the Legal Effective Date and to ensure that KGaA earns the benefits from the Leased Items in its own name and for its own account.

§ 3.5 stipulates that LS OpCo acts in accordance with the instructions of KGaA with regard to the Leased Items, the lease of which to KGaA is not permitted or otherwise possible, and will internally treat KGaA as if it were the lessee of the items.

d) Intangible assets and know-how (§ 4)

§ 4.1 defines the Leased IP with reference to § 16.2 and § 17 of the Operational Hive-down Agreement. This includes all industrial property rights and the transferred know-how transferred to LS OpCo as part of the Operational Hive-down Agreement.

The lease of the Leased IP will be carried out in accordance with the licensing stipulations governed in § 4.2.

Trustor rights and obligations arising between KGaA and LS OpCo within the meaning of § 16.3 (b) of the trust agreement entered into in respect of registered property rights in the Operational Hive-down Agreement are assigned to KGaA by § 4.3 for the duration of the Business Lease since KGaA will also manage the business of LS OpCo in this regard during the Business Lease.

Furthermore, in § 4.4, the obligation of LS OpCo to reimburse the costs and indemnify KGaA in accordance with § 16.6 and § 16.7 of the Operational Hive-down Agreement is suspended for the term of the Business Lease in respect of the fees payable to third parties for intangible assets or rights of use and, in accordance with § 4.5, the rights of use transferred under the Operational Hive-down Agreement transfer back to KGaA for the duration of the Business Lease.

§ 4.6. governs the treatment of LS OpCo's rights of use in Shared IP Life Science and know-how that cannot be exclusively attributed to the Life Science Business Sector that were granted to LS OpCo on the basis of the Operational Hive-down Agreement. § 4.6. prescribes that, for the duration of the Business Lease, KGaA exercises these rights of use in its own right.

Reference is made to the explanations of § 16 and § 17 of the Operational Hive-down Agreement in sections C.V.4.b) and C.V.4.c).

e) Tangible Assets (§ 5)

According to § 5.1, LS OpCo leases to KGaA all tangible assets that are included in § 18.1 to § 18.3 of the Operational Hive-down Agreement and in Annex 18.1 to the Operational Hive-down Agreement, including low-value assets. The lease or transfer of the physical control of the tangible assets for use shall be independent of possible third-party retention of title or transfer as collateral.

The rights arising from intercompany service agreements between KGaA and LS OpCo within the meaning of § 18.4 of the Operational Hive-down Agreement governing the rights of use of mixed-use tangible assets are specified in § 5.2 for the duration of KGaA's Business Lease, since such service agreements will have no relevance for LS OpCo as lessor during the leaseback phase.

Reference is made to the explanations of § 18 of the Operational Hive-down Agreement in section C.V.4.d).

f) Receivables (§ 6)

§ 6.1 governs the transfer of the receivables at the Beginning Of The Lease assigned to the Leased Operation and transferred by way of sale and assignment in the course of the Operational Hive-down by LS OpCo to KGaA, and refers to § 19 and Annex 19.2 of the Operational Hive-down Agreement for further specification of the receivables to be sold. § 6.1 also contains, as relates to the sale and transfer of the receivables by LS OpCo, the declaration of acceptance by KGaA. Pursuant to § 6.1, the sale shall become effective with retroactive economic effect as of the Beginning Of The Lease (January 1, 2018, 0:00 hours) and at the carrying amounts stated under German commercial law in the Life Science Hive-down Balance Sheet. The purchase price falls due pursuant to § 6.1 within four weeks of the Legal Effective Date. The sale of the current assets or the lessor's receivables to the lessee is a standard provision. It is intended to take account of the fact that the current assets are continuously turned over and renewed during the period of the Business Lease in the course of continuing the Leased Operation and thus a transfer and "enjoyment of benefits" for a limited time thus does not make sense.

Insofar as an assignment of the sold receivables is not feasible or permissible, the contracting parties shall position themselves internally, in accordance with § 6.2, as if the assignment had been effective. According to § 6.2, LS OpCo shall, in this case, provide KGaA with a direct debit authorization for the respective receivable. § 6.2 refers to the provisions in § 1.4 in the Operational Hive-down Agreement and to the trust agreement described there in more detail to specify the provisions that are to apply in the internal relationship between the Parties (see the explanations in C.V.2).

After the termination of the Life Science Business Lease Agreement, KGaA is entitled, according to § 6.3 (and also obligated at the request of LS OpCo) to (re-)sell to LS OpCo the receivables attributable to the lessee and to the Leased Operation, according to which the carrying amount of the receivables at Lease End, which is de-

terminated according to the same principles as the sale according to § 6.1, is adjusted to determine the purchase price.

§ 6.4 governs the settlement of prepaid expenses that may exist at the Beginning Of The Lease or Lease End in the context of the respective payment of the purchase price in accordance with § 6.1 and § 6.3.

According to § 6.5, § 6.1 does not apply to receivables and payables due to employees, as the special provisions on employment relationships and pension obligations pursuant to § 20 and § 21 apply to those.

Reference is made to the explanations in § 19 of the Operational Hive-down Agreement in section C.V.4.e).

g) Inventories (§ 7)

§ 7.1 governs the sale of the inventories attributable to the Leased Operation from LS OpCo to KGaA and refers to § 20 and Annex 20.3 of the Operational Hive-down Agreement for further specification of the inventories to be sold. The reason for the sale rather than the lease of inventories is that – as in the case of receivables – the current assets are continuously carried over during the period of the Business Lease, and thus a lease for a limited time does not make sense. The sale takes place on the Legal Effective Date and with economic effect as of the Beginning Of The Lease. Accordingly, the Parties, pursuant to § 7.1, deem themselves to be in such position as if the transfer of the inventories had taken place at the Beginning Of The Lease (January 1, 2018, 0:00 hours). § 7.1 also specifies the purchase price amount and due date (four weeks after the Legal Effective Date) and contains the standard stipulation for Business Lease Agreements that the sale will be at carrying amounts under German commercial law that result from the sale and assignment of the receivables attributable to the Leased Operation from the Life Science Hive-down Balance Sheet (see explanations in section E.II.3.f)).

It is clarified in § 7.2 that, upon sale of the inventories, title of ownership, possession, as well as all other rights in the items sold pursuant to § 7.1, such as entitlement rights and surrender claims, transition to KGaA at the Legal Effective Date as required.

In order to also record inventories held by third parties, LS OpCo assigns any and all surrender claims to KGaA in § 7.3.

§ 7.4 obliges the Parties to carry out any further actions and declarations necessary for the transfer of ownership or granting of possession.

In case of the termination of the Life Science Business Lease Agreement, § 7.5 stipulates the right and, in the case of a request by LS OpCo, KGaA's obligation to sell back any inventories that still exist at Lease End and are attributable to the Leased Operation. According to § 7.5, the provisions of § 7.1 to § 7.4 shall apply to the resale, provided that the carrying amount applicable at the Lease End is taken into account (whereby this carrying amount is to be determined according to the same prin-

ciples as for the original sale pursuant to § 7.1). Furthermore, the due date of the purchase price is set at four weeks after the termination date, and LS OpCo has the right to limit the inventories to be transferred to KGaA upon termination of the Business Lease to the amount required to continue the previously Leased Operation. For clarification, § 7.5 at the end stipulates that KGaA may freely dispose of its remaining assets at its sole discretion.

Finally, § 7.6 excludes warranty claims both for the sale of the inventories at the Beginning Of The Lease and for the sale of the inventories at the Lease End and clarifies that the inventories to be sold are sold in each case in the condition in which they are at the time of sale. Such a clause is common in intercompany arrangements.

Reference is made to the explanations of § 20 of the Operational Hive-down Agreement in section C.V.4.f).

h) Liabilities and provisions (§ 8)

According to § 8.1, KGaA, in principle, assumes all liabilities and/or contingent liabilities and uncertain liabilities of LS OpCo subject to § 21 of the Operational Hive-down Agreement and its Annex 21.4.a and Annex 21.4.b and receives compensation (the so-called negative purchase price) as defined in § 8.3, which, in accordance with § 8.3, is based on the commercial-law carrying amounts of these items in the Life Science Hive-down Balance Sheet and due within four weeks of the Legal Effective Date.

§ 8.2 sets forth in respect to certain liabilities and/or contingent liabilities that they, as an exception, remain with LS OpCo. § 8.2 governs assumption of joint liability and the obligation to perform by LS OpCo (with economic effect as of the Beginning Of The Lease) described in more detail in § 8.2 in case of a transfer of the legal basis of the liability to KGaA.

§ 8.4 prescribes the right (and obligation, upon request of LS OpCo) of KGaA to sell to LS OpCo any liabilities that exist upon termination of the Life Science Business Lease Agreement at Lease End and that are attributable to the Leased Operation. In accordance with § 8.4, the provisions of § 8.1 to § 8.2 apply *mutatis mutandis* to the resale; furthermore, the negative purchase price to be paid by KGaA to LS OpCo must be based on the carrying amount applicable at Lease End determined in accordance with the same principles that apply to the sale pursuant to § 8.3, and is due within four weeks of Lease End.

§ 8.5 sets forth the settlement of any deferred income that may exist at the Beginning Of The Lease or the Lease End in the context of the respective payment of the negative purchase price pursuant to § 8.3 and § 8.4.

For liabilities due to employees, § 8.6 refers to the special provisions in § 20 and § 21.

Reference is made to the explanations of § 21 of the Operational Hive-down Agreement in section C.V.4.g).

i) Entering into contracts and contract offers (§ 9)

According to § 9.1, KGaA assumes all Transferred Contractual Relationships Life Science attributable to the Leased Operation in the course of the Business Lease by way of assumption of the contract with debt-discharging effect. In principle, this includes all contractual relationships described in more detail in § 22 of the Operational Hive-down Agreement and in particular in Annex 22.2. With regard to the effective date of the assumption of the contract, the principle of retroactive economic effect also applies as of January 1, 2018, 0:00 hours, whereby § 9.1 clarifies that the contracts are assumed in terms of form and content as they exist at the Legal Effective Date. As for the retransfer, § 9.1 refers to § 9.5 of the Life Science Business Lease Agreement.

According to § 9.2, contractual relationships, particularly partnership agreements, domination and profit and loss transfer agreements, or agreements about silent partnerships, are not attributable to the Leased Operation and shall not be leased.

Since the contracts, unlike by way of partial universal succession (see the explanations in section C.IV.2.a)) in the Operational Hive-down, are assumed by KGaA in the course of the leaseback by way of singular succession, the consent of the respective contractual party is required for the transfer of the respective contract.

§ 9.3 therefore clearly states that, in the event third-party consent is required for the transfer of the contractual relationships, the Parties will make their best efforts to obtain such consent.

With regard to contracts that cannot be assumed with debt-discharging effect, or if this cannot be done in a timely fashion, § 9.4 stipulates a trust agreement according to which the Parties, in any case internally, act in fact as if the assumption took place in an effective and timely manner. The specific legal structure of the trust agreement is described in more detail in § 9.4.

Upon termination of the Life Science Business Lease Agreement, according to § 9.5, LS OpCo again assumes the contractual relationships then existing and attributable to the Leased Operation from KGaA with economic effect as of the Lease End. These contractual relationships are also transferred by way of singular succession, so that § 9.5 stipulates the corresponding validity of § 9.3 and 9.4 for the retransfer of the contractual relationships from KGaA to the LS OpCo upon termination of the Life Science Business Lease.

§ 9.6 contains provisions to simplify the processing of the Life Science Business Lease and stipulates in particular that the Parties shall endeavor, even after obtaining the consent of the contractual partner, to transfer the contract to KGaA on leaseback, to obtain the consent to the (re-)transfer to LS OpCo after the termination of the Business Lease.

As a result of the leaseback, the rights arising from a trust agreement that may be concluded between KGaA and LS OpCo in accordance with § 49.2 of the Operational

Hive-down Agreement are of no relevance to LS OpCo during the term of the Life Science Business Lease (see also the explanations in sections C.V.4.h) and C.V.13. § 9.7 therefore clarifies that, for the duration of the Life Science Business Lease, KGaA is entitled to the trustor rights (of LS OpCo) from any trust agreement that may exist.

Reference is made to the explanations of § 22 of the Operational Hive-down Agreement in section C.V.4.h).

j) Litigation and legal proceedings (§ 10)

The litigation and legal proceedings related to Leased Items or Transferred Items in accordance with the Business Lease Agreement and described in more detail in § 24.1 to § 24.4 of the Operational Hive-down Agreement and in particular in Annex 24.3 of the Operational Hive-down Agreement shall be retransferred by LS OpCo to KGaA in accordance with § 10.1 and § 10.5 for the duration of the Business Lease.

In order to ensure the effective enforcement of the respective rights after the transfer, according to § 10.2, the contracting and consulting relationships with third parties related to these litigation and legal proceedings are also transferred.

Insofar as there are additional requirements for the transfer (such as the consent of persons involved in the process), the Parties will work towards their fulfillment in accordance with § 10.3. If no change of party takes place, § 10.4 clarifies that LS OpCo will continue the corresponding legal proceedings as the litigant on behalf of KGaA. § 10.4 contains special provisions which apply in the internal relationship between LS OpCo and KGaA in the event of litigation involving LS OpCo and, in particular, stipulates that KGaA is internally responsible for the ongoing litigation.

§ 10.5 specifies the procedure in respect of litigation and legal proceedings upon termination of the Life Science Business Lease. According to § 10.5, KGaA undertakes to (re-)transfer to LS OpCo all litigation and legal proceedings newly attributable to the Operating Unit KGaA Life Science and retransferred to KGaA pursuant to § 10.1 and newly established until termination of the Life Science Business Lease Agreement. According to § 10.5, the provisions in § 10.2 to § 10.4 apply to this process *mutatis mutandis*.

Reference is made to the explanations on § 24 of the Operational Hive-down Agreement in section C.V.4.j).

k) Memberships (§ 11)

Pursuant to § 11.1, LS OpCo retransfers any memberships transferred to LS OpCo to KGaA in accordance with the provision in § 25 of the Operational Hive-down Agreement.

Memberships within the meaning of § 25 of the Operational Hive-down Agreement which have not transitioned or been transferred or only partially transitioned or been

transferred to LS OpCo, will remain with KGaA for the duration of the Business Lease in full or to the extent of the affected portion, pursuant to § 11.2, and will only be transferred to LS OpCo upon termination of the Business Lease. If a transfer of such memberships should not be feasible, KGaA shall support LS OpCo in re-applying for these memberships, assuming that the OpCo's membership is required and desired.

Reference is made to the explanations of § 25 of the Operational Hive-down Agreement in section C.V.4.k).

l) Permits and approvals required under public law, operator's responsibility (§ 12)

§ 12.1 refers to the trust agreement entered into by the contractual parties in the scope of the Operational Hive-down as regards the permits affecting the operations of LS OpCo and specified in Annex 48.2 of the Operational Hive-down Agreement in the meaning of § 1.4 of the Operational Hive-down. § 12.1 determines that the trustor rights and obligations arising from this trust agreement are assigned to KGaA during the term of the Life Science Business Lease Agreement. This is logical since the trust agreement has no relevance for LS OpCo during the phase of the Life Science Business Lease.

§ 12.2 specifies that physical control of all facilities, land, and equipment of the Leased Operation shall remain with KGaA during the Business Lease, so that KGaA is also the owner of the plant-related permits and exercises unrestricted physical control and right of disposition in the Leased Plants in the prior scope. Consistent with the operator position of KGaA during the Business Lease, § 12.2 clarifies that KGaA is responsible for the associated compliance with the relevant regulations and requirements and in particular continues to be the sole point of contact towards the competent authorities. According to § 12.2, KGaA also retains legal ownership of all product-related approvals pursuant to § 48.7 of the Operational Hive-down Agreement during the period of the Business Lease; for this it continues to fulfill all obligations under product law and to ensure quality management.

Under § 12.3, re-applications for permits after the termination of the Business Lease shall be based on the provisions in § 48.8 and § 48.9 of the Operational Hive-down Agreement.

Reference is made to the explanations of § 48 of the Operational Hive-down Agreement in section C.V.12.

m) General rights and obligations of KGaA (§ 13)

§ 13 sets out general principles for the continued operation of the Leased Operation by KGaA.

The legal status of KGaA as a lessee is governed by § 13.1. KGaA shall manage the Leased Operation as the lessee from the Legal Effective Date in its own name and for

its own account. This also includes, in particular, that all products from the Leased Operation are at KGaA's free disposition.

§ 13.2 stipulates that KGaA shall manage and operate the Leased Operation with the due diligence of a responsible and prudent manager and is to comply with and heed all statutory requirements for the operation. Insofar as the Leased Operation is impaired by third parties and claims are therefore be asserted against LS OpCo, KGaA as the lessee must indemnify LS OpCo for these claims. The provision takes account of the fact that KGaA as the lessee during the leaseback phase is responsible for the operational management of the operations.

Pursuant to § 13.3, KGaA shall be responsible for all measures necessary to ensure the legal obligation to maintain safety and all other obligations associated with the possession of the Leased Operation as regards public traffic. In this regard as well, KGaA is to indemnify LS OpCo for any claims of third parties. § 13.4 defines the obligation of KGaA to pay all public and private charges, duties and contributions during the term of the Business Lease.

LS OpCo's status as lessor is ensured in § 13.5, in that the sublease is admissible only with its prior written consent.

n) Maintenance and repair, alterations (§ 14)

According to § 14.1, KGaA is obliged to maintain the Leased Items and to bear the corresponding costs.

In order to ensure proper and effective management of the operation by KGaA, KGaA may carry out certain measures (changes, closures, etc.) to the Leased Items in accordance with § 14.2 as well as dispose of the Leased Items in accordance with § 14.3.

Corresponding to the powers of KGaA in § 14.2 and § 14.3, in order to protect LS OpCo, § 14.4 assigns a requirement for LS OpCo to consent to measures of material economic significance.

§ 14.5 contains a so-called value adjustment agreement. The stipulation is intended to compensate KGaA and LS OpCo for unscheduled and thus "unfavorable" change in value not taken into account upon concluding the agreement. The prerequisite for the existence of an indemnification claim pursuant to § 14.5 is that a "materiality threshold" as regards the change in value is exceeded. This value threshold is exceeded if (i) according to the applicable provisions in German commercial law, the measurement of the other accrued liabilities and contingent liabilities shall be corrected in an individual case by at least 100,000.00 Euros or more compared to the respective value on which it was based at the Beginning Of The Lease, and (ii) when netting all value changes as per (i) in a financial year in favor of one of the Parties, a positive balance totaling 2,000,000.00 Euros or more results. The indemnification amount to be paid by the respective Party is, pursuant to § 14.5, based on the amount of the positive bal-

ance determined in favor of the respective Party. § 14.5 stipulates furthermore that the corresponding calculation for each lease year should be made by March 31 of the following year.

§ 14.6 clarifies that the special provision of § 17 prevails in respect to changes as regards the Leased IP during the term of the Lease.

o) Investments (§ 15)

§ 15.1 defines the term of investments with reference to the accounting standards of the German Commercial Code and empowers KGaA in accordance with § 15 to make replacement and expansion investments for the account of LS OpCo during the Business Lease.

The main principles for the implementation of replacement and expansion investments are set forth in § 15.2. Hence, investments shall be made according to the principles of proper management. According to § 15.2, the decision on expansion investments lies, in principle, with KGaA, while, according to § 15.2, major expansion investments require the consent of LS OpCo, for its protection. A major expansion investment would be, for example, the construction of a new production building.

§ 15.3 stipulates that items purchased as part of replacement and expansion investments for account of LS OpCo are part of the Leased Items and are transferred to LS OpCo, and it stipulates a duty of documentation of KGaA for the transfer of ownership, observing the principle of legal certainty.

The scheduled depreciation according to the *HGB* attributable to replacement and expansion investments increases the rent in accordance with § 15.4. The stipulation takes into account the fact that KGaA completes the expansion investments for account of LS OpCo and thus at their expense, although KGaA derives the benefits from these items during the term of the lease. It is thus appropriate that KGaA indemnify LS OpCo for the amount of the corresponding depreciation.

§ 15.5 contains the obligation of both Parties to carry out all actions or declarations necessary for the investments; in order to ensure the direct acquisition of title of ownership of LS OpCo, KGaA is authorized to represent LS OpCo when making investments.

p) Goodwill (§ 16)

§ 16.1 clarifies that any goodwill attributable to the Leased Operation remains in the sole beneficial ownership of LS OpCo during and after the Lease; it will be transferred to KGaA as part of the Leased Item for the duration of the Lease only temporarily for use. This also applies if the goodwill is increased during the Business Lease or replaced by new goodwill. The clarification reflects the basic concept repeatedly confirmed by the case law of the highest courts, according to which the lessor is entitled to an increase in goodwill or intangible assets of the operation during the Busi-

ness Lease, even if it was the lessee who increased the value during the lease term. This basic concept should also apply in the present case. § 16.2 explicitly stipulates the agreement of the contracting parties that KGaA should not receive reimbursement from LS OpCo after the termination of the Business Lease for any appreciation in the value of the Leased Items, including goodwill. The implementation of the concept also simplifies the unwinding of the Business Lease, which is already created for a relatively short period of time.

q) IP Rights (§ 17)

Analogous to § 16.1, § 17.1 stipulates that LS OpCo shall at all times remain the sole beneficial owner of the entire Leased IP and that such items are deemed transferred solely for use to KGaA as part of the Leased Operation for the term of the lease.

§ 17.2 establishes the comprehensive administration of the IP by KGaA during the Business Lease and standardizes the approval of LS OpCo for certain measures (sale or pledging, encumbrance or surrender). In addition, § 17.2 clarifies in particular that in the event of contradictions between the Life Science Business Lease and the trust agreement, which, pursuant to § 16.3 b) of the Operational Hive-down Agreement, was concluded with regard to the Life Science Registered Property Rights (which are also part of the Leased IP) (cf. the comments in C.V.4.b), the provisions of the Life Science Business Lease Agreement take precedence.

§ 17.3, based on the provisions on the increase in goodwill during the Business Lease, specifies that the IP (Foreground IP) arising or created during the Life Science Business Lease will be attributed to LS OpCo. In order to prevent conflicts with the provisions in § 15, § 17.3 states that Foreground IP which at the same time fulfills the requirements for a replacement or expansion investment is primarily subject to the provisions of § 15, including the provision relating to an increase in the rent. The essential principles for increasing the rent are also more closely specified in § 17.3.

§ 17.4 governs employee inventions, and § 17.5 deals with newly created trademarks and brands. Both provisions assign sole beneficial ownership in each case to LS OpCo. Incidentally, § 17.4 and § 17.5 also refer to the provisions in § 17.3.

§ 17.6 contains the obligation of KGaA to arrange everything necessary in order to enable LS OpCo to exercise the proprietary rights in the Foreground IP and in the trademarks and brands named in more detail in § 17.5, corresponding to the provision in § 17.1 and § 17.5.

r) Insurance policies (§ 18)

§ 18 stipulates that KGaA must bear the costs of the insurance coverage required for the inclusion of LS OpCo in the group insurance policy and for the Leased Operation for the duration of the Business Lease (see the explanations in section C.V.4.1)), and also governs further details relating to the scope and maintenance of the insurance coverage. Pursuant to § 18.2, direct insurance policies and pension fund commitments

are not covered by the clause; these are subject to the (special) provisions governing pension obligations and time account agreements (§ 21).

s) Warranties and liability (§ 19)

According to § 19, warranty claims and rights of cancellation of KGaA against LS OpCo in relation to the Leased Operation, the Leased Items, and the Transferred Items are excluded to the extent legally permissible. Such a clause is customary when concluding intercompany business lease agreements.

t) Transfer of the employment relationships (§ 20)

§ 20 clarifies that the employment relationships of the Transitioning Life Science Employees will be retransferred from LS OpCo to KGaA after their transfer as part of the Operational Hive-down upon the Business Lease Agreement becoming effective. KGaA therefore remains the employer of the employees working in the Leased Operation until the termination of the Business Lease. The provision also clarifies that KGaA is held liable by LS OpCo for LS OpCo not being subject to any claims arising from or relating to the employment relationships transferred to KGaA for the duration of the Business Lease and thus provides for an indemnification claim. Furthermore, the provision sets forth an indemnification obligation of LS OpCo for the obligations arising from the employment relationships that are transferred to KGaA. The relevant provisions apply *mutatis mutandis* to the termination of the Business Lease Agreement and the associated transfer of employment relationships from KGaA to LS OpCo.

u) Pension obligations, time account claims and assumption of joint liability (§ 21)

§ 21 primarily specifies the effects of the Business Lease Agreement for the pension obligations and time account agreements, as well as other staff-related obligations. In particular, it is stipulated that LS OpCo will declare assumption of joint liability and the obligation to perform for the pension obligations that are retransferred to KGaA in the course of the Business Lease. It is also intended that protection against insolvency will be provided for these commitments via the CTA of LS OpCo. The same applies to time account agreements. As a result of the assumption of joint liability, the employees affected by the Transitions Contingent On The Lease have an independent and enforceable claim against the LS OpCo to settle said claims. This obligation to perform that is also declared results in LS OpCo being obligated vis-à-vis KGaA to bear the costs of the obligations referred to above. Claims that are not earned prior to the beginning of the leaseback will also be recorded.

As for external pension commitments, these shall in principle be continued by KGaA during the Business Lease Agreement in the external relationship with external pension providers. At the Lease End, any existing policyholder position of KGaA shall be transferred to the LS OpCo or a position as a member firm of the pension fund (*Kas-*

senfirma) shall be granted, insofar as the external pension provider agrees. The pension is intended to then be continued via LS OpCo.

In addition, it is stipulated that LS OpCo will also declare assumption of joint liability with the obligation to perform in respect of other personnel-related provisions (in particular, jubilee payments and vacation provisions). To this extent, the above summary on assumption of joint liability as relates to the pension commitments and time account agreements in principle applies accordingly; however, as in the past, other personnel-related provisions are not additionally covered by the CTA.

For secured claims that are still to be accrued, KGaA shall pay compensation to LS OpCo GmbH. This compensation mechanism is governed in Annex 21.3 to the Business Lease Agreement in Section III. (4). Such a compensation for the addition to the provisions occurs, since the addition to provisions is undertaken within the company of the lessor, although the corresponding employees, who earned the additional claims, in fact worked for the lessee.

v) Rent (§ 22)

Pursuant to § 22.1, the rent consists of the reimbursement of the scheduled depreciation incurred by LS OpCo in accordance with the principles of German commercial law accounting for the Leased Items and interest of 7.0% p.a. on the average equity of LS OpCo recorded on the commercial balance sheet. The rent is based on the concept of a combination of credit for scheduled depreciation of the Leased Items and interest on the average tied-up equity, which corresponds to a standard remuneration methodology for relationships within a group. In addition, KGaA compensates the expenses relating to the Leased Operation (e.g., additions to the pension provisions, cf. details on this in section E.III.3.u)), which the OpCo bears despite the fact that these expenses are economically attributable to KGaA. § 22.1 also contains, for the purposes of clarification, the following calculation formula for classification of the “equity under German commercial law”: Equity at the beginning of the year plus equity at the end of the year divided by two. Details explaining the calculation of the amount of the rent are already included in section E.I.2.d) which is hereby referenced.

§ 22.2 clarifies that all provisions in the Business Lease Agreement regarding Assumptions Of Joint Liability, assumptions of obligations to perform, and adjustments of the rent remain unaffected by the obligation of KGaA to pay the rent stipulated in § 22.1.

The rent payment terms and conditions are set forth in § 22.3. KGaA shall pay monthly installments, with final billing being due on March 31 of the following year. § 22.3 also specifies the more detailed procedure for determining the amount of the advance payments.

w) Effective date of the Agreement (§ 23)

§ 23.1 clarifies – with regard to Sec. 294 (2) *AktG* – that the registration in the Commercial Register of LS OpCo is the prerequisite for the effectiveness of the Life Science Business Lease Agreement (cf. above under section E.I.3.g)). Since the lease by LS OpCo relates to the assets and liabilities transferred to LS OpCo by way of the Operational Hive-down, the Parties will endeavor to make the Life Science Business Lease Agreement becomes effective immediately after the Operational Hive-down has become effective. In addition, the Parties agree that the Business Lease Agreement is subject to the condition precedent of the Operational Hive-down becoming effective upon registration in the Commercial Register of KGaA.

Finally, § 23.2 contains a cancellation right for each Party if the Healthcare Business Lease Agreement has not become effective by February 28, 2019. This is intended to provide the opportunity for the dissolution of the Business Lease Agreement in the event of unforeseen delays.

x) Term of contract and termination (§ 24)

§ 24 contains the provisions of the Life Science Business Lease Agreement regarding the contract term. According to § 24.1, the Life Science Business Lease Agreement is concluded for an indefinite period and may be ordinarily terminated giving two-month notice as per the end of the month.

§ 24.2 provides each Party the possibility to terminate the Life Science Business Lease Agreement also without notice and lists, in a non-exhaustive form, reasons for a termination for cause that justify termination by LS OpCo.

y) Consequences of the termination of the Agreement, unwinding (§ 25)

§ 25 governs the termination of the Life Science Business Lease Agreement and prescribes in § 25.1 in particular that, at the end of the Business Lease, KGaA must (re)transfer the Leased Operation and all Leased Items to LS OpCo. The provision also specifies the terms and conditions of the transfer; upon termination of the Business Lease, LS OpCo resumes operational management.

As for the retransfer of the Leased Operation, § 25.2 and § 25.4 provide the provisions according to which the Leased Operation was transferred from LS OpCo to KGaA at the Beginning Of The Lease and refer for this purpose to the corresponding provision of the Life Science Business Lease Agreement.

§ 25.3 stipulates that, for the Life Science Business Lease and the final settlement of the rent, etc., KGaA and LS OpCo shall both prepare financial accounts in accordance with the principles of financial statements as of the effective date and a pro forma balance sheet of the Leased Operation as per the Lease End.

z) Final provisions (§ 26 to § 32)

In § 26, the final provisions include information and disclosure obligations vis-à-vis third parties, as well as arrangements for joint cooperation and mutual information and support of the parties in the context of the transfer of the Leased Items.

§ 27.1 contains a so-called severability clause, according to which the possible invalidity of individual provisions of the Healthcare Business Lease Agreement does not affect the validity of the remaining provisions and the contracting parties undertake to replace incomplete or ineffective provisions with new provisions. § 27.2 governs the procedure in the event that the achievement of the purpose of the agreement is essentially no longer feasible or no longer reasonable with the necessary sustainability and provides that the Parties in such cases seek a solution ensuring that the purpose can be achieved in another way.

§ 27.3 clarifies that the preamble and annexes are integral parts of the Life Science Business Lease Agreement.

In order to ensure smooth implementation of the Life Science Business Lease Agreement, § 28 obliges the parties to reciprocal loyalty and § 29 obliges them to carry out all actions that are necessary and expedient in connection with the Life Science Business Lease Agreement or the lease of the Leased Operation.

§ 30 contains a standard written form clause. § 31 sets forth the allocation of the costs incurred as a result of the Life Science Business Lease Agreement and assigns these as regards the preparation, notarization, and implementation of the Life Science Business Lease Agreement to KGaA. However, LS OpCo bears the costs relating to the shareholders' meeting and the costs incurred for the application and registration of the Business Lease Agreement in the Commercial Register of LS OpCo. § 32.1 clarifies that the Business Lease Agreement is governed by German law. § 32.2 contains a standard agreement on the place of jurisdiction according to which the place of jurisdiction is Darmstadt for all disputes arising from the Business Lease Agreement.

IV. Temporary leaseback of the Operating Unit KGaA Performance Materials hived down to PM OpCo

The leaseback of the Operating Unit KGaA Performance Materials hived down to PM OpCo (*Performance Materials Business Lease*, as already mentioned above in A.II.3)) to KGaA is subject to the conclusion of a Business Lease Agreement pursuant to Sec. 292 (1) (3) Var. 1 *AktG* between KGaA and PM OpCo (the *Performance Materials Business Lease Agreement*). The Performance Materials Business Lease Agreement basically contains provisions identical to those of the other two business lease agreements. In addition, it contains only a special provision for the option to partially terminate the Lease prematurely to the extent that it relates to the Performance Materials Distribution and Sales Function (§ 24a of the Performance Materials Business Lease Agreement, see the explanations under E.IV.3.x)).

1. Participating entities

The leaseback of the Operating Unit KGaA Performance Materials to KGaA (as already outlined above under A.II.3)) is subject to the conclusion of a Business Lease Agreement pursuant to Sec. 292 (1) (3) Var. 1 *AktG* between KGaA and PM OpCo.

a) PM OpCo as the lessor

PM OpCo acts as the lessor under the Performance Materials Business Lease Agreement. With regard to the description of PM OpCo, reference is made to the above explanations in section B.II.3.

b) KGaA as the lessee

KGaA acts as the lessee under the Performance Materials Business Lease Agreement. With regard to the presentation of KGaA, reference is made to the statements in section B.I.

2. Economic reasoning, legal implementation, and consequences of the Performance Materials Business Lease Agreement

The Performance Materials Business Lease Agreement is directly related to and executed simultaneously to the conclusion of the Business Lease Agreements for the Operating Units KGaA Healthcare (see section E.) and KGaA Life Science (see section II.3.). The economic reasoning, the procedure for concluding the agreements, and the consequences of the Business Lease Agreement are the same for all three Business Lease Agreements and were therefore presented in summary in section E.I to avoid repetition and enhance readability. Reference is made to these statements. Due to the option of premature termination of the Business Lease to the extent that it relates to the Performance Materials Distribution and Sales Function (§ 24a of the Business Lease Agreement), a decision must be made in case of premature termination whether the legal prerequisites of an enterprise agreement within the meaning of Sec. 292 (1) (3) *AktG* are still met since the Lease in this case might no longer relate to the “entire operation” of PM OpCo. If the status of an enterprise agreement was to lapse, the OpCo would report the termination of the Business Lease as an enterprise agreement in terms of Sec. 292 (1) (3) *AktG* with declaratory effect to the Commercial Register. The existence of the Business Lease Agreement per se would remain unaffected by this.

3. Explanation of the main content of the Performance Materials Business Lease Agreement

The structure and contents of the Performance Materials Business Lease Agreement largely correspond to those of the Healthcare Business Lease Agreement and the Life Science Business Lease Agreement, which has already been explained in detail.

The Performance Materials Business Lease Agreement is divided into a preamble and six sections.

In the preamble, background information relating to the leaseback and the hive-down measures is explained in an overview. In this context, the entities involved in the measures are also listed and the essence of the Operational Hive-down and the Holding Hive-down is summarized. In addition, the economic reasons for the conclusion of the Performance Materials Business Lease Agreement are outlined and fundamental concepts of the Performance Materials Business Lease Agreement are defined.

The preamble is followed by section A. (§ 1 and § 2), which contains general provisions regarding the Leased Operation, the Legal Effective Date, and the Beginning Of The Lease. Section B. then describes the individual items and specifies in detail those that PM OpCo leases to KGaA (§ 3 to § 12). Section C. (§ 13 to § 19) discusses the legal status of KGaA. It specifies, *inter alia*, its rights and obligations with regard to the maintenance and modification of the leased items, as well as the investments, goodwill, IP, and warranty and liability. Section D. (§ 20 and § 21) discusses provisions on the transfer of employment relationships and pension obligations. Section E. (§ 22 to § 25) sets forth the consideration to be paid by KGaA and the term of the agreement, including the options and consequences of premature termination of the agreement. The final provisions in section F. (§ 26 to § 32) include agreements on the notification of third parties and the cooperation of the Parties, as well as a severability clause, agreement on the jurisdiction and applicable law, and bearing of the costs.

Unlike the Healthcare and Life Science Business Lease Agreements, § 24a of the Performance Materials Business Lease Agreement contains a special provision for the Performance Materials Distribution and Sales Function. As part of the reorganization of the distribution and sales in the Operating Unit KGaA Performance Materials, these functions will for the Operating Unit KGaA Performance Materials (according to current planning at the earliest on October 1, 2018), be transferred in a final and legally effective manner by KGaA or Merck Chemicals GmbH, Darmstadt, Germany, an affiliated company of Merck KGaA, Darmstadt, Germany, to PM OpCo. Thus, the Performance Materials Business Lease Agreement contains a provision according to which the leaseback can be terminated prematurely with regard to the Performance Materials Distribution and Sales Functions.

In the following presentation and explanation of the Performance Materials Business Lease Agreement, the terms defined in the Performance Materials Business Lease Agreement are used. Sections below that do not specify a law or act are those of the Performance Materials Business Lease Agreement.

The provisions of the Performance Materials Business Lease Agreement have the following essential content:

a) Leased Operation (§ 1)

§ 1.1 contains the key provisions of the Performance Materials Business Lease Agreement according to which PM OpCo leases the entire operation of its company in accordance with the Business Lease Agreement to KGaA for the purpose of operating

the business in its own name and for its own account (Sec. 292 (1) (3) *AktG mutatis mutandis*). It is also clarified that the provisions of Sec. 581 et seq. *BGB* apply, unless the Performance Materials Business Lease Agreement specifies otherwise.

The domination and profit and loss transfer agreement existing between PM OpCo and KGaA (see also the explanations in sections B.II.3 and C.IV.4) remains unaffected as set forth in § 1.2 of the Performance Materials Business Lease Agreement.

b) Legal Effective Date, Beginning Of The Lease (§ 2)

§ 2 states that, in accordance with Sec. 294 (2) *AktG*, the Performance Materials Business Lease Agreement will become effective upon registration in the Commercial Register of PM OpCo (see E.I.3.g) above for the effective date). In addition, § 2 specifies that the lease shall have a retroactive economic effect as of January 1, 2018, 0:00 hours. That means that, for commercial balance sheet purposes, the Performance Materials Business Lease Agreement will have retroactive economic effect as of January 1, 2018, 0:00 hours, and that PM OpCo and KGaA will act economically as if the operation had already been transferred to the OpCo on January 1, 2018, 0:00 hours. Pursuant to § 2, this applies in particular to the payment of the rent and the enjoyment of the benefits from the Leased Operation. The retroactive economic effect of the Performance Materials Business Lease Agreement has been reconciled with the Economic Effective Date of the Operational Hive-down and the Holding Hive-down (see also sections C.V.3 and D.IV.3).

c) Description of the Leased Items, general principles, granting possession (§ 3)

In § 3.1 the Leased Item is described in general terms. The description refers in general to § 27 to § 38 and § 48 to § 51 of the Operational Hive-down Agreement. The subject of the Performance Materials Business Lease, and thus the Leased Operation in terms of § 1.1, is generally the Operating Unit KGaA Performance Materials hived down to PM OpCo, including the related items and legal relationships of the assets and liabilities required to manage the Leased Operation which were transferred from KGaA to PM OpCo in the scope of the Operational Hive-down and/or which were described or referred to in § 27 to § 38 and in § 48 to § 51 of the Operational Hive-down Agreement. For this reason, in the further course of the Performance Materials Business Lease Agreement, for the specific description of the Leased or Transferred Items reference is made in principle to the respective provisions and annexes of the Operational Hive-down Agreement to describe the Operating Unit KGaA Performance Materials. § 3.1 also clarifies that certain asset components are excluded from the lease in technical terms, in particular because they are to be sold and transferred to KGaA with effect from the Beginning Of The Lease (this applies, e.g., to the receivables described in § 6.1 s. 1 or the inventories described in § 7). § 3.1 and the other provisions of the agreement therefore differentiate conceptually between “Leased Items” and “Transferred Items.” Upon termination of the Business Lease, the stock that then exists of the “Transferred Items” will be resold or retransferred. Apart from

that, § 3.1 determines that the receivables and liabilities to employees assigned to the Leased Operation are subject to the special provisions of § 20 and § 21.

§ 3.2 stipulates that the Leased Items recognizable in the balance sheet and the Transferred Items recognizable in the balance sheet within the scope of the Lease are included in the Hive-down Balance Sheet of the Operating Unit KGaA Performance Materials as of January 1, 2018, 0:00 hours, which is derived from KGaA's audited closing balance sheet as of December 31, 2017, 24:00 hours, and attached to the Operational Hive-down Agreement as Annex 27.3. In order to record all relevant assets, § 3.2 also clarifies that – subject to special provisions in the Performance Materials Business Lease Agreement and unless exempted from any lease or transfer – PM OpCo's assets that are not required to be or cannot be recorded in the balance sheet, or items which are actually not recorded in the balance sheet are also subject to the lease or transfer. § 3.3 contains a so-called surrogation clause. Through this, the treatment of changes in the portfolio of the assets affected by the Performance Materials Business Lease in the period between the Beginning Of The Lease and the Legal Effective Date is governed. This takes into account the fact that the Operating Assets To Be Transferred do not involve an asset situation that is static, but rather an asset situation that changes during ongoing business operations.

This takes into account the fact that the assets covered by the Performance Materials Business Lease are not static assets, but assets that change in the course of ongoing business operations. § 3.3 stipulates in this context that the additions and disposals of Leased Items and Transferred Items (including surrogates in rem or under the law of obligations for a Leased Item) in the period between the Beginning Of The Lease and the Legal Effective Date of the Performance Materials Business Lease are taken into account in the lease in accordance with the provisions detailed in § 3.3. A specification of the scope of the assets and liabilities to be taken into account in accordance with this provision is provided in § 3.3 (a) and (b). According to § 3.3 (a), PM OpCo leases the Asset And Liability Items attributable to the Leased Operation in the broadest sense which are added during the period from the Beginning Of The Lease to the Legal Effective Date or were created during said period and still exist at the Legal Effective Date. Conversely, § 3.3 (b) clearly specifies that the Asset And Liability Items attributable to the Leased Operation in the broadest sense which were terminated, sold, or otherwise transferred during the period from the Beginning Of The Lease to the Legal Effective Date or that simply no longer exist on the Legal Effective Date, will not be leased to KGaA. However, instead, they shall be superseded by the surrogates in rem or under the law of obligations existing at the Legal Effective Date pursuant to § 3.3 (b).

§ 3.4 governs the actual transfer of the Leased Items and the Transferred Items to KGaA on the Legal Effective Date and stipulates that PM OpCo is obliged to grant KGaA possession or physical control over these items on the Legal Effective Date and to ensure that KGaA earns the benefits from the Leased Items in its own name and for its own account.

§ 3.5 stipulates that PM OpCo acts in accordance with the instructions of KGaA with regard to the Leased Items, the lease of which to KGaA is not permitted or otherwise possible, and will internally treat KGaA as if it were the lessee of the items.

d) Intangible assets and know-how (§ 4)

§ 4.1 defines the Leased IP with reference to § 28.2 and § 29 of the Operational Hive-down Agreement. This includes all industrial property rights and the transferred know-how transferred to PM OpCo as part of the Operational Hive-down Agreement.

The lease of the Leased IP will be carried out in accordance with the licensing stipulations governed in § 4.2.

Trustor rights and obligations arising between KGaA and PM OpCo within the meaning of § 28.3 (b) of the trust agreement entered into in respect of registered property rights in the Operational Hive-down Agreement are assigned to KGaA by § 4.3 for the duration of the Business Lease since KGaA will manage the business of PM OpCo in this regard during the Business Lease.

Furthermore, in § 4.4, the obligation of PM OpCo to reimburse the costs and indemnify KGaA in accordance with § 28.6 and § 28.7 of the Operational Hive-down Agreement is suspended for the term of the Business Lease in respect of the fees payable to third parties for intangible assets or rights of use and, in accordance with § 4.5, the rights of use transferred under the Operational Hive-down Agreement retransfer to KGaA for the duration of the Business Lease.

§ 4.6. governs the treatment of PM OpCo's rights of use in Shared IP Healthcare and know-how that cannot be exclusively attributed to the Performance Materials Business Sector that were granted to PM OpCo on the basis of the Operational Hive-down Agreement. § 4.6. prescribes that, for the duration of the Business Lease, KGaA exercises these rights of use in its own right.

Reference is made to the explanations of § 28 and § 29 of the Operational Hive-down Agreement in sections C.V.4.b) and C.V.4.c).

e) Tangible Assets (§ 5)

According to § 5.1, PM OpCo leases to KGaA all tangible assets that are included in § 30.1 to § 30.3 of the Operational Hive-down Agreement and in Annex 30.1 to the Operational Hive-down Agreement, including low-value assets. The lease or transfer of the physical control of the tangible assets for use shall be independent of possible third-party retention of title or transfer as collateral.

The rights arising from intercompany service agreements between KGaA and PM OpCo within the meaning of § 30.4 of the Operational Hive-down Agreement governing the rights of use of mixed-use tangible assets are specified in § 5.2 for the duration of KGaA's Business Lease, since such service agreements will have no relevance for PM OpCo as lessor during the leaseback phase.

Reference is made to the explanations of § 30 of the Operational Hive-down Agreement in section C.V.4.d).

f) Receivables (§ 6)

§ 6.1 governs the transfer of the receivables at the Beginning Of The Lease assigned to the Leased Operation and transferred by way of sale and transfer in the course of the Operational Hive-down by PM OpCo to KGaA, and refers to § 31 and Annex 31.2 of the Operational Hive-down Agreement for further specification of the receivables to be sold. § 6.1 contains, as relates to the sale and transfer of the receivables by PM OpCo, the declaration of acceptance by KGaA. Pursuant to § 6.1, the sale shall become effective with retroactive economic effect as of the Beginning Of The Lease (January 1, 2018, 0:00 hours) and at the carrying amounts stated under German commercial law in the Performance Materials Hive-down Balance Sheet. The purchase price falls due pursuant to § 6.1 within four weeks of the Legal Effective Date. The sale of the current assets or the lessor's receivables to the lessee is a standard provision. It is intended to take account of the fact that the current assets are continuously turned over and renewed during the period of the Business Lease in the course of continuing the Leased Operation and thus a transfer and "enjoyment of benefits" for a limited time thus does not make sense.

Insofar as an assignment of the sold receivables is not feasible or permissible, the contracting parties shall position themselves internally, in accordance with § 6.2, as if the assignment had been effective. According to § 6.2, PM OpCo shall, in this case, provide KGaA with a direct debit authorization for the respective receivable. § 6.2 refers to the provisions in § 1.4 in the Operational Hive-down Agreement and to the trust agreement described there in more detail to specify the provisions that are to apply in the internal relationship between the Parties (see the explanations in C.V.2).

After the termination of the Performance Materials Business Lease Agreement, KGaA is entitled, according to § 6.3 (and also obligated at the request of PM OpCo) to (re-)sell to PM OpCo the receivables attributable to the lessee and to the Leased Operation according to which the carrying amount of the receivables at the Lease End, which is determined according to the same principles as the sale according to § 6.1, is adjusted to determine the purchase price.

§ 6.4 governs the settlement of prepaid expenses that may exist at the Beginning Of The Lease or Lease End in the context of the respective payment of the purchase price in accordance with § 6.1 and § 6.3.

According to § 6.5, § 6.1 does not apply to receivables and payables due to employees, as the special provisions on employment relationships and pension obligations pursuant to § 20 and § 21 apply to those.

Reference is made to the explanations in § 31 of the Operational Hive-down Agreement in section C.V.4.e).

g) Inventories (§ 7)

§ 7.1 governs the sale of the inventories attributable to the Leased Operation from PM OpCo to KGaA and refers to § 32 and Annex 32.3 of the Operational Hive-down Agreement for further specification of the inventories to be sold. The reason for the sale rather than the lease of inventories is that – as in the case of receivables – the current assets are continuously carried over during the period of the Business Lease, and thus a lease for a limited time does not make sense. The sale takes place on the Legal Effective Date and with economic effect as of the Beginning Of The Lease. Accordingly, the Parties, pursuant to § 7.1, deem themselves to be in such position as if the transfer of the inventories had taken place at the Beginning Of The Lease (January 1, 2018, 0:00 hours). § 7.1 also specifies the purchase price amount and due date (four weeks after the Legal Effective Date) and contains the standard stipulation for Business Lease Agreements that the sale will be at carrying amounts under German Commercial Law that result from the sale and assignment of the receivables attributable to the Leased Operation from the Performance Materials Hive-down Balance Sheet (see explanations in section E.II.3.f)).

It is clarified in § 7.2 that, upon sale of the inventories, title of ownership, possession, as well as all other rights in the items sold pursuant to § 7.1, such as entitlement rights and surrender claims, transition to KGaA at the Legal Effective Date as required.

In order to also record inventories held by third parties, PM OpCo assigns any and all surrender claims to KGaA in § 7.3.

§ 7.4 obliges the Parties to carry out any further actions and declarations necessary for the transfer of ownership or granting of possession.

In case of the termination of the Performance Materials Business Lease Agreement, § 7.5 stipulates the right and, in the case of a request by PM OpCo, KGaA's obligation to sell back any inventories that still exist at Lease End and are attributable to the Leased Operation. According to § 7.5, the provisions of § 7.1 to § 7.4 shall apply to the resale, provided that the carrying amount applicable at the Lease End is taken into account (whereby this carrying amount is to be determined according to the same principles as for the original sale pursuant to § 7.1). Furthermore, the due date of the purchase price is set at four weeks after the termination date, and PM OpCo has the right to limit the inventories to be transferred to KGaA upon termination of the Business Lease to the amount required to continue the previously Leased Operation. For clarification, § 7.5 at the end stipulates that KGaA may freely dispose of its remaining assets at its sole discretion.

Finally, § 7.6 excludes warranty claims both for the sale of the inventories at the Beginning Of The Lease and for the sale of the inventories at the Lease End and clarifies that the inventories to be sold are sold in each case in the condition in which they are at the time of sale. Such a clause is common in intercompany arrangements.

Reference is made to the explanations of § 32 of the Operational Hive-down Agreement in section C.V.4.f).

h) Liabilities and provisions (§ 8)

According to § 8.1, KGaA, in principle, assumes all liabilities and/or contingent liabilities and uncertain liabilities of PM OpCo subject to § 33 of the Operational Hive-down Agreement and its Annex 33.4.a and Annex 33.4.b and receives compensation (the so-called negative purchase price) as defined in § 8.3, which, in accordance with § 8.3, is based on the commercial-law carrying amounts of these items in the Performance Materials Hive-down Balance Sheet and due within four weeks of the Legal Effective Date.

§ 8.2 sets forth in respect to certain liabilities and/or contingent liabilities that they, as an exception, remain with PM OpCo. § 8.2 governs assumption of joint liability and obligation to perform by PM OpCo (with economic effect as of the Beginning Of The Lease) described in more detail in § 8.2 in case of a transfer of the legal basis of the liability to KGaA.

§ 8.4 prescribes the right (and obligation, upon request of PM OpCo) of KGaA to sell to PM OpCo any liabilities that exist upon termination of the Performance Materials Business Lease Agreement at Lease End and that are attributable to the Leased Operation. In accordance with § 8.4, the provisions of § 8.1 to § 8.2 apply *mutatis mutandis* to the resale; furthermore, the negative purchase price to be paid by KGaA to PM OpCo must be based on the carrying amount applicable at Lease End determined in accordance with the same principles that apply to the sale pursuant to § 8.3, and is due within four weeks of Lease End.

§ 8.5 sets forth the settlement of any deferred income that may exist at the Beginning Of The Lease or the Lease End in the context of the respective payment of the negative purchase price pursuant to § 8.3 and § 8.4.

For liabilities due to employees, § 8.6 refers to the special provisions in § 20 and § 21.

Reference is made to the explanations of § 33 of the Operational Hive-down Agreement in section C.V.4.g).

i) Entering into contracts and contract offers (§ 9)

According to § 9.1, KGaA assumes all Transferred Contractual Relationships Performance Materials attributable to the Leased Operation in the course of the Business Lease by way of assumption of the contract with debt-discharging effect. In principle, this includes all contractual relationships described in more detail in § 34 of the Operational Hive-down Agreement and in particular in Annex 34.2. With regard to the effective date of the assumption of the contract, the principle of retroactive economic effect also applies as of January 1, 2018, 0:00 hours, whereby § 9.1 clarifies that the contracts are assumed in terms of form and content as they exist at the Legal Effective

Date. As for the retransfer, § 9.1 refers to § 9.5 of the Performance Materials Business Lease Agreement.

According to § 9.2, contractual relationships, particularly partnership agreements, domination and profit and loss transfer agreements, or agreements about silent partnerships, are not attributable to the Leased Operation and shall not be leased.

Since the contracts, unlike by way of partial universal succession (see the explanations in section C.IV.2.a)) in the Operational Hive-down, are assumed by KGaA in the course of the leaseback by way of singular succession, the consent of the respective contractual party is required for the transfer of the respective contract.

§ 9.3 therefore clearly states that, in the event third-party consent is required for the transfer of the contractual relationships, the Parties will make their best efforts to obtain such consent.

With regard to contracts that cannot be assumed with debt-discharging effect, or if this cannot be done in a timely fashion, § 9.4 stipulates a trust agreement according to which the Parties, in any case internally, act in fact as if the assumption took place in an effective and timely manner. The specific legal structure of the trust agreement is described in more detail in § 9.4.

Upon termination of the Performance Materials Business Lease Agreement, according to § 9.5, PM OpCo again assumes the contractual relationships then existing and attributable to the Leased Operation from KGaA with economic effect as of the Lease End. These contractual relationships are also transferred by way of singular succession, so that § 9.5 stipulates the corresponding validity of § 9.3 and § 9.4 for the retransfer of the contractual relationships from KGaA to the PM OpCo upon termination of the Performance Materials Business Lease.

§ 9.6 contains provisions to simplify the processing of the Performance Materials Business Lease and stipulates in particular that the Parties shall endeavor, even after obtaining the consent of the Party, to transfer the contract to KGaA on leaseback, to obtain the consent to the (re-)transfer to PM OpCo after the termination of the Business Lease.

As a result of the leaseback, the rights arising from a trust agreement that may be concluded between KGaA and PM OpCo in accordance with § 49.2 of the Operational Hive-down Agreement are of no relevance to PM OpCo during the term of the Performance Materials Business Lease (see also the explanations in sections C.V.4.h) and C.V.13. § 9.7 therefore clarifies that, for the duration of the Performance Materials Business Lease, KGaA is entitled to the trustor rights (of PM OpCo) from any trust agreement that may exist.

Reference is made to the explanations of § 34 of the Operational Hive-down Agreement in section C.V.4.h).

j) Litigation and legal proceedings (§ 10)

The litigation and legal proceedings related to Leased Items or Transferred Items in accordance with the Business Lease Agreement and described in more detail in § 36.1 to § 36.4 of the Operational Hive-down Agreement and in particular in Annex 36.3 of the Operational Hive-down Agreement shall be retransferred by PM OpCo to KGaA in accordance with § 10.1 and § 10.5 for the duration of the Business Lease.

In order to ensure the effective enforcement of the respective rights after the transfer, according to § 10.2, the contracting and consulting relationships with third parties related to these litigation and legal proceedings are also transferred.

Insofar as there are additional requirements for the transfer (such as the consent of persons involved in the process), the Parties will work towards their fulfillment in accordance with § 10.3. If no change of party takes place, § 10.4 clarifies that PM OpCo will continue the corresponding legal proceedings as the litigant on behalf of KGaA. § 10.4 contains special provisions which apply in the internal relationship between PM OpCo and KGaA in the event of litigation involving PM OpCo and, in particular, stipulates that KGaA is internally responsible for the ongoing litigation.

§ 10.5 specifies the procedure in respect of litigation and legal proceedings upon termination of the Performance Materials Business Lease. According to § 10.5, KGaA undertakes to (re-)transfer to PM OpCo all litigation and legal proceedings newly attributable to the Operating Unit KGaA Performance Materials and retransferred to KGaA pursuant to § 10.1 and newly established until termination of the Performance Materials Business Lease Agreement. According to § 10.5, the provisions in § 10.2 to § 10.4 apply to this process *mutatis mutandis*.

Reference is made to the explanations on § 36 of the Operational Hive-down Agreement in section C.V.4.j).

k) Memberships (§ 11)

Pursuant to § 11.1, PM OpCo retransfers any memberships transferred to PM OpCo to KGaA in accordance with the provision in § 37 of the Operational Hive-down Agreement.

Memberships within the meaning of § 37 of the Operational Hive-down Agreement which have not transitioned or been transferred or only partially transitioned or been transferred to PM OpCo, will remain with KGaA for the duration of the Business Lease in full or to the extent of the affected portion, pursuant to Sec. 11.2, and will only be transferred to PM OpCo upon termination of the Business Lease. If a transfer of such memberships should not be feasible, KGaA shall support PM OpCo in re-applying for these memberships, assuming that the OpCo's membership is required and desired.

Reference is made to the explanations of § 37 of the Operational Hive-down Agreement in section C.V.4.k).

l) Permits and approvals required under public law, operator's responsibility (§ 12)

§ 12.1 refers to the trust agreement entered into by the contractual parties in the scope of the Operational Hive-down as regards the permits affecting the operations of PM OpCo and specified in Annex 48.2 of the Operational Hive-down Agreement in the meaning of § 1.4 of the Operational Hive-down. § 12.1 determines that the trustor rights and obligations arising from this trust agreement are assigned to KGaA during the term of the Performance Materials Business Lease Agreement. This is logical since the trust agreement has no relevance for PM OpCo during the phase of the Performance Materials Business Lease.

§ 12.2 specifies that physical control of all facilities, land, and equipment of the Leased Operation shall remain with KGaA during the Business Lease, so that KGaA is also the owner of the plant-related permits and exercises unrestricted physical control and right of disposition in the Leased Plants in the prior scope. Consistent with the operator position of KGaA during the Business Lease, § 12.2 clarifies that KGaA is responsible for the associated compliance with the relevant regulations and requirements and in particular continues to be the sole point of contact towards the competent authorities. According to § 12.2, KGaA also retains legal ownership of all product-related approvals pursuant to § 48.7 of the Operational Hive-down Agreement during the period of the Business Lease; for this it continues to fulfill all obligations under product law and to ensure quality management.

Under § 12.3, re-applications for permits after the termination of the Business Lease shall be based on the provisions in § 48.8 and § 48.9 of the Operational Hive-down Agreement.

Reference is made to the explanations of § 48 of the Operational Hive-down Agreement in section C.V.12.

m) General rights and obligations of KGaA (§ 13)

§ 13 sets out general principles for the continued operation of the Leased Operation by KGaA.

The legal status of KGaA as a lessee is governed by § 13.1. KGaA shall manage the Leased Operation as the lessee from the Legal Effective Date in its own name and for its own account. This also includes, in particular, that all products from the Leased Operation are at KGaA's free disposition.

§ 13.2 stipulates that KGaA shall manage and operate the Leased Operation with the due diligence of a responsible and prudent manager and is to comply with and heed all statutory requirements for the operation. Insofar as the Leased Operation is impaired by third parties and claims are therefore asserted against PM OpCo, KGaA as the lessee must indemnify PM OpCo for these claims. The provision takes account of the fact that KGaA as the lessee during the leaseback phase is responsible for the operational management of the operations.

Pursuant to § 13.3, KGaA shall be responsible for all measures necessary to ensure the legal obligation to maintain safety and all other obligations associated with the possession of the Leased Operation as regards public traffic. In this regard as well, KGaA is to indemnify PM OpCo for any claims of third parties. § 13.4 defines the obligation of KGaA to pay all public and private charges, duties and contributions during the term of the Business Lease.

§ 13.5 determines that shareholder rights according to which, pursuant to § 31.1 and § 31.2 of the Operational Hive-down Agreement, financial assets are transferred from KGaA to PM OpCo (and also remaining with the OpCo during the leaseback) are exercised by PM OpCo upon instruction from KGaA.

PM OpCo's status as lessor is ensured in § 13.6, in that the sublease is admissible only with its prior written consent.

n) Maintenance and repair, alterations (§ 14)

According to § 14.1, KGaA is obliged to maintain the Leased Items and to bear the corresponding costs.

In order to ensure proper and effective management of the operation by KGaA, KGaA may carry out certain measures (changes, closures, etc.) to the Leased Items in accordance with § 14.2 as well as dispose of the Leased Items in accordance with § 14.3.

Corresponding to the powers of KGaA in § 14.2 and § 14.3, in order to protect PM OpCo, § 14.4 assigns a requirement for PM OpCo to consent to measures of material economic significance.

§ 14.5 contains a so-called value adjustment agreement. The stipulation is intended to compensate KGaA and PM OpCo for unscheduled and thus “unfavorable” change in value not taken into account upon concluding the agreement. The prerequisite for the existence of an indemnification claim pursuant to § 14.5 is that a “materiality threshold” as regards the change in value is exceeded. This value threshold is exceeded if (i) according to the applicable provisions in German commercial law, the measurement of the other accrued liabilities and contingent liabilities shall be corrected in an individual case by at least 100,000.00 Euros or more compared to the respective value on which it was based at the Beginning Of The Lease, and (ii) when netting all value changes as per (i) in a financial year in favor of one of the Parties, a positive balance totaling 2,000,000.00 Euros or more results. The indemnification amount to be paid by the respective Party is, pursuant to § 14.5, based on the amount of the positive balance determined in favor of the respective Party. § 14.5 stipulates furthermore that the corresponding calculation for each lease year should be made by March 31 of the following year.

§ 14.6 clarifies that the special provision of § 17 prevails in respect to changes as regards the Leased IP during the term of the Lease.

o) Investments (§ 15)

§ 15.1 defines the term of investments with reference to the accounting standards of the German Commercial Code and empowers KGaA in accordance with § 15 to make replacement and expansion investments for the account of PM OpCo during the Business Lease.

The main principles for the implementation of replacement and expansion investments are set forth in § 15.2. Hence, investments shall be made according to the principles of proper management. According to § 15.2, the decision on expansion investments lies, in principle, with KGaA, while, according to § 15.2, major expansion investments require the consent of PM OpCo, for its protection. A major expansion investment would be, for example, the construction of a new production building.

§ 15.3 stipulates that items purchased as part of replacement and expansion investments for account of PM OpCo are part of the Leased Items and are transferred to PM OpCo, and it stipulates a duty of documentation of KGaA for the transfer of ownership, observing the principle of legal certainty.

The scheduled depreciation according to the *HGB* attributable to replacement and expansion investments increases the rent in accordance with § 15.4. The stipulation takes into account the fact that KGaA completes the expansion investments for account of PM OpCo and thus at their expense, although KGaA derives the benefits from these items during the term of the lease. It is thus appropriate that KGaA indemnify PM OpCo for the amount of the corresponding depreciation.

§ 15.5 contains the obligation of both Parties to carry out all actions or declarations necessary for the investments; in order to ensure the direct acquisition of title of ownership of PM OpCo, KGaA is authorized to represent PM OpCo when making investments.

p) Goodwill (§ 16)

§ 16.1 clarifies that any goodwill attributable to the Leased Operation remains in the sole beneficial ownership of PM OpCo during and after the Lease; it will be transferred to KGaA as part of the Leased Item for the duration of the Lease only temporarily for use. This also applies if the goodwill is increased during the Business Lease or replaced by new goodwill. The clarification reflects the basic concept repeatedly confirmed by the case law of the highest courts, according to which the lessor is entitled to an increase in goodwill or intangible assets of the operation during the Business Lease, even if it was the lessee who increased the value during the lease term. This basic concept should also apply in the present case. § 16.2 explicitly stipulates the agreement of the contracting parties that KGaA should not receive reimbursement from PM OpCo after the termination of the Business Lease for any appreciation in the value of the Leased Items, including goodwill. The implementation of the concept also simplifies the unwinding of the Business Lease, which is already created for a relatively short period of time.

q) IP Rights (§ 17)

Analogous to § 16.1, § 17.1 stipulates that PM OpCo shall at all times remain the sole beneficial owner of the entire Leased IP and that such items are deemed transferred solely for use to KGaA as part of the Leased Operation for the term of the lease.

§ 17.2 establishes the comprehensive administration of the IP by KGaA during the Business Lease and standardizes the approval of PM OpCo for certain measures (sale or pledging, encumbrance or surrender). In addition, § 17.2 clarifies in particular that in the event of contradictions between the Performance Materials Business Lease and the trust agreement, which, pursuant to § 28.3 b) of the Operational Hive-down Agreement, was concluded with regard to the Performance Materials Registered Property Rights (which are also part of the Leased IP) (cf. the comments in C.V.4.b), the provisions of the Performance Materials Business Lease Agreement take precedence.

§ 17.3, based on the provisions on the increase in goodwill during the Business Lease, specifies that the IP (Foreground IP) arising or created during the Performance Materials Business Lease will be attributed to PM OpCo. In order to prevent conflicts with the provisions in § 15, § 17.3 states that Foreground IP which at the same time fulfills the requirements for a replacement or expansion investment is primarily subject to the provisions of § 15, including the provision relating to an increase in the rent. The essential principles for increasing the rent are also more closely specified in § 17.3.

§ 17.4 governs employee inventions, and § 17.5 deals with newly created trademarks and brands. Both provisions assign sole beneficial ownership in each case to PM OpCo. Incidentally, § 17.4 and § 17.5 also refer to the provisions in § 17.3.

§ 17.6 contains the obligation of KGaA to arrange everything necessary in order to enable PM OpCo to exercise the proprietary rights in the Foreground IP and in the trademarks and brands named in more detail in § 17.5, corresponding to the provision in § 17.1 and § 17.5.

r) Insurance policies (§ 18)

§ 18 stipulates that KGaA must bear the costs of the insurance coverage required for the inclusion of PM OpCo in the group insurance policy and for the Leased Operation for the duration of the Business Lease (see the explanations in section C.V.4.1)), and also governs further details relating to the scope and maintenance of the insurance coverage. Pursuant to § 18.2, direct insurance policies and pension fund commitments are not covered by the clause; these are subject to the (special) provisions governing pension obligations and time account agreements (§ 21).

s) Warranties and liability (§ 19)

According to § 19, warranty claims and rights of cancellation of KGaA against PM OpCo in relation to the Leased Operation, the Leased Items, and the Transferred Items

are excluded to the extent legally permissible. Such a clause is customary when concluding intercompany business lease agreements.

t) Transfer of the employment relationships (§ 20)

§ 20 clarifies that the employment relationships of the Transitioning Performance Materials Employees will be retransferred from PM OpCo to KGaA after their transfer as part of the Operational Hive-down upon the Business Lease Agreement becoming effective. KGaA therefore remains the employer of the employees working in the Leased Operation until the termination of the Business Lease. The provision also clarifies that KGaA is held liable by PM OpCo for PM OpCo not being subject to any claims arising from or relating to the employment relationships transferred to KGaA for the duration of the Business Lease and thus provides for an indemnification claim. Furthermore, the provision sets forth an indemnification obligation of PM OpCo for the obligations arising from the employment relationships that are transferred to KGaA. The relevant provisions apply *mutatis mutandis* to the termination of the Business Lease Agreement and the associated transfer of employment relationships from KGaA to PM OpCo.

u) Pension obligations, time account claims and assumption of joint liability (§ 21)

§ 21 primarily specifies the effects of the Business Lease Agreement for the pension obligations and time account agreements, as well as other staff-related obligations. In particular, it is stipulated that PM OpCo will declare assumption of joint liability and the obligation to perform for the pension obligations that are retransferred to KGaA in the course of the Business Lease. It is also intended that protection against insolvency will be provided for these commitments via the CTA of PM OpCo. The same applies to time account agreements. As a result of the assumption of joint liability, the employees affected by the Transitions Contingent On The Lease have an independent and enforceable claim against the PM OpCo to settle said claims. This obligation to perform that is also declared results in PM OpCo being obligated vis-à-vis KGaA to bear the costs of the obligations referred to above. Claims that are not earned prior to the beginning of the leaseback will also be recorded.

As for external pension commitments, these shall in principle be continued by KGaA during the Business Lease Agreement in the external relationship with external pension providers. At the Lease End, any existing policyholder position of KGaA shall be transferred to PM OpCo or a position as a member firm of the pension fund (*Kassenfirma*) shall be granted, insofar as the external pension provider agrees. The pension is intended to then be continued via PM OpCo.

In addition, it is stipulated that PM OpCo will also declare assumption of joint liability with the obligation to perform in respect of other personnel-related provisions (in particular, jubilee payments and vacation provisions). To this extent, the above summary on assumption of joint liability as relates to the pension commitments and time

account agreements in principle applies accordingly; however, as in the past, other personnel-related provisions are not additionally covered by the CTA.

For secured claims that are still to be accrued, KGaA shall pay compensation to LS OpCo GmbH. This compensation mechanism is governed in Annex 21.3 to the Business Lease Agreement in Section III. (4). Such a compensation for the addition to the provisions occurs, since the addition to provisions is undertaken within the company of the lessor, although the corresponding employees, who earned the additional claims, in fact worked for the lessee.

v) Rent (§ 22)

Pursuant to § 22.1, the rent consists of the reimbursement of the scheduled depreciation incurred by the PM OpCo in accordance with the principles of German commercial law accounting for the Leased Items and interest of 7.0% p.a. on the average equity of the PM OpCo recorded on the commercial balance sheet. The rent is based on the concept of a combination of credit for scheduled depreciation of the Leased Items and interest on the average tied-up equity, which corresponds to a standard remuneration methodology for relationships within a group. In addition, KGaA compensates the expenses relating to the Leased Operation (e.g., additions to the pension provisions, cf. details on this in section E.IV.3.u)), which the OpCo bears despite the fact that these expenses are economically attributable to KGaA. § 22.1 also contains, for the purposes of clarification, the following calculation formula for classification of the “equity under German commercial law”: Equity at the beginning of the year plus equity at the end of the year divided by two. Details explaining the calculation of the amount of the rent are already included in section E.I.2.d) which is hereby referenced.

§ 22.2 clarifies that all provisions in the Business Lease Agreement regarding Assumptions Of Joint Liability, assumptions of obligations to perform, and adjustments of the rent remain unaffected by the obligation of KGaA to pay the rent stipulated in § 22.1.

The rent payment terms and conditions are set forth in § 22.3. KGaA shall pay monthly installments, with final billing being due on March 31 of the following year. § 22.3 also specifies the more detailed procedure for determining the amount of the advance payments.

w) Effective date of the Agreement (§ 23)

§ 23.1 clarifies – with regard to Sec. 294 (2) *AktG* – that the registration in the Commercial Register of PM OpCo is the prerequisite for the effectiveness of the Performance Materials Business Lease Agreement (cf. above under section E.I.3.g)). Since the lease by PM OpCo relates to the assets and liabilities transferred to PM OpCo by way of the Operational Hive-down, the Parties will endeavor to make the Performance Materials Business Lease Agreement become effective immediately after the Operational Hive-down has become effective. In addition, the Parties agree that the Busi-

ness Lease Agreement is subject to the condition precedent of the Operational Hive-down becoming effective upon registration in the Commercial Register of KGaA.

Finally, § 23.2 contains a cancellation right for each Party if the Performance Materials Business Lease Agreement has not become effective by February 28, 2019. This is intended to provide the opportunity for the dissolution of the Business Lease Agreement in the event of unforeseen delays.

x) Term of the agreement and termination (§ 24) and premature termination of the lease as regards the Performance Materials Distribution and Sales Function (§ 24a)

§ 24 contains the provisions of the Performance Materials Business Lease Agreement regarding the contract term. According to § 24.1, the Performance Materials Business Lease Agreement is concluded for an indefinite period and may be terminated ordinarily giving two-month notice as per the end of the month.

§ 24.2 provides each Party the possibility to terminate the Performance Materials Business Lease Agreement also without notice and lists, in a non-exhaustive form, reasons for a termination for cause that justify termination by PM OpCo.

In § 24a, the Performance Materials Business Lease Agreement governs the option of premature termination of the leaseback with regard to the Performance Materials Distribution and Sales Functions. The reason for this provision is the reorganization of distribution and sales in the Operating Unit KGaA Performance Materials and the introduction of an ERP Commercial Template for the Operating Unit KGaA Performance Materials (according to current planning at the earliest as of October 1, 2018). In the course of this reorganization, it is intended that the Performance Materials Distribution and Sales Functions of KGaA and/or Merck Chemicals GmbH, Darmstadt, Germany, an affiliated company of Merck KGaA, Darmstadt, Germany, shall be transferred to PM OpCo (cf. also above E.III.3 in the introduction to this section).

Pursuant to § 24a.1 of the Performance Materials Business Lease Agreement, PM OpCo is thus authorized to terminate the Business Lease as regards the Performance Materials Distribution and Sales Functions. The Distribution and Sales Functions comprise the finished products and selected merchandise of the business units Display Materials, Pigments and Functional Materials, and Advanced Technologies produced in the Operating Unit KGaA Performance Materials by KGaA in Darmstadt and Gernsheim. The above finished products are products produced by KGaA and that are not subject to any further processing step within the Group. Selected merchandise are goods purchased from external third parties or other group companies that are intended for resale.

PM OpCo will, after transferring the Distribution and Sales Function, assume the role of a global distributor for finished products in the Operating Unit KGaA Performance Materials with all related processing steps (demand planning, ordering of the products

to be sold, acquisition of title of ownership in the products to be sold, sales, customer service, and support) (cf. 24a.1).

§ 24a.2 of the Performance Materials Business Lease Agreement prescribes that PM OpCo terminates the Business Lease in writing vis-à-vis KGaA as regards the Performance Materials Distribution and Sales Functions giving one month's notice as per the end of a month. Once the partial termination of the Business Lease becomes effective, the affected activities and associated assets (mainly inventories, in particular finished goods and merchandise of the PM-I, PM-D, PM-P, PM-A areas) are no longer attributed to the operation leased from PM OpCo.

§ 24a.3 of the Performance Materials Business Lease Agreement explains that, as part of the Performance Materials Distribution and Sales Function, the employment relationships of the heads of certain functions of KGaA shall be transferred to PM OpCo by way of individual agreements. All other employment relationships between KGaA and employees of the Performance Materials Distribution and Sales Function shall remain with KGaA until the termination of the Business Lease at KGaA, unless the employment relationships were transferred from KGaA to PM OpCo by way of individual agreements. § 24a.3 governs further details of any transfer by way of individual agreements of the employee positions listed in this provision.

§ 24a.4 of the Performance Materials Business Lease Agreement states that KGaA and PM OpCo shall conclude service level agreements on the further operational support of the Performance Materials Distribution and Sales Function which governs the rendering of services among the parties.

According to § 24a.5 of the Performance Materials Business Lease Agreement, the provisions on the termination of the Business Lease in § 25.1, § 25.2 and § 25.4 shall apply accordingly for the partial termination of the Performance Materials Business Lease Agreement as regards the Performance Materials Distribution and Sales Function, unless specified otherwise in § 24a. § 24a.5 at the end clarifies in addition that a partial termination pursuant to § 24a leaves the remaining provisions of the Business Lease Agreement – including the stipulation on calculating the rent – unaffected.

Thus, upon premature termination of the Business Lease regarding the Performance Materials Distribution and Sales Functions, KGaA must transfer the Leased Items attributed to these functions to PM OpCo. PM OpCo then assumes the operational management of the Performance Materials Distribution and Sales Function and will continue to exercise this power in its own name. As regards the (i) small scope of the Performance Materials Distribution and Sales Function, (ii) the short term of the Performance Materials Business Lease apart from that (until the introduction of the ERP system during 2020), and (iii) facilitation of processing, the Parties have agreed that the partial termination of the Business Lease shall not affect the provisions on calculating the rent as regards the Distribution and Sales Function (for the transfer of the remaining PM OpCo company to KGaA), particularly as there is anyway a domination and profit and loss transfer agreement between the Parties. Since the provisions

on calculating the rent remain unaffected by the partial termination pursuant to § 24a of the Performance Materials Business Lease Agreement, no financial statements as of the Economic Effective Date are required.

In the event of any termination, a decision must be made as to whether the legal prerequisites of an enterprise agreement within the meaning of Sec. 292 (1) (3) *AktG* is still met, as the lease in this case no longer relates to the “entire operation” of PM OpCo. If the status of an enterprise agreement was to lapse, the OpCo would report the termination of the Business Lease as an enterprise agreement in terms of Sec. 292 (1) (3) *AktG* with declaratory effect to the Commercial Register. The continuation of the Business Lease Agreement per se would remain unaffected by this.

y) Consequences of the termination of the Agreement, unwinding (§ 25)

§ 25 governs the termination of the Performance Materials Business Lease Agreement and prescribes in § 25.1 that, at the end of the Business Lease, KGaA must (re)transfer the Leased Operation and all Leased Items to PM OpCo. The provision also specifies the terms and conditions of the transfer; upon the termination of the Business Lease, PM OpCo resumes operational management.

As for the retransfer of the Leased Operation, § 25.2 and § 25.4 provide the provisions according to which the Leased Operation was transferred from PM OpCo to KGaA at the Beginning Of The Lease and refer for this purpose to the corresponding provisions of the Performance Materials Business Lease Agreement.

§ 25.3 stipulates that, for the Performance Materials Business Lease and the final settlement of the rent, etc., KGaA and PM OpCo shall prepare financial accounts as of the effective date and a pro forma balance sheet of the Leased Operation as per the Lease End.

z) Final provisions (§ 26 to § 32)

In § 26, the final provisions include information and disclosure obligations vis-à-vis third parties, as well as arrangements for joint cooperation and mutual information and support of the parties in the context of the transfer of the Leased Items.

§ 27.1 contains a so-called severability clause, according to which the possible invalidity of individual provisions of the Performance Materials Business Lease Agreement does not affect the validity of the remaining provisions and the contracting parties undertake to replace incomplete or ineffective provisions with new provisions. § 27.2 governs the procedure in the event that the achievement of the purpose of the agreement is essentially no longer feasible or no longer reasonable with the necessary sustainability and provides that the Parties in such cases seek a solution ensuring that the purpose can be achieved in another way.

§ 27.3 clarifies that the preamble and annexes are integral parts of the Performance Materials Business Lease Agreement.

In order to ensure smooth implementation of the Performance Materials Business Lease Agreement, § 28 obliges the parties to reciprocal loyalty and § 29 obliges them to carry out all actions that are necessary and expedient in connection with the Performance Materials Business Lease Agreement or the lease of the Leased Operation.

§ 30 contains a standard written form clause. § 31 sets forth the allocation of the costs incurred as a result of the Performance Materials Business Lease Agreement and assigns these as regards the preparation, notarization, and implementation of the Business Lease Agreement to KGaA. However, PM OpCo bears the costs relating to the shareholders' meeting and the costs incurred for the application and registration of the Business Lease Agreement in the Commercial Register of PM OpCo. § 32.1 clarifies that the Business Lease Agreement is subject to German law. § 32.2 contains a standard agreement on the place of jurisdiction according to which the place of jurisdiction is Darmstadt for all disputes arising from the Business Lease Agreement.

F. KGaA, the OpCos, the HoldCos, and the Group after the completion of the transaction

The following is a final, overall overview of the effects of the transaction on the participating entities and the Group.

1. KGaA

a) Business activities of KGaA

Once the transaction becomes effective, KGaA will continue to act as the parent company managing the entire Group with its three global Healthcare, Life Science, and Performance Materials Business Sectors. Even after the transaction, KGaA will continue to hold the central Group and management functions (cf. above under B.I.4 and C.II.7). Furthermore, KGaA will also continue to operate the infrastructure facilities through KGaA Site Operations at the Darmstadt and Gernsheim sites and render the corresponding services for the future OpCos (cf. above under B.I.4.b and C.II.7). After completion of the measures (including the termination of the Business Lease), KGaA will still employ approx. 3,710 employees (on the basis of the employee figures as of December 31, 2017).

During the Business Lease phase (see section E.), KGaA will first continue the operation of the hived-down Operating Units in its own name and for its own account. The employees of the Operating Units will still be employed with KGaA during this phase. The transaction before the termination of the Business Lease will have no effect on the operational processes or on the external representation of KGaA.

Upon introduction of the ERP systems and the termination of the Business Lease, the operational management of the business will be permanently transferred to the OpCos, and KGaA will also become the Group holding company in relation to the German business activities of the Healthcare, Life Science and Performance Materials Business Sectors. However, even in this phase – particularly due to the indirect 100%

investment of KGaA in the OpCos and the existing domination and profit and loss transfer agreements with the OpCos – the OpCos are closely bound to KGaA economically and organizationally (e.g., because of the direct rights of KGaA to issue directives to the managements of the OpCos). After the implementation of the Operational Hive-down and introduction of the ERP systems (and accompanying termination of the Business Lease), the OpCos will also be integrated into the functional management and reporting structures of the global Healthcare, Life Science and Performance Materials Business Sectors.

b) No change in the shareholder structure, structure and composition of the managing bodies at KGaA

The transaction is a purely intragroup measure. It has no impact on the shareholdings of KGaA, either with regard to the limited shareholders (see also section C.IV.2.d)) or the investments of the General Partners.

Apart from the fact that the hived-down Operational Units will be managed in the OpCos in the future and that the KGaA, in this respect, has the function of a managing holding, the measure has no impact on the rights of the shareholders. This applies in particular to the voting rights in the general meeting of KGaA, e.g. in the resolution on the approval of the annual financial statements, the appropriation of net retained profit, the election of the Supervisory Board, capital measures or amendments to the Articles of Association. The transaction also has no impact on the structure and composition of the Executive Board and of the Supervisory Board of KGaA. Both during the Business Lease phase and after the termination of the Business Lease, KGaA employees continue to be attributed to the hived-down Operating Units of KGaA for the purpose of co-determination, so that the Supervisory Board of KGaA continues unchanged in size and parity of composition.

c) Dividend ability and policy

The dividend ability and policy of KGaA is not affected by the transaction measures. The dividends based on the earnings per share are determined on a pre exceptionals basis on the basis of the Consolidated Financial Statements. During the Business Lease phase, the income of the operation, less the rent to be paid (this income will, however, be directly paid to KGaA under the existing domination and profit and loss transfer agreements) accrue directly to KGaA either way (operation “for own account”). After the termination of the respective Business Lease phase, the operating income from the business activity accrue at the level of the OpCos, but these are transferred to KGaA under the existing domination and profit and loss transfer agreements. Thus, the type of income generated by KGaA changes (henceforth: investment income instead of operating income). Moreover, under the sustainable dividend policy pursued by the Executive Board of KGaA – provided that the economic environment develops in a stable manner – the current dividend represents the minimum level for future dividend proposals (see on this also p. 69 of the 2017 Consolidated Annual Report).

The transaction will not affect the equity and debt financing of KGaA since only the composition of the assets but not their overall value changes.

2. The OpCos

a) Business activities of the OpCos

During the Business Lease phase, the respective OpCos remain without any operational business and only earn rent for the respective leased operation. The OpCos will also not have any employees of their own during this phase (on the possible exceptional case due to the potential premature termination of the Performance Materials Business Lease Agreement as regards the Distribution and Sales Function see sections E.IV and E.IV.3.x)); instead, they will continue to be employed by KGaA as a result of the Business Lease.

After the termination of the Business Lease (see also E.I.4.c)), the OpCos then assume the management of the respective hived-down operation. The scope of the business activities is restricted to the previous activities of KGaA in the Operating Units KGaA Healthcare, Life Science, and Performance Materials, which were described in more detail in section B.I.4.b). With regard to the global Business Sectors, the OpCos – as well as the HoldCos – will have no “cross-company” Group management function. Such management will continue to be exercised by KGaA for the global Business Sectors. The OpCos themselves will be integrated into the functional management and reporting structure of the global Business Sectors. The official and/or regulatory permits required for the business activities of the OpCos will be transferred or reissued to the relevant OpCo in consultation with the responsible authorities and upon termination of the Business Lease.

b) Managing bodies and co-determination, domination and profit and loss transfer agreements with KGaA

As a result of the Operational Hive-down, the OpCos will not appoint any new managing directors nor will those managing directors currently in office and listed in sections B.II.1, B.II.2, and B.II.3 be dismissed. The domination and profit and loss transfer agreements concluded between KGaA and the OpCos will remain unaffected by the Operational Hive-down (see the comments in section C.IV.4). Supervisory Boards are not set up at the level of the OpCos during the phase of the Business Lease. Since the OpCos do not employ any staff in this phase (however, on the possible exception due to the possibility of premature termination of the Performance Materials Business Lease Agreement as regards the distribution and sales function, see sections E.IV and E.IV.3.x)), the OpCos are not subject to co-determination, neither are they subject to the German One-Third Participation Act (third-party co-determination) or the German Co-Determination Act (parity co-determination).

Upon termination of the Business Lease, the employment relationships of the employees assigned to the hived-down Operating Units KGaA Healthcare, Life Science, and Performance Materials shall be transferred to the OpCos by way of a transfer of un-

dertaking pursuant to Sec. 613a *BGB*. As a result, Supervisory Boards must be formed at the level of the OpCos, which – in the case of HC OpCo (approx. 2,700 employees) and PM OpCo (approx. 2,500 employees) – are subject to the German Co-Determination Act and – in the case of LS OpCo (approx. 1,680 employees) – to the German One-Third Participation Act. As a result, HC OpCo and PM OpCo would each have a parity co-determined Supervisory Board with 12 members, while LS OpCo would have a Supervisory Board one-third of which is co-determined, the size of which should be determined in due course in the articles of association of LS OpCo. It is also considered that the OpCos will be converted into the legal form of a Kapitalgesellschaft & Co. KGaA with dissolution of the Business Lease, *inter alia*, since a Kommanditgesellschaft auf Aktien (KGaA) is a well-known and proven legal form from KGaA's perspective. The corporate governance structure of Kapitalgesellschaft & Co. KGaA gives the option of the sole shareholder to directly determine the Executive Board of KGaA and the general partner company. Thus, the influence of KGaA on the management of the OpCos (such as appointing executive boards) would also be secured under the regime of the German Co-Determination Act with unchanged supervisory boards. A conceivable option would also be for KGaA to assume the role of the general partner in a future OpCo KGaA (so-called "two-tier KGaA"). In this case, there would *de facto* be the same identical persons in both the Executive Board of KGaA and the managements of the OpCo KGaAs. No final decision on these questions has been made. Regardless of this, the direct right of KGaA to issue directives to the managing bodies of the OpCos is based on the domination and profit and loss transfer agreement.

c) **Shareholder structure of the OpCos**

The Operational Hive-down itself has no impact on the corporate structure of the OpCos. As part of the Holding Hive-down, the shares in OpCos are transferred to the relevant HoldCo and henceforth held by the HoldCos, which in turn are wholly owned by KGaA (see section D.). The domination and profit and loss transfer agreements existing between KGaA and the OpCos remain unaffected. A depiction of the target structure is provided in section A.II.4.

3. The HoldCos

As a result of the Holding Hive-down, the HoldCos receive 100% of the shares in the OpCos. Their business activity is to hold and manage the OpCo shares. Since the OpCos are linked directly to KGaA via the domination and profit and loss transfer agreements and also controlled directly from there by the Group management, the HoldCos' business activities are essentially limited to formal administrative measures at the level of the OpCos (e.g., approval of financial statements, appointment of managing directors or – after termination of the Business Lease – appointment of members of the Supervisory Board on the capital owners' side). In the future, the HoldCos can then also be used as a "platform" for acquisitions or other portfolio measures, so that their holding functions may expand if necessary.

The management of the HoldCos (cf. section B.III) will not change as a result of the Holding Hive-down. The establishment of Supervisory Boards is not provided for at HoldCo level. Since the HoldCos neither employ employees of their own nor – for instance, as a so-called “head office of a sub-group“ with independent management authority – are they suitable subjects of attribution for employees of subordinate group levels, there is also no co-determination at the level of the HoldCos.

The Operational Hive-down or the Business Lease Agreements have no immediate effect on the HoldCos.

4. The Group

a) Impact on the structure of the Group

Due to the Operational Hive-down and the Holding Hive-down, the structure of the Group in Germany changes: With regard to KGaA’s operational business in the Operating Units KGaA Healthcare, Life Science, and Performance Materials, KGaA becomes the (indirect) managing holding company. Otherwise, the measures have no impact on the structure of the Group. As stated already, existing subsidiaries and almost all other equity interests of the Group are excluded from the Operational Hive-down. The previous role of KGaA as a managing holding company will remain unaffected in this respect.

The transaction also has no impact on the Group-wide management structures of the Business Sectors. The OpCos added as operating units after the termination of the Business Lease will basically be treated as “larger national entities” and integrated into the existing corporate governance structures. However, any global control functions that the Operating Units have previously exercised for the Business Sector in question will remain unaffected.

b) Future relationships between the OpCos, KGaA, and other Group companies

As a result of the legal separation of the activities pursued at KGaA, the services previously provided within KGaA among the Operating Units KGaA Healthcare, Life Science, and Performance Materials shall, in the future, be provided on the basis of intra-group agreements, so-called intercompany agreements. It is not yet necessary to enter into such arrangements during the Business Lease period, as the hived-down Operating Units KGaA Healthcare, Life Science, and Performance Materials continue to be managed by KGaA as a whole. During the Business Lease, key contracts between KGaA and the OpCos are the Business Lease Agreements and the domination and profit and loss transfer agreements.

For the time after the termination of the respective Business Lease, KGaA and the OpCos, and the OpCos among themselves, will conclude a series of intra-group agreements. This applies in particular to the services rendered by KGaA-based KGaA Group Functions and KGaA Site Operations, such as services in the area of account-

ing and controlling, legal and tax consultancy and human resources, as well as waste disposal and plant safety. The OpCos will conclude intercompany agreements among themselves, e.g., with regard to product production or stock-keeping. The services are provided at standard market conditions (arm's length principle).

Previously existing intercompany agreements between KGaA and other Group companies – insofar as the hived-down Operating Units KGaA Healthcare, Life Science, and Performance Materials are affected – are hived down to the OpCos and are also the subject of the temporary Business Lease. If necessary, the intercompany agreements are split or duplicated if the subject of an agreement affects several Operating Units. The material content of this Agreement will not be affected by the transaction. Internal service agreements existing until now between the Operating Units will be continued as external “intercompany agreements.”

As already mentioned, upon introduction of the new ERP systems, the OpCos shall be integrated into the planning and control system of the respective global Business Sectors (cf. section A.I). Any global control functions (such as for Supply Chain Management or for distribution activities at the Darmstadt site) that had been carried out by the Operating Units before the transaction will also remain in place after the transaction and, upon termination of the Business Lease, will be handled by the respective OpCo.

Darmstadt, on March 5, 2018

Merck Kommanditgesellschaft auf Aktien, Darmstadt, Germany

The Executive Board

[signature]

Dr. Stefan Oschmann
(Chairman of the Executive Board)

[signature]

Dr. Udit Batra
(Executive Board member)

[signature]

Dr. Kai Beckmann
(Executive Board member)

[signature]

Walter Galinat
(Executive Board member)

[signature]

Belén Garijo Lopez
(Executive Board member)

[signature]

Dr. Marcus Kuhnert
(Executive Board member)

Darmstadt, on March 5, 2018

Merck Healthcare Germany GmbH, Darmstadt, Germany, an affiliated company of Merck KGaA, Darmstadt, Germany

The Management

[signature]

[signature]

Dr. André Overmeyer
(Managing Director)

Dr. Tina Sandmann
(Managing Director)

Darmstadt, on March 5, 2018

Merck Life Science Germany GmbH, Darmstadt, Germany, an affiliated company of Merck KGaA, Darmstadt, Germany

The Management

[signature]

[signature]

Dr. Robert Nass
(Managing Director)

Stephan Lahrkamp
(Managing Director)

Darmstadt, on March 5, 2018

Merck Performance Materials Germany GmbH, Darmstadt, Germany, an affiliated company of Merck KGaA, Darmstadt, Germany

The Management

[signature]

[signature]

Dr. Andreas Kruse
(Managing Director)

Anke Steffen
(Managing Director)

Darmstadt, on March 5, 2018

Merck Healthcare Holding GmbH, Darmstadt, Germany, an affiliated company of Merck KGaA, Darmstadt, Germany

The Management

[signature]

[signature]

Dr. Friederike Rotsch
(Managing Director)

Stephan Lahrkamp
(Managing Director)

Darmstadt, on March 5, 2018

Merck Life Science Holding GmbH, Darmstadt, Germany, an affiliated company of Merck KGaA, Darmstadt, Germany

The Management

[signature]

[signature]

Dr. Friederike Rotsch
(Managing Director)

Stephan Lahrkamp
(Managing Director)

Darmstadt, on March 5, 2018

Merck Performance Materials Holding GmbH, Darmstadt, Germany, an affiliated company of Merck KGaA, Darmstadt, Germany

The Management

[signature]

[signature]

Dr. Friederike Rotsch
(Managing Director)

Stephan Lahrkamp
(Managing Director)

Annex 1

List of shareholdings as of December 31, 2017

I. Germany*

Country	Company	Registered office	Equity interest (%)	Thereof: Merck KGaA, Darmstadt, Germany (%)
Germany	AB Allgemeine Pensions GmbH & Co. KG	Zossen	100.00	100.00
Germany	AB Pensionsverwaltung GmbH	Zossen	100.00	100.00
Germany	Allergopharma GmbH & Co. KG	Reinbek	100.00	
Germany	Allergopharma Verwaltungs GmbH	Darmstadt	100.00	100.00
Germany	BiochRome GmbH	Berlin	100.00	
Germany	Chemitra GmbH	Darmstadt	100.00	100.00
Germany	Emedia Export Company mbH	Gernsheim	100.00	
Germany	IHS - Intelligent Healthcare Solutions GmbH	Darmstadt	100.00	
Germany	Litec-LLL GmbH	Greifswald	100.00	100.00
Germany	Merck 12. Allgemeine Beteiligungs-GmbH, a subsidiary of Merck KGaA, Darmstadt, Germany	Darmstadt	100.00	100.00
Germany	Merck 13. Allgemeine Beteiligungs-GmbH, a subsidiary of Merck KGaA, Darmstadt, Germany	Darmstadt	100.00	
Germany	Merck 15. Allgemeine Beteiligungs-GmbH, a subsidiary of Merck KGaA, Darmstadt, Germany	Darmstadt	100.00	
Germany	Merck 16. Allgemeine Beteiligungs-GmbH, a subsidiary of Merck KGaA, Darmstadt, Germany	Darmstadt	100.00	
Germany	Merck 18. Allgemeine Beteiligungs-GmbH, a subsidiary of Merck KGaA, Darmstadt, Germany	Darmstadt	100.00	100.00
Germany	Merck 19. Allgemeine Beteiligungs-GmbH, a subsidiary of Merck KGaA, Darmstadt, Germany	Darmstadt	100.00	100.00
Germany	Merck 20. Allgemeine Beteiligungs-GmbH, a subsidiary of Merck KGaA, Darmstadt, Germany	Darmstadt	100.00	
Germany	Merck 21. Allgemeine Beteiligungs-GmbH, a subsidiary of Merck KGaA, Darmstadt, Germany	Darmstadt	100.00	
Germany	Merck 23. Allgemeine Beteiligungs-GmbH, a subsidiary of Merck KGaA, Darmstadt, Germany	Darmstadt	100.00	100.00
Germany	Merck 24. Allgemeine Beteiligungs-GmbH, a subsidiary of Merck KGaA, Darmstadt, Germany	Darmstadt	100.00	100.00
Germany	Merck 25. Allgemeine Beteiligungs-GmbH, a subsidiary of Merck KGaA, Darmstadt, Germany	Darmstadt	100.00	100.00

Annex 1

List of shareholdings as of December 31, 2017

Non-binding convenience translation

Country	Company	Registered office	Equity interest (%)	Thereof: Merck KGaA, Darmstadt, Germany (%)
Germany	Merck 26. Allgemeine Beteiligungs-GmbH, a subsidiary of Merck KGaA, Darmstadt, Germany	Darmstadt	100.00	100.00
Germany	Merck 27. Allgemeine Beteiligungs-GmbH, a subsidiary of Merck KGaA, Darmstadt, Germany	Darmstadt	100.00	100.00
Germany	Merck 28. Allgemeine Beteiligungs-GmbH, a subsidiary of Merck KGaA, Darmstadt, Germany	Darmstadt	100.00	100.00
Germany	Merck 29. Allgemeine Beteiligungs-GmbH, a subsidiary of Merck KGaA, Darmstadt, Germany	Darmstadt	100.00	100.00
Germany	Merck 30. Allgemeine Beteiligungs-GmbH, a subsidiary of Merck KGaA, Darmstadt, Germany	Darmstadt	100.00	100.00
Germany	Merck 31. Allgemeine Beteiligungs-GmbH, a subsidiary of Merck KGaA, Darmstadt, Germany	Darmstadt	100.00	100.00
Germany	Merck 33. Allgemeine Beteiligungs-GmbH, a subsidiary of Merck KGaA, Darmstadt, Germany	Darmstadt	100.00	100.00
Germany	Merck 36. Allgemeine Beteiligungs-GmbH, a subsidiary of Merck KGaA, Darmstadt, Germany	Darmstadt	100.00	100.00
Germany	Merck 38. Allgemeine Beteiligungs-GmbH, a subsidiary of Merck KGaA, Darmstadt, Germany	Darmstadt	100.00	100.00
Germany	Merck 40. Allgemeine Beteiligungs-GmbH, a subsidiary of Merck KGaA, Darmstadt, Germany	Darmstadt	100.00	100.00
Germany	Merck 41. Allgemeine Beteiligungs-GmbH, a subsidiary of Merck KGaA, Darmstadt, Germany	Darmstadt	100.00	100.00
Germany	Merck Accounting Solutions & Services Europe GmbH, a subsidiary of Merck KGaA, Darmstadt, Germany	Darmstadt	100.00	100.00
Germany	Merck Chemicals GmbH, a subsidiary of Merck KGaA, Darmstadt, Germany	Darmstadt	100.00	
Germany	Merck China Chemicals Holding GmbH, a subsidiary of Merck KGaA, Darmstadt, Germany	Darmstadt	100.00	
Germany	Merck Consumer Health GmbH, a subsidiary of Merck KGaA, Darmstadt, Germany	Darmstadt	100.00	

Annex 1

List of shareholdings as of December 31, 2017

Non-binding convenience translation

Country	Company	Registered office	Equity interest (%)	Thereof: Merck KGaA, Darmstadt, Germany (%)
Germany	Merck Consumer Health Holding Germany GmbH, a subsidiary of Merck KGaA, Darmstadt, Germany	Darmstadt	100.00	100.00
Germany	Merck Consumer Health Holding GmbH, a subsidiary of Merck KGaA, Darmstadt, Germany	Darmstadt	100.00	100.00
Germany	Merck Export GmbH, a subsidiary of Merck KGaA, Darmstadt, Germany	Darmstadt	100.00	100.00
Germany	Merck Financial Services GmbH, a subsidiary of Merck KGaA, Darmstadt, Germany	Darmstadt	100.00	100.00
Germany	Merck Financial Trading GmbH, a subsidiary of Merck KGaA, Darmstadt, Germany	Gernsheim	100.00	100.00
Germany	Merck Healthcare Holding GmbH, a subsidiary of Merck KGaA, Darmstadt, Germany	Darmstadt	100.00	100.00
Germany	Merck Holding GmbH, a subsidiary of Merck KGaA, Darmstadt, Germany	Gernsheim	100.00	100.00
Germany	Merck International GmbH, a subsidiary of Merck KGaA, Darmstadt, Germany	Darmstadt	100.00	100.00
Germany	Merck Internationale Beteiligungen GmbH , a subsidiary of Merck KGaA, Darmstadt, Germany	Darmstadt	100.00	
Germany	Merck Life Science GmbH, a subsidiary of Merck KGaA, Darmstadt, Germany	Eppenheim	100.00	100.00
Germany	Merck Life Science Holding GmbH, a subsidiary of Merck KGaA, Darmstadt, Germany	Darmstadt	100.00	100.00
Germany	Merck Patent GmbH, a subsidiary of Merck KGaA, Darmstadt, Germany	Darmstadt	100.00	
Germany	Merck Performance Materials GmbH, a subsidiary of Merck KGaA, Darmstadt, Germany	Wiesbaden	100.00	
Germany	Merck Real Estate GmbH, a subsidiary of Merck KGaA, Darmstadt, Germany	Darmstadt	100.00	100.00
Germany	Merck Schuchardt OHG, a subsidiary of Merck KGaA, Darmstadt, Germany	Hohenbrunn	100.00	100.00
Germany	Merck Selbstmedikation GmbH, a subsidiary of Merck KGaA, Darmstadt, Germany	Darmstadt	100.00	

Annex 1

List of shareholdings as of December 31, 2017

Non-binding convenience translation

Country	Company	Registered office	Equity interest (%)	Thereof: Merck KGaA, Darmstadt, Germany (%)
Germany	Merck Serono GmbH, a subsidiary of Merck KGaA, Darmstadt, Germany	Darmstadt	100.00	100.00
Germany	Merck Versicherungsvermittlung GmbH, a subsidiary of Merck KGaA, Darmstadt, Germany	Darmstadt	100.00	100.00
Germany	Merck Vierte Allgemeine Beteiligungsgesellschaft mbH, a subsidiary of Merck KGaA, Darmstadt, Germany	Gernsheim	100.00	
Germany	Merck Wohnungs- und Grundstücksverwaltungsgesellschaft mbH, a subsidiary of Merck KGaA, Darmstadt, Germany	Darmstadt	100.00	100.00
Germany	Mobile Chamber Experts GmbH	Berlin	25.00	
Germany	Sigma-Aldrich Biochemie GmbH	Steinheim	100.00	
Germany	Sigma-Aldrich Chemie GmbH	Steinheim	100.00	
Germany	Sigma-Aldrich Chemie Holding GmbH	Taufkirchen	100.00	
Germany	Sigma-Aldrich Grundstücks GmbH & Co. KG	Steinheim	100.00	
Germany	Sigma-Aldrich Logistik GmbH	Steinheim	100.00	
Germany	Sigma-Aldrich Produktions GmbH	Steinheim	100.00	
Germany	Sigma-Aldrich Verwaltungs GmbH	Steinheim	100.00	100.00

II. Rest of Europe

Country	Company	Registered office	Equity interest (%)	Thereof: Merck KGaA, Darmstadt, Germany (%)
Belgium	Merck Chemicals N.V./S.A., a subsidiary of Merck KGaA, Darmstadt, Germany	Overijse	100.00	
Belgium	Merck Consumer Healthcare N.V.-S.A., a subsidiary of Merck KGaA, Darmstadt, Germany	Overijse	100.00	
Belgium	Merck N.V.-S.A., a subsidiary of Merck KGaA, Darmstadt, Germany	Overijse	100.00	
Belgium	Sigma-Aldrich BVBA/SPRL	Overijse	100.00	
Bulgaria	Merck Bulgaria EAD, a subsidiary of Merck KGaA, Darmstadt, Germany	Sofia	100.00	
Denmark	Merck A/S, a subsidiary of Merck KGaA, Darmstadt,	Soborg	100.00	

Annex 1

List of shareholdings as of December 31, 2017

Non-binding convenience translation

Country	Company	Registered office	Equity interest (%)	Thereof: Merck KGaA, Darmstadt, Germany (%)
	Germany			
Denmark	Merck Life Science A/S, a subsidiary of Merck KGaA, Darmstadt, Germany	Soborg	100.00	
Denmark	Sigma-Aldrich Denmark ApS	Soborg	100.00	
Denmark	Survac ApS	Frederiksberg	100.00	100.00
Estonia	Merck Serono OÜ, a subsidiary of Merck KGaA, Darmstadt, Germany	Tallinn	100.00	
Finland	Merck Life Science OY, a subsidiary of Merck KGaA, Darmstadt, Germany	Espoo	100.00	
Finland	Merck OY, a subsidiary of Merck KGaA, Darmstadt, Germany	Espoo	100.00	
Finland	Sigma-Aldrich Finland OY	Helsinki	100.00	
France	BioControl Systems S.a.r.l.	Lyon	100.00	
France	Gonnon S.A.S.	Lyon	100.00	
France	Laboratoire Médiflor S.A.S.	Lyon	100.00	
France	Merck Biodevelopment S.A.S., a subsidiary of Merck KGaA, Darmstadt, Germany	Lyon	100.00	
France	Merck Chimie S.A.S., a subsidiary of Merck KGaA, Darmstadt, Germany	Fontenay s/Bois	100.00	
France	Merck Médication Familiale S.A.S., a subsidiary of Merck KGaA, Darmstadt, Germany	Lyon	100.00	
France	Merck Performance Materials S.A.S., a subsidiary of Merck KGaA, Darmstadt, Germany	Trosly Breuil	100.00	
France	Merck S.A., a subsidiary of Merck KGaA, Darmstadt, Germany	Lyon	99.84	
France	Merck Santé S.A.S., a subsidiary of Merck KGaA, Darmstadt, Germany	Lyon	100.00	
France	Merck Serono S.A.S., a subsidiary of Merck KGaA, Darmstadt, Germany	Lyon	100.00	
France	Millipore S.A.S.	Molsheim	100.00	
France	Sigma-Aldrich Chimie S.a.r.l.	Staint Quentin Fallavier	100.00	
France	Sigma-Aldrich Chimie SNC	Saint Quentin Fallavier	100.00	

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Country	Company	Registered office	Equity interest (%)	Thereof: Merck KGaA, Darmstadt, Germany (%)
France	Sigma-Aldrich Holding S.a.r.l.	Saint Quentin Fallavier	100.00	
Greece	Merck A.E., a subsidiary of Merck KGaA, Darmstadt, Germany	Maroussi Athen	100.00	
Greece	Sigma-Aldrich (OM) Ltd.	Athen	100.00	
Great Britain	Aldrich Chemical Co. Ltd.	Gillingham	100.00	
Great Britain	AZ Electronic Materials (UK) Ltd.	Feltham	100.00	
Great Britain	BioControl Systems Limited	London	100.00	
Great Britain	BioReliance Limited	Aberdeen	100.00	
Great Britain	BioReliance U.K. Acquisition Limited	London	100.00	
Great Britain	B-Line Systems Limited	Gillingham	100.00	
Great Britain	Bristol Organics Ltd.	Gillingham	100.00	
Great Britain	Epichem Group Limited	Gillingham	100.00	
Great Britain	Fluka Chemicals Ltd.	Gillingham	100.00	
Great Britain	Lamberts Healthcare Ltd.	Tunbridge Wells	100.00	
Great Britain	Merck Chemicals Ltd., a subsidiary of Merck KGaA, Darmstadt, Germany	Nottingham	100.00	
Great Britain	Merck Consumer Healthcare Ltd., a subsidiary of Merck KGaA, Darmstadt, Germany	Feltham	100.00	
Great Britain	Merck Cross Border Trustees Ltd., a subsidiary of Merck KGaA, Darmstadt, Germany	Feltham	100.00	
Great Britain	Merck Holding Ltd., a subsidiary of Merck KGaA, Darmstadt, Germany	Feltham	100.00	
Great Britain	Merck Investments Ltd., a subsidiary of Merck KGaA, Darmstadt, Germany	Feltham	100.00	
Great Britain	Merck Ltd., a subsidiary of Merck KGaA, Darmstadt, Germany	Feltham	100.00	
Great Britain	Merck Pension Trustees Ltd., a subsidiary of Merck KGaA, Darmstadt, Germany	Feltham	100.00	
Great Britain	Merck Performance Materials Services UK Ltd., a subsidiary of Merck KGaA, Darmstadt, Germany	Feltham	100.00	
Great Britain	Merck Serono Europe Ltd., a subsidiary of Merck KGaA, Darmstadt, Germany	London	100.00	
Great Britain	Merck Serono Ltd., a subsidiary of Merck KGaA, Darmstadt, Germany	Feltham	100.00	

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Country	Company	Registered office	Equity interest (%)	Thereof: Merck KGaA, Darmstadt, Germany (%)
	Germany			
Great Britain	Millipore (U.K.) Ltd.	Feltham	100.00	
Great Britain	Millipore UK Holdings LLP	Feltham	100.00	
Great Britain	Nature's Best Health Products Ltd.	Tunbridge Wells	100.00	
Great Britain	SAFC Biosciences Limited	Gillingham	100.00	
Great Britain	SAFC Hitech Limited	Gillingham	100.00	
Great Britain	Seven Seas Limited	Feltham	100.00	
Great Britain	Sigma Chemical Co. Ltd.	Gillingham	100.00	
Great Britain	Sigma Entity One Limited	Gillingham	100.00	
Great Britain	Sigma-Aldrich Company Limited	Gillingham	100.00	
Great Britain	Sigma-Aldrich Financial Services Limited	Gillingham	100.00	
Great Britain	Sigma-Aldrich Holdings Ltd.	Gillingham	100.00	
Great Britain	Sigma-Genosys Limited	Gillingham	100.00	
Great Britain	UFC Ltd.	Gillingham	100.00	
Great Britain	Ultrafine Limited	Gillingham	100.00	
Great Britain	Webnest Ltd.	Gillingham	100.00	
Great Britain	Wessex Biochemicals Ltd.	Gillingham	100.00	
Ireland	Merck Millipore Ltd., a subsidiary of Merck KGaA, Darmstadt, Germany	Carrigtwohill	100.00	
Ireland	Merck Serono (Ireland) Ltd., a subsidiary of Merck KGaA, Darmstadt, Germany	Dublin	100.00	
Ireland	Millipore Cork Unlimited Company	Carrigtwohill	100.00	
Ireland	SAFC Arklow Ltd.	Arklow	100.00	
Ireland	Shrawdine Limited	Arklow	100.00	
Ireland	Sigma-Aldrich Ireland Ltd.	Arklow	100.00	
Ireland	Silverberry Limited	Arklow	100.00	
Italy	Allergopharma S.p.A.	Rome	100.00	
Italy	BioControl Italia S.r.l.	Rome	100.00	
Italy	BioControl Systems S.r.l.	Rome	100.00	
Italy	Istituto di Ricerche Biomediche Antoine Marxer RBM S.p.A.	Colleretto Giacosa	100.00	
Italy	Merck S.p.A., a subsidiary of Merck KGaA, Darmstadt, Germany	Vimodrone	100.00	
Italy	Merck Serono S.p.A., a subsidiary of Merck KGaA, Darmstadt, Germany	Rome	99.74	
Italy	Sigma-Aldrich S.r.l.	Milan	100.00	

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Country	Company	Registered office	Equity interest (%)	Thereof: Merck KGaA, Darmstadt, Germany (%)
Croatia	Merck d.o.o., a subsidiary of Merck KGaA, Darmstadt, Germany	Zagreb	100.00	
Latvia	Merck Serono SIA, a subsidiary of Merck KGaA, Darmstadt, Germany	Riga	100.00	
Lithuania	Merck Serono, UAB, a subsidiary of Merck KGaA, Darmstadt, Germany	Vilnius	100.00	
Luxembourg	AZ Electronic Materials (Luxembourg) S.a.r.l.	Luxembourg	100.00	
Luxembourg	AZ Electronic Materials S.a.r.l.	Luxembourg	100.00	
Luxembourg	Mats Finance S.a.r.l.	Luxembourg	100.00	
Luxembourg	Merck Chemicals Holding S.a.r.l., a subsidiary of Merck KGaA, Darmstadt, Germany	Luxembourg	100.00	
Luxembourg	Merck Finance S.a.r.l., a subsidiary of Merck KGaA, Darmstadt, Germany	Luxembourg	100.00	
Luxembourg	Merck Finanz S.a.r.l., a subsidiary of Merck KGaA, Darmstadt, Germany	Luxembourg	100.00	
Luxembourg	Merck Holding S.a.r.l., a subsidiary of Merck KGaA, Darmstadt, Germany	Luxembourg	100.00	
Luxembourg	Merck Invest SCS, a subsidiary of Merck KGaA, Darmstadt, Germany	Luxembourg	100.00	
Luxembourg	Merck Re S.A., a subsidiary of Merck KGaA, Darmstadt, Germany	Luxembourg	100.00	
Luxembourg	Millilux S.a.r.l.	Luxembourg	100.00	
Luxembourg	Millipart S.a.r.l.	Luxembourg	100.00	
Luxembourg	Millipore International Holdings, S.a.r.l.	Luxembourg	100.00	
Luxembourg	Ridgefield Acquisition S.a.r.l.	Luxembourg	100.00	
Luxembourg	Sigma-Aldrich Global S.a.r.l.	Luxembourg	100.00	
Luxembourg	Sigma-Aldrich S.a.r.l.	Luxembourg	100.00	
Malta	Merck Capital Holding Ltd., a subsidiary of Merck KGaA, Darmstadt, Germany	Pietà	100.00	
Malta	Merck Capital Ltd., a subsidiary of Merck KGaA, Darmstadt, Germany	Pietà	100.00	
Netherlands	BioControl Systems B.V.	Nieuwerkerk Ad Ijssel	100.00	
Netherlands	Calypso Biotech B.V.	Amsterdam	75.00	

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Non-binding convenience translation

Country	Company	Registered office	Equity interest (%)	Thereof: Merck KGaA, Darmstadt, Germany (%)
Netherlands	Merck B.V., a subsidiary of Merck KGaA, Darmstadt, Germany	Schiphol-Rijk	100.00	
Netherlands	Merck Chemicals B.V., a subsidiary of Merck KGaA, Darmstadt, Germany	Amsterdam Zuidoost	100.00	
Netherlands	Merck Holding Netherlands B.V., a subsidiary of Merck KGaA, Darmstadt, Germany	Schiphol-Rijk	100.00	
Netherlands	Merck Ventures B.V., a subsidiary of Merck KGaA, Darmstadt, Germany	Amsterdam	100.00	
Netherlands	Merck Window Technologies B.V., a subsidiary of Merck KGaA, Darmstadt, Germany	Eindhoven	100.00	100.00
Netherlands	Serono Tri Holdings B.V.	Schiphol-Rijk	100.00	
Netherlands	Sigma-Aldrich B.V.	Zwijndrecht	100.00	
Netherlands	Sigma-Aldrich Chemie N.V.	Zwijndrecht	100.00	
Norway	Merck Life Science AS, a subsidiary of Merck KGaA, Darmstadt, Germany	Oslo	100.00	
Norway	Sigma-Aldrich Norway AS	Oslo	100.00	
Austria	Allergopharma Vertriebsgesellschaft mbH	Vienna	100.00	
Austria	Merck Chemicals and Life Science GesmbH, a subsidiary of Merck KGaA, Darmstadt, Germany	Vienna	100.00	
Austria	Merck Gesellschaft mbH, a subsidiary of Merck KGaA, Darmstadt, Germany	Vienna	100.00	
Austria	Merck KGaA & Co. Werk Spittal, a subsidiary of Merck KGaA, Darmstadt, Germany	Spittal	100.00	99.00
Austria	Sigma-Aldrich Handels GmbH	Vienna	100.00	
Poland	Merck Business Solutions Europe Sp.z.o.o., a subsidiary of Merck KGaA, Darmstadt, Germany	Wroclaw	100.00	
Poland	Merck Sp.z o.o., a subsidiary of Merck KGaA, Darmstadt, Germany	Wroclaw	100.00	
Poland	Sigma-Aldrich Sp.z.o.o.	Posen	100.00	
Portugal	Laquifa Laboratorios S.A.	Algés	100.00	
Portugal	Merck, S.A., a subsidiary of Merck KGaA, Darmstadt, Germany	Algés	100.00	
Romeania	Merck Romeania S.R.L., a subsidiary of Merck KGaA, Darmstadt,	Bukarest	100.00	

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Country	Company	Registered office	Equity interest (%)	Thereof: Merck KGaA, Darmstadt, Germany (%)
	Germany			
Russia	Chemical Trade Limited LLC	Moscow	100.00	
Russia	MedChem Limited	Moscow	100.00	
Russia	Merck LLC, a subsidiary of Merck KGaA, Darmstadt, Germany	Moscow	100.00	
Russia	SAF-LAB LLC	Moscow	100.00	
Russia	Sigma-Aldrich Rus LLC	Moscow	100.00	
Sweden	Merck AB, a subsidiary of Merck KGaA, Darmstadt, Germany	Solna	100.00	
Sweden	Merck Chemicals and Life Science AB a subsidiary of Merck KGaA, Darmstadt, Germany	Solna	100.00	
Sweden	Sigma-Aldrich Sweden AB	Stockholm	100.00	
Switzerland	Allergopharma AG	Therwil	100.00	
Switzerland	Ares Trading SA	Aubonne	100.00	
Switzerland	Asceneuron SA	Lausanne	40.26	
Switzerland	CAMAG Chemie-Erzeugnisse und Adsorptionstechnik AG	Muttenz	39.11	
Switzerland	iOnctura SA	Plan-les-Ouates	73.60	
Switzerland	Merck & Cie, a subsidiary of Merck KGaA, Darmstadt, Germany	Altdorf	51.63	51.63
Switzerland	Merck (Schweiz) AG, a subsidiary of Merck KGaA, Darmstadt, Germany	Zug	100.00	
Switzerland	Merck Biosciences AG, a subsidiary of Merck KGaA, Darmstadt, Germany	Schaffhausen	100.00	
Switzerland	Merck Performance Materials (Suisse) SA, a subsidiary of Merck KGaA, Darmstadt, Germany	Coinsins	100.00	
Switzerland	Merck Serono SA, a subsidiary of Merck KGaA, Darmstadt, Germany	Coinsins	100.00	
Switzerland	Prexton Therapeutics SA	Plan-les-Ouates	28.36	
Switzerland	SeRomeer Holding SA	Coinsins	100.00	
Switzerland	Sigma-Aldrich (Switzerland) Holding AG	Buchs	100.00	
Switzerland	Sigma-Aldrich Chemie GmbH	Buchs	100.00	
Switzerland	Sigma-Aldrich International GmbH	St. Gallen	100.00	
Switzerland	Sigma-Aldrich Production GmbH	Buchs	100.00	
Switzerland	Vaximm AG	Basel	24.07	

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Non-binding convenience translation

Country	Company	Registered office	Equity interest (%)	Thereof: Merck KGaA, Darmstadt, Germany (%)
Serbia	Merck d.o.o. Beograd, a subsidiary of Merck KGaA, Darmstadt, Germany	Belgrad	100.00	
Slovakia	Merck spol.s.r.o., a subsidiary of Merck KGaA, Darmstadt, Germany	Bratislava	100.00	
Slovakia	Sigma-Aldrich, spol.s.r.o.	Bratislava	100.00	
Slovenia	Merck d.o.o., a subsidiary of Merck KGaA, Darmstadt, Germany	Ljubljana	100.00	
Spain	Merck Chemicals and Life Science S.A., a subsidiary of Merck KGaA, Darmstadt, Germany	Madrid	100.00	
Spain	Merck, S.L.U., a subsidiary of Merck KGaA, Darmstadt, Germany	Madrid	100.00	
Spain	Sigma-Aldrich Quimica S.L.	Madrid	100.00	
Czech Republic	Merck spol.s.r.o., a subsidiary of Merck KGaA, Darmstadt, Germany	Prag	100.00	
Czech Republic	Sigma-Aldrich spol.s.r.o.	Prag	100.00	
Turkey	Merck Ilac Ecza ve Kimya Ticaret AS, a subsidiary of Merck KGaA, Darmstadt, Germany	Istanbul	100.00	
Hungary	Merck Kft., a subsidiary of Merck KGaA, Darmstadt, Germany	Budapest	100.00	
Hungary	Sigma-Aldrich Kft.	Budapest	100.00	

III. North America

Country	Company	Registered office	Equity interest (%)	Thereof: Merck KGaA, Darmstadt, Germany (%)
Canada	EMD Chemicals Canada Inc.	Toronto	100.00	
Canada	EMD Crop BioScience Canada Inc.	Toronto	100.00	
Canada	EMD Inc.	Mississauga	100.00	
Canada	Millipore (Canada) Ltd.	Toronto	100.00	
Canada	Natrix Separations, Inc.	Burlington	100.00	
Canada	Sigma-Aldrich Canada Co.	Oakville	100.00	
USA	Aldrich Chemical Co. LLC	Milwaukee	100.00	

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List of shareholdings as of December 31, 2017

Non-binding convenience translation

Country	Company	Registered office	Equity interest (%)	Thereof: Merck KGaA, Darmstadt, Germany (%)
USA	Aldrich Chemical Foreign Holding LLC	St. Louis	100.00	
USA	Aldrich-APL, LLC	Urbana	100.00	
USA	Amnis Corp.	Seattle	100.00	
USA	BioControl Systems International, Inc.	Seattle	100.00	
USA	BioControl Systems, Inc.	Bellevue	100.00	
USA	BioReliance Corporation	Rockville	100.00	
USA	Cell Marque Corporation	Rocklin	100.00	
USA	Cerilliant Corporation	Round Rock	100.00	
USA	EMD Accounting Solutions & Services America, Inc.	Rockland	100.00	
USA	EMD Finance LLC	Wilmington	100.00	
USA	EMD Holding Corp.	Rockland	100.00	
USA	EMD Millipore Corporation	Burlington	100.00	
USA	EMD Performance Materials Corp.	Philadelphia	100.00	
USA	EMD Serono Holding, Inc.	Rockland	100.00	
USA	EMD Serono Research & Development Institute, Inc.	Billerica	100.00	
USA	EMD Serono, Inc.	Rockland	100.00	
USA	Fluka Chemical Corp.	St. Louis	100.00	
USA	Grzybowski Scientific Inventions Ltd.	Evanston	100.00	
USA	Indi Molecular, Inc.	Culver City	18.00	
USA	KL Acquisition Corp.	St. Louis	100.00	
USA	Millipore Asia Ltd.	Wilmington	100.00	
USA	Millipore UK Holdings I, LLC	Wilmington	100.00	
USA	Millipore UK Holdings II, LLC	Wilmington	100.00	
USA	Nysa Membranes USA, Inc.	Acton	100.00	
USA	Ormet Circuits, Inc.	San Diego	100.00	
USA	Prolog Healthy Living Fund II, L.P.	St. Louis	50.58	
USA	Prolog Healthy Living Fund, L.P.	St. Louis	38.32	
USA	Research Organics, LLC	Cleveland	100.00	
USA	SAFC Biosciences, Inc.	Lenexa	100.00	
USA	SAFC Carlsbad, Inc.	Carlsbad	100.00	
USA	SAFC Hitech, Inc.	Haverhill	100.00	
USA	SAFC, Inc.	Madison	100.00	
USA	Serono Laboratories, Inc.	Rockland	100.00	
USA	Sigma Chemical Foreign Holding LLC	St. Louis	100.00	
USA	Sigma Redevelopment Corporation	St. Louis	100.00	

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Non-binding convenience translation

Country	Company	Registered office	Equity interest (%)	Thereof: Merck KGaA, Darmstadt, Germany (%)
USA	Sigma-Aldrich Co. LLC	St. Louis	100.00	
USA	Sigma-Aldrich Corporation	St. Louis	100.00	
USA	Sigma-Aldrich Finance Co.	St. Louis	100.00	
USA	Sigma-Aldrich Foreign Holding Co.	St. Louis	100.00	
USA	Sigma-Aldrich Lancaster, Inc.	St. Louis	100.00	
USA	Sigma-Aldrich Manufacturing LLC	St. Louis	100.00	
USA	Sigma-Aldrich Missouri Insurance Company	St. Louis	100.00	
USA	Sigma-Aldrich Research Biochemicals, Inc.	Natick	100.00	
USA	Sigma-Aldrich RTC, Inc.	Laramie	100.00	
USA	Sigma-Aldrich, Inc.	Milwaukee	100.00	
USA	Sigma-Genosys of Texas LLC	The Woodlands	100.00	
USA	Supelco, Inc.	Bellefonte	100.00	
USA	Techcare Systems, Inc.	St. Louis	100.00	
USA	TocopheRx, Inc.	Groton	62.83	

IV. Asian-Pacific (APAC)

Country	Company	Registered office	Equity interest (%)	Thereof: Merck KGaA, Darmstadt, Germany (%)
Australia	BiochRome Australia Pty. Ltd.	Bayswater	100,00	
Australia	Merck Pty. Ltd., a subsidiary of Merck KGaA, Darmstadt, Germany	Bayswater	100,00	
Australia	Merck Serono Australia Pty. Ltd., a subsidiary of Merck KGaA, Darmstadt, Germany	Sydney	100,00	
Australia	Proligo Australia Pty. Ltd.	Castle Hill	100,00	
Australia	SAFC Biociences Pty. Ltd.	Castle Hill	100,00	
Australia	Sigma-Aldrich Oceania Pty. Ltd.	Castle Hill	100,00	
Australia	Sigma-Aldrich Pty. Ltd.	Castle Hill	100,00	
China	Beijing Skywing Technology Co., Ltd.	Peking	100,00	
China	Merck Chemicals (Shanghai) Co., Ltd., a subsidiary of Merck KGaA, Darmstadt, Germany	Schanghai	100,00	
China	Merck Display Materials (Shanghai) Co., Ltd., a subsidiary of Merck KGaA, Darmstadt, Germany	Schanghai	100,00	

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Country	Company	Registered office	Equity interest (%)	Thereof: Merck KGaA, Darmstadt, Germany (%)
China	Merck Electronic Materials (Suzhou) Ltd., a subsidiary of Merck KGaA, Darmstadt, Germany	Suzhou	100,00	
China	Merck Holding (China) Co., Ltd., a subsidiary of Merck KGaA, Darmstadt, Germany	Schanghai	100,00	
China	Merck Life Science Ltd., a subsidiary of Merck KGaA, Darmstadt, Germany	Hongkong	100,00	
China	Merck Life Science Technologies (Nantong) Co., Ltd., a subsidiary of Merck KGaA, Darmstadt, Germany	Nantong	100,00	
China	Merck Ltd., a subsidiary of Merck KGaA, Darmstadt, Germany	Hongkong	100,00	
China	Merck Millipore Lab Equipment (Shanghai) Co., Ltd., a subsidiary of Merck KGaA, Darmstadt, Germany	Schanghai	100,00	
China	Merck Performance Materials Hong Kong Ltd., a subsidiary of Merck KGaA, Darmstadt, Germany	Hongkong	100,00	
China	Merck Performance Materials Hong Kong Services Ltd., a subsidiary of Merck KGaA, Darmstadt, Germany	Hongkong	100,00	
China	Merck Pharmaceutical (HK) Ltd., a subsidiary of Merck KGaA, Darmstadt, Germany	Hongkong	100,00	
China	Merck Pharmaceutical Manufacturing (Jiangsu) Co., Ltd., a subsidiary of Merck KGaA, Darmstadt, Germany	Nantong	100,00	
China	Merck Serono (Beijing) Pharmaceutical Distribution Co., Ltd., a subsidiary of Merck KGaA, Darmstadt, Germany	Peking	100,00	
China	Merck Serono (Beijing) Pharmaceutical R&D Co., Ltd., a subsidiary of Merck KGaA, Darmstadt, Germany	Peking	100,00	
China	Merck Serono Co., Ltd., a subsidiary of Merck KGaA, Darmstadt, Germany	Peking	100,00	
China	SAFC Hitech (Shanghai) Co., Ltd.	Schanghai	100,00	
China	Sigma-Aldrich (Shanghai) Trading Co., Ltd.	Schanghai	100,00	
China	Sigma-Aldrich (Wuxi) Life Science & Technology Co., Ltd.	Wuxi	100,00	

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Country	Company	Registered office	Equity interest (%)	Thereof: Merck KGaA, Darmstadt, Germany (%)
India	Merck Life Science Pvt. Ltd., a subsidiary of Merck KGaA, Darmstadt, Germany	Mumbai	100,00	
India	Merck Ltd., a subsidiary of Merck KGaA, Darmstadt, Germany	Mumbai	51,80	
India	Merck Performance Materials Pvt. Ltd., a subsidiary of Merck KGaA, Darmstadt, Germany	Mumbai	100,00	
India	Merck Specialities Pvt. Ltd., a subsidiary of Merck KGaA, Darmstadt, Germany	Mumbai	100,00	
India	Sigma-Aldrich Chemicals Private Limited	Bangalore	100,00	
Indonesia	P.T. Merck Chemicals and Life Sciences, a subsidiary of Merck KGaA, Darmstadt, Germany	Jakarta	100,00	
Indonesia	P.T. Merck Tbk., a subsidiary of Merck KGaA, Darmstadt, Germany	Jakarta	86,65	
Japan	BioReliance KK	Tokio	100,00	
Japan	Merck Ltd., a subsidiary of Merck KGaA, Darmstadt, Germany	Tokio	100,00	
Japan	Merck Performance Materials Ltd., a subsidiary of Merck KGaA, Darmstadt, Germany	Tokio	100,00	
Japan	Merck Serono Co., Ltd., a subsidiary of Merck KGaA, Darmstadt, Germany	Tokio	100,00	
Japan	Sigma-Aldrich Japan G.K.	Tokio	100,00	
Malaysia	Merck Sdn Bhd, a subsidiary of Merck KGaA, Darmstadt, Germany	Petaling Jaya	100,00	
Malaysia	Sigma-Aldrich (M) Sdn Bhd	Kuala Lumpur	100,00	
New Zealand	Merck Ltd., a subsidiary of Merck KGaA, Darmstadt, Germany	Palmerston North	100,00	
New Zealand	Sigma-Aldrich New Zealand Co.	Christchurch	100,00	
Philippines	Merck Business Solutions Asia Inc., a subsidiary of Merck KGaA, Darmstadt, Germany	Bonifacio Global City	99,99	
Philippines	Merck Inc., a subsidiary of Merck KGaA, Darmstadt, Germany	Makati City	100,00	
Singapore	Merck Performance Materials Pte. Ltd., a subsidiary of Merck KGaA, Darmstadt, Germany	Singapore	100,00	

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Country	Company	Registered office	Equity interest (%)	Thereof: Merck KGaA, Darmstadt, Germany (%)
Singapore	Merck Pte. Ltd., a subsidiary of Merck KGaA, Darmstadt, Germany	Singapore	100,00	
Singapore	Sigma-Aldrich Pte. Ltd.	Singapore	100,00	
South Korea	Merck Electronic Materials Ltd., a subsidiary of Merck KGaA, Darmstadt, Germany	Seoul	100,00	
South Korea	Merck Ltd., a subsidiary of Merck KGaA, Darmstadt, Germany	Seoul	100,00	
South Korea	Merck Performance Materials Ltd., a subsidiary of Merck KGaA, Darmstadt, Germany	Pyeongtaek-shi	100,00	
South Korea	Sigma-Aldrich Korea Ltd.	Yongin City	100,00	
South Korea	SAFC Hitech Korea Ltd.	Yongin City	100,00	
Taiwan	Merck Ltd., a subsidiary of Merck KGaA, Darmstadt, Germany	Taipeh	100,00	
Taiwan	Merck Performance Materials Ltd., a subsidiary of Merck KGaA, Darmstadt, Germany	Taipeh	100,00	
Taiwan	SAFC Hitech Taiwan Co. Ltd.	Kaohsiung	100,00	
Thailand	Merck Ltd., a subsidiary of Merck KGaA, Darmstadt, Germany	Bangkok	45,11	
Vietnam	Merck Vietnam Ltd., a subsidiary of Merck KGaA, Darmstadt, Germany	Ho-Chi-Minh-City	100,00	

V. Latin America

Country	Company	Registered office	Equity interest (%)	Thereof: Merck KGaA, Darmstadt, Germany (%)
Argentina	Merck S.A., a subsidiary of Merck KGaA, Darmstadt, Germany	Buenos Aires	100,00	
Argentina	Sigma-Aldrich de Argentina S.r.l.	Buenos Aires	100,00	
Brazil	Merck S.A., a subsidiary of Merck KGaA, Darmstadt, Germany	Rio de Janeiro	100,00	
Brazil	Sigma-Aldrich Brasil Ltda.	São Paulo	100,00	
Chile	Merck S.A.,	Santiago de Chile	100,00	

Annex 1

List of shareholdings as of December 31, 2017

Non-binding convenience translation

Country	Company	Registered office	Equity interest (%)	Thereof: Merck KGaA, Darmstadt, Germany (%)
	a subsidiary of Merck KGaA, Darmstadt, Germany			
Chile	Sigma-Aldrich Quimica Ltda.	Santiago de Chile	100,00	
Dominican Republic	Merck Dominicana, S.R.L., a subsidiary of Merck KGaA, Darmstadt, Germany	Santo Domingo	100,00	
Ecuador	Merck C.A., a subsidiary of Merck KGaA, Darmstadt, Germany	Quito	100,00	
Guatemala	Merck, S.A., a subsidiary of Merck KGaA, Darmstadt, Germany	Guatemala-City	100,00	
Colombia	Merck S.A., a subsidiary of Merck KGaA, Darmstadt, Germany	Bogota	100,00	
Mexico	Consumer Health Distribution S.A. de C.V.	Mexico-City	100,00	
Mexico	Merck Biopharma Distribution S.A. de C.V., a subsidiary of Merck KGaA, Darmstadt, Germany	Mexico-City	100,00	
Mexico	Merck, S.A. de C.V., a subsidiary of Merck KGaA, Darmstadt, Germany	Mexico-City	100,00	
Mexico	Sigma-Aldrich Quimica, S. de R.L. de C.V.	Toluca	100,00	
Panama	Mesofarma Corporation	Panama-City	100,00	
Peru	Merck Peruana S.A., a subsidiary of Merck KGaA, Darmstadt, Germany	Lima	100,00	
Uruguay	ARES Trading Uruguay S.A.	Montevideo	100,00	
Venezuela	Merck S.A., a subsidiary of Merck KGaA, Darmstadt, Germany	Caracas	100,00	
Venezuela	Representaciones MEPRO S.A.	Caracas	100,00	

VI. Middle East and Africa (MEA)

Country	Company	Registered Office	Equity interest (%)	Thereof: Merck KGaA, Darmstadt, Germany (%)
Egypt	Merck Ltd., a subsidiary of Merck KGaA, Darmstadt, Germany	Kairo	100,00	
Israel	Inter-Lab Ltd.	Yavne	100,00	
Israel	InterPharm Industries Ltd.	Yavne	100,00	

Annex 1

List of shareholdings as of December 31, 2017

Non-binding convenience translation

Country	Company	Registered Office	Equity interest (%)	Thereof: Merck KGaA, Darmstadt, Germany (%)
Israel	InterPharm Laboratories Ltd.	Yavne	100,00	
Israel	Merck Serono Ltd., a subsidiary of Merck KGaA, Darmstadt, Germany	Herzliya Pituach	100,00	
Israel	Neviah Genomics Ltd.	Yavne	69,00	7,75
Israel	PMatX Ltd.	Yavne	90,00	
Israel	QLight Nanotech Ltd.	Jerusalem	100,00	
Israel	Sigma-Aldrich Israel Ltd.	Rehovot	100,00	
Kenya	Merck Healthcare and Life Science Limited, a subsidiary of Merck KGaA, Darmstadt, Germany	Nairobi	100,00	
Morocco	Merck Maroc S.A.R.L., a subsidiary of Merck KGaA, Darmstadt, Germany	Casablanca	100,00	
Mauritius	Millipore Mauritius Ltd.	Cyber City	100,00	
Nigeria	Merck Pharmaceutical and Life Sciences Ltd., a subsidiary of Merck KGaA, Darmstadt, Germany	Lagos	100,00	
South Africa	Merck (Pty) Ltd., a subsidiary of Merck KGaA, Darmstadt, Germany	Halfway House	100,00	
South Africa	Merck Pharmaceutical Manufacturing (Pty) Ltd., a subsidiary of Merck KGaA, Darmstadt, Germany	Wadeville	100,00	
South Africa	Sigma-Aldrich (Pty) Ltd.	Kempton Park	100,00	
South Africa	Serono South Africa Ltd.	Johannesburg	100,00	
Tunisia	Merck PRomeotion SARL, a subsidiary of Merck KGaA, Darmstadt, Germany	Tunis	100,00	
Tunisia	Merck SARL, a subsidiary of Merck KGaA, Darmstadt, Germany	Tunis	100,00	
United Arab Emirates	Merck Serono Middle East FZ-LLC, a subsidiary of Merck KGaA, Darmstadt, Germany	Dubai	100,00	