

Merck Kommanditgesellschaft auf Aktien
Darmstadt, Germany

Annual General Meeting 2020

Explanation of Shareholder Rights

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(pursuant to Section 278 (3) in connection with Sections 122 (2), 126 (1), 127 and 131 (1) of the German Stock Corporation Act (hereinafter "AktG") (each in conjunction with Section 1 of the German Act on Measures in Corporate, Cooperative, Association, Foundation and Housing Law to Combat the Effects of the COVID-19 Pandemic (COVID-19 Act)))

Against the background of the spread of the coronavirus SARS-CoV-2, the Executive Board has decided, with the consent of the Supervisory Board, that the General Meeting will be held as a virtual General Meeting without the physical presence of the shareholders or their proxies and that the shareholders will cast their votes in the General Meeting in particular also by means of electronic communication. Holding the General Meeting in the form of a virtual General Meeting under the COVID-19 Act results in modifications to the procedures of the General Meeting and to the rights of the limited liability shareholders (also referred to hereinafter as "shareholders").

The invitation to the Annual General Meeting contains information on the rights of shareholders in accordance with Sections 122 (2), 126 (1), 127, 131 (1) AktG (each in conjunction with Section 278 (3) AktG and Section 1 COVID-19 Act). The following information provides further explanations of these provisions. Excerpts from several of the relevant legal texts are given. Different legal opinions exist on the details of the shareholder rights explained here. In case of doubt, shareholders are recommended to seek legal advice.

1. Motions to add agenda items pursuant to Section 122 (2) AktG, Section 1 (3) sentence 4 COVID-19 Act

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

Pursuant to Sections 278 (3), 122 (2) AktG, Section 1 (3) sentence 4 COVID-19 Act, motions to add agenda items must be received by the company at least 14 days prior to the General Meeting, whereby the day of the General Meeting and the day of receipt of the motion are not counted (cf. Section 122 (2) sentence 3, (1) sentence 4 AktG in conjunction with Section 121 (7) AktG). As a result, motions to add agenda items must be received by the company no later than May 13, 2020, 24:00 (CEST).

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

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

Shareholders who request additional items to be put on the agenda must provide evidence that they have owned the required minimum number of shares for at least 90 days prior to the date of receipt of their motion and continue to hold those shares until the Executive Board or a court has

decided on the motion (cf. Section 122 (2) sentence 1, (1) sentence 3 and 4 and/or (3) sentence 5 AktG in conjunction with Section 121 (7) AktG). When calculating the period for holding the shares, Section 70 AktG must be observed.

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

Excerpts from the provisions of the German Stock Corporation Act and of the COVID-19 Act on which these shareholder rights are based are as follows:

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

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

Section 121 (7) AktG: General

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

Section 70 AktG: Calculation of the period of shareholding

¹If the exercise of rights arising from a share requires that the shareholder has been the holder of such share for a certain period of time, the right to request transfer of title from a credit institution, a financial services institution or an enterprise operating under Section 53 (1), sentence 1, or Section 53b (1) sentence 1, or Section 53b (7) of

the German Banking Act (Gesetz über das Kreditwesen). ²The period during which the share has been owned by a predecessor shall be attributed to the shareholder if he/she has acquired the share without consideration, from his/her trustee, as full legal successor, in connection with the winding up of a co-ownership or as a result of a transfer of assets pursuant to Section 13 of the Insurance Supervision Act (Versicherungsaufsichtsgesetz) or Section 14 of the Building Loan Associations Act (Gesetz über Bausparkassen).

Section 1 (3) sentences 3 and 4 COVID-19 Act:

³If the meeting is convened at short notice pursuant to sentence 1, notification pursuant to Section 125 (1) sentence 1 of the AktG must be given twelve days at the latest prior to the date of the meeting and notification pursuant to Section 125 (2) of the AktG must be given to persons who are entered in the stockholder register at the beginning of the twelfth day prior to the date of the meeting. ⁴By derogation from Section 122 (2) of the AktG, requests for additions to the agenda must in this event be submitted at least 14 days prior to the date of the meeting.

2. Countermotions and nominations by shareholders pursuant to Sections 278 (3), 126 (1), 127 AktG in connection with Section 1 (1) and (2) of the COVID-19 Act

The rights of shareholders to submit motions and nominations on agenda items and to submit procedural motions are excluded in accordance with the legal concept of the COVID-19 Act. Shareholders are nevertheless offered the opportunity, in analogous application of Sections 126, 127 AktG, to submit countermotions against proposals of the Executive Board and the Supervisory Board on certain agenda items and to submit nominations for the election of the auditor prior to the General Meeting pursuant to the following provisions. Countermotions must include a statement of reasons; such statement of reasons is not required for nominations.

In analogous application of Sections 278 (3), 126, 127 AktG, countermotions and nominations will be published immediately after receipt on the internet at www.merckkgaa-darmstadt-germany.com/agm including the name of the shareholder and – in case of countermotions – including the explanatory statement, provided that they are submitted to the company at least 14 days before the General Meeting, whereby the day of the General Meeting and the day of receipt of the motion are not counted. The last day on which a countermotion can be so submitted is therefore April 13, 2020, 24:00 (CEST). Shareholders are requested to provide evidence of their status as a shareholder at the point in time in which they submit the countermotion or the nomination.

Countermotions and nominations must be submitted exclusively to the following address, which is also stated in the invitation to the Annual General Meeting:

**Merck KGaA,
Darmstadt, Germany
– HV-Büro –
Frankfurter Strasse 250
64293 Darmstadt
Germany
Telefax: +49 6151 72-9877**

Email: hauptversammlung@merckkgaa-darmstadt-germany.com

Countermotions that are addressed differently will not be considered.

A potential statement by the company on countermotions and nominations will also be made available the company's website at www.merckkgaa-darmstadt-germany.com/agm.

The Executive Board reserves the right to combine countermotions and their explanations if several shareholders present countermotions on the same subject matter of a resolution. If several shareholders make election proposals on the same election, the Executive Board may also summarize the election proposals as well as their reasons (if any).

In analogous application of the prerequisites of Section 126 (2) AktG, the company also reserves the right not to make a countermotion and its explanation or a nomination accessible. This also applies to an explanation for a countermotion if it is longer than 5,000 characters in total.

In line with the legal concept of the COVID-19 Act, however, such countermotions and nominations will not be put to a vote or otherwise dealt with.

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

Section 126 AktG: Shareholder motions

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

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

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

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

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

Section 125 (1) sentence 1, (2) sentence 1 and (3) AktG (in the version currently applicable as per December 31, 2019): Communications to shareholders and supervisory board members

(1) *¹The management board shall, at least 21 days before the meeting, announce the convening of the meeting to those credit institutions and shareholders' associations which had*

exercised voting rights on behalf of shareholders in the preceding general meeting or which have requested such information.

- (2) *¹The management board shall provide the same information to shareholders who make such request or are registered as shareholders in the company's share register at the beginning of the 14th day before the meeting.*
- (3) *Each member of the supervisory board may request that the management board send the same communications to him.*

Section 127 AktG: Election proposals by shareholders

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

Section 124 (3) sentence 4 AktG:

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

Section 125 (1) sentence 5 AktG:

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

3. Opportunity to ask questions by way of electronic communication

Pursuant to Section 1 (1), (2) of the COVID-19 Act, shareholders are offered the opportunity to submit questions by way of electronic communication. The right of information as defined in Section 131 AktG shall not apply.

The Executive Board has stipulated that any questions must be submitted by electronic means two days prior to the Meeting at the latest. The Executive Board will decide which questions to answer and how to answer them, according to its dutiful and free discretion.

Shareholders who have registered for the General Meeting may submit their questions to the company until May 25, 2020 (24:00 CEST) by using the corresponding form in the web-based AGM system. The link to this web-based AGM system (investor portal) will be published on May 16, 2020, 24:00 hours CEST at www.merckkgaa-darmstadt-germany.com/agm. We would like to point out that the name of the shareholder submitting the question may also be mentioned when answering questions.

Excerpts from the provisions (Section 1 (2) sentence 1 No. 3, sentence 2 COVID-19 Act) on which this opportunity to ask questions by way of electronic communication is based are as follows:

¹The Management Board may decide that the meeting be held in the form of a virtual annual shareholders' meeting without the physical presence of shareholders or their proxies, provided that

[...]

3. shareholders are offered the opportunity to submit questions by way of electronic communication

[...].

The Management Board shall decide according to its dutiful and free discretion which questions it answers and how it answers them; it may also stipulate that any questions must be submitted online two days prior to the Meeting at the latest.