

# Corporate governance

## Joint Report of the Executive Board and the Supervisory Board according to section 3.10 of the German Corporate Governance Code

The German Corporate Governance Code is geared exclusively toward the conditions at a German stock corporation (Aktiengesellschaft). Merck KGaA has therefore independently examined and determined how the Code can be applied logically to a partnership limited by shares (Kommanditgesellschaft auf Aktien) to serve the interests of shareholders. In order to enable shareholders to compare the situation at other companies more easily, we have decided to base corporate governance on the conduct recommendations made by the Code Commission relating to management and supervision (governance) and to forego having our own, also permissible, code. With a few exceptions, the recommendations of the Code, the intent and meaning of which are applied, are complied with. To improve understanding, the following gives a general explanation of the company form Kommanditgesellschaft auf Aktien (KGaA) followed by the specific situation at Merck.

### Partnership limited by shares (Kommanditgesellschaft auf Aktien)

“The partnership limited by shares (Kommanditgesellschaft auf Aktien or KGaA) is a company with its own legal personality, at which at least one partner has unlimited liability for the company’s creditors (general partner) and the others hold an interest in the share capital without any personal liability for the company’s debts (limited liability shareholders)” (section 278 (1) of the German Stock Corporation Act (AktG)). It is therefore a hybrid of an Aktiengesellschaft (German Stock Corporation) and a Kommanditgesellschaft (limited partnership) with a focus on stock corporation law. Distinctive differences to the Aktiengesellschaft include the presence of general partners, who essentially also manage the company’s business activities, the absence of a management board and the restriction of rights and obligations of the supervisory board. In particular, the supervisory board is not responsible for appointing general partners or for regulating the terms and conditions of contracts, while at the Aktiengesellschaft it appoints the management board. At the KGaA, it also does not have the legal authority to issue rules of procedure for the executive board or a catalog of business transactions requiring approval. There are also special features with regard to the Annual General Meeting. For example, many of the resolutions made require the approval of the general partners (section 285 (2) AktG), including the adoption of the annual financial statements (section 286 (1) AktG). A large number of the conduct recommendations contained in the Code, which is geared towards Aktiengesellschaften, can therefore only be applied to a KGaA as appropriate.

The KGaA is a hybrid of a stock corporation and limited partnership.

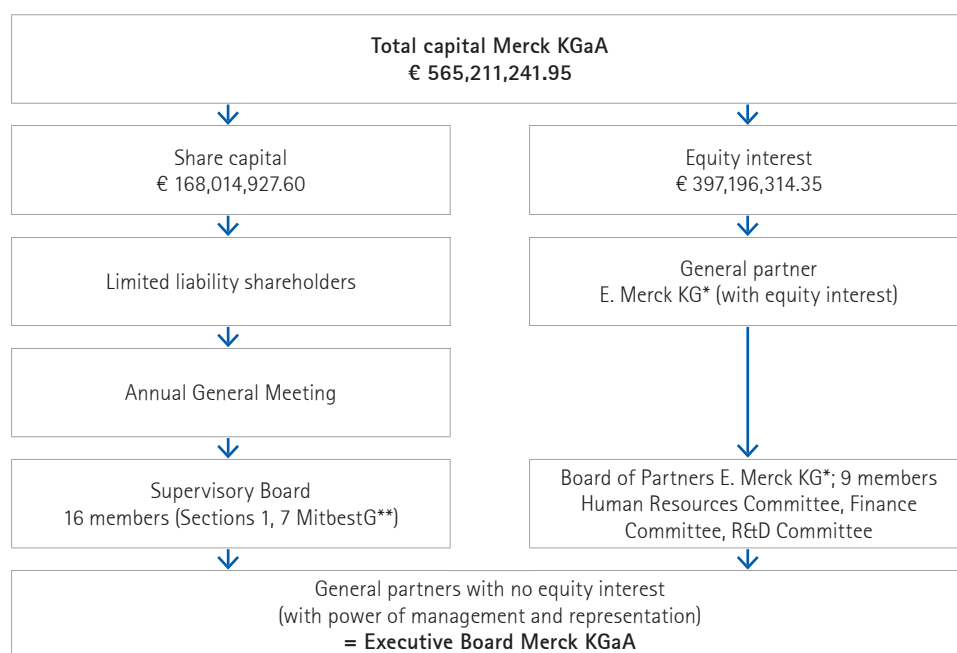
### Merck KGaA

The general partner E. Merck KG (until and including December 31, 2008 E. Merck OHG) holds around 70% of the total capital of Merck KGaA (equity interest); the limited liability shareholders hold the remainder, which is divided into shares (share capital). E. Merck KG is excluded from the management of business activities. The general partners with no equity interest (Executive Board), on the other hand, manage business activities. Nevertheless, due to its substantial capital investment and unlimited personal liability, E. Merck KG is an influential authority with a strong interest in compliance with procedures and efficiency of business operations at Merck KGaA. Merck KGaA’s participation in the profit or loss of E. Merck KG in accordance with Articles 26 et seq. of the Articles of Association provides for further harmonization of the interests of the limited liability shareholders and E. Merck KG.

Rules for Merck KGaA meet the requirements of the Code.

E. Merck KG appoints and dismisses the Executive Board. In addition, E. Merck KG has created bodies – complementing the expertise and activities of the Supervisory Board – to ensure that the Executive Board is monitored and advised. This applies primarily to the Board of Partners of E. Merck KG. Based on the provisions of the German Stock Corporation Act, the Articles of Association of Merck KGaA and the rules of procedure of the various committees, Merck KGaA has a set of regulations for the Executive Board and its supervision that meet the requirements of the Code. The investors, who bear the entrepreneurial risk, are protected as foreseen by the Code.

This is illustrated by the following chart:



\* Until and including December 31, 2008: E. Merck OHG

\*\* German Co-Determination Act

#### Deviations from the German Corporate Governance Code:

- In accordance with 2.3.2, the company shall send notification of the convening of the General Meeting together with the convention documents to all domestic and foreign financial services providers, shareholders and shareholders' associations by electronic means if the approval requirements are fulfilled. Since Merck KGaA has issued bearer shares, it relies on the cooperation of the depositary banks for electronic transmissions. Past experience has shown that we reach far more shareholders via post than electronically, which is why we have previously refrained from establishing the approval requirements. In order to comply with the Code in the future, the approval requirements will be established at the next Annual General Meeting.
- Contrary to section 3.8 (2), the Directors & Officers ("D&O") liability insurance policy, which Merck KGaA maintains for its committee members, does not include a deductible. The company has dispensed with a deductible because D&O insurance policies with the required deductible are not actively offered by the insurance sector and the individual agreement on a deductible is not countered by a substantial reduction in the premium.

3. Contrary to section 5.4.1 sentence 2, no age limit is taken into account when proposing the election of Supervisory Board members. The age of Supervisory Board members is not a criterion for their qualifications and competence. Moreover, the many years of experience of Supervisory Board members should not be dispensed with.
4. Contrary to section 5.4.6 (3), the remuneration paid to the members of the Supervisory Board is not reported individually. The amount of compensation received by the members of the Supervisory Board can be calculated in accordance with the Articles of Association of Merck KGaA, making a separate disclosure unnecessary.

## Main features of the Executive Board remuneration system

(section 4.2.5 of the German Corporate Governance Code)

The compensation of the general partners, who comprise the Executive Board of Merck KGaA, is composed of salary payments (fixed portion), profit participation and additions to pension provisions. Profit participation is based on the rolling three-year average of profit after tax. Payments in fiscal 2008 were as follows: fixed salary € 2.4 million, profit sharing € 9.9 million.

## Remuneration of Supervisory Board Members

(Section 5.4.6 of the German Corporate Governance Code)

Subject to the approval of the Annual General Meeting on the proposed distribution of a dividend of € 1.50 per share, the remuneration of the Supervisory Board in 2008 amounting to € 586 thousand consists of a fixed portion of € 116 thousand and a variable portion of € 470 thousand.

## Ownership, purchase or sale of shares in the company by members of the Executive Board and the Supervisory Board

(Section 6.6 of the German Corporate Governance Code)

As of December 31, 2008, the members of the Executive Board and the Supervisory Board held 17,337 shares. Their total ownership represents less than 1% of the issued shares of Merck KGaA.

Information on reportable transactions by members of the Executive Board and the Supervisory Board during fiscal 2008 pursuant to Section 15a of the German Securities Trading Act can be found on the Merck Web site at [www.merck.de/investors](http://www.merck.de/investors) -> Corporate governance.

# Board of Partners of E. Merck KG

Dr. Frank Stangenberg-Haverkamp, Chairman  
Jon Baumhauer, Vice Chairman | Karl-Heinrich Kraft  
Prof. Dr. Dr. h.c. Rolf Krebs | Albrecht Merck | Dr. Arend Oetker  
Dr. Norbert Schweickert | Prof. Dr. Theo Siegert | Prof. Dr. Wilhelm Simson

## Report of the Supervisory Board

During fiscal 2008, the Executive Board provided the Supervisory Board with regular written and verbal reports on the business development of Merck KGaA and the Merck Group. In particular, the Supervisory Board was informed about the market and sales situation of the company against the background of macroeconomic developments, the financial position of the company and its subsidiaries, as well as their earnings development and corporate planning. The major business policy transactions were also discussed in five joint meetings with the Executive Board, specifically the integration of Serono S.A. No permanent Supervisory Board committees have been set up.

The annual financial statements of Merck KGaA, the consolidated financial statements of the Merck Group and the management reports for Merck KGaA and the Merck Group, including the accounts, were audited by KPMG AG Wirtschaftsprüfungsgesellschaft. The auditors issued an unqualified audit opinion on the annual financial statements and management report for Merck KGaA in accordance with German Auditing Standards. For the consolidated financial statements prepared in accordance with International Financial Reporting Standards, the auditors issued the auditor's report, reproduced in the Annual Report of the Merck Group. In addition, the auditors audited the calculation of Merck KGaA's participation in the profits of E. Merck KG in accordance with Art. 27 (3) of the Articles of Association. The annual financial statements of Merck KGaA, the consolidated financial statements of the Merck Group, the management reports for Merck KGaA and the Merck Group, and the proposal by the Executive Board for the appropriation of the net retained profit were presented and distributed to the Supervisory Board, together with the auditor's reports.

In accordance with Art. 14 (2) of the Articles of Association, the Supervisory Board also examined the annual financial statements of Merck KGaA and the management report for Merck KGaA, the proposal for the appropriation of the net retained profit and the auditor's report presented in accordance with Art. 27 (3) of the Articles of Association. It also examined the consolidated financial statements of the Merck Group, the management report for the Merck Group, and took note of the auditor's report of KPMG AG Wirtschaftsprüfungsgesellschaft.

The discussion of the relevant agenda item at the Supervisory Board's meeting on February 12, 2009 to approve the financial statements was also attended by the auditors signing the audit opinion on the annual financial statements of Merck KGaA and the consolidated financial statements of the Merck Group, who reported on their audit. The Supervisory Board took note of and approved the results of the audit. On completion of its examination, the Supervisory Board raised no objections and thus approves the annual financial statements and management report for Merck KGaA, the consolidated financial statements of the Merck Group and the management report for the Merck Group prepared by the Executive Board, as well as the report presented by the auditors in accordance with Art. 27 (3) of the Articles of Association. The Supervisory Board gives its consent to the proposal for the appropriation of the net retained profit.

In 2008, considerable changes were made to the Supervisory Board in terms of both organization and personnel: The number of employees at Merck KGaA and associated companies in Germany has increased steadily. Merck now has more than 10,000 employees throughout Germany. Therefore the Supervisory Board was enlarged from 12 to a total of 16 members. The term of office of all members of the Supervisory Board legally ended with the 2008 Annual General Meeting. New elections were therefore necessary.

The Annual General Meeting elected the following shareholder representatives to the Supervisory Board: Johannes Baillou, Frank Binder, Prof. Dr. Rolf Krebs, Dr. Arend Oetker, Prof. Dr. Theo Siegert and Prof. Dr. Wilhelm Simson. The holder of the registered share appointed Michaela Freifrau von Glenck and Albrecht Merck to the Supervisory Board. Jon Baumhauer, the former member representing the holder of the registered share on the Supervisory Board, no longer stood for re-election. It was not possible to hold an election of the employee representatives on the Supervisory Board in accordance with the applicable rules within the time period available. A procedure for the court appointment of the employee representatives was therefore initiated. Darmstadt District Court appointed Heiner Wilhelm, Claudia Flauaus and Michael Fletterich as the employee representatives, Dr. Daniele Bruns as the senior executive representative and Mr. Osman Ulusoy as the union representative. The District Court appointed Edeltraud Glänzer as the second union representative in place of Klaus Brauer, who was no longer available. Judith Delp and Frieder Kaufmann were appointed as additional members of the Supervisory Board. The election of the employee representatives is expected to be completed in the course of 2009.

The General Partner E. Merck KG, the Supervisory Board and the Executive Board thanked Messrs. Baumhauer and Brauer, who each served as members of the Supervisory Board for over a decade, for their critical and constructive as well as objective work in advising and supervising the Executive Board of Merck KGaA.

Darmstadt, February 12, 2009  
The Supervisory Board of Merck KGaA



Prof. Dr. Wilhelm Simson  
Chairman

## Supervisory Board of Merck KGaA

Prof. Dr. Wilhelm Simson, Chairman

Heiner Wilhelm\*, Vice Chairman | Johannes Baillou | Frank Binder

Dr. Daniele Bruns\* | Judith Delp\* | Claudia Flauaus\* | Michael Fletterich\*

Edeltraud Glänzer\* | Michaela Freifrau von Glenck | Frieder Kaufmann\*

Prof. Dr. Dr. h.c. Rolf Krebs | Albrecht Merck | Dr. Arend Oetker | Prof. Dr. Theo Siegert

Osman Ulusoy\*

\*Employee representatives

## Executive Board of Merck KGaA



**Dr. Bernd Reckmann**  
**Head of the Chemicals business sector**

Born in 1955

Biochemist

joined Merck in 1986,  
Member of the Executive Board  
since January 2007

**Responsibility for**  
**Group-wide functions:**

Chemicals business sector;  
Site Management Darmstadt and Gernsheim;  
Production, Engineering, Process Development

**Regional responsibilities:**

Germany (including Human Resources);  
Asia; United States (Chemicals); Australia;  
New Zealand

**Elmar Schnee**  
**Head of the Pharmaceuticals**  
**business sector**

Born in 1959

Business graduate

joined Merck in 2003, Member of the  
Executive Board since November 2005

**Responsibility for**  
**Group-wide functions:**

Pharmaceuticals business sector

**Regional responsibilities:**

Europe; United States (Pharmaceuticals);  
Canada; Latin and Central America; Africa;  
Middle East



**Dr. Karl-Ludwig Kley**  
Chairman of the Executive Board

Born in 1951

Lawyer

Member of the Supervisory Board and Board of Partners of Merck from March 2004 to June 2006, Member of the Executive Board since joining Merck in September 2006

**Responsibility for**  
**Group-wide functions:**

Human Resources (global); Legal, Patents, Trademarks; Auditing, Risk Management; Strategic Planning; Inhouse Consulting; Corporate Communications; Environment, Health and Safety; Information Services

**Dr. Michael Becker**  
Chief Financial Officer

Born in 1948

Lawyer

joined Merck in 1998, Member of the Executive Board since January 2000

**Responsibility for**  
**Group-wide functions:**

Accounting, Controlling, Finance, Taxes, Insurance; Mergers and Acquisitions; Investor Relations; Purchasing

[www.merck.de/management](http://www.merck.de/management)