

## Declaration of Compliance 2020/2021

The management of H&R Komplementär GmbH, acting in its capacity as personally liable shareholder of H&R GmbH & Co. KGaA (also referred to hereinafter as the “**the Company**”) in accordance with article 161 of the German law governing joint-stock corporations (AktG), and the Supervisory Board of the Company declare that, after taking into account the specific legal features of the partnership limited by shares described in Section I below, the Company complies with the recommendations of the Government Commission of the German Corporate Governance Code (referred to in its respective valid version as “**the Code**”), as described in more detail in Section II and subject to the deviations mentioned therein, and that it has complied with, currently complies with and will in the future comply with:

### I.

#### Legal-form-specific characteristics of H&R GmbH & Co. KGaA

The Code is aimed at companies with the legal form of a German joint-stock corporation (“**AG**”). As the Code does not take into account the special characteristics of the legal form of a partnership limited by shares (“**KGaA**”), many of its recommendations to H&R GmbH & Co. KGaA can only be applied in a modified form. The main legal-form-specific characteristics of H&R GmbH & Co. KGaA are as follows:

1. Company management: Unlike an AG company, the management and representation of a KGaA are not the responsibility of the board of management, but of the personally liable shareholders (*Komplementären*, or “general partners”). In contrast to the management board of an AG company, personally liable shareholders are not determined by the supervisory board, but by the articles of association and, ultimately, the AGM of the KGaA company concerned. The only personally liable shareholder of H&R GmbH & Co. KGaA is H&R Komplementär GmbH. The management and representation of H&R Komplementär GmbH are in turn the responsibility of its managing directors. Decisions regarding the appointment, relieving and dismissal of managing directors of H&R Komplementär GmbH, and the conclusion of their executive service agreements, is the responsibility of the shareholders’ meeting of H&R Komplementär GmbH. The remuneration of H&R Komplementär GmbH is set out in the articles of association of H&R GmbH & Co. KGaA, and is therefore the responsibility of the KGaA AGM. The remuneration of the managing directors of H&R Komplementär GmbH is to be determined by the advisory board of H&R Komplementär GmbH in the form of a shareholder resolution (which is distinct from the purely advisory role at the level of H&R GmbH & Co. KGaA). Furthermore, management may conduct certain types of business only with the consent of the advisory board of H&R Komplementär GmbH.
2. Supervisory board: The competences of the supervisory board of a KGaA company are limited compared to those of the supervisory board of an AG corporation. The supervisory board of H&R GmbH & Co. KGaA performs a purely monitoring and advisory role. It has no competences in the areas of human resources or remuneration with regard to the personally liable shareholder and its managing directors (see Section 1 above), and is not authorized to issue rules of procedure or to define a catalogue of transactions for H&R Komplementär GmbH or its managing directors. These are tasks which company management may only carry out with the approval of the supervisory board. As described in Section 1, these competences correspond to the AGM of the KGaA company, the shareholders’ meeting of H&R Komplementär GmbH or the advisory board of H&R Komplementär GmbH. In contrast to the supervisory board of an AG company, the supervisory board does not decide on the approval of the annual financial statements of the KGaA. This task falls to the AGM, subject to the approval of the personally liable shareholder (see Section 3 below).
3. Annual general meeting: The AGM of a KGaA company has essentially the same rights as that of an AG corporation. Its particular responsibilities therefore include resolutions regarding the appropriation of profits, relieving the personally liable shareholder and the members of the supervisory board, the election of shareholder representatives to the supervisory board, the choice of stat-

utory auditor, the approval of systems of remuneration for the management and supervisory board, and approval of the remuneration report. In addition, the AGM of a KGaA company always decides, by law, on the approval of the annual financial statements of the KGaA company concerned. A number of AGM resolutions, including those regarding the approval of the annual financial statements, legally require the consent of the personally liable shareholder.

Insofar as the Code contains recommendations which, due to the specific legal characteristics of the company, relate to the area of responsibility of the AGM or the advisory board of H&R Komplementär GmbH, the declaration of conformity is issued in consultation with the respective decision-making body of H&R Komplementär GmbH.

## II. Recommendations of the Code

1. H&R GmbH & Co. KGaA has complied, since the latest declaration of compliance was issued on 3 December 2019, with all the recommendations of the Government Commission of the German Corporate Governance Code published in the *Bundesanzeiger* (German Federal Gazette) by the German Federal Ministry of Justice and Consumer Protection on 24 April 2017 (and amended on 19 May 2017), version of 7 February 2017 (“**DCGK 2017**”), subject to the following exceptions:

- **Recommendation 4.1.3, subsection 3 DCGK 2017:** Recommendation 4.1.3, subsection 3 of DCGK 2017 was not complied with. According to section 4.1.3, subsection 3 of DCGK 2017, employees are to be given suitable means to provide protected information on legal infringements within the company. The personally liable shareholder and supervisory board generally considered it sufficient and appropriate that the H&R Code of Conduct, which is supplied to all employees in the course of recruitment, and is also the subject of regular training courses, expressly encourages employees to: “(...) report without delay, and including anonymously, infringements of the law or of this Code of conduct.” Employees have to date been offered the possibility of contacting Compliance Management or Company Management or, if they are employed by a subsidiary, the management of the subsidiary concerned; in strict confidentiality or subject to anonymity.

By introducing an institutionalized system of notification, the company now offers employees the possibility of submitting protected information regarding legal infringements within the company. The corresponding new recommendation (A.2, subsection 2 Hs. 1 DCGK 2019/2020) is therefore fully complied with.

- **Recommendation 4.2.1, subsection 1 DCGK 2017<sup>1</sup>:** Recommendation 4.2.1, subsection 1 of DCGK 2017 was not complied with. According to recommendation 4.2.1, subsection 1 of DCGK 2017, the board of directors (or company management) shall consist of several persons, including a chairman or spokesman. In the case of H&R Komplementär GmbH, only one managing director, and therefore no chairman or spokesman, was appointed. The shareholders’ meeting of H&R Komplementär GmbH is of the opinion that management tasks can be satisfactorily performed even by a sole managing director.
- **Recommendation 4.2.3, subsection 4 DCGK 2017:** Recommendation 4.2.3, subsection 4 of DCGK 2017 was not complied with. Recommendation 4.2.3, subsection 4 of DCGK 2017 establishes, in the case of the conclusion of executive board (or executive management) agreements, that care should be taken to ensure that payments to a member of the board of directors (or member of company management) do not exceed, in the event of premature termination of the board of directors’ activities (or management activities), a certain severance-pay cap; and that reimbursement does not exceed that corresponding to the remaining term of the contract of employment concerned. The contract of employment concluded between H&R Komplementär GmbH and its managing directors does not contain any agreement on such severance

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<sup>1</sup> This recommendation has been omitted in DCGK 2019/2020.

pay. The executive employment contract is entered into for a fixed term, and does not include a proper termination option. In the event of extraordinary termination on important grounds, H&R Komplementär GmbH shall not pay compensation to the managing director, and the Company shall consequently not reimburse H&R Komplementär GmbH. Unless there are important reasons to the contrary, premature termination of an existing executive employment contract shall always require a termination agreement. This would then regulate the terms of contractual termination, including the amount of any compensation due, subject to the material requirements of recommendation 4.2.3, subsection 4 of DCGK 2017.

The new recommendation G.13, subsection 1 DCGK 2019/2020 no longer refers to the date of conclusion of the contract of employment, unlike the previous recommendation 4.2.3, section 4, subsection 1 DCGK 2017. It consequently no longer depends on a provision in the contract of employment, but on the fact that a departing member of the board of directors (or company management) does not receive more than the severance pay cap, or remuneration in excess of that corresponding to the remaining term of the contract. The company fully complies with recommendation G.13, subsection 1 DCGK 2019/2020.

- **Recommendation 4.2.5, subsection 3 DCGK 2017<sup>2</sup>:** Recommendation 4.2.5, subsection 3 of DCGK 2017, concerning the itemized disclosure of the remuneration of members of the management board (or company management) in accordance with the sample tables attached to DCGK 2017, was not complied with. On 18 May 2017, an ordinary general meeting of the Company resolved, via item 9 on the agenda (exemption from the obligation to disclose itemized management board remuneration) and at the suggestion of the personally liable shareholder and supervisory board in accordance with articles 286, sect. 5, 314, subsection 3 and 315a, section 1 of the German Commercial Code (HGB), that the individual remuneration of the managing directors of H&R Komplementär GmbH for the fiscal years 2017 to 2021 should not be disclosed in an itemized way. The personally liable shareholder and the supervisory board are of the opinion that disclosure of the individual remuneration of the managing directors would disproportionately interfere with the protected privacy of the persons concerned. As of 19 May 2017, therefore, and for reasons of confidentiality within and outside the company, disclosure in the presence of several members of management of the individual remuneration of members of company management is not possible. Since the latest declaration of compliance, company management has consisted of a sole managing director. The disclosure of his remuneration effectively complies with recommendation 4.2.5, subsection 3 of DCGK 2017.
  - **Recommendation 5.1.2, sect. 2, subsection 3 DCGK 2017:** Recommendation 5.1.2, sect. 2, subsection 3 of DCGK 2017 was not complied with. In accordance with recommendation 5.1.2, sect. 2, subsection 3 of DCGK 2017, an age limit is to be established for members of the board of directors (or company management). No age limit has to date been set for managing directors of H&R Komplementär GmbH, as there is no reason for such a provision, given the current age structure the management team. The imposition of a formal age-limit would in any case make it needlessly more difficult to find suitable members for the management board.
2. H&R GmbH & Co. KGaA currently complies with all recommendations of the Government Commission of the German Corporate Governance Code published in the *Bundesanzeiger* (Federal Gazette) by the Federal Ministry of Justice and Consumer Protection on 20 March 2020, as amended on 16 December 2019 (“**DCGK 2019/2020**”), and will continue to do so in the future, subject to the following exceptions:
- **Recommendation B.5 DCGK 2019/2020:** Recommendation B.5 DCGK 2019/2020 is not complied with. According to recommendation B.5 DCGK 2019/2020, an age limit shall be established for members of the board of directors (or company management) and published in the form of a corporate governance statement. No age limit has to date been set for managing

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<sup>2</sup> This recommendation has been omitted in DCGK 2019/2020.

directors of H&R Komplementär GmbH, as there is no reason for such a provision, given the current age structure the management team. The imposition of a formal age-limit would in any case make it needlessly more difficult to find suitable members for the management board. Accordingly, no age limit is indicated in the corporate governance statement.

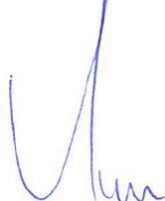
- **Recommendation G.1, bullet-points 1, 2 and 3 of DCGK 2019/2020:** Recommendation G.1 DCGK 2019/2020 is not fully complied with. According to recommendation G.1 DCGK 2019/2020, the remuneration system for the board of directors (or company management) should be subject to certain minimum specifications. The Company's current remuneration system, which has been used to determine the remuneration of the Managing Director under the terms of his current executive employment contract, does not specify how the overall target remuneration is determined for the managing director, or what amount the total remuneration must not exceed (maximum remuneration, see first bullet-point), or what relative proportion of the total target remuneration is based on (i) fixed remuneration and (ii) short-term variable and long-term variable components (see second bullet-point). Similarly, the current system of remuneration fails to specify non-financial performance criteria for the application of variable-remuneration criteria (see third bullet-point).
- **Recommendation G.10 DCGK 2019/2020:** Recommendation G.10 DCGK 2019/2020 is not complied with. According to recommendation G.10 DCGK 2019/2020, the variable-compensation amounts granted to a member of the board of directors (or company management) are to be invested by the payee, predominantly in shares of the company, or granted accordingly on share-based criteria, taking into account the respective tax burden (section 1). Amounts corresponding to long-term variables should furthermore only be available after four years (section 2). The regulatory objective of recommendation G.10 DCGK 2019/2020 is to encourage the members of the board of directors/company management to focus their efforts on the long-term promotion of the company's well-being and the guarantee of sustainable commercial success, likewise in the long term. Given that H&R GmbH & Co. KGaA is a family-run company, and that the current sole managing director of H&R Komplementär GmbH is the son of the controlling shareholder, there are ample incentives for complying with this provision.

As a precautionary measure, it should be pointed out that according to DCGK 2019/2020, the recommendations on board remuneration contained in its section G.I do not have to be taken into account in the current contract of employment on which the managing director's appointment is based.

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Salzbergen (Germany), 21 December 2020

**Personally liable shareholder  
(H&R Komplementär GmbH) of H&R  
GmbH & Co. KGaA**



Niels H. Hansen  
Sole managing director

**Supervisory board of H&R  
GmbH & Co. KGaA**



Dr Joachim Girg  
Chairman of the supervisory board: