

Joint Merger Plan for the Cross-Border Merger of KWS Services West S.L.U. into KWS SAAT SE

The executive board of KWS SAAT SE and the sole director of KWS Services West S.L.U. hereby draw up the following joint cross-border merger plan (the **Merger Plan**):

I. PREAMBLE

- (A) KWS SAAT SE is a European Company (*Societas Europaea*) having its registered office in Einbeck, Germany, registered with the commercial register of the Local Court of Göttingen under HRB 204567 (hereinafter **KWS SAAT SE**). Its business address is Grimsehlstraße 31, 37574 Einbeck, Germany. According to the Articles of Association (as of December 14, 2017), KWS SAAT SE's share capital amounts to EUR 19,800,000.00, divided into 6,600,000 no-par value bearer shares.
- (B) On 14 December 2018 KWS SAAT SE's annual shareholder meeting will resolve on the conversion of legal form of KWS SAAT SE into a partnership limited by shares (*Kommanditgesellschaft auf Aktien – KGaA*) (hereinafter the **Conversion**). After the Conversion has taken effect, the acquiring company will change its trade name to KWS SAAT SE & Co. KGaA (hereinafter respectively referred to as **Transferee**). The general partner of KWS SAAT SE & Co. KGaA will be KWS SE. KWS SAAT SE's annual shareholder meeting will also resolve on a capital increase from company funds by issuing new shares.. After the capital increase from company funds has taken effect, the share capital of the Transferee will amount to EUR 99,000,000.00 and will be divided into 33,000,000 no-par value bearer shares.
- (C) KWS Services West S.L.U. is a sole shareholder private limited company (*Sociedad de Responsabilidad Limitada Unipersonal*), incorporated and existing under Spanish law, having its registered office in calle Anglí 31, 3^o1, 08017 Barcelona, Spain, and registered with the commercial register of Barcelona (*Registro Mercantil de Barcelona*) under volume (*tomo*) 43911, page (*folio*) 74, sheet (*hoja*) B-441644 and C.I.F number B-66099706 (hereinafter also referred to as the **Transferor**). As of the date of this Merger Plan, the share capital (*capital social*) of KWS Services West S.L.U. amounts to EUR 155,000 and is fully paid up. It is divided into 155,000 shares with a nominal value of EUR 1.00 per share, free from liens and encumbrances. The sole shareholder of KWS Services West S.L.U. is KWS SAAT SE.
- (D) The sole director of KWS Services West S.L.U. and the executive board of KWS SAAT SE intend to merge KWS Services West S.L.U. as Transferor into KWS SAAT SE as Transferee by way of a cross-border merger by absorption (the **Merger**). The Merger and the Conversion shall take effect concurrently.
- (E) The Merger is a cross-border merger and is effected in accordance with the provisions adopted in the Kingdom of Spain and in the Federal Republic of Germany for the purpose of implementing Directive (EU) 2017/1132 of the European Parliament and of the Council of 14 June 2017, relating to certain aspects of company law. In the Kingdom of Spain, the Merger is effected in accordance with articles 54 et seq. of the Spanish Law 3/2009 of 3 April 2009 on Structural Modifications of Commercial Companies (*Ley de Modificaciones Estructurales de las Sociedades Mercantiles*, hereinafter **LME**); in the Federal Republic of Germany, the Merger is effected in accordance with the provisions of the Tenth Section of the Second Part of the Second Book of the German Transformation Act (*Umwandlungsgesetz*; **UmwG**).
- (F) The purpose of the Merger is to streamline and simplify the group structure. The functions of the regional service companies in the KWS Group are being merged into a central service company. When this project is completed, KWS Services West S.L.U. will no longer have any business operations. The Merger also means that the Transferee can maintain its well-established governance structure with a supervisory board consisting of six members, two of which are employee representatives, even after the Conversion. Once the Merger has taken effect, the corporate co-determination of the Transferee will be governed by the German Act on

Employee Co-Determination in Cross-border Mergers (*Gesetz über die Mitbestimmung der Arbeitnehmer bei einer grenzüberschreitenden Verschmelzung*; **MgVG**). Against this background, the Merger is to be linked with the Conversion such as that the Merger will take effect concurrently with the Conversion.

- (G) None of the merging companies is in liquidation or is the subject of insolvency or composition proceedings.

II. JOINT MERGER PLAN

1. Merging companies

- 1.1 The Transferee is KWS SAAT SE (see Preamble letters (A) and (B)).
- 1.2 The Transferor is KWS Services West S.L.U. (see preamble letter (C)).

KWS SAAT SE is the sole shareholder of KWS Services West S.L.U.

2. Transfer of assets and liabilities by way of a cross-border merger by absorption

KWS Services West S.L.U. transfers its assets and liabilities as a whole, including all rights and obligations, by way of a cross-border merger by absorption (*grenzüberschreitende Verschmelzung durch Aufnahme*) pursuant to section 122a (2) in conjunction with sections 2 no. 1, 46 *et seq.* UmwG and articles 54 to 67 of the LME. Upon the Merger taking effect, KWS Services West S.L.U. will be dissolved and all of its assets and liabilities will be transferred to KWS SAAT by way of universal succession without liquidation (*Gesamtrechtsnachfolge ohne Abwicklung*).

3. Effectiveness of the Merger

The Merger will become effective pursuant to section 122a (2) in conjunction with section 20 UmwG and article 46 of the LME upon registration with the commercial register of the Local Court of Göttingen.

After the Merger has taken effect, the commercial activity of KWS Services West S.L.U. in Spain will be continued until all activities have been transferred to the central service company. All assets and liabilities of KWS Services West S.L.U. transferred by the Merger will be attributed to the branch in Barcelona of the Transferee for accounting purposes.

4. No consideration; dispensability of further particulars; no Merger audit; effects of the Merger on shareholder contributions

- 4.1 No shares in the Transferee will be granted in exchange for the transfer of the Transferor's assets and liabilities. KWS SAAT SE is the sole shareholder of KWS Services West S.L.U. as Transferor. Accordingly, it is not permitted to increase the share capital of the Transferee by issuing new shares when implementing the Merger (section 122a (2) in conjunction with section 68 (1) sentence 1 no. 1 UmwG).
- 4.2 Since all shares in KWS Services West S.L.U. are held by KWS SAAT SE, the following information will not be required to be stated in the Merger Plan: (i) information regarding the exchange ratio and any additional cash payments pursuant to section 122c (2) no. 2 UmwG and article 49.1 of the LME, (ii) information regarding the transfer of new shares of the Transferee pursuant to section 122c (2) no. 3 UmwG and (iii) the date from which the newly issued shares will entitle the holder to a share in the profits pursuant to section 122c (2) no. 5 UmwG and article 49.1 of the LME.

For the same reason, pursuant to section 122f sentence 1 in conjunction with section 9 (2) UmwG and article 49.1.2^o LME, a merger audit according to section 9 (1) UmwG respectively article 34 of the LME is not required.

- 4.3 Since the articles of association of KWS Services West S.L.U. impose on the shareholders neither any contributions (*aportaciones de industria*) nor any ancillary obligations (*prestaciones accesorias*), the Merger shall not result in the termination of any such obligations nor in the creation of compensatory payment obligations pursuant to article 31.3^a LME of the LME.

5. Merger closing date; tax transfer date; balance sheet dates

- 5.1 The date and time as of which the actions performed by the Transferor will be treated as actions of the Transferee is 1 July 2018, 00:00 hrs (Merger Closing Date within the meaning of section 122c (2) no. 6 UmwG and article 31.7 of the LME).
- 5.2 For German tax purposes, the tax transfer date is 30 June 2018, 24:00 hrs. For Spanish tax purposes, the tax transfer date is 1 July 2018, 00:00 hrs.
- 5.3 The dates of the balance sheets that are used in order to determine the terms of the Merger are 30 June 2018 for the Transferee pursuant to section 122c (2) no. 12 UmwG and 30 June 2018 for KWS Services West S.L.U. as the Transferor pursuant to articles 31.10 and 36 of the LME.

6. Information on the valuation of the assets and liabilities of the merging companies

- 6.1 The Transferee will report the assets and liabilities transferred to it from KWS Services West S.L.U. at book value in its German GAAP annual financial statements (valuation information pursuant to section 122c (2) no. 11 UmwG and article 31.9^a of the LME).
- 6.2 The internal valuation of the assets, liabilities and the equity of KWS Services West S.L.U. to be transferred to the Transferee in the context of the Merger as of 30 June 2018 amounts to EUR 1,028,509 (assets), EUR 417,099 (liabilities) and EUR 611,410 (equity) which corresponds to the book value of the assets, liabilities and equity of KWS Services West S.L.U. as of the aforementioned date. For the purposes of article 31.9a of the LME, this valuation has been performed on the basis of the Merger balance sheet approved by KWS Services West S.L.U. The cut-off date of such balance sheet is the financial year end prior to the execution of the Merger Plan. Since the Merger Plan was executed prior to 30 December 2018, i.e. 24 October 2018, the relevant merger balance sheet date shall be 30 June 2018. This determination of the cut-off date according to Spanish law and the valuation performed on the basis of the Merger balance sheet approved by KWS Services West S.L.U., shall have no implications on the determination of the Merger Closing Date according to section 122c (2) no. 6 UmwG and article 31.7 LME and shall be independent thereof. The fact that the merger balance sheet shall be based on the balance sheet from the annual accounts of KWS Services West S.L.U. as per 30 June 2018 for purposes of section 36 of the LME shall not affect the fulfilment of the obligations related to the financial statements which will affect KWS Services West S.L.U. after the drawing up or the approval of the Merger Plan.

6.3 Income tax related impacts

The Merger is governed by sections 122a et seq. UmwG. Therefore, the regulations of the German Transformation Tax Act (*Umwandlungs-steuergesetz*, **UmwStG**) shall apply.

The Merger is tax neutral for the current shareholder, the Transferor as well as the Transferee (sections 11 to 13 UmwStG).

At level of the Transferee, a gain in the amount of the difference between the tax book value of the shares in KWS Services West S.L.U. and the tax value at which the transferred assets are to be transferred, less the merger costs, is generally not recognized for tax purposes (so-called transfer result). However, Section 8b of the Corporation Tax Act is to be applied to the extent that the profit incurred for the transfer of assets corresponds to the share of the Transferee in KWS Services West S.L.U. In this respect, the Transferee will be taxed at 5% of the transfer result.

It is not to be expected that the Transferee will generate a so-called participation correction profit (correction of a previous write-down to the going-concern value of the participation of KWS Services West S.L.U.) or a post-acquisition profit (profit from the confusion of receivables and liabilities between the participating companies or from the reversal of provisions).

Likewise, it is declared that the Merger fulfils the requirements to apply the Spanish special tax regime for mergers, spin-offs, asset transfers, share exchange and transfer of the company offices of a European corporation or cooperative corporation from a European Member State to another European Member State, pursuant to Chapter VII of Title VII of the Corporate Income Tax Law 27/2014, dated 27 November 2014; it is noted that the merger is based on valid economic reasons.

Pursuant to the previous paragraph and within the period of three months as of the registration with the Spanish commercial register of the public deed, the necessary communication to the Spanish tax authorities will be carried out to subject the transaction to the Spanish special tax regime.

6.4 VAT consequences

According to German law, the merger of KWS Services West S.L.U. into the Transferee is a sale of a going concern, hence, the transaction should not be subject to German Value Added tax. The same applies under Spanish law, therefore the merger of KWS Services West S.L.U. is not subject to Value Added tax in Spain.

The Transferor's (i.e. KWS Services West S.L.U.'s) VAT liability expires when the merger becomes effective, i.e. when the merger is registered in the commercial register of the Local Court of Göttingen. The transferring company must therefore submit its VAT returns up to this date.

7. No granting of special rights

The Transferee does not grant any rights within the meaning of section 122c (2) no. 7 UmwG and article 31.4^a of the LME to either the shareholders of the companies participating in the Merger or any holders of securities other than shares. No measures within the meaning of these provisions are being proposed either.

8. Management by KWS Management SE as general partner, composition of the supervisory board

In the course of the Conversion, KWS SE will join the Transferee as general partner. After the Merger has taken effect, it is not intended to change the position or the composition of the general partner KWS SE (the management body of the Transferee responsible after the Merger has taken effect). Furthermore, it is not intended to make any changes to the composition of the supervisory board of the Transferee other than those mentioned in Section 12.

9. No granting of special benefits

- 9.1 The appointment of the sole director of KWS Services West S.L.U. will end when the Merger takes effect. If the member of the management has a service or employment relationship with KWS Services West S.L.U., either in force or suspended, the employment contract will not be affected by the end of their

appointment as member of the management. Special benefits within the meaning of section 122c (2) no. 8 UmwG and articles 31.5^a and 59.2.1^a of the LME have not been and will not be granted to the sole director of KWS Services West S.L.U.

- 9.2 No special benefits within the meaning of section 122c (2) no. 8 UmwG and articles 31.5^a and 59.2.1^a of the LME have been or will be granted to the members of the administration, management, supervisory and controlling boards of KWS SAAT SE. In this context, however, it should be noted that the position of the general partner, which will join the Company at the time when the Merger will take effect, including the position of the members of the management board and the supervisory board of the general partner, will continue to exist after the Merger has taken effect.
- 9.3 Since all shares in KWS Services West S.L.U. are held by KWS SAAT SE, a merger audit and the appointment of a merger auditor in accordance with section 122f sentence 1 in conjunction with section 9 (2) UmwG and article 49.2 of the LME are not required. Therefore, special benefits within the meaning of section 122c (2) no. 8 UmwG or articles 31.5^a and 59.2.1^a of the LME in favour of an expert auditing the Merger Plan cannot be granted.

10. Articles of association of KWS SAAT SE and KWS SAAT SE & Co. KGaA

- 10.1 The current articles of association of KWS SAAT SE are attached to this Merger Plan as Annex 2 pursuant to section 122c (2) no. 9 UmwG and article 31.8^a of the LME. At the time when the Merger will take effect, the Transferee, KWS SAAT SE & Co. KGaA, will have the Articles of Association attached as Annex 3. Reference is made to the annexes pursuant to section 9 (1) sentence 2 of the German Notarisation Act. The mentioned annexes are an integral part of this Merger Plan.
- 10.2 The current articles of association of KWS SAAT SE and the articles of association of KWS SAAT SE & Co. KGaA that will be valid at the time when the Merger will take effect will not be amended in the context of the Merger.

11. Anticipated consequences of the Merger for employment

- 11.1 The Merger will result in a transfer of undertaking within the meaning of the Council Directive 2001/23/EC of 12 March 2001 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses (**Acquired Rights Directive**), by virtue of which all employees of KWS Services West S.L.U. will become employees of the Transferee by operation of law in accordance with the relevant local laws implementing the Acquired Rights Directive, in Spain i.e. Art. 44 of the Royal Decree 2/2015 of 23 October 2015 approving the Workers' Statute after the Merger has taken effect. The Transferee shall assume full liability for all claims and shall become entitled to all rights arising from the employment contracts of the transferring employees. No transfer of undertaking will occur in relation to the employees of KWS SAAT SE.
- 11.2 Neither the Merger nor the change of employer going along with the Merger, as such, will lead to a substantial change in the terms and conditions of employment as they stand when the Merger will take effect. The terms and conditions of employment of the transferring employees will be preserved in compliance with the applicable Spanish law implementing the Acquired Rights Directive.
- 11.3 KWS SAAT SE has a works council (*Betriebsrat*) at its offices in Einbeck, Grimsehlstraße 31 which has been established for this joint establishment that has been set up together with KWS Services Deutschland GmbH. Furthermore, works councils have been established at the offices in Wanzleben-Börde, Magdeburger Straße 30 for the establishment in Wanzleben-Börde, in Gondelsheim, Altenwingertweg 2 for the establishment in Gondelsheim and for the establishment in

Seligenstadt, Siedlungsstraße 2, Prosselheim. There is a company works council (*Gesamtbetriebsrat*) established for KWS SAAT SE. The works council agreements (*Betriebsvereinbarungen*) executed between KWS SAAT SE and the German works councils will not be affected by the Merger and will continue to apply within their current scope of application after the Merger has taken effect. A works council within the meaning of Spanish law (*Delegados de personal*) has been established at the site in Barcelona of KWS Services West S.L.U. The Merger will not affect the employee representatives. The works council will remain for the site Barcelona of the Transferee. The existing SE works council of KWS SAAT SE, known as the "EUROPEAN EMPLOYEE COMMITTEE", is tied to the legal form of an SE, so that it generally ceases to exist as an SE works council when the transformation of legal form and the cross-border merger take effect. Since KWS is a group of companies operating throughout the European Community whose controlling company has its registered office in Germany, a European Works Council can be formed in accordance with the provisions of the European Works Councils Act (*Europäische Betriebsräte-Gesetz – EBRG*) instead of the SE Works Council previously known as the "EUROPEAN EMPLOYEE COMMITTEE". The Company intends to either conclude an agreement with employee representatives to continue the EUROPEAN EMPLOYEE COMMITTEE on a voluntary basis or to transfer it to a European Works Council.

- 11.4 The Transferee is bound by various collective bargaining agreements (*Tarifverträge*). The collective bargaining agreements will not be affected by the Merger and will continue to apply within their current scope of application after the Merger has taken effect. The same applies with regard to any collective bargaining agreements to which KWS Services West S.L.U. may be bound until the date of termination or expiry of the collective agreement or the entry into force or application of the collective bargaining agreement concluded for the branch Bracelona of the Transferee.
- 11.5 There are currently no specific measures within the meaning of Section 122 para. 2 no. 4 UmwG planned because of the Merger. In particular, based on the Merger no mass lay-offs, or site relocations are planned that may negatively impact on the interests of the employees. The Merger will not affect the application of the relevant local laws and other potential rules regarding the protection of employees against dismissal.
- 11.6 KWS SAAT SE has a one-third co-determined supervisory board. After the Conversion and the Merger have taken effect, the terms of office of the current members of the supervisory board of KWS SAAT SE will terminate. KWS Services West S.L.U. has no supervisory board or any other controlling bodies that would have been formed on the basis of rules on employee participation (*Unternehmensmitbestimmung*). The future composition of the supervisory board of the Transferee will be determined as described in Sections 8 and 12 of this Joint Merger Plan.

12. Procedures by which arrangements for the involvement of employees in the definition of their participation rights are determined

12.1 Procedure for employee involvement pursuant to the MgVG.

(a) General principles

The Merger of KWS Services West S.L.U. into the Transferee is a cross-border merger within the European Union; therefore, the Directive (EU) 2017/1132 is applicable. Employee participation on the supervisory body of the company resulting from a cross-border merger is governed by Article 133 16 of the Directive (EU) 2017/1132. In Germany, Article 133 of the Directive (EU) 2017/1132 has been implemented by the MgVG. Pursuant to Section 3 para. 1 sentence 1, the MgVG applies to a company with its registered office in Germany

resulting from a cross-border merger. These conditions are met because the Transferee, will continue to have its registered seat in Germany.

According to Section 5 MgVG the provisions of the MgVG apply if

- (i.) in the six months prior to publication of the Merger Plan at least one of the companies directly involved in the Merger employs an average of more than 500 employees and a participation system within the meaning of section 2 (7) MgVG exists in this company (section 5 no. 1 MgVG), or
 - (ii.) the national law applicable to the company resulting from the Merger does not provide for the same or a larger extent of employee participation as existed in the respective companies involved in the Merger (section 5 no. 2 MgVG), or
 - (iii.) the national law applicable to the company resulting from the Merger does not provide the same participation rights for employees of businesses of this company in other member states as are granted to employees in the member state where the company resulting from the Merger has its registered office (section 5 no. 3 MgVG).
- (b) Specific consequences for the Merger

Since KWS SAAT SE currently has approximately 1,473 own employees and has also employed more than 500 employees in the six months prior to the publication of this plan and, in application of an employee involvement agreement within the meaning of Section 21 of the Act on the Participation of Employees in a European Company (**SEBG**), has a Supervisory Board, comprising one third employee representatives, a system of co-determination within the meaning of Section 2 para. 7 MgVG applies, so that the requirements of Section 5 no. 1 MgVG are fulfilled.

Therefore, a procedure for employee involvement pursuant to the MgVG must be conducted as follows:

(i) Initiation of the Procedure

In accordance with Section 6 MgVG, the management of KWS SAAT SE and KWS Services West S.L.U. must first inform the employees of KWS SAAT SE and its subsidiaries within the meaning of Section 2 para. 3 MgVG (**KWS Group**) respectively their representatives in the member states of the European Union and the other states party to the Agreement on the European Economic Area (**Member States**) about the merger and call upon them to form a special negotiating body (**SNB**). Pursuant to Section 6 para. 1 sentence 2 MgVG, the SNB has the task of entering into a written agreement with the management of KWS SAAT SE and KWS Services West S.L.U. on employee participation in the company resulting from the merger, a so-called co-determination agreement (**Co-Determination Agreement**). The information must contain the minimum details pursuant to Section 6 para. 3 MgVG.

Pursuant to Section 6 para. 2 sentence 3 MgVG, the information and invitation is to be sent to the employees of the KWS Group in the Member States respectively their competent representatives on 9 November 2018.

(ii) Composition of the SNB

The SNB is composed of representatives of employees from all Member States in which employees of KWS SAAT SE and its subsidiaries within the meaning of Section 2 para. 3 MgVG are employed.

Pursuant to Section 13 para. 1 MgVG, the election or appointment of the members of the special negotiating body shall take place within ten (10) weeks after the information about the planned merger and the call to form the SNB has been published.

Pursuant to Section 7 para. 1 MgVG, each Member State in which employees of the KWS Group are employed has at least one seat in the SNB. The number of seats allocated to a Member State shall be increased by one additional seat in each case if the number of employees in that Member State exceeds the threshold of 10%, 20%, 30%, etc. of all employees in the KWS Group employed in the Member States.

This results in the following allocation of seats:

Member state	Number of employees	% (rounded)	Members in SNB
Germany	1.952	65,33	7
Austria	35	1,17	1
Belgium	7	0,23	1
Bulgaria	13	0,44	1
Croatia	11	0,37	1
Czech Republic	21	0,70	1
Denmark	9	0,30	1
France	357	11,95	2
Hungary	53	1,77	1
Italy	106	3,55	1
Netherlands	32	1,07	1
Poland	106	3,55	1
Romania	120	4,02	1
Slovakia	22	0,74	1
Spain	64	2,14	1
Sweden	3	0,10	1
United Kingdom	77	2,58	1
Total	2.988	100	24

The election or appointment of the members of the SNB attributable to the Member States is governed by the legal systems of the respective Member State.

(iii) Constitution of the SNB

After expiry of the aforementioned ten-week period, the management bodies invite to the constituent meeting of the SNB in accordance with Section 14 para. 1 of the MgVG. The SNB is constituted by electing a chairperson and at least two deputies from among its members (Section 14 para. 1 sentence 2 MgVG).

(iv) Negotiation Procedure

After the SNB has been constituted, the negotiation procedure as such will commence and can be terminated as follows:

On 24 October 2018, the management bodies of KWS SAAT SE and KWS Services West S.L.U. have resolved to apply the statutory default solution directly and without prior

negotiations with the SNB as of the effectiveness of the cross-border merger (Section 23 para. 1 sentence 1 no. 3 MgVG). The direct application of the statutory default rules requires that, prior to effectiveness of the Merger, at least one of the merging companies had a form of co-determination which covered at least one third of the total number of employees of all companies participating in the Merger and concerned subsidiaries (Section 23 para. 1 sentence 2 no. 1 MgVG). This requirement is met because, due to the agreed employee involvement agreement within the meaning of Section 21 SEBG, KWS SAAT SE has a system of co-determination (see above) that affects all employees of the KWS Group in the Member States. The management bodies of KWS and KWS Services West S.L.U. have therefore chosen to opt for the statutory default rules and have communicated this decision to the employees respectively their representatives in the information letter starting the procedure. This does not preclude the conclusion of a voluntary Co-Determination Agreement at a later date. However, KWS SAAT SE and KWS Services West S.L.U. intend to enter into negotiations with the SNB and to conclude into a voluntary Co-Determination Agreement

(v) Statutory default rules

Under the statutory default rules, the share of employee representatives on the Supervisory Board of the Transferee will be one third after the Merger pursuant to Section 24 para. 1 sentence 2 MgVG, since KWS Services West S.L.U. does not have its own co-determination system and there is third co-determination in place at the Transferee when the Merger takes effect. Pursuant to Section 25 para. 1 MgVG, the SNB allocates the employee seats on the Supervisory Board to the Member States. The distribution shall be based proportionally on the share of employees employed in each Member State by the company resulting from the Merger, its subsidiaries and establishments. If, under this proportional distribution, employees from one or more Member States cannot obtain a seat, the SNB shall allocate the last seat to a Member State which has not yet been taken into account. At least one employee seat on the Supervisory Board of the Transferee is therefore allocated to a Member State other than Germany. The procedure of selecting the employee representatives on the Supervisory Board is based on the law of the respective Member State in which the Supervisory Board member is to be elected or appointed. If national law does not contain provisions for such procedure of the seats allocated to them, the SNB shall determine the employee representatives on the Supervisory Board. According to the current number of employees, one seat for the employee representatives would be allocated to the employees employed in Germany by the KWS Group. If the statutory default rules were applied, the additional seat would be allocated by the SNB to the Member State in which the second largest number of employees are employed by the KWS Group. According to the current number of employees, this would be France in the case that the statutory default rules were applied. The employee representative in Germany would be elected by an electoral body composed of members of the highest works council bodies (here the members of the central works council of the Transferee) The employee representative for France would be elected directly by the employees of the KWS Group employed in France. A voluntary Co-Determination Agreement may provide for a different distribution of the seats of the employee representatives and a different election procedure for the employee representatives.

(vi) Conclusion of a Co-Determination Agreement

In general, the content of a possible Co-Determination Agreement on the Supervisory Board of the Transferee after the merger is left to the parties' freedom of agreement. Section 22 MgVG, however, stipulates certain minimum contents that must be addressed in the co-determination agreement.

An agreement on employee participation at the Transferee must in particular contain information on the proportion of employee representatives on the Supervisory Board, the procedure according to which these employee representatives are determined, and their rights.

Furthermore, such agreement must include provisions on its scope (including the possible involvement of employees in Non-Member States), the date of its entry into force and its duration. The cases in which the agreement is to be renegotiated and the procedure to be followed should also be specified.

The conclusion of an agreement on employee participation would require a resolution of the SNB, which in principle is passed by a majority of its members, which must also represent the majority of the employees represented (Section 17 para. 2 MgVG).

12.2 Procedure for employee involvement under Spanish law

As provided by article 67 LME, the requirements for participation of employee representatives in the bodies of a company resulting from a cross-border merger are governed by separate regulations. In the event of a merger by absorption, the expression "a company resulting from a cross-border merger" refers to the Transferee. Since the Transferee has its registered office in Germany, all matters under article 67 LME should be governed by the relevant applicable German law (MgVG; see Section 12.1 of the Merger Plan).

Under Spanish law, the participation rights of employees are governed by the Act of 31/2006 of 19 October 2006 on Employee Participation in European Companies and Cooperative Societies (**Spanish Employee Participation Act**). Articles 27 to 32 of the Spanish Employee Participation Act apply to Spanish establishments of companies participating in a cross border merger when the company resulting from a cross-border merger has its registered office outside Spain. These provisions set out the procedure for the election of the Spanish SNB members and the supervisory board members as well as those members' legal warranties and rights as employee representatives. Other than that, the German regulations of the MgVG apply.

Under the Spanish Employee Participation Act, the SNB members are elected by agreement between trade unions which add up to at least a 50% of the staff representatives in Spain or by majority agreement of the staff representatives themselves. As there is only one works council established in Spain for the site Barcelona of KWS Services West S.L.U., this works council is competent for the election of the SNB-member allocated to Spain

13. **Conditions for the exercise of the rights of creditors and minority shareholders of the respective merging companies**

13.1 As a result of the Merger, all creditors of the Transferor will become creditors of the Transferee.

13.2 The following applies in relation to the position of the creditors of the Transferor:

The approval of the Merger by the shareholder meeting of the Transferee and the sole shareholder of the Transferor must be published in a newspaper of major circulation in the province of Barcelona and in the Spanish Commercial Registry Official Gazette (*Boletín Oficial del Registro Mercantil*). Under Spanish law and in line with article 44 of the LME, a creditor of the Transferor is entitled to request the provision of security for its receivables against the Transferor within one month as from the date of publication of the approval of the Merger by the shareholder meetings if (i) such creditor's receivable already existed before the deposit of this Merger Plan with the Commercial Registry, (ii) such creditor has notified the Transferor of its objection to the Merger within the one-month period, and (iii) the Transferor has not granted any security in relation to said receivable.

13.3 The following applies in relation to the position of the creditors of the Transferee:

The Merger does not affect the legal position of the Transferee's creditors. For the Transferee the rights of the creditors result from section 122a (2) in conjunction with section 22 UmwG. Pursuant to these statutory provisions, the creditors of the Transferee are to be provided

security insofar as they cannot demand satisfaction of their claims, if they file their claim in writing, stating the basis and the amount thereof, within six months of the day on which the registration of the Merger in the register for the place of the registered office of the Transferee was published in accordance with section 122a (2) in conjunction with section 19 (3) UmwG. However, the creditors will only have this right if they are able to substantiate that the fulfilment of their claims is jeopardised by the Merger. The creditors will be notified of this right in the publication of the registration of the Merger in the commercial register for the Transferee (section 122a (2) in conjunction with section 22 (1) sentence 3 UmwG). Pursuant to section 122a (2) in conjunction with section 22 (2) UmwG, creditors have no right to demand the provision of security if, in the event of insolvency, they have a right to preferential satisfaction of their claims out of a cover pool (*Deckungsmasse*) which, based on applicable law, has been created and is being monitored by a governmental agency for their protection.

- 13.4 Since KWS SAAT SE is the sole shareholder of KWS Services West S.L.U. and KWS Services West S.L.U. hence does not have any minority shareholders, the rights of minority shareholders are not required to be described or provided for under this Merger Plan, neither under Spanish law nor under German law.
- 13.5 Under German law, KWS SAAT SE's shareholders have the following rights in the context of the Merger:

Since KWS SAAT SE holds all shares in KWS Services West S.L.U., a resolution by the shareholder meeting of KWS SAAT SE in accordance with section 62 Para. 1 and 2 UmwG in conjunction with section 122a Para. 2 UmwG is only required if shareholders of KWS SAAT SE whose shares, taken together, account for one-twentieth of KWS SAAT SE's nominal share capital, demand that a shareholder meeting be convened for the purpose of adopting a resolution consenting to the Merger. The law does not provide for a time limit for such request. However, according to the unanimous opinion in the legal literature, the transferee may set a deadline for asserting the minority demand. The executive board of KWS SAAT SE has made use of this possibility and set a deadline up to 3 December 2018. In the event that the shareholder meeting of KWS SAAT SE has to decide on the Merger, the shareholders may make their consent pursuant to section 122g (1) contingent on their express ratification of the arrangements made for the co-determination rights of the employees of the acquiring or newly formed company. There are no claims to a cash compensation pursuant to Section 122i UmwG, as the Transferee is organized under German law. The shareholders will be notified of these rights in the publication of the submission of the Merger Plan by KWS SAAT SE's commercial register (section 122d sentence 2 no. 4 UmwG).

14. Reservation of right of rescission

Each party involved in the Merger is entitled to withdraw from this Merger Plan if the Merger has not been entered into the commercial register for the Transferee at the Local Court of Göttingen by 30 September 2019. Notice of rescission must be given to the respective other party by registered mail (return receipt requested) or equivalent delivery by courier service, and the officiating German notary must be notified in writing.

15. Costs

KWS SAAT SE and KWS Services West S.L.U. shall themselves bear the costs incurred in preparing and implementing the Merger. The jointly incurred costs are borne by the Transferee. The costs incurred by the formation and operation of the SNB shall be borne jointly and severally by the Transferor and the acquiring company, pursuant to Section 20 MgVG. The obligation to bear the costs includes the costs for material and personnel incurred in connection with the activities of the SNB, including the negotiations of the SNB with the management of the merging companies.

16. Miscellaneous

- 16.1 Should one or more provisions of this Merger Plan be or become ineffective, impracticable, unenforceable or ineligible for entry in the commercial register, the effectiveness of the remaining provisions of this Merger Plan shall not be affected. The same shall apply if any gaps are identified in this Merger Plan. The parties hereby undertake to replace the provision that is ineffective, impracticable, unenforceable or ineligible for entry in the commercial register or fill the gap by a provision which, to the extent legally permissible, comes as close as possible in terms of form, content, time, extent and scope to what the parties had or would have intended upon concluding this Merger Plan had they considered the issue.
- 16.2 Any amendments or supplements to this Merger Plan require notarial form if so required under applicable law. Otherwise any amendments or supplements must be made in writing. The same applies to any amendments or supplements to this clause 16.2.

Annex 1 to the Merger Plan

Valuation of the assets and liabilities of KWS Services West S.L.U. as of June 30. 2018

ASSETS	2018	2017
NONCURRENT ASSETS	98,733	132,062
Property, plant, and equipment	-	-
IT applications	-	-
Property, plant, and equipment	87,933	121,262
Land and buildings	46,429	65,914
Technical equipment and other property, plant, and equipment	41,504	55,348
Noncurrent financial assets	10,800	10,800
Other financial assets	10,800	10,800
CURRENT ASSETS	929,776	1,164,159
Trade receivables and other receivables	884,623	1,163,464
Customers, Group companies and affiliated companies	784,305	1,097,259
Various debtors	1,002	3,965
Other receivables due from public authorities	99,316	62,240
Short-term equity investments in Group companies and affiliated companies	44,711	-
Loans to companies	44,711	-
Cash and cash equivalents	442	695
Cash	442	695
TOTAL ASSETS	1,028,509	1,296,221

NET ASSETS AND LIABILITIES	2018	2017
NET ASSETS	611,410	456,478
OWN FUNDS	611,410	456,478
Capital	155,000	155,000
Subscribed capital	155,000	155,000
Reserves	301,478	84,482

Legal reserves and reserves provided for by the Articles of Association	30,148	8,448
Other reserves	271,330	76,034
Earnings for the fiscal year	154,932	216,996
NONCURRENT LIABILITIES	-	-
CURRENT LIABILITIES	417,099	839,743
Debts owed to Group companies and affiliated companies	-	192,986
Trade payables and other liabilities	415,434	646,757
Suppliers, Group companies and affiliated companies	49,969	225,756
Various creditors	107,492	53,243
Personnel (unpaid compensation)	97,197	163,432
Other liabilities due to public authorities	160,776	204,326
Short-term provisions	1,665	-
NET ASSETS AND LIABILITIES	1,028,509	1,296,221

Annex 2 to the Merger Plan

Current articles of association of KWS SAAT SE dated 14 December 2017

Articles of Association of KWS SAAT SE

Legal form; name and registered offices of the Company Section 1

- 1.1 The Company shall have the legal form of a European Company (*Societas Europaea* or SE).
- 1.2 The Company's name shall be
KWS SAAT SE
- 1.3 The Company shall have its registered offices in Einbeck Germany.

Purpose of the Company Section 2

- 2.1 The purpose of the Company is breeding, multiplication and use of all types of crops, production and distribution of seed, agriculture and horticulture and distribution of their products and all types of use for them as food and fodder, production of chemical products for use in agriculture and horticulture and of fertilizers, production and distribution of agricultural equipment, and production and distribution of sugar and confectionery and their distribution, including all by-products.

- 2.2 The Company may run operating plants and farms on its own and/or leased areas.
- 2.3 The Company is authorized to carve out significant parts of its operations and/or business segments, sell them, transfer them to subsidiaries or joint ventures and confine itself to discharging the tasks of a group holding company.
- 2.4 The Company may set up branches in Germany and abroad, establish and participate in companies of any type and legal form within the scope of its purpose as defined by the Articles of Association and enter into company agreements of any nature.

Capital stock and shares

Section 3

The capital stock of KWS SAAT AG shall be €19,800,000.00 and shall be divided into 6,600,000 bearer shares. Shareholders shall not be entitled to certification of their shareholding. The capital stock of €19,800,000.00 has been contributed by conversion of KWS SAAT AG into a European Company (*Societas Europaea* or SE).

Announcements and notifications

Section 4

- 4.1 Announcements of the Company shall be published in the Federal Official Gazette, unless the law stipulates a different mandatory form.
- 4.2 Information can also be sent to shareholders by data communications, subject to the conditions specified by law.

Dual system; management and supervisory bodies of the Company

Section 5

- 5.1 The Company shall have a dual system of management and supervision, consisting of a management body (Executive Board) and a supervisory body (Supervisory Board).
- 5.2 The management and supervisory bodies of the Company shall be:
 - 1. The Executive Board
 - 2. The Supervisory Board
 - 3. The Annual Shareholders' Meeting

Executive Board

Section 6

The Executive Board shall consist of at least two persons. The Supervisory Board shall appoint the members of the Executive Board and define their number. Members of the Executive Board shall be appointed by the Supervisory Board for a maximum period of six years. They can be reappointed or their term of office can be renewed.

Section 7

- 7.1 The Executive Board shall represent the Company in court and out of court.
- 7.2 If only one member of the Executive Board has been appointed, he or she shall represent the Company on his or her own. If the Executive Board consists of more than one person, the Company shall be legally represented by two Executive Board members or by one Executive Board member together with a holder of general commercial power of attorney.
- 7.3 The Executive Board shall require the consent of the Supervisory Board to undertake the following business transactions and measures:
 - a) Definition of the annual budget, including capital investment, financial and personnel planning, for the KWS Group;
 - b) The acquisition, sale or encumbrance of assets, in particular land and land rights, if the amount exceeds a value to be defined by the Supervisory Board and this measure is not specifically envisaged in the approved capital investment or financial planning;
 - c) The acquisition and sale of participating interests in companies, if their amount exceeds a value to be defined by the Supervisory Board;
 - d) The issue of bonds and raising of long-term loans, if they are not specifically envisaged in the approved capital investment or financial planning;

- e) The conclusion and modification of agreements for which the approval of the Annual Shareholders' Meeting is required under law or the Articles of Association.
- 7.4 The Supervisory Board can decide that other types of business transactions or measures above and beyond those specified in (3) above shall require its approval.

Supervisory Board Section 8

- 8.1 The Supervisory Board shall consist of six members.
- 8.2 Four members shall be elected by the Annual Shareholders' Meeting, without the meeting being bound by nominations (shareholder representatives). Two members shall be elected by the Annual Shareholders' Meeting at the nomination of the employees (employee representatives); the Annual Shareholders' Meeting shall be bound by the nominations of the employees in this regard. If an agreement regarding the involvement of employees in the SE is concluded in accordance with the Act on the Participation of Employees in a European Company (*SE-Beteiligungsgesetz* (SEBG)) and stipulates a different appointment procedure for the employee representatives on the Supervisory Board, the employee representatives shall be appointed in accordance with the agreed procedure.
- 8.3 Members of the Supervisory Board shall be appointed for the period of time up to the end of the Annual Shareholders' Meeting that ratifies their acts for the fourth fiscal year as of the start of their term of office, not including the fiscal year in which their term of office commences. Contrary to the above, the members of the first Supervisory Board of KWS SAAT SE shall be appointed for the period of time up to the end of the Annual Shareholders' Meeting that ratifies the acts of the Supervisory Board for the fiscal year 2016/2017. However, members of the Supervisory Board shall never be appointed for a term longer than six years. Supervisory Board members may be reelected.
- 8.4 Elections of substitutes for retired members shall be made for the remainder of the term of office of the retired member.
- 8.5 A substitute member can be elected for each shareholder representative and shall become a member of the Supervisory Board if the Supervisory Board member in question retires prior to the end of his or her term of office. The statutory regulations or the regulations concluded in this respect in an agreement in accordance with (2) Sentence 2 above shall apply to employee representatives. The office of a substitute member shall end no later than when the term of office of the retired Supervisory Board member ends.
- 8.6 A member of the Supervisory Board may resign from office at any time, even without an important reason.

8.7 The following shareholder representatives on the Company's first Supervisory Board shall be appointed for the term of the first Supervisory Board defined in (3) above:

- Dr. Drs. h.c. Andreas J. Büchting, Einbeck, Agricultural Biologist/Economist, Chairman of the Supervisory Board of KWS SAAT AG, Einbeck,
- Dr. Arend Oetker, Berlin, Businessman, Managing Partner of Kommanditgesellschaft Dr. Arend Oetker Vermögensverwaltungsgesellschaft mbH & Co., Berlin,
- Hubertus von Baumbach, Ingelheim am Rhein, Businessman, Member of Management of Boehringer Ingelheim GmbH, Ingelheim am Rhein, and
- Cathrina Claas-Mühlhäuser, Frankfurt am Main, Businesswoman, Chairwoman of the Supervisory Board of CLAAS KGaA mbH, Harsewinkel.

Section 9

9.1 The Supervisory Board shall elect a Chairperson and one or more Deputy Chairperson(s) for the duration of its term of office without undue delay after it has been appointed. If more than one Deputy Chairperson has been elected, the Supervisory Board shall decide who stands in for the Chairperson if the latter is prevented from discharging his or her duties. When standing in for the Chairperson, the Deputy Chairperson shall have the Chairperson's rights and obligations.

9.2 The Supervisory Board can appoint committees from its ranks and delegate certain tasks to them, unless such delegation is not permitted under the law.

Section 10

10.1 The Chairperson and, if he or she is prevented from discharging his or her duties, the Deputy Chairperson can convene a meeting of the Supervisory Board at any time.

10.2 Any member of the Supervisory Board or the Executive Board can demand that a meeting of the Supervisory Board be convened immediately, stating the purpose and reasons for doing so. The meeting must be held within two weeks of its being convened.

Section 11

11.1 Resolutions shall be adopted by the Supervisory Board at meetings chaired by the Chairperson or, if he or she is prevented from discharging his or her duties, the Deputy Chairperson. The resolutions must be recorded in minutes. The minutes must be signed by the Chairperson or, if he or she is prevented from discharging his or her duties, the Deputy Chairperson.

11.2 The Chairperson of the Supervisory Board or, if he or she is prevented from discharging his or her duties, the Deputy Chairperson may, at his or her discretion, adopt a resolution without holding a meeting by written or oral vote, by voting by fax, e-mail, telephone or electronic means of communication or a combination of the said means of communication, unless a member objects to this procedure within a reasonable period of time set by the Chairperson or, if applicable, the Deputy Chairperson. Minutes on the resolutions adopted in this manner shall be drawn up at the next meeting.

11.3 The Supervisory Board shall adopt resolutions by a simple majority of the votes. If there is a tied vote, the Chairperson shall cast the deciding vote. If the Chairperson is

prevented from discharging his or her duties, the Deputy Chairperson shall also be entitled to cast the deciding vote.

Section 12

- 12.1 The members of the Supervisory Board shall receive a fixed annual payment of €60,000 for their work. The Chairman shall receive three times and the Deputy Chairman one-and-a-half times said amount. Members of the Supervisory Board shall receive separate payment for their work on committees; the Chairman of the Supervisory Board shall not receive additional compensation for his or her work on committees.
- 12.2 Members of the Supervisory Board who are members of a committee shall receive an additional payment of €10,000 therefor. The Chairman of a committee shall receive two times said amount. The additional compensation for members of the Audit Committee shall be €20,000. The Chairman of the Audit Committee shall receive three times said amount. Additional compensation shall be owed only for participation in one committee, namely at the amount that is the highest to which the member in question is entitled for his or her work on a committee.
- 12.3 If a person is a member of the Supervisory Board or a committee or holds the office of Chairperson or Deputy Chairperson of the Supervisory Board or Chairperson of a committee for only part of the fiscal year or if a fiscal year is shorter than the calendar year, the payment defined in 12.1 and 12.2 shall be granted only on a pro rata temporis basis.
- 12.4 The compensation shall be due and payable at the end of the fiscal year.
- 12.5 Members of the Supervisory Board shall also receive reimbursement of their expenses and the value-added tax due on their payment and on their expenses.
- 12.6 The Company shall be authorized to take out a D&O insurance policy and a legal expenses insurance policy for the members of the Supervisory Board to a reasonable scope, at market conditions and at the cost of the Company.

Annual Shareholders' Meeting Section 13

- 13.1 An Annual Shareholders' Meeting shall be held in the first half of the fiscal year and shall be convened by the Executive Board or Supervisory Board or the other persons authorized to do so under the law or the Articles of Association, stating the venue, time and agenda. It shall be convened by public notice.
- 13.2 The Annual Shareholders' Meeting of the Company shall be held at the Company's registered offices or in a German city with more than 100,000 inhabitants.
- 13.3 The period of notice for convening the Annual Shareholders' Meeting shall be as defined by the statutory regulations.

Section 14

Extraordinary Shareholders' Meetings shall be convened in the same way.

Section 15

- 15.1 Shareholders shall be eligible to participate in and exercise their voting rights at the Annual Shareholders' Meeting only if they register with the Company before the Annual Shareholders' Meeting and have submitted proof of their authorization to participate in

the Annual Shareholders' Meeting and exercise their voting rights. Registration and the written proof of the shareholder's ownership of the shares must be received by the Company at the applicable address specified when notice is given of the Annual Shareholders' Meeting, in each case at least five days before the Annual Shareholders' Meeting. This period shall not include the day of the Annual Shareholders' Meeting and the day of receipt.

15.2 Proof of authorization to take part in the Annual Shareholders' Meeting and to exercise voting rights must be furnished by written proof of the shareholder's ownership of the shares from the custodial institute. This proof must be furnished in German or English. This proof must relate to the beginning of the twenty-first day before the Annual Shareholders' Meeting.

15.3 In addition, the notice convening the Annual Shareholders' Meeting shall state the conditions under which shareholders are permitted to take part in it.

Section 16

Each share grants the holder the right to cast one vote at the Annual Shareholders' Meeting.

Section 17

The Shareholders' Meetings shall be chaired by the Chairperson of the Supervisory Board or the Deputy Chairperson or a member of the Supervisory Board tasked with standing in for him or her. The Chairperson shall preside over the discussions and shall determine the sequence of the items to be discussed. The Chairperson may restrict the time allotted to shareholders to speak and ask questions to a reasonable extent.

Section 18

18.1 Unless obligatory statutory regulations or the Articles of Association otherwise compel, resolutions shall be adopted by the Annual Shareholders' Meeting by a simple majority of the votes cast and, if the law also stipulates a majority of the capital in addition to the majority of votes, with the simple majority of the capital stock represented in adoption of the resolution. Unless mandatory statutory provisions or the Articles of Association prescribe a different majority, a simple majority of the votes cast shall be sufficient to adopt changes to the Articles of Association if at least half the capital stock is represented.

18.2 The Chairperson shall define the nature and sequence of the vote.

Fiscal year, annual financial statements, distribution of profits and reserves

Section 19

The fiscal year shall commence on July 1 of a year and end on June 30 of the next year.

Section 20

20.1 The annual financial statements shall be approved if the Supervisory Board consents to them. The Annual Shareholders' Meeting shall approve the annual financial statements if the Supervisory Board has not given its consent to them or the Executive Board and the Supervisory Board have decided to let the Annual Shareholders' Meeting approve them.

20.2 The Executive Board and the Supervisory Board shall be authorized, subject to the statutory regulations, to allocate more than half of the net income for the year to other revenue reserves, as long as the other revenue reserves do not exceed half of the capital stock or would not exceed it after being allocated.

20.3 Shareholders' share in the profits shall be based on their share of the capital stock. In the event of a capital increase, the entitlement of new shares to profits may also be defined in a manner differing from Section 60 (2) of the German Stock Corporation Act (AktG).

Section 21

21.1 A legal reserve amounting to one quarter of the capital stock shall be set up. One-twentieth of the net income for the year, less any losses carried forward from the previous year, shall be allocated to it until the legal reserve and the capital reserves in accordance with Section 272 (2) Nos. 1 to 3 of the German Commercial Code (HGB) together reach a quarter of the capital stock.

21.2 In addition, Section 150 of the German Stock Corporation Act (AktG) shall apply.

Section 22

The Supervisory Board shall be authorized to decide to make amendments to the Articles of Association that only affect the wording.

Cost of conversion

Section 23

The Company shall bear the costs related to conversion of KWS SAAT AG into an SE up to a total amount of €2,000,000.00, in particular court and notary fees, the costs of the employee involvement procedure and of the Special Negotiating Body, the costs of auditing the conversion, the costs of publication, and legal and consulting fees.

Severability clause

Section 24

If one or more provisions of these Articles of Association are or become void or invalid in full or in part, the other provisions of the Articles of Association shall not be affected thereby.

Annex 3 to the Merger Plan

Annex 3 to the Merger Plan are the Articles of Association of KWS SAAT SE & Co. KGaA which are printed as **Annex 2** to this Notice of the Annual Shareholders' Meeting on December 18, 2018. Reference is made to this **Annex 2** to the Notice of the Annual Shareholders' Meeting.
