


Bayer



Articles of Incorporation of
Bayer Aktiengesellschaft
Leverkusen

Articles of Incorporation

As of September 11, 2009



The translated version of the Articles of Incorporation is a convenience translation. Only its German version is legally binding.

General Provisions

§ 1 Name and Registered Office

- (1) The name of the Company is Bayer Aktiengesellschaft.
- (2) The registered office of the Company is in Leverkusen.

§ 2 Object of the Company

- (1) The object of the Company is manufacturing, marketing and other industrial activities or the provision of services in the fields of health care, agriculture, polymers and chemicals.
- (2) The Company is authorized to undertake all business which is related to, or directly or indirectly serves, the object of the Company.
- (3) The Company may establish, acquire or take participating interests in other companies, in particular those whose objects fully or partially cover the aforementioned areas. It may bring companies in which it holds participating interests under its uniform control, or confine itself to the administration thereof. It may transfer their operations in full or in part to newly established or existing subsidiaries.



§ 3 Fiscal Year, Notices, Transmission of Information, Place of Jurisdiction


- (1) The fiscal year shall be the calendar year.
- (2) Notices of the Company shall be published in the electronic Gazette of the Federal Republic of Germany (elektronischer Bundesanzeiger). The transmission of information to stockholders may also take place by means of data telecommunication.
- (3) The place of jurisdiction for all disputes between the Company and stockholders shall be the location of the Company's registered office. Foreign courts shall have no jurisdiction with respect to such disputes.

Capital Stock and Shares

§ 4 Capital Stock


- (1) The capital stock amounts to €2,116,986,388.48 and is divided into 826,947,808 registered shares (no-par shares).

- (2) The Board of Management is authorized until April 27, 2011 and with approval of the Supervisory Board, to increase the capital stock in one or more installments by issuing new registered no-par shares by up to a total amount of €465,000,000.00. The issue of new registered no-par shares may take place in exchange for cash and/or contributions in kind, a capital increase in exchange for contributions in kind only being permissible up to a total amount of €370,000,000.00 (Authorized Capital I). In such cases, the stockholders shall be granted subscription rights. Subject to the approval of the Supervisory Board, the Board of Management shall however be authorized to exclude the subscription right of stockholders for any excess shares remaining after rights have been allocated (fractional amounts) and be authorized to exclude subscription rights to the extent necessary to grant subscription rights for new shares to holders of bonds issued by the Company or its group companies having conversion rights or attached warrants or mandatory conversion rights to the extent bondholders would be entitled to subscription rights upon exercise of their conversion rights or warrants or mandatory conversion rights.




Moreover, the Board of Management shall be authorized subject to the approval of the Supervisory Board to exclude subscription rights if the increase in capital is in exchange for contributions in kind for purposes of acquiring companies, parts of companies, or participations in companies or other assets. Subject to the approval of the Supervisory Board, the Board of Management shall determine the rights to be embodied in such new shares and their conditions of issuance including the issue price.

- (3) The Board of Management is authorized until April 26, 2012 and with approval of the Supervisory Board, to increase the capital stock by up to a total amount of €195,000,000.00 in one or more installments by issuance of new registered no-par shares in exchange for cash contributions (Authorized Capital II). In such case, the stockholders shall be granted subscription rights. In case of singular or repeated exercise of the Authorized Capital II and with approval of the Supervisory Board, the Board of Management is, however, authorized to exclude subscription rights of the stockholders with respect to an amount of the capital increase not exceeding 10 percent of the capital stock existing at the time this authorization becomes effective and existing at the time this authorization is exercised, for purposes of issuing new shares in exchange for cash contributions at an issue price not materially below the market price of the Company's shares already listed on




the stock exchange at the time the issue price is finally determined. Shares that were acquired on the basis of an authorization of the Stockholders' Meeting and are sold pursuant to Section 71, para. 1, no. 8, sentence 5 of the German Stock Corporation Act (Aktiengesetz) in conjunction with Section 186, para. 3, sentence 4 of the German Stock Corporation Act (Aktiengesetz) during the term of this authorization shall count toward the above-mentioned 10 percent limit. Moreover, shares that were issued or are to be issued in satisfaction of bonds with conversion rights or attached warrants or which are mandatorily convertible if the bond was issued during the term of this authorization subject to exclusion of the subscription rights under analogous application of Section 186, para. 3, sentence 4 of the German Stock Corporation Act (Aktiengesetz) shall also count toward this limit. Subject to the approval of the Supervisory Board, the Board of Management shall determine the rights to be embodied in such new shares and their conditions of issuance including the issue price.

- (4) The capital stock is conditionally increased by an additional €26,608,926.72, divided into no more than 10,394,112 bearer shares (Conditional Capital). The increase shall be implemented only to the extent that holders of subscription or conversion rights based on such warrant bonds or convertible bonds as may be issued or guaran-




teed – under the authorization granted to the Board of Management by the resolution of the Stockholders' Meeting on April 30, 2004 – by Bayer AG or by a Bayer Group company, as defined in Section 18 of the German Stock Corporation Act (Aktiengesetz), in which Bayer owns a direct or indirect interest of at least 90 percent, choose to exercise their subscription or conversion rights, or persons obligated to exercise such rights discharge that obligation. Such new shares shall be issued in accordance with the aforementioned authorization on the basis of the subscription or conversion price set and shall carry a dividend entitlement beginning in the fiscal year in which they were issued as a result of the voluntary or mandatory exercise of subscription or conversion rights. The Board of Management is authorized, subject to the approval of the Supervisory Board, to stipulate any additional details concerning the implementation of the conditional capital increase.

- (5) The capital stock is conditionally increased by up to an additional 195,584,000 euros, allocated to up to 76,400,000 registered shares (Conditional Capital 2008 I). The conditional capital increase will only be carried out to the extent to which the holders of options or conversion rights or parties required to exercise option rights or required to convert on the basis of bonds with warrants or convertible bonds, profit sharing rights or profit participation bonds which are issued or guaran-



teed on the basis of the Authorization I resolved in the Stockholders' Meeting of April 25, 2008 under agenda item 5 by Bayer AG or a group company of Bayer AG within the meaning of § 18 AktG in which Bayer AG directly or indirectly has a participation of at least 90 %, and where such persons exercise their option rights or conversion rights or to the extent that they are obligated to exercise options or to convert and satisfy their obligations to convert or exercise options to the extent that no cash compensation is granted and no treasury shares and shares of another company listed on the stock exchange are used to service the options or conversions. The issuance of the new shares will take place in accordance with the requirements of this Authorization and in accordance with the option price or conversion price:

- When issuing bonds granting an option right but which do not establish a duty to exercise the option, the option price corresponds to 125 % of the volume weighted average stock exchange price for the shares of the Company in XETRA trading (or a corresponding successor system) at the Frankfurt Securities Exchange during the period between adopting the resolution on using the Authorization I by the Board of Management and the allocation of the Bonds by the banks accompanying the issue or, in the case of granting a subscription right, 125% of the volume weighted average exchange price of the shares of the Company




in XETRA trading (or a corresponding successor system) on the Frankfurt Securities Exchange during the days on which the subscription rights for the bonds are traded on the Frankfurt Securities Exchange, except for the last two trading days of the trading in subscription rights (the referenced average price is referred to hereinafter also as the "Reference Price").

- In the case of issuing Bonds granting a conversion right, but which do not establish a duty to convert, the conversion price corresponds to 125 % of the reference price.
- In the case of issuing Bonds which establish a duty to convert or to exercise an option, the corresponding conversion price or option price is the following amount when the bonds become due or in the event of a takeover offer:
 - if the volume weighted average price of the shares of the Company in XETRA trading (or in a corresponding successor system) at the Frankfurt Securities Exchange on the twentieth trading day ending on the third trading day either before the Bonds become due or, in the event of a takeover offer, on the third trading day prior to the conversion date or the option exercise date ("Average Price")


- is smaller or equal to the Reference Price, the Reference Price applies,
 - greater than the Reference Price and less than 118 % of the Reference Price, the Average Price applies,
 - greater or equal to 118 % of the Reference Price, 118 % of the Reference Price applies.
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- Notwithstanding the above provisions, the price is 118 % of the Reference Price if the holders or creditors of the Bonds exercise an existing conversion right or option right prior to the occurrence of the duty to convert or exercise the option.
 - Notwithstanding the above provisions, the price is the Reference Price if the Board of Management, with the consent of the Supervisory Board and in accordance with the terms and conditions of the Bonds, calls for an early conversion to prevent immediate, significant damage to the Company or to avoid a material deterioration of a public credit rating for the Company by a recognized rating agency.

The new shares participate in the profits from the beginning of the fiscal year in which they are crea-



ted on the basis of the exercise of option rights or conversion rights or as a result of fulfilling obligations to exercise options or conversion obligations. The Board of Management is authorized with the consent of the Supervisory Board to determine the further details on carrying out the conditional capital increase.

- (6) The capital stock is conditionally increased by up to an additional 195,584,000 euros, allocated to up to 76,400,000 registered shares (Conditional Capital 2008 II). The conditional capital increase will only be carried out to the extent to which the holders of options or conversion rights or parties required to exercise option rights or required to convert on the basis of bonds with warrants or convertible bonds, profit sharing rights or profit participation bonds which are issued or guaranteed on the basis of the Authorization II resolved in the Stockholders' Meeting of 25 April, 2008 under agenda item 6 by Bayer AG or a group company of Bayer AG within the meaning of § 18 AktG in which Bayer AG directly or indirectly has a participation of at least 90 % exercise their option rights or conversion rights or to the extent that they are obligated to exercise options or to convert and satisfy their obligations to convert or exercise options to the extent that no cash compensation is granted and no treasury shares and shares of another company listed on the stock exchange are used to service the options or conversions. The issuance of



the new shares will take place in accordance with the requirements of this Authorization and in accordance with the option price or conversion price:

- When issuing bonds granting an option right but which do not establish a duty to exercise the option, the option price corresponds to 135 % of the volume weighted average stock exchange price for the shares of the Company in XETRA trading (or a corresponding successor system) at the Frankfurt Securities Exchange during the period between adopting the resolution on using the Authorization I by the Board of Management and the allocation of the Bonds by the banks accompanying the issue or, in the event that a subscription right is granted, 135% of the volume weighted average exchange price of the shares of the Company in XETRA trading (or a corresponding successor system) on the Frankfurt Securities Exchange during the days on which the subscription rights for the bonds are traded on the Frankfurt Securities Exchange, except for the last two trading days of the trading in subscription rights (the referenced average price is referred to hereinafter also as the "Reference Price").


- In the event that Bonds are issued granting a conversion right, but which do not establish a duty to convert, the conversion price corresponds to 135 % of the reference price.
- In the event that Bonds are issued which establish a duty to convert or to exercise an option, the corresponding conversion price or option price is the following amount when the bonds become due or in the event of a takeover offer:
 - if the volume weighted average price of the shares of the Company in XETRA trading (or in a corresponding successor system) at the Frankfurt Securities Exchange on the twentieth trading day ending on the third trading day either before the Bonds become due or, in the event of a takeover offer, on the third trading day prior to the conversion date or the option exercise date ("Average Price") is
 - smaller or equal to the Reference Price, the Reference Price applies,
 - greater than the Reference Price and less than 120% of the Reference Price, the Average Price applies,

- greater or equal to 120 % of the Reference Price, 120% of the Reference Price applies.

- Notwithstanding the above provisions, the price is 120% of the Reference Price if the holders or creditors of the Bonds exercise an existing conversion right or option right prior to the occurrence of the duty to convert or exercise the option.

- Notwithstanding the above provisions, the price is the Reference Price if the Board of Management, with the consent of the Supervisory Board and in accordance with the terms and conditions of the Bonds, calls for an early conversion to prevent immediate, significant damage to the Company or to avoid a material deterioration of a public credit rating for the Company by a recognized rating agency.

The new shares participate in the profits from the beginning of the fiscal year in which they are created on the basis of the exercise of option rights or conversion rights or as a result of fulfilling obligations to exercise options or conversion obligations. The Board of Management is authorized with the consent of the Supervisory Board to determine the further details on carrying out the conditional capital increase.

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- (7) In the event of a capital increase, the dividend entitlement may be determined differently from that specified in Section 60 of the German Stock Corporation Act (Aktiengesetz).

§ 5 Shares

- (1) Stockholders shall have no entitlement to the issuance of share certificates.
- (2) The Board of Management shall have the right to decide on any issuance of share certificates and all details of such issuance.

Constitution

A. The Board of Management

§ 6 Composition, Rules of Procedure

- (1) The Board of Management shall consist of at least two members. The number of members of the Board of Management shall otherwise be determined by the Supervisory Board. The Supervisory Board may appoint one member of the Board of Management to be Chairman of the Board of Management and one member of the Board of Management to be Vice Chairman of the Board of Management.
- (2) The Board of Management may, by unanimous resolution, decide on its own Rules of Procedure if these have not been issued for the Board of Management by the Supervisory Board.


§ 7 Power of Representation

The Company is represented by two members of the Board of Management or by one member of the Board of Management acting jointly with a *Prokurist* (authorized signatory with full power of representation).

B. The Supervisory Board


§ 8 Composition, Election, Term of Office

- (1) The Supervisory Board shall consist of 20 members. Ten members shall be elected by the Stockholders' Meeting in accordance with the provisions of the German Stock Corporation Act (Aktiengesetz), and ten by the employees in accordance with the provisions of the Codetermination Act (Mitbestimmungsgesetz) of May 4, 1976.
- (2) The members of the Supervisory Board shall be elected for a term extending to the end of the Stockholders' Meeting which resolves on the ratification of the actions of the Supervisory Board undertaken in the fourth fiscal year after commencement of their terms of office. For this purpose, the fiscal year in which the terms of office begin shall not be counted.
- (3) The Stockholders' Meeting may, at the same time as it elects the members of the Supervisory Board, elect one or more substitute members. The substitute members shall replace members who have ceased to be members of the Supervisory Board for the remainder of their terms of office. The election of substitute members for the employee representatives on the Supervisory Board shall take place in accordance with the provisions of the Codetermination Act (Mitbestimmungsgesetz).

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- (4) If a member of the Supervisory Board elected by the Stockholders' Meeting ceases to be a member of the Supervisory Board before the end of his or her term of office and if no elected substitute member is available, an election shall be held to determine a successor. Such successor shall be a member for the remainder of the term of office of the member who has left the Supervisory Board prematurely, unless the successor is specifically elected for a shorter term.
 - (5) Members of the Supervisory Board may resign at any time by giving two weeks' written notice to the Chairman of the Supervisory Board or to the Board of Management. The dismissal of a member of the Supervisory Board elected by the stockholders shall require a majority of at least three quarters of the votes cast.

§ 9 Chairman and Vice Chairman

- (1) The Supervisory Board shall elect a Chairman and a Vice Chairman from among its members. The election shall take place in accordance with the provisions of the Codetermination Act (Mitbestimmungsgesetz).
- (2) Unless a shorter term of office is determined at the time of their election, the Chairman and Vice Chairman of the Supervisory Board shall be elected as Chairman and Vice Chairman, respectively,





for the duration of their membership of the Supervisory Board. This election shall take place at a meeting which, without having to be separately convened, shall take place immediately after the Stockholders' Meeting during which elections to the Supervisory Board were held.

- (3) If the Chairman or the Vice Chairman of the Supervisory Board ceases to be a member before the end of his or her term of office, the Supervisory Board shall elect a successor at its next meeting. If the Chairman of the Supervisory Board ceases to be a member, such meeting shall be convened by the Vice Chairman.
- (4) The Vice Chairman shall only acquire the rights and obligations of the Chairman if the latter is unable to attend and if those rights and obligations are, in this event, explicitly assigned to the Vice Chairman by law or under these Articles of Incorporation.

§ 10 Convening of Meetings and Passing of Resolutions

- (1) The Chairman of the Supervisory Board shall convene and chair the meetings of the Supervisory Board. The Supervisory Board shall meet twice per calendar half-year. Additional meetings shall be held if required by law or if deemed appropriate for business reasons.

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- (2) The members of the Board of Management may attend meetings of the Supervisory Board unless the Chairman of the Supervisory Board determines otherwise for a particular reason.
 - (3) The Supervisory Board shall be deemed to have a quorum if at least one half of the number of members of which it is required to consist participate in voting. A member also participates in the passing of the resolution if he or she abstains from voting. Absent members of the Supervisory Board may participate in the passing of a resolution if they arrange for written votes to be cast by other members of the Supervisory Board. A vote sent by fax or by another commonly used means of communication shall also be deemed to be a written vote.
 - (4) If, at a meeting of the Supervisory Board, the number of stockholder representatives and the number of employee representatives who participate in voting are not equal, a revote shall be taken if so requested by two members of the Supervisory Board. Such revote shall be taken at the next regular meeting, unless a special meeting of the Supervisory Board is convened. Thereafter, no further revote shall be permitted to take place at the request of only a minority of the members.
 - (5) At the instigation of the Chairman, the Supervisory Board may also pass resolutions by casting votes verbally, by telephone, in writing, by



fax, or via another common communication medium. Such resolutions shall be confirmed in writing by the Chairman and recorded in the minutes of the next meeting.


- (6) Resolutions of the Supervisory Board shall be passed by a majority of the votes cast, except where otherwise provided by law. In case of a tie, the Chairman of the Supervisory Board shall have the casting vote, if the stalemate continues after a second voting on the same subject matter.
- (7) Minutes of the deliberations and resolutions of the Supervisory Board shall be recorded and filed. They must be signed by the Chairman.
- (8) Declarations by the Supervisory Board and its committees shall be made by the Chairman on behalf of the Supervisory Board. The Chairman, but not the other members, is authorized to receive declarations on behalf of the Supervisory Board.
- (9) The Supervisory Board may resolve on amendments to these Articles of Incorporation that relate solely to their wording.

§ 11 Rules of Procedure and Committees

- (1) The Supervisory Board shall decide on its own Rules of Procedure.
- (2) In addition to the committee pursuant to Section 27 para. 3 of the Codetermination Act (Mitbestimmungsgesetz), the Supervisory Board may establish other committees and appoint members of the Supervisory Board to such committees. Decision-making powers may be assigned to the committees as permitted by law.
- (3) The rules set out under Article 10 shall apply analogously to the committees. The committee may elect a Chairman from among its members if one has not been appointed by the Supervisory Board. If a committee vote is a tie and a second vote on the same resolution again produces a tie, the Chairman of the committee shall have the casting vote. The Supervisory Board may regulate the activities of the committees in its Rules of Procedure.


§ 12 Remuneration of the Supervisory Board

- (1) Apart from reimbursement of his or her expenses, each member of the Supervisory Board shall receive a fixed annual remuneration in the amount of €60,000 and a variable annual remuneration.



The variable annual remuneration shall be €2,000 for every €50,000,000 or part thereof by which the gross cash flow as reported in the consolidated group financial statements of the recent fiscal year exceeds €3,100,000,000, provided that the variable annual remuneration in total may not exceed €30,000.

- (2) The Chairman shall receive three times the amount stated in para. 1, the Vice Chairman shall receive one-and-a-half times the amount stated in para. 1. Members of the Supervisory Board who also are members of a committee shall receive an additional quarter of the amount stated in para. 1. Members of the Supervisory Board who also are chairman of a committee shall receive a further additional quarter of the amount stated in para. 1. A member of the Supervisory Board, however, shall not receive in total an annual remuneration exceeding three times the aggregate annual amount stated in para. 1.
- (3) Supervisory Board members who have been members of the Supervisory Board or of one of its committees or who have chaired one of its committees for only a part of the fiscal year shall receive a lower remuneration on a pro rata basis.
- (4) The Company shall reimburse to the Supervisory Board members the expenses incurred through the exercise of their office, including any sales tax



(value added tax) payable on their remuneration and on the reimbursement of their expenses.

- (5) The Company may purchase liability insurance for the members of the Supervisory Board to cover their legal liability arising from their activities as members of the Supervisory Board.

C. The Stockholders' Meeting

§ 13 Place of the Stockholders' Meeting

The Stockholders' Meeting shall be held at the Company's registered office or in a German city with over 100,000 inhabitants.

§ 14 Notice of the Stockholders' Meeting


Insofar as no other persons are legally authorized to do so, the Stockholders' Meeting shall be convened by the Board of Management. The Notice of the Stockholders' Meeting shall be published in the electronic Gazette of the Federal Republic of Germany (elektronischer Bundesanzeiger) at least thirty days prior to the day by the end of which the stockholders have to register for the meeting. In calculating this deadline, the day of publication of the Notice and the day by the end of which the stockholders have to register for the meeting shall not be counted.

§ 15 Right of Attendance

- (1) Only those stockholders who are entered in the share register and have registered for the Stockholders' Meeting in time are entitled to attend the Meeting and to exercise voting rights.
- (2) The last possible day for registering to attend the Meeting is determined by law. The registration must be received by the Company no later than this day at the address provided in the Notice of the Stockholders' Meeting. Details shall be announced in Company publications together with the Notice of the Stockholders' Meeting.
- (3) If the proxies appointed by the Company are authorized to exercise voting rights, the necessary power of attorney may be granted in writing, by facsimile, or electronic means, in a manner to be specified by the Company on each occasion. The details relating to the granting of such powers of attorney shall appear in the publications used by the Company for its notices together with the Notice of the Stockholders' Meeting.

§ 16 Conduct of the Stockholders' Meeting

- (1) The Stockholders' Meeting shall be chaired by the Chairman of the Supervisory Board or, if the Chairman is unable to attend, by another member of the Supervisory Board representing the stockholders, to be nominated by the Chairman. In the event that neither the Chairman nor a member of the Supervisory Board designated by the Chairman takes the chair, the stockholder representatives in attendance shall elect a Chairman for the Meeting by a simple majority of the votes cast.
- (2) The Chairman of the Stockholders' Meeting shall preside over the discussions and shall determine the sequence of items for deliberation and the nature and form of voting. The result of the vote may also be ascertained by deducting the number of yes or no votes and abstentions from the total number of votes held by those entitled to vote.
- (3) The chairman is entitled to set reasonable time limits on the right of the stockholders to speak and pose questions. In particular, he may at the beginning or during the Stockholders' Meeting set reasonable time frames for the course of the Stockholders' Meeting, for the comments on the specific agenda items, or for the specific questions and speeches.

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- (4) The Stockholders' Meeting may be transmitted in whole or in parts in sound and vision. The details of the transmission in sound and vision shall appear in the publications used by the Company for its notices together with the Notice of the Stockholders' Meeting.

§ 17 Resolutions

- (1) Each share carries the right to one vote at the Stockholders' Meeting.
- (2) Unless otherwise provided by these Articles of Incorporation or by law, resolutions of the Stockholders' Meeting shall be passed by a simple majority of the votes cast and, where a capital majority is required in addition, by a simple majority of the capital stock represented when the vote is taken.

Annual Financial Statements and Distribution of the Profit

§ 18 Annual Financial Statements

- (1) The Board of Management shall prepare the annual financial statements and management report of Bayer AG, along with the annual financial statements and management report of the Bayer Group, for the preceding fiscal year by the statutory deadlines and shall submit them immediately after their preparation to the Supervisory Board and to the auditor. The Board of Management shall at the same time submit to the Supervisory Board a proposal for use of the distributable profit.
- (2) The annual financial statements of Bayer AG and those of the Bayer Group shall be prepared in accordance with the statutory provisions and accepted accounting principles.
- (3) The Board of Management and the Supervisory Board shall be authorized, when confirming the annual financial statements, to allocate the net income remaining after deduction of the amounts to be allocated to the statutory reserve, plus any loss carryforward, in part or in full to “other retained earnings”. The allocation of an amount greater than one half of the net income for the year shall not be permissible if as a result of such transfer the “other retained earnings” would exceed one half of the capital stock.

§ 19 Use of the Distributable Profit

- (1) The Stockholders' Meeting shall resolve annually, during the first eight months of the fiscal year, on the ratification of the actions of the members of the Board of Management and the Supervisory Board, the use of the distributable profit and the appointment of the auditor (Annual Stockholders' Meeting).
- (2) The distributable profit shall be apportioned equally among the stockholders, unless the Stockholders' Meeting resolves to use it in some other manner.
- (3) The Stockholders' Meeting may resolve to distribute all or part of the distributable profit to the stockholders by way of distribution in kind.



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