Comparison of Swiss and Danish corporate law

The following is a comparison of Swiss corporate law, which applies to Trifork Holding AG, and Danish corporate law, the law under which most of the companies listed on Nasdaq Copenhagen are incorporated with regards to shareholder rights.

This summary is subject to Swiss law, including the Swiss Code of Obligations (*Swiss Code, Obligationenrecht, Droit des obligations, Diritto delle obbligazioni)* and the Swiss Merger Act *(Merger Act, Fusionsgesetz, Loi sur la fusion, Legge sulla fusion*), and Danish corporate law, including the Danish Companies Act.

The comparison is provided for information purposes only and does not purport to be an exhaustive description of Swiss or Danish law. The information speaks only as at 18/08/2021 and Trifork assumes no responsibility to adjust or update the information.

Shareholder Rights

Notice of Meeting

Switzerland

Under Swiss law, general meetings of shareholders must be convened by the board of directors at least 20 days before the date of the meeting. Pursuant to the Articles of Association, a general meeting must be convened at least 21 calendar days and not more than 35 calendar days before the day of the meeting. The general meeting of shareholders is convened by way of a notice appearing in an official publication medium, currently the Swiss Official Gazette of Commerce. Registered shareholders may also be informed by ordinary mail or e-mail. The notice of a general meeting of shareholders must state the items on the agenda, the motions to be acted upon and, in case of elections, the names of the nominated candidates. Except in the limited circumstances listed below, a resolution may not be passed at a general meeting without proper notice. This limitation does not apply to proposals to convene an extraordinary general meeting of shareholders or to initiate a special investigation. No previous notification is required for motions concerning items included in the agenda or for debates that do not result in a vote.

Denmark

According to the Danish Companies Act, general meetings in listed limited liability companies shall be convened by the board of directors with a minimum of three weeks' notice and a maximum of five weeks' notice. A convening notice shall also be forwarded to shareholders recorded in the shareholders' register, who have requested such notification. There are specific requirements as to the information and documentation required to be disclosed prior to and in connection with the convening notice.

Voting Rights

Switzerland

Each share entitles a holder to one vote, regardless of its nominal value. The shares are not divisible. The right to vote and the other rights of share ownership may only be exercised by shareholders (including any nominees as further set out in the Articles of Association) or usufructuaries who are entered into the share register at cut-off date determined by the board of directors. Those entitled to vote in the general meeting of shareholders may be represented by the independent proxy holder (annually elected by the general meeting of shareholders), another registered shareholder or third person with written authorization to act as proxy or the shareholder’s legal representative. The chairperson has the power to decide whether to recognize a power of attorney.

Denmark

Each share confers the right to cast one vote at the general meeting of shareholders, unless the articles of association provide otherwise. Each holder of shares may cast as many votes as it holds shares. Shares that are held by the company or its direct or indirect subsidiaries do not confer the right to vote.

Shareholder Proposals

Switzerland

Under Swiss law, the general meeting of shareholders is convened by the board of directors, or, if necessary, by the company's statutory auditors. In specific circumstances, liquidators and, in the case of bond issues, representatives of bondholders, may also call a general meeting of shareholders. Furthermore, pursuant to Swiss law, one or more shareholders, whose combined shareholdings represent the lower of (i) 10 % of the share capital or (ii) an aggregate nominal value of at least CHF 1,000,000, may request a general meeting of shareholders to be convened. Under the Articles of Association, the threshold under (i) has been lowered to 5 % of the share capital of the Company.

Pursuant to Swiss law, one or more shareholders, whose combined shareholdings represent the lower of (i) one tenth of the share capital or (ii) an aggregate nominal value of at least CHF 1,000,000, may request that an item be included in the agenda for an extraordinary general meeting of shareholders. Under the Articles of Association, such right is accorded to one or more shareholders, whose combined shareholdings represent the lower of (i) 0.5% of the share capital or (ii) an aggregate nominal value of at least CHF 1,000,000. To be timely, the shareholder's request must be received by the company generally at least 45 calendar days in advance of the meeting. The request must be made in writing and contain, for each of the agenda items, the following information:

- a brief description of the business desired to be brought before the extraordinary general meeting of shareholders and the reasons for conducting such business at the extraordinary general meeting of shareholders as well as the motions to be put forward;
- the name and address, as they appear in the share register, of the shareholder proposing such business; and
- all other information required under the applicable laws and stock exchange rules.

Denmark

According to the Danish Companies Act, extraordinary general meetings of shareholders will be held whenever the board of directors or the appointed auditor requires. In addition, one or more shareholders each representing at least 5% of the registered share capital of the company may, in writing, require that a general meeting be convened. If such a demand is made, the board of directors shall convene the general meeting within two weeks thereafter.

All shareholders have the right to present proposals for adoption at the annual general meeting, provided that the proposals are submitted at least six weeks prior to the meeting. In the event that the request is made at a later date, the board of directors will determine whether the proposals were made in due time to be included on the agenda.

Action by Written Consent

Switzerland

Shareholders of a Swiss corporation may only exercise their voting rights in a general meeting of shareholders and may not act by written consents.

Denmark

Under Danish law, shareholders may decide to take action and pass resolutions by written consent if such consent is unanimous. However, for a listed company, this method of adopting resolutions is generally not feasible.

Appraisal Rights

Switzerland

Business combinations and other transactions that are governed by the Swiss Merger Act (i.e. mergers, demergers, transformations and certain asset transfers) are binding on all shareholders. A statutory merger or demerger requires Qualified Majority resolution.

If a transaction under the Swiss Merger Act receives all of the necessary consents, all shareholders are compelled to participate in such transaction.

Swiss corporations may be acquired by an acquirer through the direct acquisition of the share capital of the Swiss corporation. The Swiss Merger Act provides for the possibility of a so-called "cash-out" or "squeeze-out" merger if the shareholders holding 90% of the outstanding shares of the transferring corporation agree to the merger. In these limited circumstances, minority shareholders of the corporation being acquired may be compensated in a form other than through shares of the acquiring corporation (for instance, through cash or securities of a parent corporation of the acquiring corporation or of another corporation). For business combinations effected in the form of a statutory merger or demerger and subject to Swiss law, the Swiss Merger Act provides that if equity rights have not been adequately preserved or compensation payments in the transaction are unreasonable, a shareholder may request the competent court to determine a reasonable amount of compensation.

Denmark

The concept of appraisal rights does not exist under Danish law, except in connection with statutory redemption rights according to the Danish Companies Act.

According to Section 73 of the Danish Companies Act, a minority shareholder may require a majority shareholder that holds more than 90% of the company's registered share capital and voting rights to redeem his or her shares. Similarly, a majority shareholder holding more than 90% of the company's share capital and voting rights may, according to Section 70 of the same act, squeeze out the minority shareholders. In the event that the parties cannot agree to the redemption squeeze out price, this shall be determined by an independent evaluator appointed by the court. Additionally, there are specific regulations in Sections 249, 267, 285 and 305 of the Danish Companies Act that require compensation in the event of national or cross-border mergers and demergers. Moreover, shareholders who vote against a cross-border merger or demerger are, according to Sections 286 and 306 of the Danish Companies Act, entitled to have their shares redeemed.

Shareholder Suits

Switzerland

Class actions and derivative actions as such are not available under Swiss law. Nevertheless, certain actions may, to a limited extent, have a similar effect. An appraisal lawsuit won by a shareholder can be acted upon by any person who has the same legal status as the claimant. Also, a shareholder is entitled to bring suit against directors for breach of, among other things, their fiduciary duties and claim the payment of damages. However, unless the company is subject to bankruptcy proceedings, or if the relevant shareholder can demonstrate having suffered a loss in a personal capacity, a shareholder will only be allowed to ask for payment of damages to the corporation. Under Swiss law, the winning party is generally entitled to recover attorneys' fees incurred in connection with such action, provided, however, that the court has discretion to permit the shareholder whose claim has been dismissed to recover attorneys' fees incurred to the extent he acted in good faith.

Denmark

Under Danish law, only a company itself can bring a civil action against a third party; an individual shareholder does not have the right to bring an action on behalf of a company. However, if shareholders representing at least 10% of the share capital at a general meeting have opposed a decision to grant discharge to a member of the board of directors or the executive management or refrain from bringing law suits against, among other persons, a member of the board of directors or executive management, a shareholder may bring a derivative action on behalf of the company against, among other persons, a member of the board of directors or executive management. An individual shareholder may, in its own name, have an individual right to take action against such third party in the event that the cause for the liability of that third party also constitutes a negligent act directly against such individual shareholder.

Repurchase of Shares

Switzerland

The Swiss Code limits a company's right to purchase and hold its own shares. A corporation and its subsidiaries may purchase shares only if and to the extent that (1) it (or the respective subsidiary) has freely distributable reserves in the amount of the purchase price; and (2) the aggregate par value of all shares held by the company (and the respective subsidiary) does not exceed 10% of its share capital. Pursuant to Swiss law, where shares are acquired in connection with a transfer restriction set out in the articles of association of a company, the foregoing upper limit is

20%. If a corporation owns shares that exceed the threshold of 10% of its share capital, the excess must be sold or cancelled by means of a capital reduction within two years.

Shares held by a corporation or its subsidiaries are not entitled to vote at the general meeting of shareholders but are entitled to the economic benefits applicable to the shares generally, including dividends and pre-emptive rights in the case of share capital increases.

Denmark

Danish limited liability companies may not subscribe for newly issued shares in their own capital. Such companies may, however, according to the Danish Companies Act Sections 196-201, acquire fully paid shares of themselves, provided that the board of directors has been authorized to do so by the shareholders at a general meeting. Such authorization can only be given for a maximum period of five years and the authorization shall fix (i) the maximum value of the shares and (ii) the minimum and the highest amount that the company may pay for the shares. Such purchase of shares may generally only be acquired using distributable reserves. In addition, the board of directors may, on behalf of the company, acquire the company's own shares, without authorization, in case it is necessary to avoid a considerable and imminent detrimental effect on the company and provided certain conditions are met. In case the company has acquired its own shares under such circumstances the board of directors is obligated to inform the shareholders of such acquisition at the next general meeting.

Anti-Takeover Provisions

Switzerland

Swiss law limits the implementation of anti-takeover measures. Once a public offer has been pre-announced, the board of the target company is no longer permitted to take any action to frustrate the offer, unless with the shareholders' consent. Prior to an offer being (pre-)announced, the potential target may take limited measures, such as, among other things, percentage limitation on registration of registered shares, restrictions on exercising voting rights, share buybacks or placement of shares with white knights and/or friendly investors.

Denmark

Under Danish law, it is possible to implement limited protective anti-takeover measures. Such provisions may include, among other things, (i) different share classes with different voting rights and (ii) notification requirements concerning participation in general meetings.

Inspection of Books and Records

Switzerland

Under Swiss law, any shareholder may request information on the affairs of the company from the board of directors and on the performance and the results of their audit on the financial statements from the external auditors. The information must be given to the extent required for the proper exercise of shareholders' rights. The board of directors may refuse to provide information where providing it would jeopardize the company's trade secrets or other interests warranting protection. The company ledgers and business correspondence may be inspected only with the express authorization of the general meeting or by resolution of the board of directors and only if measures are taken to safeguard trade secrets.

Denmark

According to Section 150 of the Danish Companies Act, a shareholder may, at the annual general meeting or at a general meeting whose agenda includes such item, request an inspection of the company's books regarding specific issues concerning the management of the company or specific annual reports. If approved by shareholders with a simple majority, one or more investigators are elected. If the proposal is not approved by a simple majority but 25% of the share capital votes in favor of the proposal, then the shareholder can request the court to appoint an investigator.

Pre-Emptive Rights

Switzerland

Pursuant to the Swiss Code, shareholders have pre-emptive rights (*Bezugsrechte*) to subscribe for new issuances of shares. With respect to conditional capital in connection with the issuance of conversion rights, convertible bonds or similar debt instruments, shareholders have advance subscription rights (*Vorwegzeichnungsrechte*) for the subscription of conversion rights, convertible bonds or similar debt instruments.

A resolution passed at a general meeting of shareholders by a Qualified Majority resolution may authorize the company's board of directors to withdraw or limit pre-emptive rights (*Bezugsrechte*) or advance subscription rights (*Vorwegzeichnungsrechte*) in certain circumstances.

If pre-emptive rights (*Bezugsrechte*) are granted, but not exercised, the board of directors (upon delegation of this power by the general meeting of shareholders) may allocate the pre-emptive rights (*Bezugsrechte*) as it elects.

A valid authorization to issue share capital in the articles of association of a Swiss stock corporation typically provides for the withdrawal or limitation of pre-emptive rights (*Bezugsrechte*) of shareholders, and their allocation to third parties or to the company, in the event that the newly issued shares are used for the following purposes:

- if the issue price of the new registered shares is determined by reference to the market price;
- for the acquisition of an enterprise, part(s) of an enterprise or participations, or for the financing or refinancing of any of such transactions, or in the event of share placement for the financing or re-financing of such transactions;
- for purposes of broadening the shareholder constituency of the company in certain financial or investor markets, for purposes of the participation of strategic partners, or in connection with the listing or registration of new registered shares on domestic or foreign stock exchanges;
- for purposes of granting an over-allotment option in a placement or sale of registered shares to the respective initial purchaser(s) or underwriter(s);
- for raising of capital (including private placements) in a fast and flexible manner which probably could not be reached without the exclusion of the statutory pre-emptive right (*Bezugsrechte*) of the existing shareholders;
- for other valid grounds in the sense of Article 652b para. 2 of the Swiss Code.

Denmark

As a general rule, shareholders of the company are entitled to subscribe for new shares in proportion to their existing shareholdings in the event of a cash increase of the share capital. Such a cash increase of the share capital can be resolved by the general meeting by at least two-thirds of the votes cast as well as at least two-thirds of the share capital represented at the general meeting. However, the general meeting may with respect to certain scenarios resolve to depart from the shareholders' right to proportionate subscription if certain voting requirements are met. Further, the board of directors may resolve to increase the share capital without pre-emptive subscription rights for existing shareholders pursuant to an authorization obtained from the general meeting.

Dividends

Switzerland

Under Swiss law, the board of directors may propose to shareholders that a dividend or other distribution be paid but cannot itself authorize the distribution. Dividend payments require a resolution passed by the absolute majority of the shares represented at a general meeting. In addition, the auditors of the company must confirm that the dividend proposal of the board of directors conforms to Swiss statutory law and the articles of association.

Under Swiss law, the company may pay dividends only if it has sufficient distributable profits from previous years (*Gewinnvortrag*) or freely distributable reserves (*frei verfügbare Reserven*) to allow the distribution of a dividend, in each case, as presented on the company's annual statutory stand-alone balance sheet prepared pursuant

to Swiss law, and after the allocations to the reserves required by Swiss law and the articles of association have been deducted. The company is not permitted to pay interim dividends out of profit of the current business year.

Distributable reserves are generally booked either as "free reserves" (*freie Reserven*) or as "reserve from capital contributions" (*Reserven aus Kapitaleinlagen*). Under the Swiss Code, if the general reserves (*allgemeine Reserve*) amount to less than 20% of the company's share capital recorded in the commercial register (i.e., 20% of the aggregate nominal value of its issued capital), then at least 5% of its annual profit must be retained as general reserves. The Swiss Code and the Articles of Association permit the company to accrue additional general reserves. Further, a purchase of the company's own shares (whether by the company or a subsidiary) reduces the distributable reserves in an amount corresponding to the purchase price of such shares. Finally, the Swiss Code under certain circumstances requires the creation of revaluation reserves which are not distributable.

Distributions out of issued share capital (i.e. the aggregate nominal value of a company's issued shares) are not allowed and may be made only by way of a share capital reduction. Such a capital reduction requires a resolution passed by an absolute majority of the shares represented at a general meeting. The resolution of the shareholders must be recorded in a public deed and a special audit report must confirm that claims of the company's creditors remain fully covered despite the reduction in the share capital recorded in the commercial register. The share capital may be reduced below CHF 100,000 only if and to the extent that at the same time the statutory minimum share capital of CHF 100,000 is re-established by sufficient new fully paid-up capital. Upon approval of a capital reduction by the general meeting of shareholders of a capital reduction, the board of directors must give public notice of the capital reduction resolution in the Swiss Official Gazette of Commerce three times and notify creditors that they may request, within two months of the third publication, satisfaction of or security for their claims. The reduction of the share capital may be implemented only after expiration of this time limit.

Dividends are usually due and payable after the shareholders have passed the resolution approving the payment, but shareholders may also resolve at the ordinary general meeting of shareholders on the date on which the dividends will be due and payable.

Denmark

Under Danish law, the distribution of ordinary and extraordinary dividends requires the approval of a company's shareholders at the company's general meeting. In addition the shareholders may authorize the board of directors to distribute extraordinary dividends. The shareholders may not resolve to the distribution of dividends in excess of the recommendation from the board of directors and the company may only pay out dividends from its distributable reserves, which are defined as results from operations carried forward and reserves that are not bound by law after deduction of loss carried forward. It is possible under Danish law to pay out interim dividends. The decision to pay out interim dividends shall be accompanied by a balance sheet, and the board of directors determines whether it will be sufficient to use the statement of financial position from the annual report or if an interim statement of financial position for the period from the annual report period until the interim dividend payment shall be prepared. If interim dividends are paid out later than six months following the end of the financial year for the latest annual report, an interim balance sheet showing that there are sufficient funds shall always be prepared.

Shareholder Vote on Certain Reorganizations

Switzerland

Under Swiss law, with certain exceptions, a merger or a division of the corporation or a sale of all or substantially all of the assets of a corporation must be approved by a Qualified Majority. A shareholder of a Swiss corporation participating in a statutory merger or demerger pursuant to the Swiss Merger Act can file an appraisal right lawsuit against the surviving company. As a result, if the consideration is deemed "inadequate" such shareholder may, in addition to the consideration (be it in shares or in cash) receive an additional amount to ensure that such shareholder receives the fair value of the shares held by such shareholder. Swiss law also provides that a parent corporation, by resolution of its board of directors, may merge with any subsidiary, of which it owns at least 90.0% of the voting rights without a vote by shareholders of such subsidiary, if the shareholders of the subsidiary are offered the payment of the fair value in cash as an alternative to shares.

In addition, under Swiss law, the sale of "all or substantially all of a company's assets" by the company may require a Qualified Majority resolution. Whether a shareholder resolution is required depends on the particular transaction, including whether the following test is satisfied:

- a core part of the company's business is sold without which it is economically impracticable or unreasonable to continue to operate the remaining business;
- the company's assets, after the divestment, are not invested in accordance with the statutory business purpose; and
- the proceeds of the divestment are not earmarked for reinvestment in accordance with the company's business purpose but, instead, are intended for distribution to its shareholders or for financial investments unrelated to its business.

A shareholder of a Swiss corporation participating in certain major corporate transactions may, under certain circumstances, be entitled to appraisal rights. As a result, such shareholder may, in addition to the consideration (be it in shares or in cash) receive an additional amount (compensation payment) to ensure him receiving the fair value of the shares.

Denmark

Under Danish law, all amendments to the articles of association shall be approved by the general meeting of shareholders with a minimum of two-thirds of the votes cast and two-thirds of the represented share capital. The same applies to solvent liquidations, mergers with the company as the discontinuing entity, mergers with the company as the continuing entity if shares are issued in connection therewith and demergers. Under Danish law, it is debatable whether the shareholders must approve a decision to sell all or virtually all of the company's business/assets.

Amendments to Governing Documents

Switzerland

The articles of association of a Swiss corporation may be amended by the general meeting with a resolution passed by an absolute majority of the shares represented at such meeting, unless otherwise provided in the articles of association. There are a number of resolutions, such as an amendment of the stated purpose of the corporation and the introduction of authorized and conditional capital, that require the approval by a Qualified Majority. The articles of association may increase the voting thresholds.

Denmark

All resolutions made by the general meeting may be adopted by a simple majority of the votes, subject only to the mandatory provisions of the Danish Companies Act and the articles of association. Resolutions concerning all amendments to the articles of association must be passed by two-thirds of the votes cast as well as two-thirds of the share capital represented at the general meeting. Certain resolutions, which limit a shareholder's ownership or voting rights, are subject to approval by a nine-tenth majority of the votes cast and the share capital represented at the general meeting. Decisions to impose or increase any obligations of the shareholders towards the company require unanimity.