

COMPARISON BETWEEN DANISH AND SWEDISH COMPANY LAW

DanCann Pharma A/S is a public limited company with its registered office in Denmark and thus subject to Danish company law. The following sections contain a general comparison between Danish and Swedish law focusing on some of the differences in the two countries' company law, the Danish Act on Public and Private Limited Companies (the "Danish Companies Act") (Consolidated Act 2019-07-23 No. 763) (in Danish "Selskabsloven"), and the Swedish Companies Act (2005:551) (in Swedish "Aktiebolagslagen"). The purpose of the comparison is to throw light on some of these differences and assist Swedish investors in understanding fundamental provisions in Danish company law. Please note that the comparison is a brief summary of some of the differences in the company law of the two countries and is therefore not exhaustive.

1. *Distribution of dividends*

1.1 *Distribution of ordinary and extraordinary dividend under the Danish Companies Act*

Under section 180 (1) of the Danish Companies Act, distribution of *ordinary* dividends is decided by the annual general meeting on the basis of the annual report. It cannot be decided to distribute dividends of a higher amount than what is proposed or accepted by the board of directors. As ordinary dividends may only be distributed distributable reserves, i.e. amounts stated as retained earnings in the company's latest approved annual report, and reserves not being non-distributable under a statute or the company's articles of association less retained earnings, cf. section 180 (2) of the Danish Companies Act. Under section 182 of the Danish Companies Act, distribution of *extraordinary* dividends is decided by the general meeting and it is required that the company has presented its first annual report. The amount cannot be higher than what is proposed or accepted by the board of directors and only earnings that are falling within the scope of section 180 (2) may be distributed. However, also earned profit and distributable reserves created or released after the latest financial year for which an annual report has been prepared may be distributed as extraordinary dividends, unless the amount has been distributed, spent or is non-distributable. It is required that a balance sheet is attached to every decision of distribution of extraordinary dividends and that the board of directors assesses

whether an interim balance sheet showing that sufficient funds are available for distributions needs to be prepared.

1.2 Distribution of dividend under the Swedish Companies Act

Overall, the provisions of the Danish Companies Act and the Swedish Companies Act contain similar rules regarding distribution of dividends. Only minor formal differences exist with the relevant exception as follows. In accordance with Swedish law, the general meeting is under two separate circumstances entitled to resolve on distribution of dividends to a higher amount than is the amount proposed or accepted by the board of directors. Such circumstances are if (i) such an obligation is enrolled under the company's Articles of Association or if (ii) the dividend is resolved at the request of a minority consisting at least ten per cent of the shares of the company. In case of a minority dividend such dividend can never exceed half of the disposable earnings adopted by the general meeting.

2. Annual general meetings and extraordinary general meetings under the Danish Companies Act

The general meeting is the forum in which shareholders' exercise their influence and right to pass resolutions, cf. section 76 of the Danish Companies Act.

2.1 Right to attend and vote etc.

All shareholders have right to attend and speak at general meetings and right to attend by proxy, cf. section 78 and 80 (1) of the Danish Companies Act. In connection hereof, the Proxy must show a written and dated instrument of proxy. Further, it is required that the instrument of proxy may be revoked at any time, cf. section 80 (2) of the Danish Companies Act. Shareholders and proxies are entitled to attend general meetings with an advisor, cf. section 81 of the Danish Companies Act.

2.2 Time and place

Under section 87 (1) of the Danish Companies Act, general meetings must be held at the registered office of the company, unless the articles of association specify another place. The general meeting must for instance pass resolutions on approval of the annual report, appropriation of profit or loss as recorded in the approved annual report and any other issue prescribed in the company's articles of association. The annual general meeting must be held in time for the approved annual report to be received by the Danish Business Authority no later than 5 months after the end of the financial year, cf. section 88 (2) of the Danish Companies Act.

2.3 Extraordinary general meetings

Extraordinary general meetings for the transaction of a specific issue must be held at the request of shareholders who hold 5 per cent of the share capital, unless otherwise provided in the articles of association, cf. clause 89 (3) of the Danish Companies Act.

2.4 Agenda

Shareholders are entitled to have a specific issue included on the agenda for the general meeting. Shareholders must submit a written request at least six weeks before the general meeting. If the request is received less than six weeks before the general meeting, the board will decide whether the request has been made in time for the issue to be included on the agenda, cf. section 90 (2) of the Danish Companies Act.

2.5 Notice of general meetings

In general, general meetings are called and organised by the board of directors, cf. section 93 (1) of the Danish Companies Act. Unless the articles of association prescribe for a longer period of notice, the notice must be given no earlier than 4 weeks and no later than 2 weeks before the general meeting and the notice must be given in accordance with provisions of the articles of association, cf. section 94 (1) and 95 (1) of the Danish Companies Act. The notice must state the time and place of the meeting as well as an agenda setting out the matters to be dealt with, cf. section 96 (1) of the Danish Companies Act. The agenda and the complete proposed resolutions and, in case of the annual general meeting, also the audited annual report must be available for inspection by the shareholders no later than two weeks before the general meeting, cf. section 98 of the Danish Companies Act.

2.6 Voting

Each shareholder must vote in respect of his shares in aggregate, unless otherwise provided in the articles of association. In general, resolutions at general meetings must be passed by a simple majority of votes, unless otherwise provided in the Danish Companies Act or in the articles of association, cf. section 105 of the Danish Companies Act. However, there are several rules deviating from the general rule. For instance, resolutions to amend the articles of association must be passed by at least two-thirds of the votes cast as well as at least two-third of the share capital represented at the general meeting, cf. section 106 (1) of the Danish Companies Act. Only if all shareholders agree, resolutions to amend the articles of association resulting in an increase of the shareholders' obligations to the company are valid, cf. section 107 (1) of the Danish Compa-

nies Act. Further, section 107 (2) of the Danish Companies Act, requires that resolutions to amend the articles of association in connection with resolutions reducing the shareholders' right to receive dividends or distributions of the company's funds, including subscriptions for shares at a favourable price, to the benefit of persons other than the shareholders and employees, only are valid if they are passed by at least nine-tenths of the votes cast as well as at least nine-tenths of the share capital represented at the general meeting.

2.7 Invalid resolutions by general meetings

Resolutions which are clearly likely to provide certain shareholders or others with an undue advantage over the other shareholders or the company cannot be passed by the general meeting, cf. section 108 of the Danish Companies Act. A shareholder or a member of the management may commence legal proceedings concerning a resolution passed by the general meeting that has not been lawfully passed or conflicts with the Danish Companies Act or the articles of association of the company, cf. section 109 (1) of the Danish Companies Act.

3. Annual general meetings and extraordinary general meetings under the Swedish Companies Act

Broadly, the provisions of the Swedish Companies Act and the Danish Companies Act contain similar rules regarding annual general meetings and extraordinary general meetings. However, some differences can be mentioned. Under chapter 7 of the Swedish Companies Act, the notice of general meetings must be given no earlier than 6 weeks and no later than 4 weeks before the annual general meeting. The annual general meeting must be held no later than 6 months after the end of the financial year (5 months in accordance with Danish Law). The notice of extraordinary general meetings must be given no earlier than 6 weeks and no later than 2 weeks before the extraordinary general meeting. Extraordinary general meetings must be held at the request of shareholders who hold 10 per cent of the share capital (the percentage is 5 under the Danish Companies Act). The Swedish Companies Act chapter 16 contain the so-called Lex Leo Act, which constitutes a minority shareholder protection and must be applied under certain related-transactions. To pass resolutions in relation herof, a qualified majority is required, at least nine-tenths of the votes cast as well as at least nine-tenths of the share capital represented at the general meeting. Similar rules does not exist under the Danish Companies Act.

4. Tax

4.1 Tax regulations in Sweden

The following sections contain a general review on certain Swedish rules for taxation of dividends and capital gainz for those who are resident in Sweden and who invest in shares in DanCann Pharma A/S.

4.2 Tax – natural persons in Sweden

For natural persons who are fully taxable in Sweden because they reside in Sweden or are permanent residents here, capital income such as dividends and capital gains in the income category capital is taxed. The tax rate of the income category is 30 percent.

4.3 Tax – limited companies in Sweden

All income for Swedish limited companies, including dividends and capital gains on market-listed shares, is taxed in the income category of business activities. The tax rate is 21.4 per cent for 2020 and thereafter 20.6 percent for fiscal year commencing after 1 January 2021.

The capital gain respectively capital loss are calculated based on the difference between the sales revenue received, after deduction for expenses for the sale, for the divested shares and the overhead cost of the shares (acquisition cost). When calculating the overhead cost all the shares of the same series and type shall be aggregated and calculated jointly with application of the average method. Upon divestment of the market-listed shares alternative standard methods shall be applied, which means that the overhead cost may be determined at 30 per cent of the sales revenue after deduction for expenses for the sale.

4.4 Danish source tax on dividends

Dividends on shares in DanCann Pharma A/S, which have been provided to persons with taxable residence in Sweden as a starting point will be subject to 27 per cent withholding tax in Denmark. According to the Nordic double taxation agreement, the withholding tax on shares is, however, normally limited to 15 per cent of the gross amount of the dividend. According to the same double taxation agreement, in certain cases, dividends are fully exempt from Danish withholding tax for recipients that are companies and that directly own at least 10 per cent of the paying company's capital. In order to avoid double taxation of dividend income, allowance for such foreign tax in Sweden is permitted under certain conditions against the Swedish tax payable on the dividend. If the deducted Danish withholding tax exceeds 15 per cent, the taxpayer may in certain cases apply for refund of the excess tax from Denmark.