

# SUMMARY OF DIFFERENCES OF SHAREHOLDER RIGHTS UNDER SWEDISH AND SWISS LAW APPLICABLE TO ABB

## 1 BACKGROUND

ABB Ltd (“**ABB**”) is a stock corporation (Germ. *Aktiengesellschaft*) incorporated under the laws of Switzerland. ABB is listed on the SIX Swiss Exchange in Zurich, Nasdaq Stockholm, and the NYSE in New York.

According to Section 3.11.2 of the Nordic Main Market Rulebook for Issuers of Shares, a company with its shares listed on any of the Nordic Nasdaq Main Markets, but incorporated or established outside the European Economic Area (“EEA”), shall on its website publish a general description of the main differences in minority shareholders’ rights between the company’s place of domicile and the country or those countries where its shares are admitted to trading. As regards Sweden, the below comparison is based, unless otherwise stated, on the minority shareholders’ rights under the Swedish Companies Act (Sw. *aktiebolagslagen*) in respect of a Swedish limited liability company (Sw. *aktiebolag*) listed on the main market of Nasdaq Stockholm and Swedish corporate governance principles. ABB is not required to comply with the Swedish Corporate Governance Code.

Regarding Swiss law, this comparison is based, unless otherwise set forth below, on the minority shareholders’ rights that follow from the Swiss Code of Obligations, ABB’s articles of incorporation, the Swiss Federal Act on Financial Market Infrastructures and Market Conduct in Securities and Derivatives Trading (“**FMIA**”) and the Swiss Federal Act on Merger, Demerger, Conversion and Transfer of Assets (“**Merger Act**”).

The below summary shall, however, not be relied upon as an exhaustive list or a complete description of the relevant provisions and does not replace specific legal advice.

## 2 MINORITY SHAREHOLDERS’ RIGHTS UNDER SWEDISH AND SWISS LAW

### 2.1 Swedish law

#### 2.1.1 General restrictions on the right of decision-making

Under Swedish law, the shareholders’ meeting, the board of directors and the managing director of the company may not adopt any resolutions or undertake any other measures which would give an undue advantage to a shareholder or other person to the disadvantage of the company or another shareholder. In addition, under Swedish law, the shareholders’ meeting, the board of directors and the managing director of the company may not undertake measures which contravene the company’s object of business as stated in the articles of incorporation or the obligation to pursue a profit.

#### 2.1.2 Shareholder initiatives

Shareholders are entitled to have a matter brought before the shareholders’ meeting. Shareholders’ who wish to have a matter brought before the shareholders’ meeting must submit a written request to the board of directors. Such request must normally be received by the board of directors no later than seven weeks prior to the shareholders’ meeting or in due time for the matter to be included in the notice to attend the general meeting.

### 2.1.3 Right to request information

At the shareholders' meeting, any shareholder has the right to request information from the board of directors and the managing director that may impact (i) the assessment of a matter that is on the agenda of the shareholders' meeting, or (ii) the assessment of the company's financial situation. Should a company be included in a group, the duty to provide information also applies to the company's relationship to other group companies. Where the company is a parent company, the duty to provide information also applies to the group accounts and other circumstances regarding its subsidiaries.

In public limited liability companies, information in respect of ii) above may only be requested at the shareholders' meeting where the annual report or, if applicable, group annual report is considered.

Information requests may be refused if it could cause material damage to the company to provide such information.

## **2.2 Swiss law**

### 2.2.1 General restrictions on the right of decision-making

Under Swiss law, as a matter of principle, the shareholders of a stock corporation such as ABB shall be treated equally according to the proportion of share capital held by each shareholder. Accordingly, a shareholder may challenge any resolution of the shareholders' meeting which gives rise to the unequal treatment or disadvantaging of the shareholders in a manner not justified by the company's objects. At the same time, members of the board of directors must, under equal circumstances, ensure equal treatment of all shareholders.

The decision to withdraw the pursuit of profit orientation of the company requires a unanimous resolution of the shareholders.

### 2.2.2 Shareholder initiatives

According to ABB's articles of incorporation, one or more shareholders whose combined shareholdings represent an aggregate par value of at least CHF 48,000 may demand that an item be included on the agenda of a shareholders' meeting. Such inclusion must be requested in writing at least forty days prior to the meeting and shall specify the agenda items and proposals of such shareholder(s).

### 2.2.3 Right to request information

At the shareholders' meeting, any shareholder has the right to request information from the board of directors concerning the business of the company and from the auditors concerning the performance and the results of their audit. The information must be given to the extent required for the proper exercise of shareholders' rights. It may be refused where providing it would jeopardize the company's trade secrets or other interests warranting protection. Where information is refused without just cause, the shareholder may apply for a court order.

## **3 SHAREHOLDERS' MEETINGS**

### **3.1 Swedish law**

According to the Swedish Companies Act, the shareholders' meeting is a company's ultimate decision-making body. Under Swedish law, an annual general meeting must be held within six months of the expiry of each financial year. At the annual general meeting the shareholders exercise their voting rights in key issues, such as adoption of

the income statement and the balance sheet, appropriation of the company's results, including declaration of dividends, discharge from liability for the board of directors and the managing director, election of members of the board of directors and auditors, as well as to resolve upon guidelines for remuneration to management.

Notice of an annual general meeting, and of an extraordinary general meeting convened for resolving on an amendment of the articles of incorporation, is required to be given no earlier than six weeks and no later than four weeks prior to the general meeting. Notice of other extraordinary general meetings, where an amendment of the articles of incorporation shall not be resolved upon, is required to be given no earlier than six weeks and no later than three weeks prior to the general meeting. Shareholders who wish to participate in the shareholders' meetings shall be registered in the shareholders' register on the record date six banking days prior to the shareholders' meeting and thereto also notify the company of their intention to attend the meeting no later than the day stated in the notice convening the meeting. Shareholders whose shares are registered in the name of a nominee must temporarily re-register the shares in their own name no later than four banking days prior to the shareholders' meeting to be entitled to attend the meeting. Notice of a shareholders' meeting must be given in accordance with the articles of incorporation, which must include an advertisement in the Swedish Official Gazette (*Sw. Post- och Inrikes Tidningar*), and the notice must also be published on the company's website. A notice that a shareholders' meeting has been convened must also be published in a daily newspaper with national coverage, as specified in the articles of incorporation. Upon the request of the company's auditor, or upon the written request of shareholders holding at least one tenth (1/10) of the shares in the company, the board of directors is obliged to convene a shareholders' meeting. The board of directors may also convene a shareholders' meeting at its own initiative. The notice shall include an agenda listing each item that will be considered at the meeting. Pursuant to the Swedish Corporate Governance Code, a company shall, as soon as the time and venue of a shareholders' meeting have been decided, and no later than in conjunction with the third quarterly report, post such information on the company's website.

Moreover, the Swedish Corporate Governance Code stipulates that the chairman of the board of directors together with a quorum of directors, as well as the chief executive officer, shall attend shareholders' meetings. The chairman of the shareholders' meeting shall be nominated by the nomination committee and elected at the shareholders' meeting. The minutes of a shareholders' meeting shall be available on the company's website no later than two weeks after the meeting.

At a shareholders' meeting, a shareholder may vote for the full number of shares held unless otherwise stated in the articles of incorporation. When, pursuant to the Swedish Companies Act or the articles of incorporation, approval by the owners of a certain percentage of the shares is required for a particular resolution (certain majority requirements), shares held by the company or by a subsidiary of the company (also known as treasury shares) are not to be included in the voting.

### **3.2 Swiss law**

Under Swiss law, the shareholders' meeting is the supreme body of the company. The annual general meeting should take place every year within six months of the end of the financial year. Extraordinary general meetings are convened, as and when necessary, by the board of directors, the auditors, upon resolution of a shareholders' meeting or if requested by one or more shareholders who represent an aggregate of at

least one tenth (1/10) of the share capital and who submit a petition signed by such shareholder(s) specifying the items for the agenda and the proposals.

The annual general meeting must, *inter alia*, approve the annual management report and the annual accounts and set the annual dividend. It further may discharge the directors and the persons entrusted with management from liability for disclosed matters. Furthermore, the shareholders' meeting must approve the compensation of the board of directors and of the top management. The general meeting also elects, *inter alia*, the members and the chairman of the board of directors, the members of the compensation committee, the independent proxy and the auditors.

Notice of any shareholders' meeting must be given to the shareholders no later than 20 days before the date for which it is scheduled. Notice of the meeting shall be given by way of an announcement appearing once in the Swiss Official Gazette of Commerce. Shareholders may also be informed by ordinary mail. The notice convening the meeting must include the agenda items and the motions of the board of directors and the shareholders who have requested that a shareholders' meeting be called or an item be placed on the agenda. The members of the board of directors are entitled to participate in the shareholders' meeting. They may table motions.

The chairman of the board of directors or, in his absence, a vice-chairman or any other member appointed by the board of directors, takes the chair of the shareholders' meeting.

The shareholder rights may be exercised by any person registered in the share register or authorized by a written power of attorney issued by the entitled shareholder. Alternatively, shareholders may grant voting instructions to the independent proxy elected by the shareholders' meeting. Each share grants the right to one vote.

Unless otherwise provided by law or the company's articles of incorporation, the shareholders' meeting passes resolutions and conducts elections by an absolute majority of the voting rights represented at the shareholders' meeting. In accordance with Swiss law, the following resolutions must be approved with a qualified majority of at least two thirds (2/3) of the votes represented: (i) modifications of company's purpose; (ii) the creation of shares with increased (preferential) voting rights; (iii) restrictions on the transferability of registered shares and the removal of such restrictions; (iv) an authorized or conditional increase in the company's share capital; (v) an increase in the company's share capital through the conversion of capital surplus, against contribution in kind, for the acquisition of assets and the granting of special privileges; (vi) the restriction or elimination of pre-emptive rights; (vii) a change of the place of incorporation; (viii) the dissolution of the company and (ix) certain decisions leading to a change in the company's structure such as mergers, demergers and conversions as governed by the Merger Act. According to the Swiss Code of Best Practice for Corporate Governance, the voting results of the shareholders' meeting should be made available to the shareholders as soon as possible, but no later than one week after the meeting.

## **4 APPOINTMENT AND REMOVAL OF MEMBERS OF THE BOARD OF DIRECTORS**

### **4.1 Swedish law**

The board of directors is the second-highest decision-making body after the shareholders' meeting. According to the Swedish Companies Act, the board of directors is responsible for the organization of a company and the management of the company's affairs, which means that the board of directors is responsible for, among other things, setting targets and strategies, securing routines and systems for evaluation of set targets, continuously assessing the financial condition and profits as well as evaluating the operating management. The board of directors is also responsible for ensuring that annual reports and interim reports are prepared in a timely manner. Moreover, the board of directors appoints the managing director.

The members of the board of directors are elected by the shareholders' meeting, except employee representatives, which are board members appointed by the trade unions. Members of the board of directors are typically appointed at an annual general meeting for a period up until the end of the next annual general meeting. In respect of elections, the person who receives the most votes shall be deemed to have been elected and, formally, a vote is made for each of the nominated directors. Re-election of a board member is possible and also very common in Sweden.

The shareholders' meeting has the power to, at any time, remove the board members elected by it, i.e. also before expiration of the ordinary term of office. Each board member also has the right to, at any time, resign at its own request.

### **4.2 Swiss law**

The company's board of directors is ultimately responsible for the organization and the management of the company's affairs. The board of directors has, in particular, the following non-delegable and inalienable duties: (i) the ultimate management of the company and the issuance of the necessary directives; (ii) the determination of the organization of the company; (iii) the administration of accounting, financial control and financial planning; (iv) the appointment and removal of the persons entrusted with the management and representation of the company; (v) the ultimate supervision of the persons entrusted with the management of the company, specifically in view of their compliance with the law, the articles of incorporation, the regulations and directives; (vi) the preparation of the business report, the compensation report and the shareholders' meetings as well as the implementation of the resolutions adopted by the shareholders' meetings; (vii) the adoption of resolutions concerning an increase in share capital to the extent that such power is vested in the board of directors (art. 651 para. 4 Swiss Code of Obligations) and of resolutions concerning the confirmation of capital increases and corresponding amendments to the articles of incorporation, as well as making the required report on the capital increase; (viii) the notification of the court if the liabilities of the company exceed its assets. In addition, the board of directors may pass resolutions with respect to all matters that are not reserved to the authority of the shareholders' meeting by law or under the articles of incorporation. According to the articles of incorporation of ABB, the board of directors must have no less than 7 and no more than 13 members. Each member of the board of directors must be individually elected by the shareholders' meeting by an absolute majority of the voting rights represented at the meeting. Members of the board are elected for a period up until the end of the next annual general meeting. Re-election of a board member is possible.

An extraordinary general meeting has the power to remove any member of the board of directors at any time, i.e. also before expiration of the ordinary term of office. Each board member has also the right to resign at any time.

## **5 DIVIDENDS AND UNLAWFUL VALUE TRANSFER**

### **5.1 Swedish law**

Under the Swedish Companies Act, only a shareholders' meeting may authorize the payment of dividends. A resolution to pay dividends may, with some exceptions, not exceed the amount recommended by the board of directors. Upon request by the owners of not less than one tenth (1/10) of all shares, the shareholders' meeting shall resolve upon the distribution of one-half (1/2) of the remaining profit for the year pursuant to the adopted balance sheet following certain deductions. Dividends may only be paid if, after the payment of the dividend, there is sufficient coverage for the company's restricted equity and the payment of dividends are justified, taking into consideration the equity required for the type of operations, the company's need for consolidation and liquidity as well as the company's financial position in general. Each person who is listed as a shareholder in the printout of the entire share register as of the record date for the dividend (usually the second business day following the shareholders' meeting) will be entitled to receive the dividend distribution. Dividends are normally distributed to the shareholders through Euroclear.

If a value transfer has taken place in violation of the provisions of the Swedish Companies Act, the recipient is obliged to return what he or she has received, if the company can prove that he or she knew or should have realised that the value transfer was in violation of the Swedish Companies Act.

If a value transfer has been made in violation with the Swedish Companies Act, the persons who participated in the resolution will be liable for the shortage if all funds cannot be returned to the company.

### **5.2 Swiss law**

Under Swiss law, only a shareholders' meeting may authorize the payment of dividends based on audited annual accounts. Dividends may only be paid from the distributable profits and from reserves formed for this purpose. Distributable profit is only the amount of the profit that remains after the obligatory allocation to the general legal reserves.

Each shareholder registered in the share register as of the record date for the dividend is entitled to the dividend distribution.

For shareholders who are residents of Sweden, ABB has established a dividend access facility. With respect to any annual dividend payment for which this facility is made available, shareholders who register with Euroclear may elect to receive the dividend payment from ABB Norden Holding AB in Swedish krona and without deduction of Swiss withholding tax.

Finally, each shareholder may claim that unduly payments which were made in bad faith to the benefit of other shareholders, board members or related persons be returned to the company (e.g. excessive interest payments for shareholders' loans or dividends). The same applies to other benefits received from the company to the extent these are manifestly disproportionate to the performance rendered in return and to the company's economic situation. The claim for restitution accrues to the company or the shareholder. The claim is directed against the receiver of such an unduly payment. Value

transfers in violation of Swiss corporate law also trigger individual liability of board members.

## **6 PREFERENTIAL RIGHTS IN RELATION TO SHARE ISSUES**

### **6.1 Swedish law**

Under Swedish law, shareholders must approve of each issue of shares, or, as the case may be, authorize the board of directors to resolve on such an issue. Generally, existing shareholders have preferential rights to subscribe for new shares, convertibles and warrants (to subscribe for new shares), pro rata to their current shareholdings. Resolutions to issue new shares, convertibles or warrants, where the existing shareholders shall have preferential rights to the new shares, are adopted at a shareholders' meeting by simple majority (unless the articles of incorporation need to be amended in order to allow for the issue). The same applies to resolutions concerning an issue in kind.

A resolution approving or authorizing an issue with deviation from the preferential right for existing shareholders requires a majority of at least two thirds (2/3) of the votes cast and of the shares represented at the shareholders' meeting, and, in addition, that there are valid reasons for such deviation. If the shareholders are not to be given preferential rights and the issue is directed to (i) members of the board of directors; (ii) the managing director; (iii) employees of the company; or (iv) an individual or a legal person who is closely related to the aforementioned categories, the resolution approving the issue is subject to additional restrictions, requiring a majority of at least nine tenths (9/10) of the votes cast and of the shares represented at the shareholders' meeting. Further, such resolutions may not be adopted by the board of directors through the exercise of an authorization from the shareholders' meeting.

### **6.2 Swiss law**

Under Swiss law, any share issue, whether for cash or by contribution in kind, is subject to the prior approval of the shareholders at a shareholders' meeting.

Generally, every shareholder is entitled to the proportion of the newly issued shares that corresponds to his or her existing participation. A resolution adopted at a shareholders' meeting by a qualified majority of at least two thirds (2/3) of the voting rights represented may restrict or withdraw (or authorize the board of directors, within certain limits, to restrict or withdraw) preferential subscription rights for good cause. In particular, the takeover of companies, parts of companies or equity interests and employee share ownership are deemed to be good cause. The restriction or withdrawal of the subscription right must not result in any improper advantage or disadvantage to the parties involved.

ABB's articles of incorporation provide for an authorization of the board of the directors to restrict or withdraw preferential subscription rights in connection with (i) the issuance of convertible or warrant-bearing bonds or other financial market instruments for the financing and refinancing of acquisitions or new investments or the issuance on national or international capital markets, (ii) the issuance of shares to employees or board members and (iii) the issuance of shares for acquisitions or new investments or share placements to finance or refinance such transactions as well as the issuance for the broadening of the shareholder constituency in connection with a listing of the shares.

## **7 DISTRIBUTION OF ASSETS ON LIQUIDATION**

### **7.1 Swedish law**

Under the Swedish Companies Act, all shares carry equal rights in liquidation unless the articles of incorporation provide otherwise.

### **7.2 Swiss law**

Unless the articles of incorporation provide otherwise, the proceeds of the liquidation of a company are calculated in proportion to the amounts paid up on the share capital. ABB's articles of incorporation do not provide otherwise.

## **8 REQUEST FOR A SPECIAL AUDIT**

### **8.1 Swedish law**

The Swedish Companies Act provides that minority shareholders, holding at least one tenth (1/10) of all shares in the company or representing at least one third (1/3) of the shares at a shareholders' meeting, have a right to request that the Swedish Companies Registration Office (Sw. *Bolagsverket*) appoints a minority auditor that shall participate in the audit together with the company's auditor (Sw. *minoritetsrevisor*). Minority shareholders may also request the appointment of a special examiner (Sw. *särskild granskare*) for examination of certain past events or circumstances in the company.

### **8.2 Swiss law**

Under Swiss law, any shareholder may propose at the shareholders' meeting that certain facts be subject to a special audit (independent investigation) conducted by a special auditor to the extent that this is necessary for the exercising of shareholders' rights and provided further the shareholders' right to information and inspection has been previously exercised. Depending on the outcome of the shareholders' meetings' resolution, the following procedures apply:

Where the shareholders' meeting adopts the motion, the company or any shareholder may apply to the court within 30 days for appointment of a special auditor.

Where the shareholders' meeting rejects the motion, one or several shareholders who together represent at least 10 per cent of the nominal share capital of the company or who represent shares with a nominal value of at least CHF 2,000,000 may request the judge within 30 days to appoint a special auditor. To that end, the applicants have to make a prima facie case that governing officers of the company have violated the law or the articles of incorporation and, thereby, have harmed the company or the shareholders.

## **9 MANDATORY REDEMPTION OF SHARES (SQUEEZE-OUT RULES)**

### **9.1 Swedish law**

The Swedish Companies Act provides that if a shareholder holds more than 90 per cent of the shares of a Swedish limited liability company, such majority shareholder is entitled to acquire the remaining outstanding shares through a compulsory redemption procedure (so called squeeze-out procedure) and the minority shareholders have a corresponding right to have their shares redeemed by the majority shareholder (this applies also to warrants and convertibles held by the minority). Unless the majority shareholder and the minority shareholders agree on the price to be paid for the minority shares, an arbitration tribunal will determine a fair price payable in cash for the minority shares.



## 9.2 Swiss law

Under Swiss law, as a matter of principle, there is no general statutory provision providing for the right or the obligation of a majority shareholder to acquire the remaining outstanding shares.

Only in two specific circumstances, the Swiss law provides for an exceptional “squeeze-out” right of the majority shareholder, namely in connection with a merger or in connection with a tender offer:

Where a Swiss company such as ABB is involved in a merger transaction, the provisions of the Swiss Merger Act apply. Subject to the approval of at least 90 per cent of the shareholders with voting rights of the transferring company, the merger contract may provide that, instead of granting shares of the surviving company, only a compensation other than shares of the surviving company be paid to shareholders of the transferring company (so called “squeeze-out merger”). The minority shareholders are protected by appraisal rights.

According to the FMIA, an offeror who, upon expiry of the tender offer period, holds more than 98 per cent of the voting rights of the offeree (target) company, may petition the court to cancel the outstanding shares (“squeeze-out”). The court orders the cancellation of the remaining equity securities (including derivatives issued by the target) and the target company must allot them to the bidder against payment of the offer price or fulfilment of the exchange offer in favour of the holders of the cancelled equity securities (no appraisal rights).

## 10 PUBLIC TAKEOVERS AND OTHER SIMILAR TRANSACTIONS

### 10.1 Swedish law

#### 10.1.1 Public takeovers

The Swedish Takeover Act (*Sw. lag om offentliga uppköpserbjudanden på aktiemarknaden*), the Swedish Financial Instruments Trading Act (*Sw. lag om handel med finansiella instrument*) and the Takeover Rules issued by Nasdaq Stockholm will, as a general rule, govern a public offer by an offeror for all shares in a company listed on Nasdaq Stockholm. The Swedish Financial Supervisory Authority (*Sw. Finansinspektionen*) supervises that a company complies with the Takeover Act, and the Swedish Securities Council (*Sw. Aktiemarknadsnämnden*) may grant exemptions in respect of certain provisions of the Takeover Act. The Swedish Securities Council also interprets the Takeover Rules.

In order for an offeror to be allowed to make a public offer, the offeror must undertake towards Nasdaq Stockholm to comply with (i) the Takeover Rules; and (ii) the Swedish Securities Council’s rulings concerning the interpretation and application of the Takeover Rules. The offeror must also submit to any sanctions imposed by Nasdaq Stockholm upon breach thereof. Such undertaking must be made prior the announcement of an offer. The Takeover Rules contain detailed provisions of the takeover process and the rules are mainly based on principles derived from the Takeover Directive. These principles stipulate, among others, that all holders of the same class of securities in a target company must receive equal treatment; if a person has acquired control of a company, the other holders of securities must be protected (see also the description of the mandatory public offers below); that holders of securities in a target company must be given sufficient time and information to make a well-informed decision of the offer; and that the board of directors of the target company must take into account the interests of all holders in the target company and

that it may not deprive holders of securities of an opportunity to make a decision on the offer. Further, if the board of directors or the managing director has reason to believe that a bid is imminent (based on information originating from a party who intends to make a public offer) or where such a bid has already been made, the board of directors of the target company is prohibited from taking measures, without the approval of shareholders, which could impair the conditions for making or implementing the offer (so-called defensive measures or frustrating action). The prohibition does not prevent the board of directors from seeking alternative, competing, offers. The mandatory bid rule and the prohibition on defensive measures under the Swedish Takeover Act are, however, only applicable to Swedish companies.

#### 10.1.2 Mandatory public offers

The Swedish Takeover Act stipulates that if a person with less than 30 per cent of the votes for all shares in a Swedish company acquires shares and thereby reaches or exceeds 30 per cent of the votes in the company, such shareholder is obliged to, within four weeks, either (i) sell a sufficient amount of shares so that its shareholdings fall below 30 per cent of the votes in the company, or (ii) make a public offer for all remaining shares of the company (a so-called mandatory bid). Pursuant to the Takeover Rules issued by Nasdaq Stockholm, a mandatory bid can be made conditional only on regulatory approvals, and the consideration in a mandatory bid must be cash or include an all-cash alternative.

#### 10.1.3 Similar transactions, e.g. mergers

From a minority shareholder perspective, the same interests apply irrespective of whether the takeover of a target company is carried out in the form of a takeover procedure or e.g. through a statutory merger procedure. Therefore the Takeover Rules provide that, in most respects, the rules apply mutatis mutandis to mergers and similar procedures and that certain provisions of the Swedish Companies Act regarding voting at shareholders' meetings apply mutatis mutandis notwithstanding that such provisions are not directly applicable, e.g. due to the fact that the merger provisions of the Swedish Companies Act are not applicable to Swiss companies such as ABB (see also the section about mergers under Section 11.1 below).

### **10.2 Swiss law**

#### 10.2.1 Public takeovers

Public offers for listed shares are subject to the FMIA, which provides for protective rules for the benefit of shareholders of public companies requiring offerors to treat shareholders equally and to abide by a minimum price and a best price rule. The FMIA applies to cash or share exchange offers addressed publicly to the holders of equity securities of companies whose equity securities are listed on a Swiss exchange. Compliance with the takeover rules of the FMIA are supervised by the Swiss Takeover Board.

#### 10.2.2 Mandatory public offers

The obligation to make a mandatory tender offer is imposed on any person, acting directly or indirectly, alone or in concert, who exceeds the threshold of 33⅓ per cent of the voting rights, whether exercisable or not, of a Swiss listed company; the company may raise this threshold in its articles of incorporation to 49 per cent of the voting rights or opt out of such threshold altogether. ABB's articles of incorporation do not contain such provisions. In justified cases, the Swiss Takeover Board may grant exemptions from the obligation to make an offer.

In the case of a mandatory offer, the offeror must in any case offer a cash alternative (if otherwise structured as an exchange offer).

The offeror has to publish the offer in a prospectus containing true and complete information. The offeror has to treat all holders of equity securities of the same class equally. The offeror's obligations are incumbent upon all who act in concert with the former. The offeror has, prior to publication, to submit the offer to an auditing company or to a securities dealer for review. The result of the public offer has to be published upon expiry of the offer period.

In a public offer, the target company's board of directors must issue a special report to the shareholders stating its position on the offer in order to enable the shareholders to make an informed decision.

The board of directors of the target company is not entitled to take measures, without the approval of shareholders, which could impair the conditions for making or implementing the offer (so-called defensive measures or frustrating actions).

Swiss takeover law permits the use of authorised capital under exclusion of subscription rights of the existing shareholders in the context of a takeover if the articles of incorporation provide for such use.

In the case of a public offer, directors and officers are bound to act in the best interests of the company and to abide by the requirement to treat all shareholders and all bidders equally. In the context of a friendly takeover, the board of directors may, in normal circumstances, recommend acceptance without violating its fiduciary duties and without obligation to initiate an auction.

Public offers may be made subject to conditions only if such conditions are beyond the bidder's control. Where the nature of the conditions is such that the bidder's cooperation is required to satisfy them, the bidder must take all reasonable steps to ensure that the conditions are satisfied. At the close of the offer period, it must be clearly stated whether the conditions have been satisfied. With the approval of the Swiss Takeover Board, the bidder may postpone this statement until closing of the offer if it demonstrates an overriding interest. Finally, the bidder may waive any or all of the conditions at any time. By law, closing of the offer results in all outstanding conditions being waived.

Mandatory bids may only be subject to conditions in justified cases (namely, if the condition is needed for completion, for example, government approval, to obtain control or abolishment of voting restrictions).

### 10.2.3 Similar transactions, e.g. mergers

The takeover rules of the FMIA do not apply to mergers of public companies as mergers are governed by the Merger Act.

## **11 STATUTORY MERGERS**

### **11.1 Swedish law**

The Swedish Companies Act requires the board of directors of the merging Swedish company to adopt a merger plan before a merger can be approved at a shareholders' meeting. The Swedish Companies Act further provides that, as a general rule, the merger plan must be approved by a majority of two thirds (2/3) of the votes cast and the shares represented at the shareholders' meeting of the transferor company. Holders of at least five per cent of the shares of the transferee company are entitled to demand that the plan shall also be submitted to the shareholders' meeting of the

transferee company. If there are different classes of shares issued in the company, the above mentioned majority rules apply within each class of shares represented at the shareholders' meeting. In connection with a statutory merger, the merger consideration to the shareholders of the transferor company may be composed of shares in the transferee company or cash. However, more than half of the total value of the consideration must be composed of share consideration.

When a Swedish public limited liability company is merged into a Swedish private limited liability company, the approval of the merger plan requires the vote of all the shareholders represented at the shareholders' meeting (in the transferor company) holding at least nine tenths (9/10) of all the shares of the company. The same applies if the transferor company is a public company with its shares listed on a regulated market or a corresponding market outside the EEA and the merger consideration is to be paid in shares which, at the time when the merger consideration should be paid, are not admitted to trading on such a marketplace. In connection with a resolution to approve the merger plan for a transferor company, shares held by the transferee company or by a company within the same group as the transferee company shall not be regarded.

The Takeover Rules issued by Nasdaq Stockholm provide that, in most respects, the Takeover Rules apply mutatis mutandis to mergers and similar procedures (see also Section 10.1 above).

## **11.2 Swiss law**

Where a Swiss company is involved in a merger transaction with another company, the provisions of the Merger Act might apply. The Merger Act provides for certain protection rights of the shareholders and shall ensure a transparent and fair merger procedure.

The merger contract must be concluded by the boards of the merging companies and must list specific items deemed to inform the shareholders about the consequences of the planned merger. In particular, the contract must disclose the exchange ratio for shares and/or the amount of the compensation to the shareholders of the transferring company.

Shareholders of the transferring company are entitled to claim shares of the surviving company in proportion to the former equity or membership rights held in the transferring company, taking into account the assets of the merging companies, the allotment of voting rights, as well as all other relevant circumstances. The merging companies may provide in the merger contract that the shareholders may choose between shares of the surviving company and a compensation payment. Under certain circumstances, the merging companies may even provide in the merger contract that only a compensation will be paid (so-called "squeeze out merger" see Section 9.2 above).

The boards of the merging companies must prepare a merger report addressed to the shareholders in which they explain and justify from a legal and economic viewpoint the purpose and the consequences of the merger.

As a rule, the companies involved in a merger must consult the employees before the merger becomes effective. The employees may have the recording of the merger in the commercial register enjoined by a court if such duty was violated.

The merger contract as well as the merger report and the merger balance sheet must be audited by a licensed expert auditor, and the merger must be approved by the shareholders' meeting of all participating companies. The required majorities depend on the planned merger. In most cases, a qualified majority of at least two thirds (2/3) of

the votes of the shares represented at the shareholders' meeting and the absolute majority of the nominal value of the shares represented is required.

A transaction effected under the rules of the Merger Act must be registered in the commercial register.

In case of a "squeeze-out merger", i.e. where the merger contract provides only for a compensation payment (see Section 9.2 above), the merger resolution requires the consent of at least 90 per cent of all members of the transferring company who are entitled to vote.

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September 2020