



Date August 17<sup>th</sup>, 2022  
To Biofrontera AG  
From Markus Janssen, Keisuke Enomoto, Atsumi & Sakai Janssen Foreign Law Joint Enterprise – ASJ –  
Re **Attribution of Voting Rights to Mr. Takagi on the grounds of Controlling Influence on Maruho Co Ltd. (Update 2022)**

We have been asked by the German stock corporation Biofrontera AG (hereafter “**Biofrontera**”) to update our findings regarding our memorandum “*Attribution of Voting Rights to Mr. Takagi on the grounds of Controlling Influence on Maruho Co Ltd.*” (“**Memorandum 2019**”, see **Attachment 0**) which we issued in 2019 in course of a court proceeding at the German District Court of Cologne in 2019 between Biofrontera and Deutsche Balaton AG (“**Deutsche Balaton**”), one of Biofrontera’s shareholders.

We are briefly summarizing the findings of the Memorandum 2019 (see item 1, below), point out the updated facts as of August 2022 (see item 2, below), conclude that there are no changes in our legal evaluation compared to the Memorandum 2019 (see item 3, below), and then outlining further legal consequences (see item 4, below).

## 1. SUMMARY OF FACTS AND FINDINGS OF THE 2019 MEMORANDUM

### a. Summary of Facts 2019 (more detailed facts outlined in the Memorandum 2019)

Mr. Koichi Takagi (“**Mr. Takagi**”) was in 2019 Representative Director, President and CEO of Maruho Co., Ltd. (“**Maruho Japan**”) which was a 100% shareholder of Maruho Deutschland GmbH (“**Maruho Germany**”) which itself owned 20% in Biofrontera.

The major shareholders of Maruho Japan were as follows:

Name of Shareholder	Holding ratio in %
Employee Stock Ownership Plan	30.94
Maruho-Takagi Dermatological Foundation (“ <b>Foundation</b> ”)	30.01
Officers Stock Ownership Plan	18.05
Koichi Takagi	10.00
Total	89.00



**b. Summary of Legal Evaluation 2019 (more detailed legal evaluation outlined in the Memorandum 2019)**

In the Memorandum 2019 we came to the conclusion that Mr. Takagi as President and CEO of Maruho Japan had a “controlling influence” because he was a 10% shareholder of Maruho Japan Ltd. by himself directly, and in addition, we concluded that as President and CEO he also controls 30.01% of the shares held by the Foundation, 30.94% of the Employee Stock Ownership Plan and also controls 18.05% of the Officers Stock Ownership Plan. The controlling influence therefore extend to 89% of the shares of Maruho Japan.

We therefore concluded that the above-described situation constitutes a “controlling influence” in terms of § Article 35 WpHG and that therefore any reporting obligations subject to § 33 WpHG should have been passed from Maruho Japan (the 100% parent company of Maruho Germany) to Mr. Takagi.

**2. UPDATED FACTS AS OF AUGUST 2022**

Upon a research of the current situation, as of 2022, we now found that the shareholding of Maruho Japan has not changed and Mr. Takagi is still registered as Representative Director of Maruho Japan and remains member of the company’s board of directors. However, another person, Mr. Atsushi Sugita has been appointed as additional Representative Director of Maruho Japan, who has been appointed as the current “*President and CEO*”, while Mr. Takagi’s title has been changed to “*Chairman*”.

**3. NO CHANGES IN OUR LEGAL EVALUATION COMPARED TO THE MEMORANDUM 2019**

We come to the conclusion that the above-described change in the board of directors of Maruho Japan does not have an impact on the “controlling influence” of Mr. Takagi: Under Japanese law, there is no legal difference between “Chairman” and “President” if both are appointed as representative Director.

Even if another representative director has been appointed, Mr. Takagi is still a representative director and still has rights to solely represent Maruho Japan In addition, in the board’s hierarchy, “Chairman” is practically deemed as a position superior to “President” if both are representative Directors. Therefore, the President is not likely to object to the Chairman’s opinion and therefore Mr. Takagi as Chairman could still influence and control the votes of the Foundation, the Employee Stock Ownership Plan and the Officers Stock Ownership Plan.

There are cases in which a former President and CEO will be “promoted” to “Chairman” without being appointed as a representative director. In such case, such former CEO is regarded as “elder statemen” or “Honorary Chairman”, but without operative power. In case of Maruho Japan, however, the continuous representative rights clearly indicate that the era of Mr. Takagi at Maruho Japan has not ended yet and he still controls the company, now even from the elevated position of the powerful Chairman. Therefore Mr. Takagi’s control over 89 % of the shareholders voting rights of Maruho Japan continues.



#### 4. LEGAL CONSEQUENCES

##### a) Continuous loss of shareholder rights according to § 44 (1) WpHG

According to § 33 (1) WpHG, Mr. Takagi is obligated to notify the issuer (Biofrontera) and the German Federal Financial Supervisory Authority (“BaFin”) about his controlling influence. If he does not comply with this notification obligation, Maruho Germany loses its shareholder rights according to § 44 I WpHG, until Mr. Takagi has made up the notification at a later point, subject to a waiting period of six months.

The subsequent notification would then lead to an ex nunc revival of the shareholder rights after the expiration of a six months blocking period (§ 44 I 3 WpHG). The retroactive loss of shareholder rights, therefore, applies for a further six months beyond the period in which the notification obligation was duly made. The period starts on the day after the notification obligation has been fulfilled (§ 187 I BGB).

No such notice occurred before or during the litigation between Deutsche Balaton and Biofrontera. The litigation was settled by mediation on November 17, 2021 (and was also logically excluded as it would have caused Biofrontera to lose the litigation against Deutsch Balaton). For the application on August 2, 2022 to convene an extraordinary general meeting of shareholders of Biofrontera to be valid, the subsequent notification should have been made up by February 1, 2022 at the latest.

To our knowledge, no subsequent notification was made between November 17, 2021 and February 22, 2021. Therefore, the loss of rights according to § 44 I WpHG continues, Mr. Takagi cannot exercise his right to convene extraordinary general meetings, as well as all shareholder rights. Consequently, he cannot attend or use his voting rights at any other (ordinary) general meetings.

##### b) No retrospective healing of the loss of rights

Retroactive healing of the loss of rights is only possible with regard to the dividend claim (§ 58 IV AktG) and the proportionate liquidation proceeds (§ 271 I AktG) within the additional requirements of § 44 (1) 2 WpHG. With regard to all other shareholder rights, healing is barred. Unjustly received dividends must be repaid according to § 62 AktG.

[REDACTED]

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Consequently, the application for convening an extraordinary general meeting as well as any participation in any general shareholder meetings on the part of Maruho Germany is to be rejected.

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