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**Regulation on Notifications in Accordance with Section 2c of the German Banking Act (Kreditwesengesetz – KWG) and section 17 of the German Insurance Supervision Act (Versicherungsaufsichtsgesetz – VAG) (Holder Control Regulation, Inhaberkontrollverordnung – InhKontrollV)**

Holder Control Regulation of 20 March 2009 Federal Law Gazette (BGBl.) I p. 562, 688, as last amended by Article 1 of the Regulation of 19 December 2022 (BGBl. I, p. 2645)

**Part 1 General Provisions**

**1 Target entity**

**2 Copies of notifications, method of submission and translations**

**3 Information on the receiving agent in Germany**

**4 Information on persons, commercial partnerships, companies with other legal forms and special purpose funds**

**5 Shares of capital and voting rights**

**Part 2 Notification of the acquisition or increase of a qualifying holding**

**6 Notification forms, completeness of the notification**

**7 Change in the notified intention, the notified acquisition, and the notified information**

**8 General documents and declarations**

**8a Additional documents and declarations to be provided by certain parties required to notify**

**9 Declarations and documents on reliability**

**10 Curriculum vitae**

**11 Shareholding structure, group affiliation and other possibilities to exert influence**

**11a Effect of the group structure on supervision**

**12 Financial and non-financial interests**

**13 Financial position and creditworthiness of the party required to notify**

**14 Financing, disclosure of all agreements**

**15 Business plan, description of strategic objectives and plans**

**16 Reduced information requirements**

**Part 3 Further notification and disclosure requirements**

**17 Notification of the reduction or disposal of a qualifying holding**

**18 Notification of changes in the holder of a qualifying holding**

**19 Supplementary notifications in the case of subsequent changes in the holder of a qualifying holding to ensure cooperation with the responsible bodies in the European Economic Area**

**20 (repealed)**

Annex 1 (regarding section 6 (1) sentence 1) Acquisition-Increase Form

Annex 2 (regarding section 6 (2) (1)) Complex Shareholding Structures Form

Annex 3 (regarding section 9 (1) sentence 1) Information on Reliability Form

Annex 4 (regarding section 9 (4) sentence 1) Information on intended members of the management body in its management function

Annex 5 (to section 9 (5)) IPVFA Questionnaire for the Assessment of Professional Competence, Personal Reliability and Sufficient Time Commitment – to be filled in by the party required to notify

Annex 6 (to section 9 (5)) IPVFP Questionnaire for the Assessment of Professional

Competence, Personal Reliability and Sufficient Time Commitment – to be filled in by the person pursuant to section 8 no. 7  
Annex 7 (to section 17 (1)) IAV Disposal/Reduction Form

## **Part 1 General Provisions**

### **1 Target Entity**

A Target Entity within the meaning of this Regulation is

1. a credit institution,
2. a financial services institution,
3. an insurance undertaking,
4. a pension fund, or
5. an undertaking domiciled in Germany, whose principal activity is the acquisition and holding of direct or indirect holdings in insurance or reinsurance undertakings or pension funds,

in which a qualifying holding within the meaning of section 1 (9) of the KWG or section 7 no. 3 of the VAG is to be acquired, an existing qualifying holding is to be changed, or a qualifying holding is to be disposed of, or where a qualifying holding was unintentionally acquired, changed or disposed of.

### **2 Copies of notifications, filing method and translations**

(1) <sup>1</sup>If the target entity is a credit institution or a financial services institution, a single copy of each of the notifications defined in section 2c (1), (1b) sentence 10 and (3) of the KWG and of the notifications and disclosures defined in sections 7, 18 and 19 shall be submitted to BaFin and the Deutsche Bundesbank regional office that is responsible for the credit institution or financial services institution in question. <sup>2</sup>This applies accordingly to documents and declarations that are subsequently requested.

(2) If the target entity is a company within the meaning of section 1 nos. 3 to 5, a single copy of each of the notifications defined in section 17 (1) and (2) as well as section 18 (3) sentence 4 of the VAG and the notifications and disclosures defined in sections 7, 18 and 19 shall be submitted to BaFin or the responsible federal state supervisory authority.

(3) <sup>1</sup>The party required to notify shall submit, in addition to the original documents, a translation of any documents and declarations that are not written in German which is officially certified or produced by an appointed or sworn interpreter or translator. <sup>2</sup>BaFin and the responsible federal state supervisory authority may waive the requirement for officially certified translations in individual cases.

### **3 Information on the receiving agent in Germany**

<sup>1</sup>Parties required to notify with no residence or place of habitual abode, domicile, or place of management in Germany shall give the name and address of a receiving agent in Germany in the form defined in section 6 (1) sentence 1 and section 17 (1) sentence 1. <sup>2</sup>The authorisation shall be evidenced by enclosing an officially or publicly certified copy of the relevant document.

#### **4 Information on persons, commercial partnerships, undertakings with other legal forms and special purpose funds**

(1) The following information shall be provided with regard to the natural persons to be specified by the party required to notify in accordance with this regulation and with section 2c (1) sentence 2 last half-sentence of the KWG and section 17 (1) sentence 1 no. 1 second half-sentence of the VAG:

1. full name,
2. date of birth,
3. place of birth and
4. address of the person's primary residence.

(2) The following information shall be provided with regard to the legal persons, commercial partnerships, undertakings with other legal forms and special purpose funds to be specified by the party required to notify in accordance with this regulation and with section 2c (1) sentence 2 last half-sentence of the KWG and section 17 (1) sentence 1 no. 1 second part-sentence of the VAG:

1. company name,
2. legal form ,
3. domicile,
4. country of domicile,
5. address of the place of management's headquarters and
6. the classification entries for the commercial register entry if an entry exists.

#### **5 Shares of capital and voting rights**

(1) When calculating shares of capital or voting rights in accordance with section 6 (2) sentence 1, section 8 no. 5, section 11 (1) no. 1 (a) and no. 3, section 12 (2) no. 3 and 4, subsection (4) and (6), and section 15 (2) and (3), shares held directly and indirectly shall be taken into account. <sup>2</sup>If a person directly or indirectly controls a shareholder which holds at least 10 per cent of the capital of the target entity, then the capital shares of that shareholder shall be counted in full towards the capital shares of the controlling person. <sup>3</sup>Section 1 (9) sentence 2 and 3 of the KWG and section 7 no. 3 part-sentence 2 and 3 of the VAG apply to the calculation of voting rights.

(2) <sup>1</sup>If the amount of the shares of capital or voting rights held is decisive in accordance with this Regulation, this amount shall be given in per cent. <sup>2</sup>In the case of indirect shares, the intermediate entities with the shares of capital or voting rights held by them shall additionally be given in per cent. <sup>3</sup>In cases where voting rights are attributed, the parties holding the voting rights concerned and the reason for attributing the voting rights shall also be disclosed.

## **Part 2 Notification of the acquisition or increase of a qualifying holding**

### **6 Notification forms, completeness of the notification**

(1) <sup>1</sup>For notifications regarding

1. the intended acquisition of a qualifying holding pursuant to section 2c (1) sentence 1 of the KWG or section 17 (1) sentence 1 no. 1 of the VAG,
2. the intended increase of a qualifying holding pursuant to section 2c (1) sentence 6 of the KWG or section 17 (1) sentence 1 no. 2 of the VAG, or
3. the unintentional acquisition or unintentional increase of a qualifying holding pursuant to section 2c (1) sentence 7 of the KWG or section 17 (1) sentence 2 no. 1 of the VAG,

the form "Acquisition/Increase" in Annex 1 must be used. <sup>2</sup>A separate form must be used for each party required to notify.

(2) <sup>1</sup>In the case of complex shareholding structures, the notification must also include:

1. the form "Complex Shareholding Structures" from Annex 2 as well as
2. a diagram of the shareholding structure before and after the acquisition or increase of the qualifying holding, specifying the respective capital shares and voting rights held in percent.

<sup>2</sup>Complex shareholding structures exist in particular in the case of holdings that are held both directly and indirectly via one or more entities, via several chains of holdings, in concert with others, in the case of trust relationships or in other cases where shares of voting rights are attributed in accordance with section 1 (9) sentence 2 and 3 of the KWG or section 7 no. 3 part-sentence 2 and 3 of the VAG, in each case in conjunction with section 34 (1) sentence 1 nos. 2 to 8 and subsection (2) of the German Securities Trading Act (*Wertpapierhandelsgesetz* – WpHG).

(3) <sup>1</sup>Notifications are complete within the meaning of section 2c (1) sentence 9 in conjunction with subsection (1a) sentence 1 of the KWG and section 17 (3) in conjunction with subsection (4) sentence 1 of the VAG if the form specified in subsection 1 sentence 1 is completed in full and all the required annexes are enclosed. <sup>2</sup>If it is not possible to enclose all the required annexes, the reasons for this must be given and missing annexes must be provided subsequently without delay. <sup>3</sup>Notifications shall only be regarded as complete when the required annexes have been received.

(4) For the purposes of section 2c (1) sentence 9 of the KWG, a notification shall be regarded as being received in full when it is received in full by BaFin.

### **7 Change in the notified intention, the notified Acquisition, and the notified information**

(1) If the party required to notify abandons its intention to acquire or increase a qualifying holding before the acquisition or increase, it shall provide written information of this without delay.

(2) <sup>1</sup>If the party required to notify changes its intention to acquire or increase a qualifying holding in the target entity in an ongoing process in accordance with section 2c (1) sentence 1 or sentence 6 of the KWG or in accordance with section 17 (1) sentence 1 or sentence 2 of the VAG, it shall provide written information of this without delay subject to sentence 3 and shall

re-submit the documents and declarations filed under this Regulation insofar as individual disclosures therein need to be amended. <sup>2</sup>This shall also apply if the party required to notify changes its intention to acquire or increase a qualifying holding in the target entity after the end of the assessment period but before the acquisition or increase is completed. <sup>3</sup>If the holding thresholds of 20 percent, 30 percent, or 50 percent are to be reached or exceeded or the party required to notify would obtain control of the target entity due to the intended acquisition or the intended increase, the notified intention shall be regarded as withdrawn; in this case, the party required to notify shall submit a new notification in accordance with section 2c (1) sentence 1 or sentence 6 of the KWG or section 17 (1) sentence 1 or sentence 2 of the VAG. <sup>4</sup>Sentences 1 and 3 apply accordingly to notifications regarding the unintentional acquisition or unintentional increase of a qualifying holding pursuant to section 2c (1) sentence 7 of the KWG or section 17 (1) sentence 2 no. 1 of the VAG.

(3) <sup>1</sup>If information in the documents and declarations submitted changes by the end of the assessment period in accordance with section 2c (1a) of the KWG or section 17 (4) of the VAG after a notification has been dispatched, the party required to notify shall update the relevant documents and submit them without delay so that BaFin or the responsible federal state supervisory authority can include these in its assessment. <sup>2</sup>If the party required to notify fails to do this or if the updated information is received with such a delay that the authority does not have five working days, or, in the case of a CRR credit institution, less than 20 working days, for its examination during the assessment period, the information in the documents and declarations filed shall be regarded as incorrect.

## **8 General documents and declarations**

The following documents and declarations must be enclosed with the notifications:

1. suitable current evidence of the identity or existence of the party required to notify; suitable evidence shall be in particular the following:
  - a) in the case of natural persons, an officially or publicly certified copy of a valid identity card that contains a photograph and that meets the passport or identity card obligation in Germany,
  - b) in the case of other parties subject to the notification requirement, officially or publicly certified copies of the formation documents or documents of equal probative value and, if entry in a register or list is required under the law of the home country of the party required to notify or an entry has been made voluntarily, an officially or publicly certified and current extract from the commercial register, the register of associations, cooperatives, German professional partnerships, of foundations or a similar public register or list,
2. if the party required to notify is not a natural person, an officially or publicly certified copy of the current articles of association, the current partnership/shareholder agreement, or an equivalent agreement,
3. if the party required to notify is not a natural person, a list of the general partners and the persons who are authorised to represent the business of the party required to notify under the law, the articles of association, the partnership/shareholder agreement, or an equivalent agreement, describing the type and scope of their powers as well as the distribution of responsibilities and, if the party required to notify is a special purpose fund, whether and to what percentage these persons participate in the distribution of the special purpose fund's profit,

4. a current, complete and informative description of the business activities of the party required to notify,
5. if the party required to notify is not a natural person, a list of the natural persons, legal persons, commercial partnerships, or companies with other legal forms as well as special purpose funds that own or control the party required to notify or at whose instigation the qualifying holding is being acquired or increased; these include in particular all holders of more than 25 per cent of the shares of capital or voting rights in the party required to notify and, if the party required to notify is a special purpose fund, those who control 25 per cent or more of the special purpose fund or participation in the distribution of the special purpose fund's profit in at least this amount; in the case of natural persons this information must include the full name, date of birth, place of birth, address of the main domicile, and the email address
6. a declaration whether an authority outside the financial services sector is conducting or has conducted an investigation in connection with the acquisition or the increase; the address and name of the authority as well as the status of the process shall be given; if the investigation has been completed, the result shall be given and verified by official documents,
7. a declaration whether and by which persons the party required to notify intends to replace or to appoint further members of the management body in its management function.
8. details of the time that the persons referred to in no. 7 will commit annually and per month to their function in the target entity, and
9. a list of further mandates as members of the management body in its management function or as members of the management body in its supervisory function of other companies held by persons referred to in no. 7.

**Section 8a Additional documents and declarations to be provided by certain parties required to notify.**

(1) If the party required to notify is not a natural person and is domiciled in a third country, the notifications must be accompanied by the following documents and declarations:

1. a certificate of good standing issued by public authorities of the third country or, where the third country does not issue certificates of good standing, an equivalent certificate issued by the financial supervisory authority of the third country in relation to the party required to notify,
2. where available, a declaration by the financial supervisory authority of the third country that there are no obstacles or limitations to the provision of information necessary for the supervision of the target entity, and
3. a summary of the regulatory provisions of the third country that apply to the party required to notify.

(2) If the party required to notify is a sovereign wealth fund, the notifications must be accompanied by the following documents and declarations:

1. Details providing the exact name of the ministry or the government department responsible for the investment policy of the fund.

2. Details of the investment policy and any investment restrictions,
3. the names and job titles of the persons making the investment decisions for the fund, and
4. details regarding the influence the ministry or the government department referred to in no. 1 exerts on the daily business of the fund and the target entity.

(3) If the party required to notify is a private equity fund or a hedge fund, the notification must be accompanied by the following documents and declarations:

1. a detailed description of the performance of qualifying holdings in credit institutions, financial services institutions, insurance undertakings or pension funds previously acquired by the party required to notify,
2. details of the investment policy and any investment restrictions including details of investment monitoring,
3. factors that serve as the basis for its investment decision in relation to the target entity and factors that would lead to a change in its success strategy,
4. its governance structures, including names and functions of the persons who make the investment decisions, and
5. a detailed description of its money laundering prevention process including the applicable legal framework.

## **9 Declarations and documents on reliability**

(1) <sup>1</sup>The party required to notify must submit a copy of the form “Disclosures on Reliability” from Annex 3 with each notification. <sup>2</sup>In this form, the party required to notify must state whether any of the following points apply regarding itself, a person as defined in section 8 number 3, a shareholder who can exercise a significant influence on the party required to notify, or, if the party required to notify is a natural person, regarding any undertaking the party required to notify at present or in the last ten years, or, if the party required to notify is not a natural person, regarding any undertaking controlled by them:

1. criminal proceedings are being conducted or have been conducted at an earlier date due to a crime or misdemeanour,
2. administrative offence proceedings or similar proceedings under another legal system in connection with a business or other professional activity are being conducted or have been concluded with a fine or other sanction,
3. insolvency proceedings, proceedings for an affirmation in lieu of an oath regarding their financial situation, or similar proceedings are being conducted or have been conducted at an earlier date,
4. a supervisory authority initiated or carried out an examination of reliability or professional competence for the purposes of industrial law, or a supervisory process in order to adopt measures either currently or in the past, or
5. a register entry, authorisation, membership, or trade licence has been refused or revoked by an authority, or that person or one of these undertakings has been prohibited in any other manner from conducting a trade or representing and managing its business, or corresponding proceedings are being conducted.

(2) Likewise, the form "Information on Reliability" according to Annex 3 must state whether they or a person according to section 8 no. 3 or a shareholder who can exert a significant influence on the party required to notify has been dismissed from a job, a position of trust, a fiduciary relationship or a comparable position.

(3) <sup>1</sup>Similar matters and proceedings under other legal systems shall also be notified. <sup>2</sup>A separate form must be used for each natural person and for each entity. <sup>3</sup>Details regarding reliability for undertakings managed or controlled by the party required to notify may be provided in a single form, accompanied by a table listing the companies concerned, provided that this information applies equally to all the companies listed. <sup>4</sup>All of the circumstances, proceedings and sanctions mentioned in the forms must be explained. <sup>5</sup>Officially or publicly certified copies of judgments, decisions and other sanctions shall be enclosed with the form. <sup>6</sup>If the party required to notify is unable to provide information pursuant to subsection (1) and (2) as well as sentence 1 for compelling legal reasons, BaFin or the responsible federal state supervisory authority is to be consulted in order to determine what explanations can be provided in lieu thereof on a case-by-case basis. <sup>7</sup>If proceedings pursuant to subsection 1 sentence 2 nos. 1 to 3 have not yet been concluded, the information on these proceedings must be accompanied by an affidavit.

(4) <sup>1</sup>The party required to notify must submit the form "Details for intended members of the management body in its management function" in accordance with Annex 4 for each person in accordance defined in section 8 number 7. <sup>2</sup>Subsections (1) to (3) apply accordingly. <sup>3</sup>The form must also provide details regarding time commitment and in respect of any further mandates in accordance with section 8 nos. 8 and 9, as well as list interests and business dealings in accordance with section 12 (6).

(5) Where the target entity is a CRR credit institution meeting one of the conditions pursuant to Article 6 (4) (2) of Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions, (OJ L 287 of 29.10.2013, S. 63; L 218 of 19.8.2015, p. 82) then, in derogation of subsection (4), the "Questionnaire for the assessment of professional competence, personal reliability and sufficient time commitment" must be completed by the party required to notify pursuant to Annex 5, a "Questionnaire for the assessment of professional qualification, personal reliability and sufficient time commitment - to be completed by the person defined in section 8 no. 7 InhKontrollV" pursuant to Annex 6 must be fully and accurately completed by the person defined in section 8 no. 7, and these need to be submitted with the notification.

(6) <sup>1</sup>In providing information pursuant to subsection (1) sentence 2 no. 1, criminal proceedings may be disregarded if they were discontinued due to a lack of evidence or an impediment to the proceedings, if they ended in an acquittal, or if a corresponding entry made in the Federal Central Criminal Register must be deleted or cancelled, or proceedings that are not required to be disclosed in accordance with section 53 of the BZRG. <sup>2</sup>Criminal proceedings, that have been discontinued either temporarily or pursuant to sections 153 and 153a StPO must be listed. <sup>3</sup>The same applies to criminal proceedings that were not ended by a German criminal investigation authority or by a German court. <sup>4</sup>In the case of the information defined in subsection 1 sentence 2 in relation to criminal proceedings that were discontinued pursuant to sections 153 and 153a StPO, as well as information pursuant to subsection 1 sentence 2 nos. 2, 4 and 5, proceedings may be disregarded if they were concluded with a fine, sanction, or other decision more than five years before the beginning of the year in which the notification is submitted, or if they need to be erased from the Central Trade and Industry Register pursuant to section 153 of the Industrial Code (*Gewerbeordnung – GewO*).<sup>5</sup>When providing information pursuant to subsection (2), the loss of a position may be disregarded if it occurred more than five years before the beginning of the year in which the notification is submitted.



(7) <sup>1</sup>The party required to notify must also declare in the form defined in subsections 1, 4, or 5, whether its reliability or the reliability of the persons defined in section 8 no. 3 or no. 7, or the reliability of a shareholder who can exert a significant influence on the party required to notify, has been examined as an acquirer of a qualifying holding in a target entity or as a member of the management body in its management function by another supervisory authority.<sup>2</sup> The party required to notify must also declare whether a similar examination has been conducted by another authority. <sup>3</sup>Official documents relating to the result of this examination must be enclosed with the relevant form. <sup>4</sup>If the party required to notify does not have such documents, it shall give the reasons for this.<sup>5</sup> In the case of the information defined in sentences 1 and 2, examinations may be disregarded if they were concluded more than a year before the beginning of the year in which the notification is submitted.

(8) <sup>1</sup>Parties required to notify who are natural persons, persons defined in section 8 no. 3 or no. 7, and persons who, as shareholders, can exert a significant influence, must submit a certificate of good conduct for submission to an authority pursuant to section 30 (5) or section 30b of the Federal Central Register Act (*Bundeszentralregistergesetz – BZRG*) to BaFin or the responsible federal state supervisory authority. <sup>2</sup>The certificate of good conduct must not be more than three months old at the time of submission. <sup>3</sup>For this purpose, the date of issue is the relevant date. <sup>4</sup>Persons who are nationals of or resident in a country which does not issue documents pursuant to sentence 1 shall submit documents from their home country or country of residence which are equivalent to the documents pursuant to sentence 1. <sup>5</sup>If no such documents are issued, BaFin or the responsible federal state supervisory authority shall be consulted in order to determine on a case-by-case basis the extent of documents to be submitted as a substitute. <sup>6</sup>Persons who have resided in different countries in the past ten years must submit certificates of good conduct and documents from each of these countries.

(9) <sup>1</sup>Parties required to notify who are natural persons, persons defined in section 8 no. 3 or no. 7, and natural persons, who, as shareholders, can exert significant influence on the party required to notify and have or had a place of residence in Germany or exercise or exercised professional activities in Germany must submit an excerpt from the Central Trade and Industry Register pursuant to section 150 of the Industrial Code (*Gewerbeordnung – GewO*) to BaFin or the responsible federal state supervisory authority. <sup>2</sup>That excerpt must not be more than three months old at the time of submission. <sup>3</sup>For this purpose, the date of issue is the relevant date.

## **10 Curriculum vitae**

(1) A curriculum vitae of the party required to notify if the latter is a natural person, and a curriculum vitae of each natural person defined in section 8 no. 3 or no. 7 bearing their handwritten signature, shall be enclosed with the notifications.

(2) <sup>1</sup>The curriculum vitae to be filed in accordance with subsection 1 must contain the following information:

1. full name,
2. name at birth,
3. date of birth,
4. place of birth,
5. country of birth,
6. address of the person's primary residence,

7. nationality,
8. professional qualification including degrees obtained,
9. professional training programmes and
10. professional experience, which shall be given in chronological order beginning with the current occupation held; the following information shall be provided in each case:
  - a) name and domicile of the undertaking for which the person works or has worked,
  - b) type and duration of the person's activity including secondary employments with the exception of voluntary work,
  - c) the person's power of representation,
  - d) their internal decision-making powers and
  - e) the business areas that report to them.

<sup>2</sup>All dates must be given to the precise month. <sup>3</sup>All information must be complete and truthful.

<sup>4</sup>Any employer's references, where available, for employment positions within the last three years prior to submission of the notification have to be appended to the curriculum vitae of persons defined in section 8 no. 7.

## **11 Shareholding structure, group affiliation and other possibilities to exert influence**

(1) Notifications must contain the following information on the shareholding structure of the party required to notify as an investor and as an investee, on its group affiliation and other possibilities to exert influence:

1. if the party required to notify is part of a group:
  - a) an informative description of the group structure with a chart indicating each group undertaking and the shares of capital and voting rights held in each case in per cent,
  - b) an informative description of the group's business activities,
  - c) a list of the group entities that are subject to supervision that conduct business requiring authorisation in accordance with the industry rules under section 1 (18) of the KWG or section 2 (2) of the Supervision of Financial Conglomerates Act (*Finanzkonglomerate-Aufsichtsgesetz – FKAG*) in the financial services sector within the meaning of section 1 (19) of the KWG or section 2 (3) of the FKAG, citing the relevant industry rule and the name and address of the competent supervisory authority; the same applies to group entities whose head office is outside a Member State and that are subject to supervision under the rules applicable to them, and
  - d) details regarding the business relationships with the group entities that are part of the financial sector and to those group companies that are not part of the financial sector, and
  - e) if the party required to notify is a natural person, additionally,
    - aa) at which group entities and at which other undertakings the party required to

notify manages the business and

bb) over which other entities the party required to notify has control, or

- f) if the party required to notify is not a natural person, additionally a list of the persons and entities that are not part of the group that meet the criteria specified in no. 3; existing voting rights agreements must be explained;
2. if the party required to notify is a natural person and is not part of a group, a list of the entities whose business the party required to notify manages or over which the party required to notify has control; in each case it shall also be disclosed whether the party required to notify manages the business of the undertaking specified or has control over it;
  3. if the party required to notify is not a natural person and is not part of a group, a list of the natural and legal persons, commercial partnerships and undertakings with other legal forms as well as special purpose funds that hold at least 10 per cent of the shares of capital or voting rights in the party required to notify or, regardless of whether shares of capital or voting rights are held, that can exert significant influence over the party required to notify or, if the party required to notify is a special purpose fund, that participate in the distribution of the special purpose fund's profit in the amount of at least 10 per cent; existing voting rights agreements must be explained.

(2) Group affiliation is determined pursuant to section 18 of the German Stock Corporation Act (*Aktiengesetz – AktG*).

### **Section 11a Effect of the group structure on supervision**

<sup>1</sup>Where the party required to notify is not a natural person, then an analysis of the extent of the supervision on a consolidated basis must be included with the notification. <sup>2</sup>In this analysis details need to be provided on which group companies would fall under the scope of supervision on a consolidated basis following the acquisition or increase, and at what levels within the group such supervision on a consolidated or sub-consolidated basis would take place. <sup>3</sup>Moreover, the notification must be accompanied by an analysis on whether the acquisition or increase would have an effect on the target entity's ability to continue to provide the supervisory authority with prompt and accurate information.

### **12 Financial and non-financial interests**

(1) A detailed description of the financial and other interests of the party required to notify in the qualifying holding shall be enclosed with the notifications.

(2) This description shall describe the business relationships maintained by the party required to notify or by an entity managed or controlled by the party required to notify, the group of which the party required to notify is a part of, or a person pursuant to section 8 (3), and

1. the target entity,
2. the undertakings controlled by the target entity,
3. holders of at least 5 per cent of the capital shares in the target entity; the percentage of

the capital shares shall also be given,

4. holders of at least 5 per cent of the voting rights in the target entity; the percentage of the voting rights shall also be given,
5. members of the management body in its management function of the target entity and persons who effectively direct the target entity's business and
6. members of the management body in its supervisory function of the target entity.

(3) If the party required to notify or a person defined in section 8 no. 3 is a relative of a person within the meaning of subsection 2 nos. 3, 4, or 5, this must be disclosed.

(4) (4) Furthermore, it must be disclosed whether and which

1. persons defined in section 8 no. 3 are also authorised by law, the articles of association, the partnership/shareholder agreement, or an equivalent agreement to direct the business of a holder defined in subsection 2 nos. 3 and 4 or of the target entity, or effectively direct or represent the business of the holder, and
2. Holders of capital shares or voting rights in the party required to notify are also holders of at least 5 per cent of the shares of capital or voting rights in the target entity; the amount of the shares of capital or voting rights shall be given in each case.

(5) Interests or activities of the party required to notify that could run counter to the target entity's interests in a sound and prudent management shall be addressed separately and a statement shall be given as to how these interests are to be prevented from having a negative effect on the target entity.

(6) <sup>1</sup>The financial and other interests or business relationships of persons defined in section 8 no. 7 or their relatives, with members of the management body in its management function and key function holders of the target entity, its parent company, its subsidiaries, and with holders of at least 5 per cent of the capital or voting shares in the target entity must also be set out. <sup>2</sup>This must also include the amount of the capital shares or voting shares.

(7) Relatives within the meaning of this Regulation are the persons mentioned in section 20 (5) of the German Administrative Procedure Act (*Verwaltungsverfahrensgesetz – VwVfG*).

### **13 Financial position and creditworthiness of the party required to notify**

(1) The party required to notify must describe its financial position.

(2) In the case of parties required to notify that are obliged to prepare annual accounts, the description defined in subsection 1 shall include the following documents relating to the party required to notify:

1. Annual accounts and, if they are required to be prepared or have been prepared voluntarily, management reports for each of the past three financial years,
2. reports on the audit of the annual accounts by independent auditors for the past three financial years if they are required to be prepared or have been prepared voluntarily, and
3. cash flow statements and segment reporting for the past three financial years if they are

required to be prepared or have been prepared voluntarily.

(3) If the party required to notify is a natural person, the description defined in subsection 1 must contain the following information:

1. a full list and description of the income sources of the party required to notify plus evidence of these,
2. a current financial statement of the party required to notify, disclosing all liabilities plus evidence of these,
3. annual accounts and, if they are required to be prepared or have been prepared voluntarily, management reports for each of the past three financial years of the entities controlled by the party required to notify and of the entities whose business the party required to notify manages, and
4. reports on the audit of the annual accounts by independent auditors for the past three financial years of the entities controlled by the party required to notify and of the entities whose business the party required to notify manages if these reports are required to be prepared or have been prepared voluntarily.

(4) Where the party required to notify is a newly founded company, then instead of the documentation listed in subsections (2) and (3) nos. 3 and 4, they must provide the projected balance sheets and profit and loss accounts for the next three financial years, including the planning assumptions on the basis of which these were prepared.

(5) If the party required to notify is part of a group, the description defined in subsection 1 must also include:

1. Group accounts for the past three financial years if they are required to be prepared or have been prepared voluntarily, and
2. reports on the audit of the group accounts by independent auditors for the past three financial years if they are required to be prepared or have been prepared voluntarily.

(6) <sup>1</sup>If the target entity is an undertaking as defined in section 1 nos. 3 to 5, which is not subject to supervision by a state supervisory authority, and if the documents defined in subsection 2 nos. 1 and 2 are inconclusive or if there are indications that these documents do not suitably present the business situation of the party required to notify, BaFin may demand that the party required to notify have the documents audited at its expense by an auditor to be appointed by BaFin. <sup>2</sup>The same applies to the documents defined in subsection 5.

(7) <sup>1</sup>If the creditworthiness of the party required to notify has been rated by one or more rating agencies, the party required to notify shall disclose the latest rating by each rating agency and substantiate it in each case using informative documents issued by the relevant rating agency. <sup>2</sup>The same applies to the creditworthiness of the group to which the party required to notify belongs, as well as to the non-group entities over which the party required to notify – if the latter is a natural person – has control or of which the party required to notify directs the business. <sup>3</sup>If the party required to notify does not have the documents defined in sentence 1, it shall give the reasons for this.

## **14 Financing, disclosure of all agreements**

An informative and complete description as well as suitable and complete evidence of the existence and origin of the own and external funds that have been or are to be used for the acquisition or increase, as well as all agreements and contracts entered into in connection with

the acquisition or increase, must be enclosed with the notifications.

## **15 Business plan, description of strategic objectives and plans**

(1) <sup>1</sup>If the party required to notify obtains control over the target entity through the acquisition or increase of the qualifying holding, either on its own or in concert with others, acquiring a majority of voting shares or in some other way, a business plan clearly describing the strategic objectives and plans pursued by the party required to notify with the acquisition or the increase shall be enclosed with the notification. <sup>2</sup>In particular, the business plan must include informative disclosures on the projected strategic development, the projected development of the assets position, financial position and earnings position as well as the impacts on the target entity's corporate and organisational structure. <sup>3</sup>The disclosures on projected strategic development shall include general statements on the material objectives of the acquisition of the qualifying holding and the measures planned to achieve these objectives. <sup>4</sup>These include:

1. the reasons for the acquisition or increase,
2. medium-term asset and income objectives,
3. any possible reorientation of the business activities,
4. any planned redistribution of capital within the target entity and
5. general requirements and specifications relating to the inclusion and integration of the target entity in the acquirer's group and group structure; this includes a description of the material planned interactions with other entities in the group as well as a description of the principles and procedures for managing and controlling corporate relationships within the group.

<sup>5</sup>The disclosures on the projected development of the assets position, financial position and earnings position comprise the projected balance sheets and profit and loss accounts for the three financial years after the acquisition or increase of the qualifying holding for both the target entity and the group, as well as statements regarding the willingness and ability to continue to provide the target entity with capital, should this become necessary. <sup>6</sup>In addition, in particular the following shall be disclosed for the three financial years after the acquisition or increase of the qualifying holding for both the target entity and the group:

1. the projected regulatory capital requirements and solvability ratios,
2. the amount of the expected exposures,
3. an outlook of planned intragroup transactions.

<sup>7</sup>The disclosures on the effects on the target entity's corporate and organisational structure shall comprise in particular the following:

1. the effects on the composition and areas of responsibility of the undertaking's bodies and the committees established by them,
2. changes in the accounting method and material changes in management, control and monitoring processes; these also include disclosures on material changes relating to the internal audit, money laundering prevention, and compliance functions and to a change in key personnel,

3. material changes in the IT systems and IT security systems used and
4. the effects on the principles for outsourcing business activities and processes to other entities or persons.

<sup>8</sup>If the target entity is a life insurance undertaking or a pension fund, then the details pursuant to sentences 5 and 6 need to be provided for the next 15 business years. <sup>9</sup>BaFin or the responsible federal state supervisory authority may permit a shorter period in individual cases.

(2) If, as a result of the acquisition or increase of the qualifying holding in the target entity, shares of capital or voting rights in the amount of at least 20 per cent are held by the party required to notify or the latter can exert significant influence over the target entity and the party required to notify does not have control over the target entity after the acquisition or increase, documents containing the following information must be enclosed with the notification:

1. informative disclosures on the projected strategic development defined in subsection 1 sentence 3 and 4 and
2. informative disclosures within the meaning of subsection 3 that must additionally include detailed statements on the type of the intended future influence on the target entity's financial resources and capital allocation.

(3) If, as a result of the acquisition or increase of the qualifying holding in the target entity, shares of capital or voting rights below 20 per cent are held by the party required to notify, the latter cannot exert significant influence over the target entity and the party required to notify also does not have control over the target entity after the acquisition or increase of the qualifying holding, documents containing the following information must be enclosed with the notification:

1. an informative description of the general strategic objectives that are being pursued with the acquisition or increase; the disclosures shall include how long the shares are expected to be held and whether the number of shares is to be changed within a foreseeable period after the acquisition or increase,
2. the intended future influence on the target entity, giving the reasons for this, and
3. statements regarding the willingness and ability to provide the target entity with additional capital in the future, if necessary.

### **16 Reduced information requirements**

(1) <sup>1</sup>The party required to notify does not need to resubmit any documents and declarations that it has already submitted within the last two years before the current notification as part of a notification pursuant to

1. section 2c (1) sentence 1, 5, 6, or 7 of the KWG, or
2. section 17 (1) sentence 1 nos. 1 or 2, sentence 2 no. 1 first half-sentence, or subsection 2 of the VAG,

unless the information provided in those documents and declarations is no longer accurate.

<sup>2</sup>BaFin or the responsible federal state supervisory authority may permit a longer period in individual cases. <sup>3</sup>The party required to notify is under no obligation to resubmit the documents and declarations referred to in sentence 1, irrespective of the length of time, where an acquisition did or would merely turn an existing indirect qualifying holding into a direct qualifying holding, unless the information provided in those documents and declarations is no

longer accurate. <sup>4</sup>If all of the information provided in the documents and declarations referred to in sentence 1 is still accurate, then the party required to notify must state this in the form in accordance with section 6 (1). <sup>5</sup>If the party required to notify already holds a qualifying holding, it need not prove its identity or existence in accordance with section 8 no. 1 again. <sup>6</sup>However, BaFin or the responsible federal state supervisory authority may request the documents and declarations mentioned in sentences 1, 3 and 5 in accordance with section 2c (1a) sentence 3 to 9 of the KWG or section 17 (4) sentence 3 to 9 of the VAG.

(2) Where the party required to notify is the German Federal Government, the Deutsche Bundesbank, a legally dependent special fund of the German Federal Government or of a German federal state, a German federal state, a local government, or a local government association, then it is not necessary to include the documents and declarations defined in sections 8 to 15.

(3) Where the party required to notify is an authorised credit institution, financial services institution, investment firm, insurance undertaking or an authorised pension fund, in each case with its registered office in Germany, or a capital management company which has a licence pursuant to Articles 20 and 21 or Articles 20 and 22 of the Investment Code (*Kapitalanlagegesetzbuch – KAGB*), then it is not necessary to enclose the documents and declarations pursuant to section 8 nos. 1 to 5 and sections 9 to 11, 12 and 13, or the presentation and evidence of existence and origin of any equity and debt pursuant to section 14.

(4) Where the party required to notify is a financial holding company or a mixed financial holding company in accordance with section 1 (35) of the KWG in conjunction with Article 4(1) no. 20 or no. 21 of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (OJ L 176, 27.6.2013, p. 1, OJ L 208, 30.10.1978, p. 68, OJ L 321, 30.11.2013, p. 6, OJ L 193, 3.10.1989, p. 166, OJ C 20, 25.1.2017, p. 3, last amended by Delegated Regulation (EU) 2022/676 (OJ L 123, 26.4.2022, p. 1), and if the documents and declarations pursuant to section 16(2) of the Reports Regulation (*Anzeigenverordnung*) are available to the supervisory authority, the documents and declarations pursuant to sections 9 and 10 need not be enclosed.

(5) If the party required to notify is an insurance holding company pursuant to § 7 number 31 of the VAG, a mixed financial holding company pursuant to § 7 number 10 of the VAG or an undertaking pursuant to § 293 paragraph 4 of the VAG and if the documents and declarations pursuant to § 47 number 1 in conjunction with § 293 paragraphs 1 and 4 of the VAG are available to BaFin or the responsible federal state supervisory authority, the documents and declarations pursuant to §§ 9 and 10 need not be enclosed.

(6) If the party required to notify is a central government, a central bank, a regional government or a local authority of a Member State of the European Union or of another State party to the Agreement on the European Economic Area or the European Central Bank, the documents and declarations pursuant to sections 8 to 15 need not be enclosed.

(7) <sup>1</sup>If the party required to notify is a CRR credit institution, investment firm, electronic money institution, insurance undertaking or authorised pension fund authorised in a Member State of the European Union or another Contracting State to the Agreement on the European Economic Area, the documents and declarations pursuant to sections 9 and 10 need not be enclosed. <sup>2s</sup>In the case of the documents pursuant to section 15 (1) sentence 4 no. 5, information on the specific divisions within the group structure on which the transaction has an impact are sufficient.

(8) If the party subject to the notification requirement is supervised in another Member State of the European Union or another Contracting State to the Agreement on the European



Economic Area in accordance with Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (OJ L 302, 17.11.2009, p. 3; OJ L 269, 13.10.2010, p. 27) as last amended by Directive (EU) 2021/2261 (OJ L 455 of 20.12.2021, p. 15), or pursuant to Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010 (OJ L 174, of 1.7.2011, p. 1; OJ L 115, 27.4.2012, p. 35) as last amended by Directive (EU) 2019/2034 (OJ L 314, of 5.12.2019 p. 64), then the documents and declarations pursuant to sections 9 and 10 need not be enclosed.

(9) Where the party required to notify is affiliated to a group of which several parties are required to notify and BaFin has received a complete notification pursuant to section 6 in time from one of these parties required to notify, then the documents and declarations pursuant to sections 9 and 10, section 11 (1) (1) (a) to (d) and section 13 (5) and (7) sentence 2 need not be submitted to the extent that the notifying party was obliged to submit them.

(10) <sup>1</sup>BaFin or the responsible federal state supervisory authority may waive requiring documents and declarations in whole or in part in the case of parties required to notify who are affiliated to a group, insofar as they would only hold an indirect holding in the target entity and are not the head of the group. <sup>2</sup>BaFin or the responsible federal state supervisory authority will inform the party required to notify of this decision in writing. <sup>3</sup>Irrespective of the extent of their holdings for the purposes of section 15, the parties required to notify referred to in sentence 1 are only required to enclose documents pursuant to section 15 (3). <sup>4</sup>In case of an intragroup acquisition, the party required to notify only needs to submit documents and declarations as far as these contain details regarding persons, undertakings and the group structure, which are not known from previous notifications pursuant to section 2 (c) (1) sentences 1, 5, 6, or 7 of the KWG or section 17 (1) sentence 1 no. 1 or 2, sentence 2 no. 1 first half-sentence, or subsection (2) of the VAG, or to the extent that any of the previously notified information is no longer accurate.

(11) Instead of employer's references pursuant to section 10 (2) sentence 4, a list of reference persons, including their email addresses, or reference letters may be enclosed with the notification, if the target entity is an undertaking within the meaning of section 1 nos. 3 to 5.

(12) <sup>1</sup>The documents defined in section 13 (2), (3) nos. 3 and 4 and subsections (4) and (5) need not be enclosed with the notifications if the target entity is a financial services institution. <sup>2</sup>The documents defined in section 13 (3) no. 1 and 2, as well as section 15 (1) sentence 6 no. 1 need not be enclosed with the notifications if the target entity is a financial services institution that exclusively provides financial services within the meaning of section 1 (1a) sentence 2 no. 9 and 10 of the KWG. <sup>3</sup>Where the target entity is a financial services institution that exclusively provides financial services within the meaning of section 1 (1a) sentence 2 no. 9 and 10 of the KWG, parties required to notify which are affiliated to the group are not required to submit documents and declarations pursuant to sections 8 to 15 either, where they would only have an indirect holding in the target entity and are not the head of the group, or if it concerns an intragroup transaction.

(13) Subsection (1) sentence 6 applies accordingly to subsections (2) to (9), subsection (10) sentence 3 and 4, and subsection (12).

### **Section 3 Further notification and reporting obligations**

#### **17 Notification of the reduction or disposal of a qualifying holding**

(1) <sup>1</sup>For notifications regarding

1. the intended reduction of a qualifying holding pursuant to section 2c (3) sentence 1 of the KWG or section 17 (1) sentence 1 no. 3 of the VAG,
2. the intended disposal of a qualifying holding pursuant to section 2c (3) sentence 1 of the KWG or section 17 (1) sentence 1 no. 3 of the VAG, or
3. the unintentional disposal or reduction of a qualifying holding pursuant to section 2c (3) sentence 2 of the KWG or section 17 (1) sentence 2 no. 2 of the VAG,

the form "Disposal/Reduction" according to Annex 7 must be used. <sup>2</sup>Section 6 (2) sentence 1 no. 1 applies accordingly to notifications regarding an intentional or unintentional reduction of a qualifying holding.

(2) <sup>1</sup>The party required to notify must declare in an annex to the form defined in subsection 1 sentence 1 to whom it has transferred or will transfer the capital or voting shares. <sup>2</sup>If it is not possible to provide this information, it must give reasons for this in the annex.

(3) Section 16(10) shall apply accordingly to all notifications pursuant to subsection (1).

### **18 Notification of changes in the holder of a qualifying holding**

(1) The documents and declarations defined in sections 9 and 10 shall be enclosed with the notification defined in section 2c (1) sentence 5 of the KWG or section 17 (2) of the VAG for every newly appointed person in accordance with section 8 no. 3.

(2) Where the holder of a qualifying holding is the German Federal Government, the Deutsche Bundesbank, a legally dependent special fund of the German Federal Government or of a German federal state, a German federal state, a local government or a local government association, then a notification pursuant to subsection 1 is not required.

(3) Where the holder of the qualifying holding is an authorised credit institution, financial services institution, investment firm, insurance undertaking or an authorised pension fund, in each case with its registered office in Germany, or a capital management company which has a licence pursuant to sections 20 and 21 or sections 20 and 22 of the Investment Code (*Kapitalanlagegesetzbuch* – KAGB), then a notification pursuant to subsection 1 is not required.

(4) Where the holder of the qualifying holding is a financial holding company or a mixed financial holding company in accordance with section 1 (35) of the KWG in conjunction with Article 4(1) no. 20 or no. 21 of Regulation (EU) No 575/2013 and BaFin has received the documents and declarations defined in section 16 (2) of the Reports Regulation (*Anzeigenverordnung*), then a notification pursuant to subsection 1 is not required.

(5) Where the holder of the qualifying holding is an insurance holding company within the meaning of section 7 no. 31 of the VAG, a mixed financial holding company in accordance with section 7 (10) of the VAG, or a company within the meaning of section 293 (4) of the VAG, and BaFin or the responsible federal state supervisory authority has received the documents and declarations defined in section 47 no. 1 in conjunction with section 293 (1) and (4) of the VAG, then a notification pursuant to subsection 1 is not required.

(6) If the holder of the qualifying holding is a central government, a central bank, a regional government or a local authority of a Member State of the European Union or of another Contracting State to the Agreement on the European Economic Area or the European Central Bank, the notification pursuant to paragraph 1 is not required.

## **19 Supplementary notifications in the case of subsequent changes in the holder of a qualifying holding to ensure cooperation with the responsible bodies in the European Economic Area**

<sup>1</sup>If the holder of a qualifying holding is not a credit institution or a financial services institution, investment firm, insurance undertaking, or pensions fund domiciled in Germany, the holder shall inform in writing without delay, naming the relevant country and the competent supervisory authority, when the holder

1. is authorised as a CRR institution, e-money institution, investment firm, primary insurance undertaking, or reinsurance undertaking in another Member State of the European Union or in another Contracting State to the Agreement on the European Economic Area; the identity number under which the party required to notify is registered with the competent supervisory authority shall also be provided;
2. becomes the parent undertaking of a CRR credit institution, e-money institution, investment firm, primary insurance undertaking, or reinsurance undertaking authorised in another Member State of the European Union or in another Contracting State to the Agreement on the European Economic Area, or
3. gains control of a CRR credit institution, e-money institution, investment firm, primary insurance undertaking, or reinsurance undertaking authorised in another Member State of the European Union or in another Contracting State to the Agreement on the European Economic Area.

<sup>2</sup>The CRR credit institution, e-money institution, investment firm, primary insurance undertaking, or reinsurance undertaking defined in sentence 1 nos. 2 and 3 must also be disclosed providing the identity number under which it is registered with the competent supervisory authority.

### **Section 20 (repealed)**

**Annex 1 (regarding § 6 (1) sentence 1) Acquisition-Increase Form**

**Annex 2 (regarding section 6 (2) (1)) Complex Shareholding Structures Form**

**Annex 3 (regarding section 9 (1) sentence 1) Information on Reliability Form**

**Annex 4 (regarding section 9 (4) sentence 1) Information on intended members of the management body in its management function**

**Annex 5 (regarding section 9 (5)) IPVFA Questionnaire for the Assessment of Professional Competence, Personal Reliability and Sufficient Time Commitment – to be filled in by the party required to notify**

**Annex 6 (regarding section 9 (5)) IPVFP Questionnaire for the Assessment of Professional Competence, Personal Reliability and Sufficient Time Commitment – to be filled in by the person pursuant to section 8 no. 7**

**Annex 7 (regarding section 17(1)) IAV Disposal-Reduction Form**