WpÜG Applicability Regulation	Regulation Pertaining to the Application of Provisions in case of Offers pursuant to § 1 (2) and (3) of the Securities Acquisition and Takeover Act
WpÜG-Beaufsichtigungsmitteilungsverordnung	Verordnung über den Zeitpunkt sowie den Inhalt und die Form der Mitteilung und der Veröffentlichung der Entscheidung einer Zielgesellschaft nach § 1 Abs. 5 Satz 1 und 2 des Wertpapiererwerbs- und Übernahmegesetzes (WpÜG Supervision Notice Regulation)
WpÜG-Beiratsverordnung	Verordnung über die Zusammensetzung, die Bestellung der Mitglieder und das Verfahren des Beirats bei der Bundesanstalt für Finanzdienstleistungsaufsicht (WpÜG Advisory Committee Regulation)
WpÜG Objection Committee Regulation	Regulation Pertaining to the Composition and the Procedures of the Objection Committee of the Federal Financial Supervisory Authority
WpÜG Offer Regulation	Regulation Pertaining to the Contents of the Offer Document, the Consideration in the Event of Takeover Offers and Mandatory Offers and the Release from the Obligation to Publish and to Make an Offer
WpÜG Supervision Notice Regulation	Regulation Pertaining to the Time, the Contents and the Form of the Notice and the Publication of the Decision by the Target Company pursuant to section 1 paragraph 5 sentence 1 of the Securities Acquisition and Takeover Act
WpÜG-Widerspruchsausschuss-Verordnung	Verordnung über die Zusammensetzung und das Verfahren des Widerspruchsausschusses bei der Bundesanstalt für Finanzdienstleistungsaufsicht (WpÜG Objection Committee Regulation)

PART I
The Legal Framework for Stock Corporations

1 INTRODUCTION

The following German company forms, if publicly listed, are capable of being 'Target Companies' in a public takeover subject to German takeover rules: The stock corporation (*Aktiengesellschaft*) which makes up for 98% of all takeover cases; the still rare European Company (*Societas Europeae*) with its statutory seat in Germany and hence governed by German law, and the equally rare partnership limited by shares (*Kommanditgesellschaft auf Aktien*). Hence, this part describes primarily the legal framework, the key features and peculiarities of German stock corporations, but the other two company forms will also be introduced.

1.1 Legal Framework

German stock corporations are primarily subject to the German Stock Corporation Act (*Aktiengesetz*, AktG, Appendix 9), and to the German Commercial Code (*Handelsgesetzbuch*, HGB, Appendix 12) as to accounting requirements. Listed stock corporations are additionally subject to other legislation, such as the German Securities Trading Act (*Wertpapierhandelsgesetz*, WpHG, Appendix 15) in respect of, *inter alia*, publication duties and insider trading regulation. The WpHG is supplemented by the Securities Trading Reporting and Insider Regulation (*Wertpapierhandelsanzeige- und Insiderverzeichnisverordnung*, WpAIV, Appendix 16) and the Market Manipulation Regulation (*Marktmanipulations-Konkretisierungsverordnung*, MaKonV, Appendix 17). As of 2016, these acts will largely be replaced by the then directly applicable EU Market Abuse Directive governing insider laws and publicity requirements for European listed companies. Stock corporations listed in Germany are also subject to the German Stock Exchange Act (*Börsengesetz*, BörsG, Appendix 13) and the stock

exchange regulations (*Börsenordnung*, BörsO) of the respective German stock exchanges where the stock corporation's shares are listed (for instance of the Frankfurt stock exchange, see Appendix 14). Prospectus requirements are addressed in the Securities Prospectus Act. Finally, as a matter of soft law, the German Corporate Governance Code (GCGC) (Appendix 10) applies to listed stock corporations.

Additionally, the internal organization of a German stock corporation (*Aktiengesellschaft*, AG) is subject to its articles of association. The articles of association must necessarily provide, *inter alia*, for the company name and domicile, the amount of share capital and details about the issued shares and the number of management board members (§ 23(3) AktG). With regard to the relationship between the German Stock Corporation Act and the articles of association, the German Stock Corporation Act generally contains strict provisions that may only be amended or altered by the articles of association if permitted by the Stock Corporation Act (§ 23(5) AktG). Thus, the articles of association usually provide a comparatively narrow set of rules.

1.2 German Equity Capital Markets and Their Historic Dimension

Since the inception of the Takeover Act in 2002, the German equity capital markets have undergone significant changes. The collapse of the New Market economy in 2001, the financial crisis since 2008 and the Euro crisis since 2010 have severely and repeatedly hampered the attractiveness of the stock market; on the other hand, historically low interest rates since 2012 have led to new record highs in terms of market capitalization and share prices. Established companies have benefitted from this whereas the German IPO activity has never regained the pre-2001 momentum.

In 2012, only about 12,000 German stock corporations were still in existence; the aggregate amount of the entire nominal share capital of all German stock corporations exceeded EUR 177 billion. Of these, only about 665 stock corporations were publicly listed, but they assembled an aggregate market capitalization of about EUR 1,140 billion at the end of 2012. Until 2014 the number of publicly listed stock corporations increased to approx. 700. This illustrates that there is still a significant market interest in the stock corporation as a legal company form and as a means to access the equity capital markets.

Historically, stock corporations first became important in Germany with the establishment of a nationwide infrastructure system and the formation of large railway companies in the nineteenth century. The financing requirements of such companies went far beyond the usual capitalization at the time, making public participation in such companies a necessity. The increase in the number of stock corporations was very significant from 1871 onwards. Until the beginning of World War I, the number of stock corporations increased rapidly every year so that approximately 5,500 stock corporations were in existence within the territory of the former *Deutsche Reich* by the end of 1913.

The deep political, economic and social changes after World War I greatly influenced the further development of the equity capital markets in Germany. First, after World War I, a new dynamic wave in the formation of stock corporations began

and by the end of 1925 more than 13,000 German stock corporations were registered. However, a large number of the newly established stock corporations only had a limited lifetime. During the great depression, the number of German stock corporations decreased, but despite the influences of the worldwide economic crisis at the beginning of the 1930s, more than 5,500 stock corporations were still in existence at the end of 1938.

After World War II, the number of German stock corporations in the remaining territory of what should become the Federal Republic of Germany had decreased dramatically. The economic basis of the newly built Federal Republic of Germany had substantially changed so much that the number of German stock corporations amounted only to approximately 2,500 at the beginning of the 1950s. Furthermore, the reconstruction of the country was primarily performed by countless small and medium-sized enterprises of all industrial and technical branches and some state-owned conglomerates. Therefore, the need to establish stock corporations was limited to the extent that most entrepreneurs involved in the reconstruction opted for the smooth and flexible legal form having a closed shareholder structure known as the GmbH (*Gesellschaft mit beschränkter Haftung*), the German limited liability company.

The limited significance of stock corporations continued until the mid-1980s when only approximately 2,000 German stock corporations existed, compared to more than 400,000 GmbHs. An enterprise most often retained the legal form under which it was originally set up. This is one reason why no German public takeover market ever developed at that time.

The German law on stock corporations was introduced in 1870 as part of the German Commercial Code. Following a substantial reform in 1884, it became the foundation of modern German stock corporation law. The law was revised again in 1937. Since then, the German Stock Corporation Act has been a separate statute.

In 1965, the German Stock Corporation Act was again significantly revised, aiming at strengthening shareholder rights, in particular in relation to the management board. Since these revisions, shareholders have been authorized to resolve, *inter alia*, upon the appropriation of the annual profits. Furthermore, the competence of the supervisory board (*Aufsichtsrat*) to supervise the management board (*Vorstand*) was enhanced. Lastly, comprehensive provisions applying to affiliated companies within a group of companies (*Konzern*) were introduced.

Since 1965, many smaller amendments to the German Stock Corporation Act have been made. Many amendments were necessary to transform European Union directives into national stock corporation law, such as the European Directive on the Harmonization of Accounting (*Bilanzrichtlinie*). Amongst others, the German particularity of co-determination was introduced. The most important Act in this respect is the German Co-Determination Act (*Mitbestimmungsgesetz*) of 1976. Since then, employee representatives must be appointed to the supervisory board and may influence the management of the company. Through the implementation of co-determination, the workers and employees of major German stock corporations have significant rights allowing them to make their opinion heard by the company. The impact of co-determination is often of significance for a foreign investor's understanding of German corporate culture, but it is at the end not an impediment to investing in a German stock

corporation. Nearly four decades of practice with German co-determination show that it rather supports the flexibility of German companies when reacting to market changes.

The historic development of the Stock Corporation Act itself pursued various objectives at different times, but did not primarily focus on the attractiveness of the stock corporations for institutional and private investors at large:

- As a starting point, the German legislator realized the deficiencies of the German capital markets with regard to publicly invested capital. Therefore, several legislative projects were undertaken to promote capital markets and – as part of this – the stock corporation as a vehicle for placing broad public investment. These steps were motivated, on the one hand, to reduce the influence of large banks on traditionally mainly debt-financed companies and, on the other hand, to adapt the German capital markets to meet international standards. The globalization process as well as the ongoing harmonization and integration within the European Union have forced the German lawmaker to introduce significant changes in this regard. In particular, in 1994 the German Act amending the Stock Corporation Act with respect to small stock corporations (*Gesetz für kleine Aktiengesellschaften*) was enacted to provide small and medium-sized enterprises with access to capital markets. This Act was explicitly addressed to mainly debt-financed enterprises intending to reduce their dependence on banks and therefore provided for various significant simplifications of the strict formal requirements of the Stock Corporation Act, leaving the remaining provisions applicable. The Act facilitated publication duties and reduced formal requirements regarding the internal organization and decision making processes within the corporation.
- Also in 1994, the Second Financial Market Promotion Act (Zweites Finanzmarktförderungsgesetz) introduced the Securities Trading Act (Wertpapierhandelsgesetz, WpHG) as one of the cornerstones of Germany's capital market law. The improvements of the Act concerned, *inter alia*, the prosecution of insider trading as a criminal offence and the establishment of the supervisory authority Federal Supervisory Office for Securities Trading (Bundesamt für den Wertpapierhandel, BaWe), as predecessor of the current Federal Financial Supervisory Authority (Bundesanstalt für Finanzdienstleistungsaufsicht, BaFin). Its responsibilities include the prosecution and prevention of insider trading, the supervision of ad hoc disclosure for public companies and disclosure of transactions in major shareholdings as well as the international cooperation with other supervisory authorities.
- In 1998, the Business Control and Transparency Act (*Gesetz zur Kontrolle und Transparenz im Unternehmensbereich*, KonTraG) introduced many provisions concerning internal control mechanisms, the reduction of the influence of banks on German stock corporations by limiting proxy rights, the abolition of multiple and maximum voting stocks, and the issuance of stock options to members of management. Furthermore, in 2001 the Act Pertaining to Registered Shares and Simplification of the Exercise of Voting Rights (*Gesetz zur*

Namensaktie und zur Erleichterung der Stimmrechtsausübung, NaStraG) facilitated the trading of registered shares (*Namensaktien*) by removing obstacles relating to the conversion of bearer shares (*Inhaberaktien*) into registered shares capable of being listed on important capital markets outside of Germany. Since then, many major German stock corporations have converted bearer shares into registered shares in order to get a closer tie to their shareholders. Furthermore, the exercise of voting rights at the shareholders' meeting (*Hauptversammlung*) was simplified by, in particular, allowing the (limited) use of electronic telecommunication media.

- A second reason lies in the fact that during the nineties, German governments recognized that large state-owned service companies could easily attract investment. Therefore, various privatization transactions with substantial international volume were arranged. Among these transactions, the most important was the initial public offering (IPO) of the former state-owned telecommunication enterprise into *Deutsche Telekom AG* in 1996, followed by additional offerings in 1999 and 2000. The volume of these transactions and the related enormous promotional efforts have helped to make equity investments more popular amongst German private investors. This development was accelerated by the privatization of the former state-owned *Bundespost* into *Deutsche Post AG* and its IPO in 2000.
- Another significant reason for the promotion of the German capital markets related to the fast-growing number of venture-capitalized young and innovative companies, in particular from the telecommunications and media sector. Most of them expanded considerably within a short time and needed funds for further investments. The growing 'New Economy' and the exceptional one-way situation at the international stock exchanges supported such dynamic development, and in Germany it led to the introduction of the 'New Market' (*Neuer Markt*) by *Deutsche Börse AG* (DBAG) at the *Frankfurter Wertpapierbörse* (Frankfurt Stock Exchange, FSE) as a market segment for high growth and technology enterprises. In this environment, a significant number of new placements of shares at the *Neuer Markt* were significantly over-subscribed so that companies and investors could expect quick and substantial gains. That was why many institutional and private investors changed their portfolios and made further investments in the *Neuer Markt*.
- In 2001, the German shareholder culture learned to live with the downside of shareholding as it suffered from the consolidation in worldwide stock exchanges and the lasting adjustment in capital markets. The stock market crisis especially affected the *Neuer Markt*, where the burst of the dot-com bubble rendered many shares into penny stocks and subsequently led to the closure of the *Neuer Markt* segment. In order to further promote the international competitiveness and the attractiveness of the German capital market, the German legislator passed the Fourth Financial Market Promotion Act (*Viertes Finanzmarktförderungsgesetz*) in 2002. The Act included a reform of capital market law, in particular the ability for stock exchanges to create higher listing standards (see 1.5 below). It also contained a reform of the ad hoc disclosure

rules, introduced publication duties with regard to director's dealings (§ 15a WpHG), and strengthened the rules on prospectus liability.

The Act on Corporate Integrity and Modernization of the Right to Challenge Resolutions in Court (*Gesetz zur Unternehmensintegrität und zur Modernisierung des Anfechtungsrechts*, UMAG) went into force in 2005. The reform included, *inter alia*, the introduction of the business judgment rule into statutory law (§ 93(1)2 AktG) as well as restrictions on shareholder appeal rights regarding resolutions of the shareholders' meeting in order to prevent abusive lawsuits. The German legislator had not foreseen that shareholders might use their minority rights to engage in abusive lawsuits when the Stock Corporation Act was revised in 1965. There has, however, been a growing tendency for shareholders to purchase minimum amounts of shares in order to attend the annual shareholders' meeting and subsequently block important corporate decisions through lawsuits in order to obtain a financially lucrative settlement. The reform therefore introduced provisions which aim at strengthening shareholder rights, while at the same time significantly reducing the possibility of lawsuits. These provisions are meant to speed up procedures at a shareholders' meeting and limit the grounds on which resolutions can be challenged. Furthermore, the reform introduced a release procedure (*Freigabeverfahren*) designed to prevent shareholders from blocking the implementation of important shareholder resolutions (see 2.4.4 below for details).

The Act Implementing the Shareholder Rights Directive (*Gesetz zur Umsetzung der Aktionärsrichtlinie*, ARUG) was introduced in 2009 as well. It predominantly focused on additional measures to prevent abusive shareholder actions, online participation in general meetings and the relaxation of the requirements that govern raising capital through contributions in kind by partial abolition of costly and time-consuming audits. In particular, it strengthened the release procedure regulated in § 246a AktG. In order to reduce the length of the proceedings for a final and binding decision jurisdiction for release proceedings now lies with the Higher Regional Courts (*Oberlandesgerichte*) as courts of first instance and last resort. From today's point of view, the improved release procedure helped to reduce the actions of predatory shareholders to a significant extent.

In 2009, the German legislature also established the Act on the Adequacy of Management Board Compensation (*Gesetz zur Angemessenheit der Vorstandsvergütung*, VorstAG) as a reaction on the financial crisis. It was based on the view that the prevailing compensation of members of the management board was insufficiently linked to the long-term success of the company and its sustainable development.

1.3 Public and Private Stock Corporations

The stock corporation is the only German corporate form offering the possibility of listing its shares on the stock market besides the still rare *Societas Europea* and the partnership limited by shares (*Kommanditgesellschaft auf Aktien*, KGaA), see 6 and 7 below. Therefore, the stock corporation is the primary vehicle for the establishment of a company whose shares are publicly traded with a wide body of shareholders (*Publikumsgesellschaft*). However, there is no obligation to list shares of a stock

corporation on a stock exchange – but if the decision for listing is made, all shares of a kind must be listed on the stock exchange. The vast majority of German stock corporations, in particular family-owned and otherwise closely held stock corporations, are not listed on a stock exchange. Of about 12,000 existing stock corporations and partnerships limited by shares in September 2012, only 5.8% were listed (Source: DAI).

1.4 The German Real Estate Investment Trust

Real estate investment trusts ('REIT') have been introduced in Germany in 2007. REITs are tax-exempted companies that hold and manage certain real estate assets other than residential real estate and distribute at least 90% of their profits. As in most countries where REITs have been introduced, they must be publicly listed. Accordingly, German REITs are German stock corporations listed at an organized market within the European Economic Area. In order to qualify as a REIT and to benefit from the associated tax benefits, the REIT must fulfil a number of criteria: The share capital must amount to EUR 15 million at least (rather than EUR 50,000 for a regular stock corporation); the REIT must maintain an equity quota of 45%. It must have a minimum free float of 15% of the shares (any shareholder holding less than 3% of the shares is deemed to be part of the free float in this context). No shareholder may directly hold 10% or more of the shares in a REIT. However, indirect holdings through more than one entity may be higher. Generally speaking, if these criteria are violated in three consecutive years, the tax-exemption for the REIT will be withdrawn at the end of the third year. The practical importance of the German REIT has remained rather limited. At the end of 2014, only three German REITs were in existence.

In summary, the REIT is not a company form separate from a German listed stock corporation, but merely a listed stock corporation that enjoys certain tax benefits mainly due to the composition of the assets held by the company and due to a specific shareholder structure. Accordingly, a stock corporation that qualifies as a REIT may very well be subject to a public takeover like any other listed German stock corporation. However, the acquiring investor will after the acquisition have to re-establish the shareholding requirements concerning free float and maximum participation in order to preserve the tax beneficial treatment of the REIT.

1.5 The German Stock Exchanges and Their Market Segments

Frankfurt is the home of the largest German stock exchange which is operated by Deutsche Börse AG (DBAG), itself a stock corporation listed on the Frankfurt Stock Exchange (FSE). There are several smaller regional stock exchanges in Berlin, Düsseldorf, Hamburg, Hanover, Munich, Stuttgart and Leipzig.

After reformation of its market segments in 2003 and again in November 2007, DBAG has merged its previous listing segments at each of its German stock exchanges, being the Official Market (*Amtlicher Markt*) and the Regulated Market (*Geregelter Markt*) into the new Regulated Market (*Regulierter* Markt) which is now – including its

below mentioned sub-segments – the regulated market within the definition of the applicable EU directives. In addition, the Regulated Unofficial Market (*geregelter Freiverkehr*), an OTC-trading segment, is also supervised by the German stock exchange regulator, but governed by the respective stock exchange regulations, i.e., private law (see also Part III, 3.6.1). All stocks are listed and traded in one of these market segments. To further distinguish the statutory market segments provided for in the Stock Exchange Act, DBAG as well as the regional stock exchanges have implemented separate segments to provide for higher publication and transparency requirements. Further, DBAG set up an index system comprising, *inter alia*, DAX, MDAX, SDAX and the TecDAX. The earlier market segment *Neuer Markt* was discontinued at the end of 2003, as was the NEMAX index based thereon in 2004.

1.5.1 *Market Segments*

The basic standard of the current segmentation is the 'General Standard' which is designed to accommodate the needs of medium-sized companies with lesser placement volumes. The General Standard is primarily aimed at national investors and provides the possibility of a listing on a stock exchange with comparatively fewer publicity obligations. However, the listing and post-listing requirements of this market segment have been largely harmonized with those of the Prime Standard, leaving only minor differences between the two segments.

The 'Prime Standard' is the market segment where well-established and large stock corporations from traditional industry sectors (such as automotive, energy, commerce, banking, insurance, chemicals) are listed, with issuing totals and trade volumes corresponding to their size. The shares of about two-thirds of all listed German companies are traded in this market segment. The Prime Standard is intended for those issuers who wish to attract international investors and contemplate the possibility of dual-listings also on stock exchanges abroad. The key characteristic of the Prime Standard is that, compared to the General Standard, it requires companies to comply with additional post-listing requirements. In particular, such companies are subject to quarterly financial reporting obligations in line with international market standards. Consequently, the issuer will incur higher costs compared with the General Standard.

Instead of being admitted to listing on a 'regulated' market segment, shares may be included to trading at the Frankfurt Stock Exchange on the Regulated Unofficial Market (*Freiverkehr*), which was renamed 'Open Market' with effect from 10 October 2005. This market segment is not aiming at the same level of reputation with investors as the Regulated Market. Shares included to trading on the Open Market are for the most part from regionally active companies or foreign issuers. Inclusion to trading on the Open Market is subject only to very limited entry requirements and obligations. Admission does not require the issuer to submit an application, but instead takes place *de facto* if and when the stock brokers see the need to include shares in trading on the Open Market. The legal basis are the Rules for the Regulated Unofficial Market (*Freiverkehrsrichtlinien*) of each stock exchange.

In October 2005, DBAG introduced the '*Entry Standard*' as a new sub-segment of the Open Market at the FSE for medium-sized companies, its purpose being to provide medium-sized companies with cost-efficient access to the capital markets due to a relatively low level of regulation compared to the Official Market and the Regulated Market. Comparable standards are, for instance, the *m:access* at the Munich Stock Exchange, the *Primärmarkt* in Düsseldorf, or the *Erstlisting* in Berlin, and together they form the Qualified Open Market (*Qualifizierter Freiverkehr*) part of the Open Market. Being governed by private law, the Qualified Open Market provides the best regulatory framework whereby the companies are, however, subject to additional transparency and publication duties. To distinguish the Qualified Open Market from the remainder of the Open Market, DBAG introduced listing prospectus requirements and a share index for the Entry Standard reflecting the price performance of the shares constituting this market segment. The other local stock exchanges have set similar listing requirements. Foreign stock exchanges also offer comparable market segments.

1.5.2 *Index Markets*

The index system of DBAG consists of four selection indices composed of shares listed in the Prime Standard which are continuously quoted in the electronic trading system *Xetra*. The DAX is composed of the thirty largest German listed companies, whose market capitalization amounted to around EUR 800 billion by the end of 2014, representing about 80% of the total market capitalization of all German listed companies (Source: DBAG). The main criteria for including shares in the DAX are their market capitalization and their stock exchange turnover.

Below the DAX level, shares are subdivided to distinguish between the classic industries sector and the technology sector. MDAX and SDAX are the selection indices for medium-sized and small companies of the classic industries sector. The MDAX represents 50 Prime Standard values starting directly below the DAX, the SDAX in turn represents the following 50 Prime Standard values below the MDAX. The TecDAX is the selection index for medium-sized companies of the technology sector. All DBAG indices require a listing in the Prime Standard segment.

Irrespective of the size of a company and regardless of whether or not it is included in another index, a number of industry-specific indices cover certain types of Prime Standard companies such as automobile, banks, basic resources, chemicals, construction, consumer, financial services, food and beverages, industrial, insurance, media, pharmaceutics and healthcare, retail, software, technology, telecommunication, transportation and logistics, and utilities. The selection indices are further supplemented by benchmark indices. The Classic All Share Index comprises the MDAX and SDAX. The Technology All Share Index features the technology sector. The Midcap Market Index summarizes the performance of the MDAX and TecDAX companies. The DAX, MDAX and TecDAX companies are all contained in the HDAX. The Prime All-Share Index covers all Prime Standard companies. By adding the General Standard companies, it serves as a basis for the calculation of the CDAX, an index of all German Prime Standard and General Standard shares quoted on the Frankfurt Stock Exchange.

2 CORPORATE GOVERNANCE AND THE CORPORATE BODIES OF A GERMAN STOCK CORPORATION

The German Stock Corporation Act provides for three distinct corporate bodies, namely the management board (*Vorstand*), the supervisory board (*Aufsichtsrat*), and the shareholders' meeting (*Hauptversammlung*), each with clearly defined rights and responsibilities. However, no body is entitled to give instructions to the others regarding the operation of the business. This is one of the most significant differences between the stock corporation and the limited liability company, where the shareholders' meeting may give instructions to the managing directors regarding the overall strategy as well as the conduct of day-to-day business.

The stock corporation has a two-tier management structure; the management board has exclusive authority for managing and representing the stock corporation (§76(1) AktG) (*Geschäftsführungsbefugnis*). The management board is subject to the permanent supervision by the supervisory board (§ 111(1) AktG). The supervisory board appoints and dismisses the management board members (§ 84 AktG). However, the supervisory board is not involved in the day-to-day business of the company. These two bodies are distinct and membership in both bodies is incompatible.

Finally, the shareholders' meeting elects the shareholders' representatives (who sit as members of the supervisory board), elects the company's auditors and resolves upon the annual appropriation of profits. The shareholders' meeting also has the exclusive right to amend the articles of association. Such amendments may include the financial and legal structure of the corporation, such as the definition of the objects of the company, increases and decreases of its share capital, the decision to enter into certain enterprise agreements with other business enterprises (*Unternehmensverträge*) as well as restructuring measures, such as a merger, spinoff or transformation and the liquidation of the stock corporation (§ 119(1) AktG).

Due to the above-mentioned division of competences, the German two-tier board structure differs in several ways from the one-tier board structure found in other countries. Most importantly, even if a shareholder holds the majority of the voting rights, this position does not translate into direct control over the management board in the absence of other specific instruments of control. Instead, the management board operates the company without being subject to interference from the shareholder(s) and has to act in the best interest of the company. This includes not only the interests of the shareholders, but also those of the employees and other stakeholders, such as the company's creditors. The management board is accountable to the supervisory board and the shareholder's meeting. Individual shareholders, the shareholder's meeting or the supervisory board may not instruct the management board to make certain managerial decisions; however, there is a catalogue of decisions of the management board that require the approval of the supervisory board. Only in very specific cases where structural measures of outstanding importance (e.g., the sale of a substantial part of the company's business) are to be implemented must the management board obtain the shareholders' approval prior to entering into such specific transactions. Unlike in a one-tier board structure, it is also difficult to exercise control over the management board by replacing (or threatening to replace) its members, since the

appointment and revocation of the management board members is the exclusive competence of the supervisory board. In summary, the two-tier board structure makes it more difficult for individual shareholders to exert control over the company's management. Further details on the post-takeover replacement of the members of the management and supervisory boards are described below (Part III, 3.1).

2.1 The German Corporate Governance Code

The two-tier system of corporate governance has come under scrutiny. After some major German companies were on the verge of bankruptcy, critics have suggested that the supervisory board is an ineffective controlling body within the corporation and is insufficient to prevent such crises.

Since the supervisory board is generally not involved in the day-to-day operations of the company, its members may sometimes not have developed sufficient expertise to effectively control the management board. Even though the law imposes certain disclosure obligations on the management board for the benefit of the supervisory board, and even though the supervisory board is entitled to veto important management decisions, the control exercised by the supervisory board is not perceived as very dense. Thus, many observers have advocated modifications to the German system to enhance the involvement of the supervisory board in daily business decisions. The aim is to establish an ongoing discussion process between the management board and the supervisory board concerning daily business, so that the supervisory board will act more as counsel to the management board.

As a consequence of this discussion, an expert committee (Deutsche Corporate Governance-Kommission) was implemented to develop common corporate governance principles. These principles were included in the 'GCGC' (Appendix 10) in 2002 and are updated regularly (the last significant update being from 2013). It serves as a 'Code of Best Practice' meant to, *inter alia*, adapt German corporate governance principles to international standards and to improve the corporate governance on a level below binding law (but with the common understanding that lasting ignorance by stock corporations of the GCGC rules could cause the legislator to pass binding legislation on the aspects concerned). The GCGC contains a peculiar mixture of rules: Some are the repetition (albeit in other words) of legally binding provisions of the Stock Corporation Act, and in the GCGC they serve more as a reminder, and they add context. Then there are suggestions (*Anregungen*) for what the Kodex-Kommission would like to see as best practice, and recommendations (*Empfehlungen*) describing what the Kodex-Kommission expects more strongly. Individual recommendations of the GCGC will be mentioned in the context of this chapter. The GCGC as such is not legally binding, it is intended to serve as a body of voluntary guidelines for stock corporations in Germany. However, every stock corporation must issue an annual statement disclosing those practices where the company does not adhere to the recommendations (not the suggestions) of the GCGC, and why (§ 161 AktG). This declaration of compliance (*Entsprechenserklärung*) will be scrutinized by shareholders and may in case of disclosed non-compliance with the GCGC result in unpleasant questions asked

Appendix 6
WpÜG Fees Regulation

WpÜG-Gebührenverordnung

WpÜG-Gebührenverordnung vom 27. Dezember 2001 (BGBl. I S. 4267), zuletzt geändert durch Artikel 2 Absatz 65 des Gesetzes vom 7. August 2013 (BGBl. I S. 3154) (Verordnung aufgehoben durch Art. 4 Abs. 54 des Gesetzes vom 7. August 2013 (BGBl. I 3154) mit Wirkung vom 14.8.2018)

Auf Grund des § 47 Satz 2 des Wertpapiererwerbs- und Übernahmegesetzes vom 20. Dezember 2001 (BGBl. I S. 3822) in Verbindung mit dem 2. Abschnitt des Verwaltungskostengesetzes vom 23. Juni 1970 (BGBl. I S. 821) verordnet das Bundesministerium der Finanzen:

§ 1. Anwendungsbereich Die Bundesanstalt für Finanzdienstleistungsaufsicht (Bundesanstalt) erhebt zur Deckung der Verwaltungskosten für die nachfolgend aufgezählten Handlungen nach dem Wertpapiererwerbs- und Übernahmegesetz Gebühren und Auslagen nach Maßgabe dieser Verordnung.

§ 2. Gebührenpflichtige Handlungen (1) Gebührenpflichtige Handlungen sind:

WpÜG Fees Regulation

WpÜG Fees Regulation dated 27 December 2001 (Federal Gazette I, p. 4267), last amended by Article 2 subsection 65 of the Act dated 7 August 2013 (Federal Gazette I, p. 2417) (Regulation repealed with effect as of 14 August 2018 pursuant to Art. 4 paragr. 54 of the Act dated 7 August 2013 (Federal Gazette I 3154))

On the basis of § 47 sentence 2 of the Securities Acquisition and Takeover Act of 20 December 2001 (Federal Gazette I, p. 3822) in connection with the Second Division of the Administration Costs Act of 23 June 1970 (Federal Gazette I, p. 821), the Federal Ministry of Finance issues the following regulation:

§ 1. Scope of Application The Federal Financial Supervisory Authority ('Federal Authority') levies fees and expenses in accordance with this regulation to cover the administration costs for the acts pursuant to the Securities Acquisition and Takeover Act described hereinafter.

§ 2. Acts subject to Fees (1) Acts subject to fees are:

1. die Entscheidung über einen Antrag auf gleichzeitige Vornahme der Mitteilung und der Veröffentlichung nach § 10 Abs. 2 Satz 3 des Wertpapiererwerbs- und Übernahmegesetzes,

1. the decision of an application for simultaneous notification and publication pursuant to § 10(2) sentence 3 of the Securities Acquisition and Takeover Act;

2. die Gestattung der Veröffentlichung der Angebotsunterlage oder das Verstreichenlassen der in § 14 Abs. 2 Satz 1 des Wertpapiererwerbs- und Übernahmegesetzes genannten Frist,

2. the approval of the publication of the offer document or the passing of the deadline described in § 14(2) sentence 1 of the Securities Acquisition and Takeover Act;

3. die Untersagung des Angebotes nach § 15 Abs. 1 oder 2 des Wertpapiererwerbsund Übernahmegesetzes,

3. the prohibition of the Offer pursuant to § 15(1) or (2) of the Securities Acquisition and Takeover Act;

4. die Entscheidung über einen Antrag auf Befreiung nach § 20 Abs. 1 des Wertpapiererwerbs- und Übernahmegesetzes,

4. the decision of an application for an exemption pursuant to § 20(1) of the Securities Acquisition and Takeover Act;

5. die Entscheidung über einen Antrag auf Ausnahme bestimmter Inhaber von Wertpapieren von einem Angebot nach § 24 des Wertpapiererwerbs- und Übernahmegesetzes,

5. the decision of an application for the exclusion of certain holders of Securities from an Offer pursuant to § 24 of the Securities Acquisition and Takeover Act;

6. die Untersagung von Werbung nach § 28 Abs. 1 des Wertpapiererwerbs- und Übernahmegesetzes,

6. the prohibition of advertising pursuant to § 28(1) of the Securities Acquisition and Takeover Act;

7. die Entscheidung über einen Antrag auf Nichtberücksichtigung von Aktien der Zielgesellschaft bei der Berechnung des Stimmrechtsanteils nach § 36 des Wertpapiererwerbs- und Übernahmegesetzes,

7. the decision of an application for the non-consideration of the Target Company's shares when calculating the voting rights portion pursuant to § 36 of the Securities Acquisition and Takeover Act;

8. die Entscheidung über einen Antrag auf Befreiung von der Verpflichtung zur Veröffentlichung und zur Abgabe eines Angebotes nach § 37 Abs. 1 des Wertpapiererwerbs- und Übernahmegesetzes,

8. the decision of an application for the release from the obligation to publish and to make an Offer pursuant to § 37(1) of the Securities Acquisition and Takeover Act;

9. die vollständige oder teilweise Zurückweisung eines Widerspruchs nach § 41 in Verbindung mit § 6 des Wertpapiererwerbs- und Übernahmegesetzes.

9. the complete or partial rejection of an objection pursuant to § 41 in connection with § 6 of the Securities Acquisition and Takeover Act.

(2) Eine Gebühr wird auch erhoben, wenn ein Antrag auf Vornahme einer nach Absatz 1 Nr. 1, 4, 5, 7 oder Nr. 8 gebührenpflichtigen Handlung nach Beginn der sachlichen Bearbeitung, jedoch vor deren Beendigung zurückgenommen wird.

(2) A fee shall also be paid if an application for an act subject to a fee pursuant to sub-section 1, number 1, 4, 5, 7 or 8 is withdrawn after the processing of the application has commenced and before the processing is completed.

§ 3. Auslagen Als Auslagen werden die Kosten der Veröffentlichung nach § 44 des Wertpapiererwerbs- und Übernahmegesetzes sowie die Kosten, die im Rahmen des Widerspruchsverfahrens den Mitgliedern des Widerspruchsausschusses für die Teilnahme an den Sitzungen entstehen, erhoben. Im Übrigen gilt § 23 Absatz 6 des Bundesgebührengesetzes.

§ 3. Expenses The costs of the publication pursuant to § 44 of the Securities Acquisition and Takeover Act as well as the costs arising for the members of the objection committee in the framework of the objection proceedings for their participation in the meetings shall be levied as expenses. § 23(6) of the Federal Fees Act shall also apply.

§ 4. Höhe der Gebühren (1) Die Gebühr beträgt für individuell zurechenbare öffentliche Leistungen

1. nach § 2 Abs. 1 Nr. 1:	1 000 Euro,
2. nach § 2 Abs. 1 Nr. 4:	2 000 Euro bis 5 000 Euro,
3. nach § 2 Abs. 1 Nr. 5, 6 oder 7:	3 000 Euro bis 10 000 Euro,
4. nach § 2 Abs. 1 Nr. 8:	5 000 Euro bis 20 000 Euro,
5. nach § 2 Abs. 1 Nr. 2 oder 3:	10 000 Euro bis 100 000 Euro.

§ 4. Amount of the Fees (1) The fee for individually attributable public servicesshall be as follows:

1. pursuant to § 2(1) number 1:	EUR 1,000;
2. pursuant to § 2(1) number 4:	EUR 2,000 to 5,000;
3. pursuant to § 2(1) number 5, 6 or 7:	EUR 3,000 to 10,000;
4. pursuant to § 2(1) number 8:	EUR 5,000 to 20,000;
5. pursuant to § 2(1) number 2 or 3:	EUR 10,000 to 100,000.

(2) Die Gebühr beträgt für Entscheidungen über Widersprüche gegen individuell zurechenbare öffentliche Leistungen

1. nach § 2 Abs. 1 Nr. 1:	2 000 Euro,
2. nach § 2 Abs. 1 Nr. 4:	4 000 Euro bis 10 000 Euro,
3. nach § 2 Abs. 1 Nr. 5, 6 oder 7:	6 000 Euro bis 20 000 Euro,
4. nach § 2 Abs. 1 Nr. 8:	10 000 Euro bis 40 000 Euro,
5. nach § 2 Abs. 1 Nr. 3:	20 000 Euro bis 200 000 Euro.

(2) The fee for decisions on objections against individually attributable public servicesshall be as follows:

1. pursuant to § 2(1) number 1:	EUR 2,000;
2. pursuant to § 2(1) number 4:	EUR 4,000 to 10,000;
3. pursuant to § 2(1) number 5, 6 or 7:	EUR 6,000 to 20,000;
4. pursuant to § 2(1) number 8:	EUR 10,000 to 40,000;
5. pursuant to § 2(1) number 3:	EUR 20,000 to 200,000.

8 ENFORCEMENT

Orders issued by the BaFin may be enforced by coercive measures, in particular by fines of up to EUR 500,000.

9 COSTS

For certain official acts, the BaFin is entitled to impose fees and to demand reimbursement of expenses. Details are governed by the WpÜG Fees Regulation (Appendix 6). For instance, the approval of an Offer Document by the BaFin may result in fees between EUR 10,000 and EUR 100,000 (§ 4(1) in connection with § 2 number 2 WpÜG Fees Regulation). The BaFin may demand advance payment of 50% of the anticipated fees (§ 5 WpÜG Fees Regulation) from the Offeror.

Other costs associated with the making of a public Offer typically relate to legal, tax and accounting advice, corporate finance advice by an investment bank, financing of the Offer, financing confirmation and settlement of the Offer through the settlement bank engaged by the Offeror and the various banks where the tendering shareholders have their depository accounts, public relations work and miscellaneous publication obligations.

PART III
Options of the Offeror after a Successful Offer

1 FACTUAL AND LEGAL POSITION OF THE OFFEROR AFTER A SUCCESSFUL OFFER

1.1 Control over the Target Company?

A successful Offer may result in a number of different strategic positions for the Offeror. Depending on the Target Company's remaining shareholder structure and the percentage of shares acquired by the Offeror, it may be in fact: (a) a minority shareholder, however, having a strong influence due to its relative or absolute majority in shareholders' meetings; or (b) a majority shareholder holding more than 50% or more than 75%; or (c) even in a position where only very few minority shareholders exist besides the Offeror.

Typically, the outcome of a Takeover Offer or Mandatory Offer will be that the Offeror now controls the votes and is able to pass resolutions which require a simple majority or of a constitutional nature requiring a qualified majority of more than 75% of the votes cast. In some cases, the majority acquired by the Offeror may even be sufficient to allow for a squeeze-out of Minority Shareholders (see 3.3 below). In practice, the threshold levels for dominating 50% or 75% of the votes in a shareholders' meeting may be significantly lower than the respective proportion of the total number of votes. Due to low attendance rates at shareholders' meetings of publicly-listed stock corporations – typically between 50% and 60% – even 30%-40% of the votes, in some cases even less, allow a shareholder an absolute majority or more at such shareholders' meetings. However, there is a tendency among event-driven financial investors, particularly hedge-funds, to build up significant stakes during a takeover situation. These investors will use the stakes for tactical purposes, e.g., the exercising of minority rights requiring a significant number of shares, or the blocking

of a squeeze-out, or even the blocking of the Offeror's 75% majority in the shareholders' meeting.

However strong the Offeror's position in the shareholders' meeting is, this position does not translate into direct control over management in the absence of other specific instruments of control. It is one of the peculiarities of the corporate governance structure of German stock corporations that having control of the majority of votes at a shareholders' meeting does not necessarily lead to control of the management, nor does it allow the members of the supervisory board or management board to be replaced easily. The management board operates the company without being subject to interference from the shareholder(s) and has to act in the best interests of the company (as being conceptually distinct from the best interests of the shareholders). The management board is accountable to the supervisory board and to the shareholders' meeting. Individual shareholders, the shareholders' meeting or the supervisory board may not instruct the management board. However, there will be a catalogue of decisions of the management board that require the approval of the supervisory board. In very specific but rare cases where structural measures of outstanding importance (e.g., selling a substantial part of the company's business) are to be implemented (i.e., so-called *Holzmüller/Gelatine* cases, named after the corresponding case law), the management board has to obtain the shareholders' approval prior to entering into specific transactions. This principle does not operate in reverse, i.e., a resolution of the shareholders' meeting cannot force the management board to take any operational action. The Stock Corporation Act also allows for the supervisory board to veto certain significant management decisions, but again, the management board cannot be forced to act in accordance with positive instructions. Even information rights of a majority shareholder are technically limited to those existing for any shareholder, in particular the right to receive the annual financial statements and the right to ask questions during a shareholders' meeting, and there are, in principle, no special rights for large shareholders, except that for accounting and consolidation as well as compliance purposes certain financial information and reporting from the Target Company to a majority shareholder may be required and permissible. The same applies in general to information that the majority shareholder requires for group planning purposes. In practice, however, management boards sometimes tend to treat large shareholders preferentially beyond these limitations.

The indirect exercise of control over the management board by replacing (or threatening to replace) its members is difficult not least because the appointment and revocation of appointment of members of the management board is the exclusive domain of the supervisory board. The replacement of members of the management board prior to the end of their term of office is possible, but subject to strict formal and material requirements described in more detail below. It is worth noting here that the term of office of members of the management board is typically longer than it is in, for instance, the UK or the US. It is not unusual to have terms of office of three to five years, during which the board members enjoy a relatively high degree of independence, even if there is a new or significantly strengthened majority shareholder.

The legal regime with respect to exercising indirect influence on members of the supervisory board who represent the shareholder side is not as strict as with members

of the management board. Although members of the supervisory board are technically not subject to instructions from a shareholder, in practice supervisory board members typically follow recommendations of shareholders to whom they are close. Also, as a matter of practice, members of the supervisory board who (effectively) represent a specific shareholder, typically resign if such shareholder asks them to or if the shareholder structure of the company has changed significantly. Also members of the supervisory board can be revoked from office by the shareholders' meeting more easily than members of the management board can be revoked from office by the supervisory board. Such influence is typically not exercised with respect to those members of the supervisory board elected by and representing the employees in case of a supervisory board subject to co-determination. Details are described under 3.1.1.

In summary, even a successful Offeror who has secured more than 50% of the votes or even more than 75% of the votes in a stock corporation only has limited control over the company and its business legally and practically speaking, due to the pronounced independence of the management board. This is often a new experience in particular for investors from the UK or the US.

1.2 Statutory Regime Governing Relationship between Target Company and its Main Shareholder

1.2.1 *General Remarks*

This section discusses and describes: (a) the legal consequences of *de facto* control over a stock corporation by a shareholder; and (b) the option available to a majority shareholder to establish full legal control over a stock corporation.

Despite the limits on the influence of a (majority) shareholder over a stock corporation, the Stock Corporation Act deals with the *de facto* influence of an individual shareholder over a stock corporation in a special section. The law recognizes that even with rules limiting the influence of shareholders on the management board, such influence might nevertheless exist. In this sense, the statutory rules contained in §§ 311 et seq. AktG and described hereinafter, which govern the relationship between a stock corporation and a dominating shareholder, constitute a second tier of protection for the integrity of a stock corporation against the detrimental influence of one or more of the shareholders. These rules are important for shareholders who, with the help of a cooperating management board, have *de facto* influence over a stock corporation.

In order to properly record the relationship between the dominating company and the dominated company, and to inform minority shareholders and creditors accordingly, the management board of the dominated company must prepare a report each year about its relationship with related entities, a so-called 'dependency report' (*Abhängigkeitsbericht*). The dependency report must contain a full account of intra-group transactions, influence exercised by the dominating company and, where appropriate, any compensation measures taken. The report must be audited by the company's auditors and reviewed and approved by its supervisory board. The closing

statement of the dependency report is made public together with the dominated company's annual accounts.

1.2.2 *Detrimental Influence over a Stock Corporation*

The basic rule in § 311 AktG is that a dominating company may not exercise its influence to cause a dominated company to undertake a disadvantageous transaction or to undertake, or to refrain from undertaking, any action to the detriment of the company, unless such disadvantage is compensated for.

The terms 'dominating company' and 'dominated company' refer to terms defined in § 17 AktG. Accordingly, a dominating company is any (German or non-German) person or entity, who can exercise, directly or indirectly, a dominating influence over another enterprise. § 17(2) AktG establishes the statutory rebuttable presumption that a company owning the majority of the shares in another company controls such other company (such control not to be confused with 'control' as defined in § 29(2) WpÜG which means at least 30% of the voting rights – not 30% of the shares – for takeover law purposes). This does not mean, however, that shareholders holding only a minority in the share capital of a stock corporation cannot be considered to be a dominating company. Courts have held that, depending on the circumstances, in particular the historic attendance rates at shareholders' meetings, as well as minority shareholdings may lead to a dominating influence because *de facto* such shareholder has the majority of the votes at the shareholders' meeting; examples include a 43.74% shareholding in connection with a historic 80% presence of all shares at the shareholders' meeting or a 20% shareholding with a 37% presence. Another factor which can be considered when judging whether there is a dominating influence is the existence of voting pools, i.e., agreements between shareholders to vote in a coordinated manner. Purely external means of influencing the stock corporation without the benefit of a relevant shareholding, such as the influence of financing banks, does not suffice under § 17 AktG. The law also allows for a rebuttal of the presumption under § 17(2) AktG e.g., if the articles of association of the stock corporation limit the influence of an individual shareholder in one way or the other (for instance by requiring a 75% majority for any and all matters subject to voting).

There is no statutory definition of a 'disadvantageous transaction'. Generally speaking, any action or omission which adversely affects the stock corporation and which is not at arm's length in the case of contractual relationships fulfils this requirement. It is not necessary that the management board or supervisory board has implemented the action. Direct influence on employees of the stock corporation suffices. Typical examples would be causing the company to enter into a contract which is not at arm's length, be it that the company would have never entered into such a contract or that the respective obligations of the parties are commercially unbalanced. This issue is of particular importance within major groups with respect to intra-group pricing and so-called 'central service charges' (*Konzernumlagen*). Other examples include causing the company to give up a certain line of business (in order to indirectly benefit another group member) or entering into particularly risky new lines

of business, the secondment of particularly able employees or board members to the parent or the sale of valuable assets to other group companies. It is worth noting that the law does not specify the means of influencing the dominated company. Such influence can be more formal, such as by persuading or instructing the management board, or can be more informal in nature, such as suggesting certain transactions to the management board or employees. Some writers even suggest that in cases where the management board of the dominated company acts without any direct influence of the dominating shareholder to the detriment of the company, the consequences of § 311 AktG are triggered. Finally, it is not necessary to show that a certain monetary value can be attributed to the disadvantageous transaction. It is just sufficient to establish that there is some kind of detrimental effect on the dominated company.

The law does not address situations where the influence of the dominating company is such that no specific individual transactions can be identified as being detrimental for the dominated company. In these types of situations, where the dominating influence is diffuse and more or less omnipresent, there is a principle of analogous application of § 302 AktG. According to this, the dominating company has an obligation to compensate the dominated company for all balance sheet losses shown in its financial statements. In practice, these types of cases have been rather rare with stock corporations.

In a post-takeover situation, financial assistance may often become an issue. The new main shareholder may need the assets of the Target Company to finance the transaction. Given the strict protection of a stock corporation's assets, it is clear that causing the Target Company to provide collateral for debts and obligations of the main shareholder constitutes a detrimental transaction within the meaning of the law, which accordingly also triggers the legal consequences of § 311 AktG.

1.2.3 *Sanctions for Exercising Detrimental Influence*

The legal consequences of causing a dominated company to enter into a disadvantageous transaction are not straightforward in the sense that the dominated company or its minority shareholders automatically have a claim in damages for any violation. Rather, there is a two-step mechanism, which separates (a) legal obligations to disclose and compensate from (b) sanctions in the form of damage claims. In the first step, the dominating company has an obligation to fully and effectively compensate the dominated company for the effects of the detrimental influence by the end of the fiscal year at the latest. In practice, this means paying monetary compensation (for commercially disadvantageous transactions) and/or withdrawing the relevant instruction or equivalent means of influence. However, dominated companies, their minority shareholders and creditors have no corresponding claim against the dominating company; the first step imposes a purely legal obligation without any direct enforcement mechanism. Instead of compensation during the fiscal year, the parties may conclude a compensation agreement, which then gives rise to a regular contractual (i.e., enforceable) claim for the dominated company. This contractual claim can then be reflected in the financial statements of the dominated company.

Sanctioning and enforcement mechanisms for the obligations described above are determined by § 317 AktG which imposes full liability on the dominating company and its statutory legal representatives (e.g., board members) for the disadvantages caused to the dominated company, for the benefit of the dominated company itself. The minority shareholders also have a separate claim for damages they have suffered individually, which goes beyond the damage suffered by the dominated company. An example would be that a disadvantageous transaction also causes the stock price to fall significantly. In practice, however, it will be difficult to assert damages extending beyond those suffered by the company directly.

If the management board of the dominated company does not claim damages from the dominating company in accordance with § 317 AktG then such an omission constitutes a violation by the management board members of their obligations vis-à-vis the company leading to personal liability according to § 318(1) AktG. This is because the management board members alone have competence to raise claims on behalf of the dominated stock corporation against the dominating company. Members of the supervisory board may become personally liable under § 318(2) AktG for approving an incorrect or incomplete dependency report. In addition, § 147(2) sentence 2 AktG provides that shareholders holding 10% of the voting rights or EUR 1,000,000 par value of shares can institute a procedure to bring resulting damage claims against the members of the management board and the supervisory board in accordance with the procedures provided for in § 147 AktG (see Part I, 2.2.6 and 2.3.7 above).

In summary, the rules of German stock corporation law governing the influence of a dominating company over a dominated company are ambiguous. On the one hand, the law makes such influence illegal and provides the governing bodies of a stock corporation with conceptional independence from a dominating shareholder. On the other hand, the law accepts that such influence cannot be effectively prevented and therefore tolerates such influence at least, provided that any detrimental effects are compensated for. In any event, from the perspective of an Offeror who has successfully acquired a dominating stake in a German stock corporation, the situation may remain unsatisfactory as long as the Target Company is a stock corporation that is not fully-owned by the Offeror. Either the management board may decide to defend its independence from the dominating shareholder and act accordingly or, if the management board turns out to be cooperative, both the management board and the dominating shareholder (and to a certain extent, the supervisory board of the dominated company also) must be on constant alert in order to identify actions which may be potentially detrimental for the dominated company, and must provide for compensation by the end of the business year in order to avoid personal liability.

It is rather obvious that whilst such a situation can be accepted for a limited interim period or in cases where the investment is purely financial, it is not a viable basis for governing a stock corporation in the long-term. Therefore, prudent investors will have to review their options in order to restructure the Target Company in a way that reaches most, if not all, of the Offeror's goals regarding the Target Company.

2 MAIN CONSIDERATIONS REGARDING CHANGES AT THE LEVEL OF THE TARGET COMPANY

No two Offerors will ever have the exact same plans and projects with respect to a Target Company after acquiring Control. The Offeror's considerations will depend on a number of variables. An industrial or strategic investor will have different priorities to those of a financial investor.

In cases where the investment in the shares of a stock corporation is essentially financially motivated, the peculiarities of the corporate governance structure offer strong incentives to a successful Offeror to restructure the company. As public takeovers are rarely done for purely financial reasons, the issue of how to effectively control the company will always be on the agenda. Any Offeror interested in actively restructuring and managing a stock corporation will have to consider available means for reducing the independence of the management board.

Typically, an Offeror would consider the following aspects in order to choose and implement changes with respect to the Target Company. The relative weight of these considerations depends on the specific situation of the Offeror and the Target Company.

2.1 Employee Co-determination

For many foreign investors, the fact that 50% of the members of the supervisory board of a stock corporation with more than 2,000 employees are employee representatives who are elected by the employees of the company is rather surprising, if not discomforting. Although co-determination has turned out to be workable and even constructive in many cases, foreign investors who are not used to dealing with the 'German system' prefer to avoid co-determination, if at all possible. Although in practice the options are quite limited and difficult to implement, some investors might prefer a one-off effort versus engagement with employee representatives which is potentially permanent. In stock corporations with 500 to 2,000 employees, the employees elect only one-third of the members of the supervisory board.

2.2 Rights of Remaining Minority Shareholders

Since the statutory basis of the German stock corporation has a rather elaborate system for protecting the legal and financial integrity of the company as well as minority shareholder rights, it is potentially burdensome and financially risky to exercise control over a stock corporation. Minority shareholders who disagree, in bona fide, with the policies and plans of the new majority shareholder may contest shareholders' resolutions in court or threaten to take other actions against the company, the majority shareholder or members of the management and supervisory boards. In addition (and perhaps more frequently), small individual shareholders acting in bad faith and

blackmailing the company may file a lawsuit to set aside certain shareholders' resolutions, based mostly on frivolous arguments, in order to gain a monetary 'compensation'. In any event, all major cases involving the company may be subject to public scrutiny. Therefore, the elimination of minority shareholders or, at least, the reduction of their influence is likely to be on the agenda of most Offerors.

2.3 Administrative Burdens

One issue related to the existence of minority shareholders is that of administrative burdens. The proper operation of a stock corporation is rather cumbersome. In particular, the formal requirements regarding the invitation and operation of shareholders' meetings are quite elaborate. Consequently, compliance with those requirements is not only costly for the company, but it also slows the company's decision-making in matters that require a resolution of the shareholders' meeting. Actual or alleged violations of formal requirements may also give rise to disputes regarding the validity of shareholders' resolutions the implementation of which may be important for the Target Company.

2.4 Use of Assets in the Interests of the Target Company

In many cases, an Offeror and/or the banks financing the Offer will want access to the cash-flow and the assets of the Target Company in order to finance or secure the purchase price and respective credit facilities. As a general rule, stock corporation law makes it impossible to use assets of a stock corporation to secure financial liabilities of a shareholder. The Target Company's cash-flow can be used, in principle, in the form of loans from the stock corporation to the shareholder, provided the arm's-length principle is strictly observed.

2.5 Tax Considerations

Depending on the medium- to long-term financial goals of an Offeror, the resulting tax planning will strongly influence the plans for restructuring the stock corporation.

3 OPTIONS FOR ACTION AND THEIR LIMITS

This section outlines the options available to an Offeror in order to increase the degree of influence over the Target Company following a successful takeover, including scenarios of a full public-to-private transaction. Not all options will be necessary or useful in each case, but they constitute the basic 'tool-box' for realizing the Offeror's goals. The various measures presented can be taken individually or in some cases in combination with each other.

3.1 Replacement of Members of the Company's Governing Bodies

3.1.1 *Supervisory Board*

Controlling the supervisory board is the first goal for any shareholder hoping to influence the operation of a stock corporation within the boundaries prescribed by law, once an absolute or relative majority at the shareholders' meeting has been achieved. Compared to having the majority of votes in the shareholders' meeting, having control of the supervisory board provides the shareholder with a more flexible, more informal and denser control and corresponding influence over the operation of the management board. This is due primarily to the responsibilities of the supervisory board, which include the appointment of the members of the management board and the other powers granted by law and in the company's articles of association.

In order to appoint new supervisory board members who are loyal to the Offeror, the appointments of the old members must first be revoked. As a general rule, § 103(1) AktG requires a resolution of the shareholders' meeting, passed with at least three-quarters of all votes cast at that meeting, to revoke the appointment of a member of the supervisory board before the end of the member's regular term of office. The articles of association may impose higher or lower majority requirements than the three-quarters majority provided for by law and the lowering of the threshold to a simple majority is commonly seen. In any event, in practice, it is rarely necessary to revoke the appointment of a member of the supervisory board in the course of a shareholders' meeting. It is a quite well-established practice in Germany that after a change in control of a stock corporation, supervisory board members resign from office either voluntarily or after being asked to resign by the new dominating shareholder. This applies particularly to cases where such members were *de facto* representatives of the shareholder who dominated the company prior to the takeover.

However, often the majority shareholder might have an interest in keeping some particularly reputable and well-connected members in office.

In some cases, the articles of association provide that a specific shareholder has the special right to appoint one or more members of the supervisory board. In such cases, only the shareholder who has this special right may revoke such appointments.

Although rare in practice, some cases might offer the opportunity to use special procedures to terminate the office of a member of the supervisory board for an important cause (*wichtiger Grund*) (§ 103(3) AktG). If a supervisory board member violates obligations vis-à-vis the company, by acting contrary to the company's interests for instance, the supervisory board may resolve by simple majority to apply to the local court to terminate that member's office.

All of the aforementioned options to revoke the appointment of a supervisory board member apply only to those members who are not employee representatives under the German Co-Determination Act (*Mitbestimmungsgesetz*) or under the One-Third Co-Determination Act (*Drittelbeteiligungsgesetz*). According to those laws, one-third of the supervisory board members must be representatives of the workforce if the company and its subsidiaries have more than 500 employees. In the case of companies with more than 2,000 regular employees, the supervisory board must have an equal

APPENDIX 5

WpÜG Offer Regulation

WpÜG-Angebotsverordnung

Verordnung über den Inhalt der Angebotsunterlage, die Gegenleistung bei Übernahmeangeboten und Pflichtangeboten und die Befreiung von der Verpflichtung zur Veröffentlichung und zur Abgabe eines Angebots (WpÜG-Angebotsverordnung vom 27. Dezember 2001 (BGBl. I S. 4263)), zuletzt geändert durch Art. 17 des Gesetzes vom 6. Dezember 2011 (BGBl. I S. 2481)

Auf Grund des § 11 Abs. 4, § 31 Abs. 7 Satz 1 und § 37 Abs. 2 Satz 1 des Wertpapiererwerbs- und Übernahmegesetzes vom 20. Dezember 2001 (BGBl. I S. 3822) verordnet das Bundesministerium der Finanzen:

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Zweiter Abschnitt. Inhalt der Angebotsunterlage

§ 2 Ergänzende Angaben der Angebotsunterlage

Dritter Abschnitt. Gegenleistung bei Übernahmeangeboten und Pflichtangeboten

WpÜG Offer Regulation

Regulation Pertaining to the contents of the Offer document, the Consideration in the Event of Takeover Offers and Mandatory Offers and the Release from the Obligation to Publish and to Make an Offer (WpÜG Offer Regulation dated 27 December 2001 (Federal Gazette I, p. 4263), last amended by Article 17 of the Act dated 6 December 2011 (Federal Gazette I, p. 2481)

On the basis of § 11(4), § 31(7) sentence 1 and § 37(2) sentence 1 of the Securities Acquisition and Takeover Act of 20 December 2001 (Federal Gazette I, p. 3822), the Federal Ministry of Finance issues the following:

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§ 8 Antragstellung

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§ 10 Antragsinhalt

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§ 12 Prüfung der Vollständigkeit des Antrags

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§ 13 Inkrafttreten

Erster Abschnitt. Anwendungsbereich

§ 1. Anwendungsbereich Diese Verordnung ist auf Angebote gemäß § 2 Abs. 1 des Wertpapiererwerbs- und Übernahmegesetzes anzuwenden.

Zweiter Abschnitt. Inhalt der Angebotsunterlage

§ 2. Ergänzende Angaben der Angebotsunterlage Der Bieter hat in seine Angebotsunterlage folgende ergänzende Angaben aufzunehmen:

1. Name oder Firma und Anschrift oder Sitz der mit dem Bieter und der Zielgesellschaft gemeinsam handelnden Personen und der Personen, deren Stimmrechte aus Aktien der Zielgesellschaft nach § 30 des Wertpapiererwerbs- und Übernahmegesetzes Stimmrechten des Bieters gleichstehen oder ihm zuzurechnen sind, sowie, wenn es sich bei diesen Personen um Gesellschaften handelt, die Rechtsform und das Verhältnis der Gesellschaften zum Bieter und zur Zielgesellschaft;

§ 3 The Principle

§ 4 Taking into Account Prior Acquisition

§ 5 Taking into Account Domestic Stock Exchange Prices

§ 6 Taking into Account Foreign Stock Exchange Prices

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First Division. Scope of Application

§ 1. Scope of Application This regulation shall apply to offers pursuant to § 2(1) of the Securities Acquisition and Takeover Act.

Second Division. Contents of the Offer Document

§ 2. Supplementary Particulars of the Offer Document The Offeror shall include the following supplementary particulars in the offer document:

1. name or company name and address or domicile of the persons acting jointly with the offeror and the Target Company, and the persons whose voting rights from shares of the Target Company shall be equated with voting rights of the offeror or which shall be attributed to him pursuant to § 30 of the Securities Acquisition and Takeover Act, as well as, if any of these persons are companies, their legal form and the relationship of the companies with the offeror and the Target Company;

2. Angaben nach § 7 des Wertpapierprospektgesetzes in Verbindung mit der Verordnung (EG) Nr. 809/2004 der Kommission vom 29. April 2004 zur Umsetzung der Richtlinie 2003/71/EG des Europäischen Parlaments und des Rates betreffend die in Prospekten enthaltenen Angaben sowie die Aufmachung, die Aufnahme eines Verweises und die Veröffentlichung solcher Prospekte und die Verbreitung von Werbung (ABl. EU Nr. L 149 S. 1, Nr. L 215 S. 3), sofern Wertpapiere als Gegenleistung angeboten werden; wurde für die Wertpapiere vor Veröffentlichung der Angebotsunterlage ein Prospekt, auf Grund dessen die Wertpapiere öffentlich angeboten oder zum Handel an einem organisierten Markt zugelassen worden sind, im Inland in deutscher Sprache veröffentlicht und ist für die als Gegenleistung angebotenen Wertpapiere während der gesamten Laufzeit des Angebots ein gültiger Prospekt veröffentlicht, genügt die Angabe, dass ein Prospekt veröffentlicht wurde und wo dieser jeweils erhältlich ist;

2a. Angaben nach § 7 des Vermögensanlagengesetzes in Verbindung mit der Vermögensanlagen-Verkaufsprospektverordnung, sofern Vermögensanlagen im Sinne des § 1 Absatz 2 des Vermögensanlagengesetzes als Gegenleistung angeboten werden; wurde für die Vermögensanlagen innerhalb von zwölf Monaten vor Veröffentlichung der Angebotsunterlage ein Verkaufsprospekt im Inland in deutscher Sprache veröffentlicht, genügt die Angabe, dass ein Verkaufsprospekt veröffentlicht wurde und wo dieser erhältlich ist, sowie die Angabe der seit der Veröffentlichung des Verkaufsprospekts eingetretenen Änderungen;

2. particulars pursuant to § 7 of the Securities Prospectus Act in conjunction with the Commission Regulation 809/2004 of 29 April 2004 implementing Directive 2003/71/EC of the European Parliament and of the Council as regards information contained in prospectuses as well as the format, incorporation by reference and publication of such prospectuses and dissemination of advertisements (OJ L 149/1, L 215/3), to the extent that Securities are offered as consideration; in the event that a prospectus due to which the Securities have been publicly offered or have been admitted for trading on an organized market has been published in Germany in the German language prior to the publication of the offer document and provided that a valid prospectus is published during the entire duration of the offer for the securities offered as consideration, then the information that a prospectus has been published and where it is available shall be sufficient;

2a. Information pursuant to § 7 of the Investment Act in conjunction with the Investment Sales Prospectus Regulation, in case investments pursuant to § 1(2) of the InvestmentAct are offered as consideration; if a sales prospectus has been published for the investments in Germany in the German language within 12 months prior to the publication of the offer document, then the information that a prospectus has been published and where it is available, as well as particulars concerning amendments which have been made since the publication of the sales prospectus, shall be sufficient;

3. die zur Festsetzung der Gegenleistung angewandten Bewertungsmethoden und die Gründe, warum die Anwendung dieser Methoden angemessen ist, sowie die Angabe welches Umtauschverhältnis oder welcher Gegenwert sich bei der Anwendung verschiedener Methoden, sofern mehrere angewandt worden sind, jeweils ergibt; zugleich ist darzulegen, welches Gewicht den verschiedenen Methoden bei der Bestimmung des Umtauschverhältnisses oder des Gegenwerts und der ihnen zugrunde liegenden Werte beigemessen worden ist, welche Gründe für die Gewichtung bedeutsam waren, und welche besonderen Schwierigkeiten bei der Bewertung der Gegenleistung aufgetreten sind;

3. the valuation methods used for the determination of the consideration and reasons why the application of these methods is appropriate, as well as information as to the respective exchange ratio or consideration that results from the application of different methods, to the extent that several have been applied; at the same time, it shall simultaneously be demonstrated how the different methods have been weighed when determining the exchange ratio or the consideration, which reasons were important for the weighing, and which particular difficulties arose in assessing the consideration;

3a. die zur Berechnung der Entschädigung nach § 33b Abs. 5 des Wertpapiererwerbs- und Übernahmegesetzes angewandten Berechnungsmethoden, sowie die Gründe, warum die Anwendung dieser Methoden angemessen ist;

3a. the method employed in determining the compensation pursuant to § 33b(5) of the Securities Acquisition and Takeover Act as well as the reasons why the application of these methods is adequate;

4. die Maßnahmen, die die Adressaten des Angebots ergreifen müssen, um dieses anzunehmen und um die Gegenleistung für die Wertpapiere zu erhalten, die Gegenstand des Angebots sind, sowie Angaben über die mit diesen Maßnahmen für die Adressaten verbundenen Kosten und den Zeitpunkt, zu dem diejenigen, die das Angebot angenommen haben, die Gegenleistung erhalten;

4. the measures that the addressees of the offer must take in order to accept it and in order to receive the consideration for the Securities which are the subject matter of the offer, as well as particulars concerning costs to the addressee associated with these measures and the point in time when those who accepted the offer shall receive the consideration;

5. die Anzahl der vom Bieter und von mit ihm gemeinsam handelnden Personen und deren Tochterunternehmen bereits gehaltenen Wertpapiere sowie die Höhe der von diesen gehaltenen Stimmrechtsanteile unter Angabe der ihnen jeweils nach § 30 des Wertpapiererwerbs- und Übernahmegesetzes zuzurechnenden Stimmrechtsanteile getrennt für jeden

5. the number of Securities already held by the offeror, persons acting jointly therewith or their Subsidiaries as well as the amount of the voting rights portions held by them, reporting the respective voting rights portions to be attributed to them pursuant to § 30 Securities Acquisition and Takeover Act separately for each attribution type and the amount of voting rights to be reported pursuant to § 25 and § 25a of Securities Trading Act;

Zurechnungstatbestand sowie die Höhe der nach den §§ 25 und 25a des Wertpapierhandelsgesetzes mitzuteilenden Stimmrechtsanteile;

6. bei Teilangeboten der Anteil oder die Anzahl der Wertpapiere der Zielgesellschaft, die Gegenstand des Angebots sind, sowie Angaben über die Zuteilung nach § 19 des Wertpapiererwerbs- und Übernahmegesetzes;

6. in the event of partial offers the portion or the number of securities of the Target Company which are the subject of the Offer, as well as particulars concerning the allocation pursuant to § 19 of the Securities Acquisition and Takeover Act;

7. Art und Umfang der von den in Nummer 5 genannten Personen und Unternehmen jeweils für den Erwerb von Wertpapieren der Zielgesellschaft gewährten oder vereinbarten Gegenleistung, sofern der Erwerb innerhalb von sechs Monaten vor der Veröffentlichung gemäß § 10 Abs. 3 Satz 1 des Wertpapiererwerbs- und Übernahmegesetzes oder vor der Veröffentlichung der Angebotsunterlage gemäß § 14 Abs. 3 Satz 1 des Wertpapiererwerbs- und Übernahmegesetzes erfolgte; dem Erwerb gleichgestellt sind Vereinbarungen, auf Grund derer die Übereignung der Wertpapiere verlangt werden kann;

7. type and amount of the respective granted or agreed-upon consideration for the acquisition of securities of the Target Company by the persons and enterprises designated in number 5, if the acquisition has occurred within six months prior to the publication pursuant to § 10(3) sentence 1 of the Securities Acquisition and Takeover Act or prior to the publication of the offer document pursuant to § 14(3) sentence 1 of the Securities Acquisition and Takeover Act; agreements on the basis of which the transfer of title to Securities can be claimed shall be considered acquisitions;

8. Angaben zum Erfordernis und Stand behördlicher, insbesondere wettbewerbsrechtlicher Genehmigungen und Verfahren im Zusammenhang mit dem Erwerb der Wertpapiere der Zielgesellschaft;

8. particulars concerning the requirement and status of official proceedings, especially of competition law approvals and proceedings, in connection with the acquisition of the Target Company's securities;

9. der Hinweis auf die Annahmefrist im Falle einer Änderung des Angebots nach § 21 Abs. 5 des Wertpapiererwerbs- und Übernahmegesetzes und die Annahmefrist im Falle konkurrierender Angebote nach § 22 Abs. 2 des Wertpapiererwerbsund Übernahmegesetzes sowie im Falle von Übernahmeangeboten der Hinweis auf die weitere Annahmefrist nach § 16 Abs. 2 des Wertpapiererwerbs- und Übernahmegesetzes;

9. a statement of the acceptance period in the case of a modification of the offer pursuant to § 21(5) of the Securities Acquisition and Takeover Act, and of the acceptance period in the event of competing offers pursuant to § 22(2) of the Securities Acquisition and Takeover Act, as well as, in the event of takeover offers, a statement of the further acceptance period pursuant to § 16(2) of the Securities Acquisition and Takeover Act;

10. der Hinweis, wo die Angebotsunterlage gemäß § 14 Abs. 3 Satz 1 des Wertpapiererwerbs- und Übernahmegesetzes veröffentlicht wird;

11. der Hinweis auf das Rücktrittsrecht nach § 21 Abs. 4 und § 22 Abs. 3 des Wertpapiererwerbs- und Übernahmegesetzes und

12. Angaben darüber, welchem Recht die sich aus der Annahme des Angebots ergebenden Verträge zwischen dem Bieter und den Inhabern der Wertpapiere der Zielgesellschaft unterliegen, und die Angabe des Gerichtsstands.

Dritter Abschnitt. Gegenleistung bei Übernahmeangeboten und Pflichtangeboten

§ 3. Grundsatz Bei Übernahmeangeboten und Pflichtangeboten hat der Bieter den Aktionären der Zielgesellschaft eine angemessene Gegenleistung anzubieten. Die Höhe der Gegenleistung darf den nach den §§ 4 bis 6 festgelegten Mindestwert nicht unterschreiten. Sie ist für Aktien, die nicht derselben Gattung angehören, getrennt zu ermitteln.

§ 4. Berücksichtigung von Vorerwerben Die Gegenleistung für die Aktien der Zielgesellschaft muss mindestens dem Wert der höchsten vom Bieter, einer mit ihm gemeinsam handelnden Person oder deren Tochterunternehmen gewährten oder vereinbarten Gegenleistung für den Erwerb von Aktien der Zielgesellschaft innerhalb der letzten 6 Monate vor der Veröffentlichung nach § 14 Abs. 2 Satz 1 oder § 35 Abs. 2 Satz 1 des Wertpapiererwerbs- und Übernahmegesetzes entsprechen. § 31 Abs. 6 des Wertpapiererwerbs- und Übernahmegesetzes gilt entsprechend.

§ 5. Berücksichtigung inländischer Börsenkurse (1) Sind die Aktien der Zielgesellschaft zum Handel an einer

10. statement as to where the offer document is published pursuant to § 14(3) sentence 1 of the Securities Acquisition and Takeover Act;

11. statement of the rescission right pursuant to § 21(4) and § 22(3) of the Securities Acquisition and Takeover Act; and

12. statements concerning the choice of law to which the agreements between the offeror and the holders of the Target Company's securities resulting from the acceptance of the offer will be subject, and the indication of the court of jurisdiction.

Third Division. Consideration for Takeover Offers and Mandatory Offers

§ 3. The Principle In the event of takeover offers and mandatory offers, the offeror shall offer the shareholders of the Target Company reasonable consideration. The amount of the consideration shall not fall short of the minimum value determined pursuant to §§ 4 to 6. It shall be determined separately for shares which do not belong to the same class.

§ 4. Taking into Account Prior Acquisitions The consideration for the Target Company's shares shall correspond, at the least, to the value of the highest consideration granted or agreed upon by the offeror, persons acting jointly therewith and their subsidiaries for the acquisition of shares of the Target Company within the six months prior to the publication pursuant to § 14(2) sentence 1 or § 35(2) sentence 1 of the Securities Acquisition and Takeover Act. § 31(6) of the Securities Acquisition and Takeover Act shall apply analogously.

§ 5. Taking into Account Domestic Stock Exchange Prices (1) If the shares of the Target Company are admitted to trading on a domestic

inländischen Börse zugelassen, muss die Gegenleistung mindestens dem gewichteten durchschnittlichen inländischen Börsenkurs dieser Aktien während der letzten drei Monate vor der Veröffentlichung nach § 10 Abs. 1 Satz 1 oder § 35 Abs. 1 Satz 1 des Wertpapiererwerbs- und Übernahmegesetzes entsprechen.

(2) Sind die Aktien der Zielgesellschaft zum Zeitpunkt der Veröffentlichung nach § 10 Abs. 1 Satz 1 oder § 35 Abs. 1 Satz 1 des Wertpapiererwerbs- und Übernahmegesetzes noch keine drei Monate zum Handel an einer inländischen Börse zugelassen, so muss der Wert der Gegenleistung mindestens dem gewichteten durchschnittlichen inländischen Börsenkurs seit der Einführung der Aktien in den Handel entsprechen.

(3) Der gewichtete durchschnittliche inländische Börsenkurs ist der nach Umsätzen gewichtete Durchschnittskurs der Bundesanstalt für Finanzdienstleistungsaufsicht (Bundesanstalt) nach § 9 des Wertpapierhandelsgesetzes als börslich gemeldeten Geschäfte.

(4) Sind für die Aktien der Zielgesellschaft während der letzten drei Monate vor der Veröffentlichung nach § 10 Abs. 1 Satz 1 oder § 35 Abs. 1 Satz 1 des Wertpapiererwerbs- und Übernahmegesetzes an weniger als einem Drittel der Börsentage Börsenkurse festgestellt worden und weichen mehrere nacheinander festgestellte Börsenkurse um mehr als 5 Prozent voneinander ab, so hat die Höhe der Gegenleistung dem anhand einer Bewertung der Zielgesellschaft ermittelten Wert des Unternehmens zu entsprechen.

stock exchange, the consideration must correspond, at the least, to the weighted domestic stock exchange price of these shares during the three months prior to the publication pursuant to § 10(1) sentence 1 or § 35(1) sentence 1 of the Securities Acquisition and Takeover Act.

(2) If the shares of the Target Company, at the time of the publication pursuant to § 10(1) sentence 1 or § 35(1) sentence 1 of the Securities Acquisition and Takeover Act, have been admitted to trading on a domestic stock exchange for less than three months, then the value of the consideration shall correspond, at the least, to the weighted average domestic stock exchange price since the introduction of the shares to trading.

(3) The weighted average domestic stock exchange price is the average price of all transactions reported as stock exchange transactions to the Federal Financial Supervisory Authority (Federal Authority) pursuant to § 9 of the Securities Trading Act, weighted in accordance with turnover.

(4) If within the last three months prior to the publication pursuant to § 10(1) sentence 1 or § 35(1) sentence 1 of the Securities Acquisition and Takeover Act stock exchange prices have been determined for the shares of the Target Company on less than one-third of the stock exchange business days, and if several consecutively determined stock exchange prices deviate from one another by more than 5% then the amount of the consideration shall correspond to the value of the enterprise determined on the basis of a Target Company valuation.

§ 6. Berücksichtigung ausländischer Börsenkurse (1) Sind die Aktien der Zielgesellschaft ausschließlich zum Handel an einem organisierten Markt im Sinne des § 2 Abs. 7 des Wertpapiererwerbs- und Übernahmegesetzes in einem anderen Staat des Europäischen Wirtschaftsraums im Sinne des § 2 Abs. 8 des Wertpapiererwerbs- und Übernahmegesetzes zugelassen, muss die Gegenleistung mindestens dem durchschnittlichen Börsenkurs während der letzten drei Monate vor der Veröffentlichung nach § 10 Abs. 1 Satz 1 oder § 35 Abs. 1 Satz 1 des Wertpapiererwerbs- und Übernahmegesetzes des organisierten Marktes mit den höchsten Umsätzen in den Aktien der Zielgesellschaft entsprechen.

(2) Sind die Aktien der Zielgesellschaft zum Zeitpunkt der Veröffentlichung nach § 10 Abs. 1 Satz 1 oder § 35 Abs. 1 Satz 1 des Wertpapiererwerbs- und Übernahmegesetzes noch keine drei Monate zum Handel an einem Markt im Sinne des Absatzes 1 zugelassen, so muss der Wert der Gegenleistung mindestens dem durchschnittlichen Börsenkurs seit Einführung der Aktien in den Handel an diesem Markt entsprechen.

(3) Der durchschnittliche Börsenkurs ist der Durchschnittskurs der börsentäglichen Schlussauktion der Aktien der Zielgesellschaft an dem organisierten Markt. Wird an dem organisierten Markt nach Absatz 1 keine Schlussauktion durchgeführt, ist der Durchschnittskurs auf der Grundlage anderer, zur Bildung eines Durchschnittskurses geeigneter Kurse, die börsentäglich festgestellt werden, zu bestimmen.

§ 6. Taking into Account Foreign Stock Exchange Prices (1) If the shares of the Target Company are admitted to trading exclusively on an organized market within the meaning of § 2(7) of the Securities Acquisition and Trading Act in another State of the European Economic Area within the meaning of § 2(8) of the Securities Acquisition and Trading Act, the consideration shall correspond, at the least, to the average stock exchange price during the three months prior to the publication pursuant to § 10(1) sentence 1 or § 35(1) sentence 1 of the Securities Acquisition and Takeover Act of the organized market with the highest turnover in the Target Company's shares.

(2) If the shares of the Target Company, at the time of the publication pursuant to § 10(1) sentence 1 or § 35(1) sentence 1 of the Securities Acquisition and Takeover Act, have been admitted to trading on a market within the meaning of subsection (1) for less than three months, then the value of the consideration shall correspond, at the least, to the weighted average stock exchange price since the introduction of the shares to trading on this market.

(3) The average stock exchange price is the average price of the stock exchange day closing auction of the Target Company's shares on the organized market. If no closing auction takes place on the organized market pursuant to subsection (1), the average price shall be determined on the basis of other market values which are determined on a stock exchange day basis and which are suitable for forming an average price.

(4) Werden die Kurse an dem organisierten Markt nach Absatz 1 in einer anderen Währung als in Euro angegeben, sind die zur Bildung des Mindestpreises herangezogenen Durchschnittskurse auf der Grundlage des jeweiligen Tageskurses in Euro umzurechnen.

(5) Die Grundlagen der Berechnung des durchschnittlichen Börsenkurses sind im Einzelnen zu dokumentieren.

(6) § 5 Abs. 4 ist anzuwenden

§ 7. Bestimmung des Wertes der Gegenleistung Besteht die vom Bieter angebotene Gegenleistung in Aktien, sind für die Bestimmung des Wertes dieser Aktien die §§ 5 und 6 entsprechend anzuwenden.

Vierter Abschnitt. Befreiung von der Verpflichtung zur Veröffentlichung und zur Abgabe eines Angebots

§ 8. Antragstellung Der Antrag auf Befreiung von der Pflicht zur Veröffentlichung nach § 35 Abs. 1 Satz 1 des Wertpapiererwerbs- und Übernahmegesetzes und zur Abgabe eines Angebots nach § 35 Abs. 2 Satz 1 des Wertpapiererwerbsund Übernahmegesetzes ist vom Bieter bei der Bundesanstalt zu stellen. Der Antrag kann vor Erlangung der Kontrolle über die Zielgesellschaft und innerhalb von sieben Kalendertagen nach dem Zeitpunkt gestellt werden, zu dem der Bieter Kenntnis davon hat oder nach den Umständen haben musste, dass er die Kontrolle über die Zielgesellschaft erlangt hat.

§ 9. Befreiungstatbestände Die Bundesanstalt kann insbesondere eine Befreiung von den in § 8 Satz 1 genannten Pflichten erteilen bei Erlangung der Kontrolle über die Zielgesellschaft:

(4) If the prices on the organized market pursuant to subsection (1) are quoted in a currency different from the Euro, the average prices which are being used to form the minimum price shall be converted into Euro on the basis of the prevailing daily exchange rate.

(5) The basis of the calculation of the average stock exchange price shall be documented in detail.

(6) § 5(4) shall apply.

§ 7. Determination of the Value of the Consideration If the consideration offered by the offeror consists of shares, §§ 5 and 6 shall apply analogously for the determination of the value of these shares.

Fourth Division. Exemption from the Obligation to Publish and to Make an Offer

§ 8. Making an Application Any application for the exemption from the obligation to publish pursuant to § 35(1) sentence 1 of the Securities Acquisition and Takeover Act and to make an offer pursuant to § 35(2) sentence 1 of the Securities Acquisition and Takeover Act shall be filed by the offeror at the Federal Authority. The application may be filed prior to the attainment of control over the Target Company and within seven calendar days after the point in time when the offeror has knowledge or according to the circumstances must have knowledge, that he or she has attained control over the Target Company.

§ 9. Exemption Requirements The Federal Authority may in particular grant an exemption from the obligation designated in § 8 sentence 1 in particular upon the attainment of control over the Target Company:

1. durch Erbschaft oder im Zusammenhang mit einer Erbauseinandersetzung, sofern Erblasser und Bieter nicht verwandt im Sinne des § 36 Nr. 1 des Wertpapiererwerbs- und Übernahmegesetzes sind,

1. through inheritance or in connection with a settlement of an inherited estate, provided that the heirs and the offeror are not related within the meaning of § 36 number 1 of the Securities Acquisition and Takeover Act,

2. durch Schenkung, sofern Schenker und Bieter nicht verwandt im Sinne des § 36 Nr. 1 des Wertpapiererwerbs- und Übernahmegesetzes sind,

2. by a gift, provided that the person making the gift and the offeror are not related within the meaning of § 36 number 1 of the Securities Acquisition and Takeover Act;

3. im Zusammenhang mit der Sanierung der Zielgesellschaft,

3. in connection with a reorganization of the Target Company;

4. zum Zwecke der Forderungssicherung,

4. for the purpose of securing claims;

5. auf Grund einer Verringerung der Gesamtzahl der Stimmrechte an der Zielgesellschaft,

5. on the basis of a reduction of the total number of voting rights in the Target Company;

6. ohne dass dies vom Bieter beabsichtigt war, soweit die Schwelle des § 29 Abs. 2 des Wertpapiererwerbs- und Übernahmegesetzes nach der Antragstellung unverzüglich wieder unterschritten wird.

6. without this having been intended by the offeror, provided that he or she falls below the threshold in § 29(2) of the Securities Acquisition and Takeover Act without undue delay after the application.

Eine Befreiung kann ferner erteilt werden, wenn:

Furthermore, an exemption may be granted if:

1. ein Dritter über einen höheren Anteil an Stimmrechten verfügt, die weder dem Bieter noch mit diesem gemeinsam handelnden Personen gemäß § 30 des Wertpapiererwerbs- und Übernahmegesetzes gleichstehen oder zuzurechnen sind,

1. a third party has a higher portion of voting rights at his disposal which are not equated with voting rights of, or attributed to, the offeror or persons acting jointly therewith pursuant to § 30 of the Securities Acquisition and Takeover Act;

2. auf Grund des in den zurückliegenden drei ordentlichen Hauptversammlungen vertretenen stimmberechtigten Kapitals nicht zu erwarten ist, dass der Bieter in der Hauptversammlung der Zielgesellschaft über mehr als 50 Prozent der vertretenen Stimmrechte verfügen wird,

2. on the basis of the capital entitled to vote and represented at the three most recent ordinary shareholders' meetings, it is not expected that the offeror will have more than 50% of the represented voting rights at his disposal in the Target Company's shareholders' meeting;

3. auf Grund der Erlangung der Kontrolle über eine Gesellschaft mittelbar die Kontrolle an einer Zielgesellschaft im Sinne des § 2 Abs. 3 des Wertpapiererwerbs- und Übernahmegesetzes erlangt wurde und

3. on the basis of the attainment of control over a company, indirect Control over a Target Company within the meaning of § 2(3) of the Securities Acquisition and Takeover Act has been attained and the book value of the company's interest in the Target Company

der Buchwert der Beteiligung der Gesellschaft an der Zielgesellschaft weniger als 20 Prozent des buchmäßigen Aktivvermögens der Gesellschaft beträgt.

amounts to less than 20% of the company's balance sheet assets.

§ 10. Antragsinhalt Der Antrag muss folgende Angaben enthalten:

§ 10. Contents of the Application The application must contain the following particulars:

1. Name oder Firma und Wohnsitz oder Sitz des Antragstellers,

1. the name or the company name and the residential address or domicile of the applicant;

2. Firma, Sitz und Rechtsform der Zielgesellschaft,

2. company name, domicile and legal form of the Target Company;

3. Anzahl der vom Bieter und den gemeinsam handelnden Personen bereits gehaltenen Aktien und Stimmrechte und die ihnen nach § 30 des Wertpapiererwerbsund Übernahmegesetzes zuzurechnenden Stimmrechte,

3. number of the shares and voting rights already held by, and the voting rights which pursuant to § 30 of the Securities Acquisition and Takeover Act shall be attributed to, the offeror and the persons acting jointly therewith;

4. Tag, an dem die Schwelle des § 29 Abs. 2 des Wertpapiererwerbs- und Übernahmegesetzes überschritten wurde, und

4. day on which the threshold pursuant to § 29(2) of the Securities Acquisition and Takeover Act was exceeded; and

5. die den Antrag begründenden Tatsachen.

5. the facts on which the application is based.

§ 11. Antragsunterlagen Die zur Beurteilung und Bearbeitung des Antrags erforderlichen Unterlagen sind unverzüglich bei der Bundesanstalt einzureichen.

§ 11. Application Documents The documents required for the evaluation and processing of the application shall be submitted to the Federal Authority without undue delay.

§ 12. Prüfung der Vollständigkeit des Antrags Die Bundesanstalt hat nach Eingang des Antrags und der Unterlagen zu prüfen, ob sie den Anforderungen der §§ 10 und 11 entsprechen. Sind der Antrag oder die Unterlagen nicht vollständig, so hat die Bundesanstalt den Antragsteller unverzüglich aufzufordern, den Antrag oder die Unterlagen innerhalb einer angemessenen Frist zu ergänzen. Wird der Aufforderung innerhalb der von der Bundesanstalt gesetzten Frist nicht entsprochen, gilt der Antrag als zurückgenommen.

§ 12. Verification of the Completeness of the Application After receipt of the application and the documents, the Federal Authority shall verify whether they comply with the requirements of §§ 10 and 11. If the application and the documents are incomplete, the Federal Authority shall, without undue delay, request the applicant to complete the application or the documents within a reasonable period of time. If the request is not complied with within the period set by the Federal Authority, the application shall be considered withdrawn.

Fünfter Abschnitt. Schlussvorschrift

Fifth Division. Final Provision

§ 13. Inkrafttreten Diese Verordnung tritt am 1. Januar 2002 in Kraft.

§ 13. Coming into Force This regulation shall come into force on 1 January 2002.

Appendix 6
WpÜG Fees Regulation

WpÜG-Gebührenverordnung

WpÜG-Gebührenverordnung vom 27. Dezember 2001 (BGBl. I S. 4267), zuletzt geändert durch Artikel 2 Absatz 65 des Gesetzes vom 7. August 2013 (BGBl. I S. 3154) (Verordnung aufgehoben durch Art. 4 Abs. 54 des Gesetzes vom 7. August 2013 (BGBl. I 3154) mit Wirkung vom 14.8.2018)

Auf Grund des § 47 Satz 2 des Wertpapiererwerbs- und Übernahmegesetzes vom 20. Dezember 2001 (BGBl. I S. 3822) in Verbindung mit dem 2. Abschnitt des Verwaltungskostengesetzes vom 23. Juni 1970 (BGBl. I S. 821) verordnet das Bundesministerium der Finanzen:

§ 1. Anwendungsbereich Die Bundesanstalt für Finanzdienstleistungsaufsicht (Bundesanstalt) erhebt zur Deckung der Verwaltungskosten für die nachfolgend aufgezählten Handlungen nach dem Wertpapiererwerbs- und Übernahmegesetz Gebühren und Auslagen nach Maßgabe dieser Verordnung.

§ 2. Gebührenpflichtige Handlungen (1) Gebührenpflichtige Handlungen sind:

WpÜG Fees Regulation

WpÜG Fees Regulation dated 27 December 2001 (Federal Gazette I, p. 4267), last amended by Article 2 subsection 65 of the Act dated 7 August 2013 (Federal Gazette I, p. 2417) (Regulation repealed with effect as of 14 August 2018 pursuant to Art. 4 paragr. 54 of the Act dated 7 August 2013 (Federal Gazette I 3154))

On the basis of § 47 sentence 2 of the Securities Acquisition and Takeover Act of 20 December 2001 (Federal Gazette I, p. 3822) in connection with the Second Division of the Administration Costs Act of 23 June 1970 (Federal Gazette I, p. 821), the Federal Ministry of Finance issues the following regulation:

§ 1. Scope of Application The Federal Financial Supervisory Authority ('Federal Authority') levies fees and expenses in accordance with this regulation to cover the administration costs for the acts pursuant to the Securities Acquisition and Takeover Act described hereinafter.

§ 2. Acts subject to Fees (1) Acts subject to fees are:

1. die Entscheidung über einen Antrag auf gleichzeitige Vornahme der Mitteilung und der Veröffentlichung nach § 10 Abs. 2 Satz 3 des Wertpapiererwerbs- und Übernahmegesetzes,

2. die Gestattung der Veröffentlichung der Angebotsunterlage oder das Verstreichenlassen der in § 14 Abs. 2 Satz 1 des Wertpapiererwerbs- und Übernahmegesetzes genannten Frist,

3. die Untersagung des Angebotes nach § 15 Abs. 1 oder 2 des Wertpapiererwerbsund Übernahmegesetzes,

4. die Entscheidung über einen Antrag auf Befreiung nach § 20 Abs. 1 des Wertpapiererwerbs- und Übernahmegesetzes,

5. die Entscheidung über einen Antrag auf Ausnahme bestimmter Inhaber von Wertpapieren von einem Angebot nach § 24 des Wertpapiererwerbs- und Übernahmegesetzes,

6. die Untersagung von Werbung nach § 28 Abs. 1 des Wertpapiererwerbs- und Übernahmegesetzes,

7. die Entscheidung über einen Antrag auf Nichtberücksichtigung von Aktien der Zielgesellschaft bei der Berechnung des Stimmrechtsanteils nach § 36 des Wertpapiererwerbs- und Übernahmegesetzes,

8. die Entscheidung über einen Antrag auf Befreiung von der Verpflichtung, zur Veröffentlichung und zur Abgabe eines Angebotes nach § 37 Abs. 1 des Wertpapiererwerbs- und Übernahmegesetzes,

9. die vollständige oder teilweise Zurückweisung eines Widerspruchs nach § 41 in Verbindung mit § 6 des Wertpapiererwerbs- und Übernahmegesetzes.

1. the decision of an application for simultaneous notification and publication pursuant to § 10(2) sentence 3 of the Securities Acquisition and Takeover Act;

2. the approval of the publication of the offer document or the passing of the deadline described in § 14(2) sentence 1 of the Securities Acquisition and Takeover Act;

3. the prohibition of the Offer pursuant to § 15(1) or (2) of the Securities Acquisition and Takeover Act;

4. the decision of an application for an exemption pursuant to § 20(1) of the Securities Acquisition and Takeover Act;

5. the decision of an application for the exclusion of certain holders of Securities from an Offer pursuant to § 24 of the Securities Acquisition and Takeover Act;

6. the prohibition of advertising pursuant to § 28(1) of the Securities Acquisition and Takeover Act;

7. the decision of an application for the non-consideration of the Target Company's shares when calculating the voting rights portion pursuant to § 36 of the Securities Acquisition and Takeover Act;

8. the decision of an application for the release from the obligation to publish and to make an Offer pursuant to § 37(1) of the Securities Acquisition and Takeover Act;

9. the complete or partial rejection of an objection pursuant to § 41 in connection with § 6 of the Securities Acquisition and Takeover Act.

(2) Eine Gebühr wird auch erhoben, wenn ein Antrag auf Vornahme einer nach Absatz 1 Nr. 1, 4, 5, 7 oder Nr. 8 gebührenpflichtigen Handlung nach Beginn der sachlichen Bearbeitung, jedoch vor deren Beendigung zurückgenommen wird.

§ 3. Auslagen Als Auslagen werden die Kosten der Veröffentlichung nach § 44 des Wertpapiererwerbs- und Übernahmegesetzes sowie die Kosten, die im Rahmen des Widerspruchsverfahrens den Mitgliedern des Widerspruchsausschusses für die Teilnahme an den Sitzungen entstehen, erhoben. Im Übrigen gilt § 23 Absatz 6 des Bundesgebührengesetzes.

§ 4. Höhe der Gebühren (1) Die Gebühr beträgt für individuell zurechenbare öffentliche Leistungen

1. nach § 2 Abs. 1 Nr. 1:	1 000 Euro,
2. nach § 2 Abs. 1 Nr. 4:	2 000 Euro bis 5 000 Euro,
3. nach § 2 Abs. 1 Nr. 5, 6 oder 7:	3 000 Euro bis 10 000 Euro,
4. nach § 2 Abs. 1 Nr. 8:	5 000 Euro bis 20 000 Euro,
5. nach § 2 Abs. 1 Nr. 2 oder 3:	10 000 Euro bis 100 000 Euro.

(2) Die Gebühr beträgt für Entscheidungen über Widersprüche gegen individuell zurechenbare öffentliche Leistungen

1. nach § 2 Abs. 1 Nr. 1: 2 000 Euro,
2. nach § 2 Abs. 1 Nr. 4: 4 000 Euro bis 10 000 Euro,
3. nach § 2 Abs. 1 Nr. 5, 6 oder 7: 6 000 Euro bis 20 000 Euro,
4. nach § 2 Abs. 1 Nr. 8: 10 000 Euro bis 40 000 Euro,
5. nach § 2 Abs. 1 Nr. 3: 20 000 Euro bis 200 000 Euro.

(2) A fee shall also be paid if an application for an act subject to a fee pursuant to sub-section 1, number 1, 4, 5, 7 or 8 is withdrawn after the processing of the application has commenced and before the processing is completed.

§ 3. Expenses The costs of the publication pursuant to § 44 of the Securities Acquisition and Takeover Act as well as the costs arising for the members of the objection committee in the framework of the objection proceedings for their participation in the meetings shall be levied as expenses. § 23(6) of the Federal Fees Act shall also apply.

§ 4. Amount of the Fees (1) The fee for individually attributable public servicesshall be as follows:

1. pursuant to § 2(1) number 1:	EUR 1,000;
2. pursuant to § 2(1) number 4:	EUR 2,000 to 5,000;
3. pursuant to § 2(1) number 5, 6 or 7:	EUR 3,000 to 10,000;
4. pursuant to § 2(1) number 8:	EUR 5,000 to 20,000;
5. pursuant to § 2(1) number 2 or 3:	EUR 10,000 to 100,000.

(2) The fee for decisions on objections against individually attributable public servicesshall be as follows:

1. pursuant to § 2(1) number 1: EUR 2,000;
2. pursuant to § 2(1) number 4: EUR 4,000 to 10,000;
3. pursuant to § 2(1) number 5, 6 or 7: EUR 6,000 to 20,000;
4. pursuant to § 2(1) number 8: EUR 10,000 to 40,000;
5. pursuant to § 2(1) number 3: EUR 20,000 to 200,000.

Die Gebühr beträgt für Entscheidungen über Widersprüche gegen individuell zurechenbare öffentliche Leistungen nach § 4 Abs. 1 Satz 3 oder § 10 Abs. 1 Satz 3 des Wertpapiererwerbs- und Übernahmegesetzes: 3 000 Euro bis 10 000 Euro.

(3) Im Fall einer Antragsrücknahme nach § 2 Abs. 2 ist die Hälfte der für die beantragte individuell zurechenbare öffentliche Leistungvorgesehenen Gebühr zu entrichten.

§ 5 (weggefallen)

§ 6. Inkrafttreten Diese Verordnung tritt am 1. Januar 2002 in Kraft.

The fee for decisions on objections against individually attributable public services pursuant to § 4 (1) sentence 3 or § 10(1) sentence 3 of the Securities Acquisition and Takeover Act shall be between EUR 3,000 and 10,000.

(3) If an application is withdrawn pursuant to § (2) or becomes irrelevant in any other way after the Federal Authority has commenced its processing, half of the fee payable for the requested individually attributable public service shall be paid.

§ 5 (repealed)

§ 6. Coming into Force This Regulation shall come into force on 1 January 2002.

APPENDIX 7
WpÜG Advisory Committee Regulation

WpÜG-Beiratsverordnung

Verordnung über die Zusammensetzung, die Bestellung der Mitglieder und das Verfahren des Beirats bei der Bundesanstalt für Finanzdienstleistungsaufsicht (WpÜG-Beiratsverordnung vom 27. Dezember 2001 (BGBl. I S. 4259)), zuletzt geändert durch Artikel 368 der Verordnung vom 31. Oktober 2006 (BGBl. I S. 2407)

Auf Grund des § 5 Abs. 2 Satz 1 des Wertpapiererwerbs- und Übernahmegesetzes vom 20. Dezember 2001 (BGBl. I S. 3822) verordnet das Bundesministerium der Finanzen:

§ 1. Bestellung von Stellvertretern für Mitglieder des Beirats Für jedes Mitglied des Beirats ist ein erster und zweiter Stellvertreter zu bestellen. Scheidet ein Mitglied des Beirats vorzeitig aus, rückt sein Stellvertreter bis zum Ablauf der ursprünglichen Bestellung des ausgeschiedenen Mitglieds nach. Steht kein Stellvertreter zur Verfügung, erfolgt eine Nachbestellung bis zum Ablauf der ursprünglichen Bestellung des ausgeschiedenen Mitglieds.

WpÜG Advisory Committee Regulation

Regulation Pertaining to the Composition, the Appointment of Members and the Procedures of the Advisory Committee of the Federal Financial Supervisory Authority (WpÜG Advisory Committee Regulation dated 27 December 2001 (Federal Gazette I, p. 4259)), last amended by Article 368 of the Regulation of 31 October 2006 (Federal Gazette I, p. 2407)

Pursuant to § 5(2) sentence 1 of the Securities Acquisition and Takeover Act dated 20 December 2001 (Federal Gazette I, p. 3822), the Federal Ministry of Finance issues the following regulation:

§ 1. Appointment of Deputies of Members of the Advisory Committee A first and a second deputy shall be appointed for each member of the Advisory Committee. If a member of the Advisory Committee leaves the office prematurely, its deputy shall replace the member until the lapse of the original period of office of the leaving member. If no deputy is available, a replacement appointment shall be made for the time period of the original period of office of the leaving member.

§ 2. Vorzeitige Beendigung der Mitgliedschaft Die Mitgliedschaft im Beirat erlischt außer mit Ablauf der Amtszeit durch vorzeitige Beendigung. Das Bundesministerium der Finanzen kann die Mitgliedschaft durch Widerruf der Bestellung aus wichtigem Grund vorzeitig beenden. Ein wichtiger Grund liegt insbesondere dann vor, wenn ein Mitglied nicht mehr der Gruppe nach § 5 Abs. 1 Satz 2 des Wertpapiererwerbs- und Übernahmegesetzes angehört, zu deren Vertretung es bestellt wurde, oder ein Mitglied den Widerruf der Bestellung aus persönlichen Gründen beantragt.

§ 3. Sitzungen des Beirats (1) Der Präsident der Bundesanstalt bestimmt den Termin der Sitzung. Sitzungen sind auch auf Antrag von mindestens acht Mitgliedern anzuberaumen. Der Präsident lädt die Mitglieder des Beirats sowie die Vertreter der Bundesministerien der Finanzen, der Justiz sowie für Wirtschaft und Technologie zu den Sitzungen des Beirats ein. Die Einladung muss die Zeit und den Ort der Sitzung sowie die Tagesordnung enthalten. Kann ein Mitglied an der Sitzung nicht teilnehmen, so hat es den Präsidenten der Bundesanstalt hierüber unverzüglich zu unterrichten.

(2) Die Sitzungen des Beirats sind nicht öffentlich. Der Präsident kann weitere Vertreter der Bundesanstalt zu der Sitzung hinzuziehen. Die Mitglieder des Beirats unterliegen der Verschwiegenheitspflicht nach § 9 Abs. 1 des Wertpapiererwerbs- und Übernahmegesetzes.

§ 4. Beschlussfassung Der Beirat ist beschlussfähig, wenn mindestens acht Mitglieder anwesend sind. In der Sitzung hat jedes Mitglied eine Stimme. Beschlüsse des Beirats bedürfen der einfachen Mehrheit der abgegebenen Stimmen. Für die Unterbreitung der Vorschläge für die ehrenamtlichen Mitglieder des Widerspruchsausschusses und deren Vertreter ist eine Mehrheit von zwei Dritteln der Mitglieder erforderlich.

§ 5. Protokolle (1) Über die Sitzungen und Beschlüsse ist von der Bundesanstalt ein Protokoll zu fertigen, das der Sitzungsleiter und der Protokollführer zu unterzeichnen haben. Das Protokoll muss Angaben enthalten über:

1. den Ort und den Tag der Sitzung,
2. die Namen der anwesenden Personen,
3. die behandelten Gegenstände der Tagesordnung,
4. die Ergebnisse und gefassten Beschlüsse.

Die Wirksamkeit der gefassten Beschlüsse ist nicht von ihrer Protokollierung abhängig. Das Protokoll ist den Mitgliedern des Beirats und den sonstigen Teilnehmern zu übersenden.

(2) Das Protokoll gilt als genehmigt, wenn innerhalb von drei Werktagen nach seiner Übersendung kein Mitglied schriftlich Einwendungen erhoben hat. Über Einwendungen entscheidet der Sitzungsleiter abschließend.

§ 6. Entschädigung der Mitglieder Die Mitglieder des Beirats verwalten ihr Amt als unentgeltliches Ehrenamt. Sie erhalten für ihre Tätigkeit Tagegelder und Reisekostenvergütung nach den Richtlinien des Bundesministeriums der Finanzen über die Abfindung der Mitglieder von Beiräten, Ausschüssen, Kommissionen und ähnlichen Einrichtungen im Bereich des Bundes vom 9. November 1981 (GMBl S. 515), zuletzt geändert durch das Rundschreiben des Bundesministeriums der Finanzen vom 19. März 1997 (GMBl S. 172).

§ 7. Inkrafttreten Diese Verordnung tritt am 1. Januar 2002 in Kraft.

§ 2. Premature Termination of Membership The membership in the Advisory Committee shall terminate, other than by the lapse of the period of the office, by premature termination. The Federal Ministry of Finance may by revocation of the appointment terminate the membership prematurely for cause. Cause shall exist in particular if a member no longer belongs to the group pursuant to § 5(1) sentence 2 of the Securities Acquisition and Takeover Act for whose representation it has been appointed, or if a member applies for revocation of appointment for personal reasons.

§ 3. Meetings of the Advisory Committee (1) The president of the Federal Authority determines the time of the meeting. Meetings shall also be called upon application by at least eight members. The president invites the members of the Advisory Committee as well as the representatives of the Federal Ministries of Finance, Justice and Economy and Technology to the meetings of the Advisory Committee. The invitation shall state the time and place of the meeting as well as the agenda. Any member who cannot participate in a meeting shall without undue delay inform the president of the Federal Authority accordingly.

(2) The meetings of the Advisory Committee shall not be public. The president may call additional representatives of the Federal Authority to the meeting. The members of the Advisory Committee shall be subject to the secrecy obligation pursuant to § 9(1) of the Securities Acquisition and Takeover Act.

§ 4. Adoption of Resolutions The Advisory Committee shall have a quorum if at least eight members are present. Each member has one vote in the meeting. Resolutions of the Advisory Committee require a simple majority of the votes cast. The submission of nominations for the honorary assessors of the Appeal Committee and their representatives shall require a two-thirds majority of the members.

§ 5. Minutes (1) The Federal Authority shall prepare minutes of the meeting and the resolutions which shall be signed by the person chairing the meeting and the person preparing the minutes. The minutes shall contain information concerning:

1. the place and date of the meeting;
2. the names of the persons present;
3. the topics of the agenda that have been dealt with;
4. the results and the adopted resolutions.

The validity of the adopted resolutions shall be independent of their recording in the minutes. The minutes shall be sent to the members of the Advisory Committee and any other participants.

(2) The minutes shall be deemed to be approved if no member has raised objections in writing within three working days after the sending of the minutes. The person chairing the meeting shall conclusively decide upon any objections.

§ 6. Compensation of the Members The members of the Advisory Committee shall administer their office as an unremunerated honorary post. For their activities, they shall receive daily allowances and reimbursement of travel costs in accordance with the guidelines of the Federal Ministry of Finance for the compensation of members of advisory committees, delegations and commissions and similar institutions of the Federation dated 9 November 1981 (GMBl, p. 515), last amended by the circular of the Federal Ministry of Finance dated 19 March 1997 (GMBl, p. 172).

§ 7. Coming into Force This Regulation shall come into force on 1 January 2002.