

New Rules for Major Holdings of Voting Rights in Germany

On 20 January 2007, the *Transparenzrichtlinie-Umsetzungsgesetz* (Transparency Directive Implementation Act) came into effect in Germany implementing the European Transparency Directive 2004/109/EC. The German directive effected some significant changes to the disclosure requirements of German listed corporations, such as material alterations to the share ownership notification rules in the *Wertpapierhandelsgesetz* (German Securities Trading Act – WpHG).

Pursuant to section 21, clause 1 of the WpHG, anyone whose share of a domestic listed company's voting rights equals, exceeds or falls below 3%, 5%, 10%, 15%, 20%, 25%, 30%, 50% or 75% as a result of a purchase or sale, or by any other means, is obliged to inform the listed company and the German Federal Financial Supervisory Authority (BaFin) that he or she has achieved, exceeded or fallen below the aforementioned thresholds. In addition to direct holdings of voting rights, with effect from 20 January 2007 capital market participants also have to file notifications when they hold certain financial instruments with which shares can be acquired. In this case, however, the opening threshold has been set to 5%.

Ultimately, any change in voting rights must be reported to the listed company and BaFin without undue delay – i.e. within four trading days at the latest (section 21 WpHG). The listed company must also pass on the notification without undue delay – within three trading days at the latest – to “a combination of media for Europe-wide dissemination” and to the [company register](#) which stores the data.

On 11 February 2011, the German Parliament has passed an Act on the Strengthening of Investor Protection and Improved Functioning of the Capital Markets (*Anlegerschutz- und Funktionsverbesserungsgesetz*). It includes amendments to various sections of the WpHG and the Investment Act (*Investmentgesetz*). The amended notification obligations under the new Act will come into force on 1 February 2012.

Under the new section 25a WpHG, the notification obligation is extended to all financial and other instruments that are not already subject to notification under other provisions and which, based on their legal structure, entitle the owner to purchase issued shares carrying voting rights from the listed company. Such holdings of financial instruments must be reported to the listed company and BaFin even if the listed company of the instrument does not have any influential right on the buying of such voting rights or even if a purchase is not being considered at all. In this case, the threshold for notification is also 5%.

In respect of such reporting under sections 25 and 25a WpHG, BaFin has published on 25 January 2012 a [Q&A note](#) to demonstrate its view on such reporting obligations.

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