

Ordinance

by the Saxon State Ministry for Economic Affairs and Labour regarding Procedures for Obtaining Permissions and Procedures for the Notification of Significant Shareholdings according to the German Exchange Act (Saxon Procedural Ordinance regarding the Exchange Act - SächsBörsGVfVO)

= Article 1 of the Ordinance by the Saxon State Ministry for Economic Affairs and Labour for the Enactment of Implementing Provisions regarding the Exchange Act (Saxon Implementing Regulations regarding the Exchange Act - SächsBörsGDVO)

of 16th January 2009

Art. 1 Scope of Application

This Ordinance shall apply with regard to applications for a permission to establish and operate an exchange to be granted according to art. 4 paragraph 2 of the German Exchange Act (BörsG) of 16th July 2007 (German Federal Law Gazette I page 1330, 1351), which was amended by article 11 of the law of 21st December 2007 (German Federal Law Gazette page 3089, 3137), and with regard to notifications of significant shareholdings according to art. 6 paragraphs 1, 5 and 6 BörsG.

Art. 2 Type, extent and time of application

(1) The application shall contain the following:

1. a balance sheet and a profit and loss account by the applicant regarding the full business year preceding the application in order to furnish evidence of the availability of the funds required to operate an exchange according to art. 4 paragraph 2 sentence 2 figure 1, art. 5 paragraph 5 BörsG;
2. a) a complete curriculum vitae signed in person, which must contain all first names, the name at birth, the date of birth, the place of birth, the home address and nationality, a detailed presentation of the professional educational background, the names of all companies by which the person concerned was employed and information on the type of the respective work for these, including secondary activities with the exception of work in an honorary capacity; as regards the respective work the actual authority of said person, his/her internal decision-making competences and the business divisions of which said person was in charge within the company shall be described in particular, and
b) a declaration signed in person with regard to whether criminal proceedings against said person are currently being pursued, whether criminal proceedings were pursued against said person on charges of a crime or an offence at any prior time or whether said person or a company managed by it was or is involved in insolvency proceedings or in proceedings regarding the execution of an affirmation in lieu of an oath or comparable proceedings in the capacity of a debtor. The form enclosed with this ordinance as an Annex shall be used for said declaration. Criminal proceedings discontinued on grounds of lack of reasonable suspicion of an offence or on grounds of procedural bars or criminal proceedings which ended

in an acquittal or with regard to which registrations effected in the Federal Central Criminal Register were removed or deleted do not have to be considered in the declaration,

according to art. 4 paragraph 2 sentence 2 figure 2 BörsG in order to assess the reliability and the professional qualification of a managing director of the company operating the exchange;

3. a business plan specifying the asset or right intended for exchange trading according to art. 4 paragraph 2 sentence 2 figure 3 BörsG. A market concept and contract specifications regarding the designated commodity or its derivative have to be added for commodity and commodity futures exchanges according to art. 2 paragraph 3 BörsG. In the case of a network-bound commodity, the transport of such shall also be described; moreover, an expert opinion on the marketability and saleability of the network-bound commodity shall be submitted upon a request to that end by the exchange supervisory authority.
4. the declaration required according to figure 2 lit. 4 in order to assess the reliability of the holder of a significant shareholding according to art. 4 paragraph 2 sentence 2 figure 5 BörsG. Moreover, a complete and signed curriculum vitae, which must comprise the full name as well as information on the stages of the professional career of the holder, records regarding the origin of the funds used for the acquisition and, in case a reliability test was carried out by another authority, records of such a test and its result shall be handed in subsequently upon a request to that end by the exchange supervisory authority in so far as this is required for the assessment of the holder's reliability.

Art. 4 paragraph 2 sentence 3 BörsG shall not be affected.

(2) The application can be restricted to the information according to paragraph 1 figure 1 and 3 in as far as such application exclusively aims at the expansion of exchange trading to assets or rights which are not covered by an existing permission.

(3) The full application according to paragraph 1 shall be submitted to the exchange supervisory authority at the latest three months prior to the intended establishment of the exchange and the full application as per paragraph 2 shall be submitted to the exchange supervisory authority at the latest two months prior to the intended admission of the assets or rights to exchange trading.

Art. 3 **Type and scope of notification**

(1) In order to assess the reliability of the party in charge of submitting the notification said notification shall comprise a declaration signed in person according to the form described in art. 2 paragraph 1 sentence 1 fig. 2 lit. b. In case the party in charge of notification is

1. an organised market according to art. 2 paragraph 5 of the German Act on Securities Trading (German Securities Trading Act - WpHG) in the version as announced on 9th September 1998 (German Federal Law Gazette I page 2708), which was last amended by article 1 of the law of 12th August 2008 (German Federal Law Gazette I page 1666), in the respectively valid version,

2. a supervised credit institution according to art. 1 paragraph 1 sentence 1 of the German Act regarding Credit Services (Credit Services Act - KWG) in the version as announced on 9th September 1998 (German Federal Law Gazette I page 2776), which was last amended by article 3 of the law of 13th August 2008 (German Federal Law Gazette I page 1690, 1704), a supervised institution with registered offices in a member country of the European Economic Area or a third country for which alleviations were ordered in a statutory instrument according to art. 53c fig. 2 KWG or the supervised holder of a significant shareholding of such an institution according to art. 2c paragraph 1, 1a or 4 KWG or
3. a supervised insurance company within the meaning of art. 1 paragraph 1 figure 1 of the German Law regarding the Supervision of Insurance Companies (Insurance Supervision Law - VAG) in the version as announced on 17th December 1992 (German Federal Law Gazette 1993 I page 2), which was last amended by article 4 of the law of 13th August 2008 (German Federal Law Gazette I page 1690, 1704), in the respectively valid version or of art. 110a paragraph 1 VAG with registered offices in a member country of the European Economic Area or a supervised holder of a significant shareholding according to art. 104 paragraph 1 or 3 VAG,

the respective exceptional fact shall be specified and the declaration as per sentence 1 shall only be submitted upon a request to that end by the exchange supervisory authority. Upon a request to that end by the exchange supervisory, a complete and signed curriculum vitae, which must comprise the full name as well as information on the stages of the professional career of the party in charge of the notification, records of the origin of the funds employed for the acquisition and, in as far as a reliability test was carried out by another authority, records of this examination and its result shall be handed in subsequently in addition to the notification in as far as this is required in order to assess whether the party in charge of notification is reliable or whether there are reasons for a prohibition according to art. 6 paragraph 2 sentence 1 BörsG. In case the person in charge of notification is a legal entity or a business partnership, sentences 1 to 4 shall apply accordingly with regard to the legal or statutory representatives or the personally liable partners.

(2) In the event of notifications according to art. 6 paragraph 1 sentence 5 BörsG, the holder of a significant shareholding shall furnish evidence of the essential facts required for the assessment of his/her reliability subject to the provisions of paragraph 1 with regard to each new legal or statutory representative appointed or each new personally liable partner.

Art. 4

Form of the application or notification

The application or notification shall be submitted in writing to the following address:

Sächsisches Staatsministerium für Wirtschaft und Arbeit
[Saxon State Ministry for Economic Affairs and Labour]
Börsenaufsichtsbehörde
[Exchange Supervisory Authority]
Wilhelm-Buck-Straße 2
01097 Dresden
Germany

Declaration¹

1. **Name:** _____
2. **All first names:** _____
3. **Name at birth:** _____
4. **Date of birth:** _____
5. **Place of birth:** _____
6. **Home address:** _____
7. **Nationality:** _____

I hereby assert that criminal proceedings are not pursued against me at the moment and that criminal proceedings on charges of a crime or an offence have not been pursued against me at an earlier time and that neither I nor a company managed by me is or was involved in insolvency proceedings or proceedings for the execution of an affirmation in lieu of an oath or comparable proceedings in the capacity of a debtor.

Place and date

Signature

¹ _____
The information regarding figures 1 to 7 has to be typewritten or entered in print.

