



Overview

Regulatory Clearance of Qualifying Holdings

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Scope

A regulatory clearance must be considered when the acquisition, increase, or divestiture of a qualifying holding in an institution is planned.

Institution (Target)

- Credit institutions
- Financial service providers
- Investment firms
- Payment institutions
- Electronic money institutions
- et al.

Acquisition, Increase or Divestiture

The acquisition or divestiture of a qualifying holding must be notified. Additionally, a notification is required if a holding reaches, exceeds or falls below the thresholds of 20%, 30%, or 50% of the capital or voting rights, or if control over an institution is obtained or relinquished.

- Typical scenarios include, aside from direct shareholdings in an institution, for example changes in ownership structures at the parent company level, corporate restructuring measures, or voting rights agreements.
- Furthermore, actions taken by other shareholders may trigger notification obligations for previously uninvolved shareholders.

Qualifying Holding

A qualifying holding in the institution can result from:

- directly or indirectly holding 10% or more of the capital,
- directly or indirectly holding 10% or more of the voting rights or
- other forms of significant influence over the management.

→ In case of complex holding structures, accurately determining the relevant percentages can be challenging (e.g., in scenarios involving the attribution of voting rights).

Parties Required to Notify

The obligation to notify applies to the proposed acquirer, the holder of a qualifying holding (in cases of divestiture or when the holdings exceed or fall below the thresholds), and the institution itself (as part of notifying a “passive” qualifying holding).

→ In participations chains, all direct and indirect shareholders are in principle required to notify.

Conducting the Regulatory Clearance of Qualifying Holdings

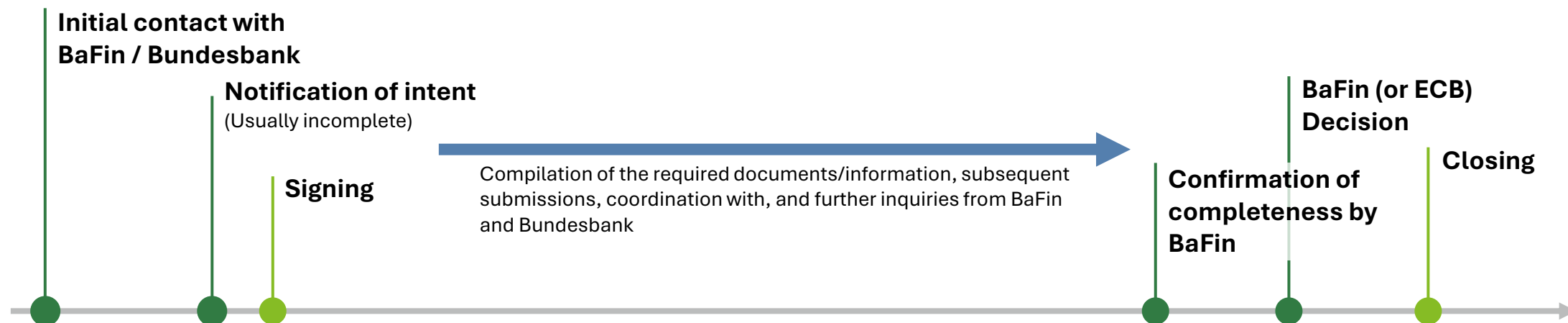
The regulatory clearance does often not take place within the statutory deadlines but is often dependent on the practical challenges of obtaining documents and information.

The legal requirements stipulate a process that begins with a (complete) notification followed by specific review steps by BaFin (and in case of credit institutions under CRR by ECB), which are tied to deadlines. In practice, this process is often deviated from since the required documents and information are usually not complete at the time of the notification.

Extensive documentation and information must be submitted for the clearance. This includes details regarding the reliability of the parties required to notify or their governing bodies (e.g., police records, extract from the central trade register), regarding the existence and economic origin of funds (e.g., annual financial statements, audit reports), regarding strategic objectives (e.g., strategic intentions for the institution's business development, business plan), and the ownership structure.

Exemptions may apply e.g., to already previously assessed proposed acquirers, indirect shareholdings in groups, and authorised institutions as proposed acquirers.

→ Simplified overview of a typical clearance procedure:



Key Factors for Project Planning

A regulatory clearance of qualifying holdings is not merely a formality but a critical requirement for the closing of the transaction.

The regulatory clearance of qualifying holdings constitutes a significant additional hurdle compared to unregulated transactions. It is therefore absolutely necessary to take regulatory requirements into account during the project planning phase. These requirements may include, but are not limited to, the following aspects:



Timeline

A regulatory clearance can cause substantial delays, extending the period between signing and closing by several months.



Share Purchase Agreement

The successful completion of the regulatory clearance must be included as a condition in the Share Purchase Agreement. It is also recommended to include information rights within the agreement, as typically only the acquirer has insight into the clearance procedure.



Support by Indirect Acquirers or Holders

The support of indirect acquirers or holders of a qualifying holding is indispensable for the regulatory clearance. Specifically in complex and multi-layered structures in corporate groups or in family businesses, the commitment of indirect acquirers or holders of a qualifying holding is indispensable for the success of the project.



Centralized Coordination

A successful regulatory clearance requires centralized coordination. A central point of contact is necessary, with access to all parties required to notify. In the case of particularly sensitive acquirers or holders, the collection of required documents and information may be entrusted to a third party, such as a trusted lawyer or tax advisor of the acquirer or holder.



Early Identification of Obstacles

Potential obstacles must be identified before the project begins. This is often relevant in cases where certain indirect shareholders cannot be reached, for example in the context of foreign holding structures or certain state-owned holdings.

A clear project planning ensures the success of the regulatory clearance and the transaction

... and the regulatory requirements do not end with the closing. Both direct and indirect holders are subject to ongoing obligations, such as the notification requirement following changes to the holders' managing bodies. Further regulatory clearances in case of future corporate restructurings must also be taken into account.

Our Services and Contacts

We offer flexible and comprehensive support in all stages of the regulatory clearance of qualifying holdings.

We are happy to support you with our profound and proven expertise with regulatory clearances for qualifying holdings of any scope, including:



sound legal assessment of shareholding structures regarding the qualification of qualifying holdings,



sound provisions on the clearance of qualifying holdings in Share Purchase Agreements,



cost-effective and timely execution of the clearance of qualifying holdings,



quality assurance through internally prepared documents and forms and



coordinated and target-aimed communication with regulatory authorities.



... further information about Deloitte's services:
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