

Unofficial translation of *Besluit prudentiële regels Wft* dated 12 October 2006.

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(Text applicable as at 08-02-2008 / 04-08-2008)

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## **Decree of 12 October 2006, with regard to prudential rules for financial undertakings that operate in the financial markets (Decree on Prudential Rules pursuant to the Act on Financial Supervision)**

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We Beatrix, by the grace of God, Queen of the Netherlands, Princess of Orange-Nassau, etc. etc. etc.

On the recommendation of Our Minister of Finance of 27 June 2006, no. FM 2006-01567 M;

Taking into consideration the sections 3:9, third subsection, 3:10, second and third subsection, 3:17, second subsection, 3:18, second and third subsection, 3:29, third subsection, 3:36, fourth subsection, 3:40, 3:41, 3:42, 3:43, second subsection, 3:47, sixth subsection, 3:48, 3:52, 3:53, third subsection, 3:54, third subsection, 3:55, second subsection, 3:57, second and seventh subsection, 3:59, second subsection, 3:62, second subsection, 3:63, second subsection, 3:67, fourth subsection, 3:71, second subsection, 3:72, fifth and seventh subsection, 3:73, 3:74, second subsection, 3:78, second subsection, 3:81, second subsection, 3:83, second subsection, 3:87, second subsection, 3:88, fourth subsection, 3:89, first subsection, 3:96, third and fourth subsection, 3:99, third subsection, of the Act on Financial Supervision and the directives no. 73/239/EEC, 85/611/EEC, 88/357/EEC, 91/674/EEC, 92/49/EEC, 93/6/EEC, 93/22/EEC, 2000/12/EC, 2000/46/EC and 2002/83/EC;

Having consulted the Council of State (opinion of 27 July 2006, no. W06.06.0265/IV;

Having seen the more detailed report of Our Minister of Finance of 9 October 2006, no. FM 2006-2352 M;

Have approved and decreed the following:

### **Chapter 1. Introductory provisions**

#### **Section 1**

The following definitions apply in this Decree:

*back-to-back loan*: credit instrument whereby cash or financial instruments are made available to the borrower, for which collateral is provided to the lender, directly or indirectly, from the own liquid assets of the borrower;

*business line*: separate category of activities, referred to in Appendix X, part 2, table 2, of the *Recast Banking Directive*;

*convertible currencies*: currencies of:

- a. the states that are part of the G10;
- b. the other states that are party to the European Economic Area Agreement; or
- c. Australia or New Zealand;

*redeemable funds*: short-term receivables that are due on demand and that have to be repaid no later than two days after the demand for payment or the cancellation;

*entity for securitisation purposes*: undertaking:

- a. that is not a credit institution;
- b. that has been established for the purpose of one or several securitisations;
- c. whose activities are limited to what is necessary for these securitisations;
- d. whose establishment serves to divide its liabilities from the liabilities of the initiator; and
- e. whose owners can unconditionally pledge or sell their participation;

*covered bond*: bond with regard to which the following criteria are fulfilled:

- a. the bond has been or will be issued by a bank having its registered office in the Netherlands;
- b. the bond is covered by assets which, if the issuing bank should default, will be used with priority towards the redemption of the principal sum and the payment of interest on the bond;
- c. the assets have been secured for the benefit of the bond holders:
  - 1°. through a transfer under universal or particular title to a legal person whose only object is to accomplish the state of affairs referred to under (b) and through the establishment of a pledge or a security right under foreign law equivalent to a pledge for the benefit of another such legal entity; or
  - 2°. in a different manner, to be specified by ministerial regulation;

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d. the assets provide sufficient security during the term of the bond for the redemption of the principal sum and the payment of interest on the bond, and for payments relating to the management and administration of the assets;

e. the assets are governed by the law of a Member State, the United States of America, Canada, Japan, the Republic of Korea, Hong Kong, Singapore, Australia, New Zealand or Switzerland; and

f. the issuing bank does not own a shareholding in the legal persons referred to under (c)(1°), does not exercise decisive control over those legal entities and is not entitled to an ownership stake in those legal entities in any other way;

*registered covered bond*: bond pertaining to a category which:

a. is included in a list of which the details have been made available to the public by the Commission of the European Communities pursuant to Article 22(4) of the UCITS Directive, or

b. has been registered in accordance with section 124b;

*group director*: every person who determines the policy within a group;

*group of affiliated counterparties*: at least two people who:

a. are affiliated with each other in a formal or actual control structure; or

b. should be considered as one from the viewpoint of the risks entailed because they are interconnected in such a manner that, in the event that one of the parties were to experience financial difficulties, at least one of the other parties would probably encounter difficulties in meeting payment obligations;

*large positions*: non-risk weighted assets and off-balance sheet items in respect of a counterparty or group of affiliated counterparties of which the value amounts to at least ten percent of the qualifying capital, with the exception of:

a. the assets and off-balance sheet items, which a financial undertaking deducts from its qualifying capital;

b. the non-risk weighted assets and off-balance sheet items that are maintained in connection with the normal settlement of:

1°. currency transactions within 48 hours after the payment has taken place;

2°. securities transactions within five working days after the payment has taken place or after the securities have been delivered, in case this delivery takes place earlier;

*incident*: conduct or event that forms a serious threat for the sound pursuit of the business operations of the financial undertaking in question;

*initiator*: undertaking that:

a. itself or through another undertaking was a party directly or indirectly in the original agreement with which the obligations or potential obligations of the debtor or potential debtor that is being securitised, have arisen; or

b. purchases a receivable from a third party, incorporates this receivable in its balance sheet, and subsequently securitises this receivable;

*integrity-sensitive position*:

a. management position directly under that of the persons who determine or co-determine the policy of a financial undertaking; or

b. a position to which an authority is linked that entails a substantial risk for the sound pursuit of the business operations of a financial undertaking;

*integrity risk*: threat of harm to the reputation or existing or future threats to the capital or result of a financial undertaking due to insufficient compliance with that which has been stipulated by virtue of any statutory regulation;

*international accounting standards*: international accounting standards that have been declared applicable by the Committee of the European Union in accordance with section 3 of directive (EC) no. 1606/2002 of the European Parliament and of the Council of the European Union 19 July 2002 (PbEG L 243);

*internal models method*: method whereby the total of the risk-weighted assets and off-balance sheet items for the credit risks of a financial undertaking is determined on the basis of an internal model;

*schedule item*: asset or liability item of which the cash inflow or cash outflow respectively due to the repayment of interest payments are included in the maturity schedule;

*probability of default*: probability that a counterparty remains in default over a period of one year;

*cash flow of the core activities*: cash flow from loans with a fixed term that have been extended to counterparties, which are not branches and banking participations which are not included in the reporting, which are not credit institutions and not professional money market parties, and of these counterparties with fixed term borrowed funds, including the interest to be received or to be paid respectively;

*credit rating*: estimate of the probability of default and the degree of default of a certain debtor with

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regard to all of its obligations or part of its obligations;

*credit rating agency*: an agency that issues credit ratings;

*credit risk reduction*: technique to limit the credit risk that is linked to assets and off-balance sheet items;

*credit improvement*: contractual arrangement that reduces the probability of default and the degree of default of a securitisation position compared to the situation as it would be if the arrangement did not exist;

*lending financial undertaking*: financial undertaking that has a receivable, regardless whether that receivable is based on a loan;

*monthly period*: first calendar month following the reporting date;

*non-fully paid up credit protection*: credit risk reduction whereby the credit risk in respect of a receivable of a financial undertaking is limited by the guarantee of a third party to pay out a certain amount in the event of default of the counterparty or in the event of other events specified in the credit protection agreement that result in payment under the agreement or settlement of the agreement;

*official stand-by facilities*: liquidity guarantee that, under conditions specified by the Dutch Central Bank, has been received or issued by a domestic or a foreign bank;

*inverse retrocession agreement*: agreement whereby a counterparty sells securities, commodities or guaranteed rights concerning the ownership of securities or commodities to a financial undertaking, under the resolutive condition to buy back these or substituting securities or commodities at a fixed price at a point in time in the future to be determined by the counterparty, in the event that:

- a. in the case of guaranteed rights, the guarantee is issued by a regulated market who is the holder of the rights; and
- b. the agreement determines that the financial undertaking is not allowed to transfer or promise a specific security or a specific commodity to more than one counterparty at the same time;

*conversion factor*: relationship between the unused amount at a given moment of a credit line that is expected to be used and is available in the event of default and the unused amount of that credit line, whereby the size of the credit line is determined by the approved limit, unless the unapproved limit is higher;

*operational risk*: risk of losses due to inadequate or failing internal procedures and systems or due to external events, including legal risks;

*taken up securities loan*: agreement whereby a counterparty lends securities to a financial undertaking against collateral, under the resolutive condition that the financial undertaking delivers equivalent securities back at a point in time in the future or as soon as the counterparty requests this;

*taken up commodities loan*: agreement whereby a counterparty lends commodities to a financial undertaking against collateral, under the resolutive condition that the financial undertaking delivers equivalent commodities back at a point in time in the future or as soon as the counterparty requests this;

*professional money market party*: a person who is not a bank and that enters into transactions on the money market in connection with its treasury management in volumes that are in accordance with the money market and is active on this market on a regular basis in a manner that is comparable to that of a bank;

*retrocession agreement*: agreement whereby a financial undertaking sells securities, commodities or guaranteed rights concerning the ownership of securities or commodities to a counterparty, under the resolutive condition to buy back these or substituting securities or commodities at a fixed price at a point in time in the future to be determined by the financial undertaking, in the event that:

- a. in the case of guaranteed rights, the guarantee is issued by a regulated market who is the holder of the rights; and
- b. the agreement determines that the financial undertaking is not allowed to transfer or promise a specific security or a specific commodity to more than one counterparty at the same time;

*revolving receivable*: receivable whereby the counterparty is allowed to vary the outstanding amount up to a limit agreed in advance;

*risk measurement system*: system for the measuring of the operational risk;

*securitisation*: transaction or arrangement whereby:

- a. the credit risk of a receivable or collection of receivables are subdivided into at least two tranches;
- b. the payments to be made in connection with the transaction or arrangement depend on the performance of the receivable or the collection of receivables; and
- c. the order of ranking of the tranches determines the distribution of the losses during the term of the transaction or arrangement;

*securitisation position*: receivable in connection with a securitisation;

*sponsor*: undertaking, not being an initiator, who structures and manages securitisation agreements whereby receivables from third parties are bought, structured and managed;

*stress test*: investigation into the risks that arise when changes in the market situation occur or would

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occur that have a negative effect on the adequacy of the qualifying capital of a financial undertaking, and into the risks that arise when security rights are exercised in crisis situations;

*additional contributions*: contributions that the management of a mutual association can demand from its members by virtue of its articles of association in connection with a negative balance in any specific financial year at all times and without additional conditions;

*synthetic securitisation*: securitisation whereby:

- a. the division in tranches of the credit risk of a receivable or collection of receivables takes place through credit derivatives or guarantees; and
- b. the receivable or collection of receivables remains included in the balance sheet total of the initiator;

*counterparty credit risk*: risk that the counterparty remains in default in a transaction before the final settlement of the cash flows related to the transaction has taken place;

*traditional securitisation*: securitisation whereby:

- a. the securitised receivables are transferred in an economic sense to an entity for securitisation purposes who issues securities for this purpose;
- b. the ownership of the securitised receivables is transferred by the initiator or the cash flow from the securitised receivables is transferred by the initiator through an agreement of sub-participation; and
- c. the issued securities do not result in a payment obligation for the initiator;

*tranche*: contractually specified segment of the credit risk of a securitised receivable or collection of receivables, whereby a securitisation position in this segment entails a larger or smaller risk of loss than a securitisation position of the same size in each other segment, if no account is taken of the paid-up or not paid-up credit protection that is provided by third parties directly to the holders of the securitisation positions in this segment or in other segments;

*loss given default*: relationship between the expected economic loss on a receivable due to default, taking into consideration the time value of money, and the expected outstanding amount in the event of default;

*reporting date*: date of the day directly preceding the reporting period;

*extended securities loan*: agreement whereby a financial undertaking lends securities to a counterparty against collateral, under the resolutive condition that the counterparty delivers equivalent securities back at a point in time in the future or as soon as the financial undertaking requests this;

*extended commodities loan*: agreement whereby a financial undertaking lends commodities to a counterparty against collateral, under the resolutive condition that the counterparty delivers equivalent commodities back at a point in time in the future or as soon as the financial undertaking requests this;

*maturity schedule*: summary of contractual terms of agreements concluded by a financial undertaking;

*early redemption provision*: contractual provision by virtue of which the securitisation positions of investors are fully or partially redeemed before the original maturity date of the issued securities;

*expected loss*: product of the probability of default, the loss given default and the value of an asset or off-balance sheet item;

*dilution risk*: risk that the value of a current trade receivable decreases as a result of credit entries to the account of the debtor;

*fully paid-up credit protection*: credit risk mitigation whereby the credit risk with regard to a receivable of a financial undertaking is limited by the right of this financial undertaking to, in the event of default of the counterparty or in the event of other specific events in connection with the counterparty that have or can have consequences for the credit risk with regard to the receivable:

- a. realise certain assets or off-balance sheet items;
- b. acquire certain assets or off-balance sheet items;
- c. acquire or retain the ownership of certain assets or off-balance sheet items;
- d. reduce the value of certain assets or off-balance sheet items; or
- e. replace the value of certain assets or off-balance sheet items by the difference between this value and the value of a debt owed by the financial undertaking;

*inventory items*: liquid assets that are not included in the maturity schedule;

*exposure value*: value of non-risk-weighted asset or off-balance sheet item;

*value of the qualified participation*: purchase price of a share, at the time of the acquisition or expansion of the qualified participation, multiplied by the number of acquired shares;

*default*:

- a. situation in which a financial undertaking considers it unlikely that a debtor will fulfil its obligation in full vis-à-vis the financial undertaking, the parent company or one of the subsidiaries of the financial undertaking without the financial undertaking, the parent company or one of the subsidiaries having to take measures; or
- b. situation in which a debtor has been in default for more than ninety days in fulfilling a

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considerable obligation vis-à-vis a financial undertaking, the parent company or one of the subsidiaries of the financial undertaking;

*weekly period*: first seven calendar days following the reporting date;

*the Act*: the Act on Financial Supervision (*Wet op het financieel toezicht; Wft*).

## **Section 2**

The sections 1, 4, 5 up to and including 25, 27 up to and including 31, 35, 48, 50, 59 up to and including 62, 89 up to and including 94, 102, 103, 138, 139, and 145 apply, insofar as they are applicable to banks, mutatis mutandis to financial undertakings that have a supervisory status certificate as referred to in section 3:110 of the Act.

## **Section 3**

Chapter 10 does not apply to investment firms that exclusively provide an investment service as referred to under a or d of the definition of to provide an investment service in section 1:1 of the Act. Contrary to section 130, an investment firm as referred to in the previous sentence only provides statements for the supervision of the compliance with the rules with regard to the minimum amount of equity capital by virtue of the sections 3:53, first subsection, and 3:54, first subsection, of the Act. The sections 131 up to and including 133 apply mutatis mutandis.

## **Section 4**

1. Calculations with regard to the minimum amount of equity capital, the solvency and the liquidity by virtue of chapters 9, 10 or 11 respectively, are, insofar as not determined otherwise, performed on the basis of the individual financial reports as prepared in accordance with Title 9 Book 2 of the Dutch Civil Code or the international accounting standards.
2. Calculations with regard to the solvency of credit institutions by virtue of chapter 10 and the liquidity of banks by virtue of chapter 11 are, insofar as not determined otherwise, performed based on the consolidated financial statements if these are prepared in accordance with Title 9 of Book 2 of the Dutch Civil Code or international accounting standards.

## **Chapter 2. Properness**

### **Provisions for the implementation of the sections 3:9, third subsection, and 3:99, third subsection, of the Act**

## **Section 5**

The Dutch Central Bank determines whether the properness of a person as referred to in Section 3:9, first subsection, 3:11, 3:13, 3:37, third subsection and fourth subsection, 3:47, first and fifth subsection, 3:99, first subsection, or 3:149 of the Act is beyond doubt based on this person's intentions, actions and antecedents.

## **Section 6**

In establishing a person's properness as referred to in Section 5, the Dutch Central Bank will consider in any event:

- a. the criminal antecedents referred to in sections 1 and 2 of Annex A;
- b. the financial antecedents referred to in section 3 of Annex A;
- c. the supervision antecedents referred to in section 4 of Annex A;
- d. the fiscal antecedents under administrative law referred to in section 5 of Annex A; and
- e. the other antecedents referred to in section 6 of Annex A.

## **Section 7**

1. The Dutch Central Bank will obtain insight into the intentions, actions and antecedents referred to in Section 5 on the basis of:
  - a. details and information provided by the person concerned;
  - b. details from the police files obtained from the National Public Prosecutor;
  - c. details from the registration referred to in Section 1, subsection b, of the Companies (Documentation) Act (*Wet documentatie vennootschappen*);
  - d. details and information obtained from the Dutch Tax and Customs Administration (*Belastingdienst*);
  - e. details and information obtained from Dutch or foreign government bodies or from Dutch or foreign government-appointed bodies that are charged with the supervision of financial markets, or of persons operating in those markets;
  - f. official reports from the Public Prosecution Service;
  - g. information obtained from references provided by the person in question;
  - h. information from public sources;
  - i. information obtained from liquidators or administrators with regard to liquidations, moratoriums, debt restructuring, the imposition of administration or emergency regulations in which the person referred to in Section 5 was involved;

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- j. information obtained from organisations of current or former professional colleagues of the person in question; or
  - k. details and information obtained from other sources to be designated by ministerial regulation.
2. If the details or information obtained in accordance with the first subsection cause the Dutch Central Bank to carry out a further investigation, the Dutch Central Bank may also gather information and request details from persons or bodies other than those referred to in that subsection. In that event, the Dutch Central Bank will first inform the person in question in writing of:
- a. the reason for the further investigation;
  - b. the persons or bodies from whom further details or information will be requested; and
  - c. the nature of the further details or information.

#### **Section 8**

The properness of a person as referred to in section 5 will not be beyond doubt if this person has been convicted of a crime as referred to in section 1 of annex A, unless eight or more years have elapsed since the judgment became final.

#### **Section 9**

In establishing a person's properness as referred to in section 5, the Dutch Central Bank will consider:

- a. the interrelationship between the action or actions underlying an antecedent and the other circumstances of the case;
- b. the interests that the Act is intended to protect; and
- c. the other interests of the clearing institution, the credit institution or the insurer and of the person in question.

### **Chapter 3. Sound pursuit of the business operations**

#### **Provisions for the implementation of the sections 3:10, first, second and third subsection, and 3:17, second subsection, opening words and section b, of the Act.**

##### **Section 10**

- 1. A clearing institution, credit institution, insurer or branch as referred to in section 3:10, first subsection, 3:11, 3:12, 3:13 of 3:14 of the Act provides for a systematic analysis of integrity risks.
- 2. The financial undertaking, or the branch, ensures that the policy, referred to in section 3:10, first subsection, of the Act is translated into procedures and measures.
- 3. The financial undertaking, or the branch respectively, informs all relevant business units of the policy and the procedures and measures.
- 4. The financial undertaking, or the branch respectively, provides for the execution and the systematic assessment of the policy and the procedures and measures.
- 5. The financial undertaking, or the branch respectively, ensures that there is independent supervision of the execution of the policy and the procedures and measures with regard to the sound pursuit of the business operations and has established procedures that ensure that identified shortcomings or defects are reported to the responsible person, referred to in section 21.
- 6. The financial undertaking, or the branch respectively, has established procedures that ensure that identified shortcomings with regard to the sound pursuit of the business operations of the undertaking supervised by the responsible persons, referred to in section 21, lead to a fitting adjustment.

##### **Section 11**

- 1. A clearing institution, credit institution, insurer or branch as referred to in section 3:17, first subsection, 3:23, 3:26 of 3:27 of the Act has established procedures and measures with regard to the prevention of conflicts of interest of:
  - a. persons who determine the policy of the financial undertaking;
  - b. group directors;
  - c. members of the body that is responsible for supervising the policy and the general course of affairs of the financial undertaking; and
  - d. other employees or other persons who perform work for the financial undertaking on a structural basis at the instruction of the financial undertaking, with its interests or the interest of its clients.
- 2. The credit institution or insurer, or the branch respectively, has established procedures and measures with regard to the provision of financial services based on employment conditions to persons who determine the policy of the financial undertaking and group directors.
- 3. Providing financial services by the credit institution or insurer, or the branch respectively, based on employment conditions to persons who determine the policy of the financial undertaking or group directors only takes place within the normal business operations and each time only takes place with the prior approval of the body that is responsible for the supervision of the policy and the general course of affairs of the financial undertaking or on behalf of a body that has been appointed for this purpose.

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4. Providing financial services by the credit institution or insurer, or the branch respectively, to persons who determine the policy of the financial undertaking or group directors, in the event that the service is provided outside of the framework of the financial undertaking's existing system of employment conditions, only takes place in the course of the normal business operations and against the usual commercial terms and conditions and collateral.
5. Providing financial services by the credit institution or insurer, or the branch respectively, to members of the body that is responsible for supervising the policy and the general course of affairs of the financial undertaking, as well as to family members, not being employees, of persons who determine the policy of the financial undertaking, of group directors and of members of the body that is responsible for supervising the policy and the general course of affairs of the financial undertaking, only takes place in the course of the normal business operations of the undertaking and against the usual commercial terms and conditions and collateral.

#### **Section 12**

1. A clearing institution, credit institution, insurer or branch as referred to in section 11, first subsection, has established procedures and measures concerning the handling and recording of incidents.
2. The financial undertaking, or branch respectively, takes measures following an incident that are aimed at controlling the risks that have occurred and at preventing repetition.
3. The financial undertaking, or the branch respectively, immediately informs the Dutch Central Bank about any incidents.

#### **Section 13**

1. A clearing institution, credit institution, insurer or branch as referred to in section 11, first subsection, makes a substantiated assessment of the properness of persons whom they wish to appoint to an integrity sensitive position.
2. The financial undertaking, or the branch respectively, provides for the assessment of the properness of those whom, other than by virtue of an employment agreement, carry out duties in an integrity sensitive position.

#### **Section 14**

1. A credit institution, life insurer or branch as referred to in section 11, first subsection, has established procedures and measures with regard to the acceptance of clients in view of a sound pursuit of the business operations.
2. Without prejudice to the provisions of the Money Laundering and Terrorist Financing Prevention Act the credit institution or life insurer, or the branch respectively, have established procedures and measures with regard to the determining of the identity of clients and the verification thereof. The credit institution, life insurer, or branch respectively, does not accept a client when the identity has not been determined in accordance with the policy that has been formulated with regard to the identification of clients.
3. In view of a sound pursuit of the business operations, the financial undertaking, or branch respectively, has established organisational and administrative procedures and measures with regard to risk classifications pertaining to clients, products or services.
4. The financial undertaking, or branch respectively, has established procedures and measures with regard to the analysis of client information, also in relation to the products and services purchased by the client, and with regard to the detection of deviating transaction patterns. Based on the abovementioned procedures and measures, the financial undertaking also determines the risks of specific clients, products or services for the sound pursuit of its business.
5. The financial undertaking, or branch respectively, provides for the documentation with regard to the acceptance and classification according to risk of clients, the identification and verification of the details of clients and the monitoring of the transactions of clients. Such information is stored up to five years after the services have been provided or up to five years after the termination of the relationship with the client.
6. In view of sound pursuit of the business operations, the Dutch Central Bank can lay down rules with regard to the policy of credit institutions and branches of credit institutions as referred to in the first subsection with regard to protected accounts.

#### **Section 15**

1. A credit institution or branch of a credit institution as referred to in section 11, first subsection, has established procedures with regard to the provision of back-to-back loans.
2. If the credit institution or the branch intends to provide a back-to-back loan, it investigates whether the loan will be used for legitimate purposes.
3. When a back-to-back loan is provided, the credit institution or the branch carefully documents the agreement stating the provided essential collateral.

#### **Section 16**

1. A financial undertaking or branch as referred to in section 11, first subsection, investigates, at the

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request of the Dutch Central Bank, whether certain persons or institutions listed in its administration, whom in the opinion of Our Minister, in connection with suspected terrorist activities or activities related thereto, could harm the integrity of the financial sector.

2. The financial undertaking provides the outcome of the investigation referred to in the first subsection, within a term specified by the Dutch Central Bank, to the Dutch Central Bank.

## **Chapter 4. Controlled pursuit of the business operations**

### **§ 4.1. General aspects of business operations**

#### **Provisions for the implementation of section 3:17, second subsection, opening words and section a, of the Act**

##### **Section 17**

1. The business operations of a clearing institution, credit institution, insurer or branch as referred to in section 3:17, first subsection, 3:23, 3:26 or 3:27 of the Act comprise:
  - a. a clear and adequate organisational structure;
  - b. a clear and adequate division of tasks, authorities and responsibilities;
  - c. an adequate documentation of rights and obligations;
  - d. unambiguous reporting lines; and
  - e. an adequate system of information provision and communication.
2. The business operations are aligned with the nature, size, risks and complexity of the activities of the financial undertaking or branch.
3. The business operations are documented in a clearly structured manner.
4. The effectiveness of the structure of the organisation and of the procedures and measures are audited at least annually in an independent manner. To this end, the financial undertaking or the branch has established an organisational unit that performs this internal audit function. The financial undertaking or branch ensures that identified deficiencies are remediated.

##### **Section 17a**

The organisational unit, referred to in section 17, fourth subsection, of a bank as referred to in section 3:17, first subsection, or 3:23, second subsection, of the Act that may provide investment services or investment activities in the Netherlands, has the task of:

- a. establishing and implementing an audit plan to examine and assess the soundness and effectiveness of the systems, internal control procedures and rules of the bank;
- b. making recommendations based on the results of the activities, referred to in section a;
- c. verifying whether these recommendations are followed up; and
- d. reporting at least annually to the persons who determine the day-to-day policy of the bank and to the body, if present, that is responsible for supervising the policy and the general course of affairs of the bank with regard to matters concerning the internal audit and the measures taken in the event of identified deficiencies.

##### **Section 18**

A clearing institution, credit institution, insurer or branch as referred to in section 17 has established an adequate segregation of duties and responsibilities with a view to a controlled pursuit of the business operations.

##### **Section 19**

The business operations of a clearing institution, credit institution, insurer or branch as referred to in section 17 provide for a correct, timely and complete record of all rights and obligations of the financial undertaking or branch in an administration specifically established for this purpose.

##### **Section 20**

1. A clearing institution, credit institution, insurer or branch as referred to in section 17 has an information system that enables effective control of the business processes and the risks and that provides for internal and external information requirements.
2. The financial undertaking or branch has established procedures and measures to ensure the integrity, ongoing availability and security of the computerised processing of information.
3. The segregation of duties and responsibilities within the computerised processing of information are in accordance with the organisational structure.

##### **Section 21**

1. A clearing institution, credit institution, insurer or branch as referred to in section 17 has established an organisational unit that exercises a compliance function in an independent and effective manner. The organisational division has the task to verify the compliance with statutory rules and internal rules that the financial undertaking or the branch has laid down.
2. The organisational unit, referred to in the first subsection, of a bank as referred to in section 3:17, first subsection, or 3:23, second subsection, of the Act, that may provide investment services or investment activities in the Netherlands, also has the task of:



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- a. advising persons who are responsible for providing investment services or for performing investment activities with regard to the compliance with the statutory rules and internal rules;
  - b. supervising the soundness and effectiveness of the internal rules and procedures;
  - c. assessing the effectiveness of the procedures that have been established and measures that have been taken to resolve identified deficiencies in the compliance with statutory rules and internal rules; and
  - d. reporting at least annually to the persons who determine the day-to-day policy of the bank and to the body, if present, that is responsible for supervising the policy and the general course of affairs of the bank with regard to matters concerning the compliance with statutory rules and internal rules. The annual reporting states, in particular, whether measures have been taken in the event of identified shortcomings.
3. The organisational unit of a bank, as referred to in the second subsection, has the required authority, resources, expertise and access to all necessary information to be able to perform its tasks independently and effectively.

#### **Section 22**

The instruction to audit the financial statements of a clearing institution, credit institution, insurer or branch, as referred to in section 17, given to the external auditors includes high-level testing and assessment with regard to the adequacy of the structure of the organisation and risk management.

#### **Section 22a**

The employees of a bank, that has a licence as referred to in section 2:11 of the Act and that may provide investment services or may carry out investment activities in the Netherlands and other persons who have been commissioned to perform such activities by such a bank possess the required competence and expertise to exercise the responsibilities they are entrusted with.

### **§ 4.2. Risk management**

#### **Provisions for the implementation of section 3:17, second subsection, opening words and under c of the Act**

#### **Section 23**

1. An investment firm, clearing institution, credit institution, insurer or branch as referred to in section 3:17, first and third subsections, 3:22, 3:23, 3:26 or 3:27 of the Act, pursues a policy aimed at managing relevant risks.
2. Relevant risks, as referred to in the first subsection, include, in particular, the concentration risk, credit and counterparty risk, liquidity risk, market risk, operational risk, interest-rate risk resulting from non-trading activities, residual risk, securitisation risk and insurance risk. A bank, investment firm or clearing institution as referred to in section 3:17, first or third subsections, 3:22, 3:23 or 3:27 of the Act also takes into account the risks that follow from the macroeconomic environment in which the firm operates and that are related to the stage in the economic cycle.
3. The policy is laid down in procedures and measures to manage the relevant risks and is integrated in the business processes.
4. The procedures and measures, referred to in the third subsection, also consist of authorisation procedures, imposing limits, monitoring limits and procedures and measures for emergency situations and are aligned with the nature, the size, the risk profile and the complexity of the activities of the financial undertaking or branch.
5. The procedures and measures referred to in the third subsection, are determined and communicated to all relevant business units of the financial undertaking or the branch.
6. The financial undertaking has an independent risk management function that carries out independent risk management in a systematic manner that is aimed at identifying, measuring and evaluating the risk to which financial undertakings or branches are or can be exposed. The risk management is carried out both with regard to the financial undertaking or the branches as a whole and with regard to the separate business units.

#### **Section 23a**

1. A bank as referred to in section 3:17, first subsection, or 3:23 of the Act, clearly documents the procedures for the acceptance, revision, renewal and refinancing of loans.
2. For the continuous administration and monitoring of the various portfolios and receivables that entail a credit risk, including the detection and the management of problem loans, performing adequate value adjustments and making provisions, effective systems are used.
3. The bank ensures that the diversification of the loan portfolio is in accordance with the target markets and the general lending strategy of the bank.

#### **Section 23b**

1. The procedures and measures, referred to in section 23, third subsection, which are aimed at the liquidity risk, concern the management of the current and future net financial position and

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requirements.

2. A bank, investment firm or clearing institution, as referred to in section 23, second subsection, second sentence, considers alternative scenarios and the hypotheses underlying decisions concerning the net financial position, are regularly subject to a new examination.

#### **Section 23c**

1. The procedures and measures, referred to in section 23, third subsection, which are aimed at managing operational risk are also aimed at rare but very severe events.
2. A bank or investment firm as referred to in section 23, second subsection, second sentence, also indicates, in addition to what is defined as operational risk in this Decree, how it defines operational risk.

#### **Section 23d**

A bank or investment firm, as referred to in section 23, second subsection, second sentence, makes use of systems for the assessment and management of the risks that follow from potential changes in interest rates, insofar as these changes have an impact on the activities outside of the trading portfolio of the bank, investment firm or clearing institution.

#### **Section 23e**

1. The procedures and measures, referred to in section 23, third subsection, that concern the management of securitisation risk, are aimed at taking into consideration the economic importance of the transaction when taking decisions in the area of risk assessment and risk management.
2. A bank or investment firm as referred to in section 23, second subsection, second sentence, that is the initiator of a securitisation of revolving loans to which an early redemption provision applies, prepares a liquidity plan to handle the consequences of both planned and early redemptions.

#### **Section 24**

An investment firm, clearing institution, credit institution, insurer or branch as referred to in section 23, first subsection, verifies in a systematic manner that the procedures and measures, referred to in section 23, second subsection, are complied with and ensures that identified shortcomings or deficiencies are remediated.

#### **Section 24a**

1. A bank or investment firm, as referred to in section 23, second subsection, second sentence, has established solid, effective and comprehensive strategies and procedures on the basis of which it continuously verifies whether and ensures that, the level, composition and division of its own equity capital are in accordance with the size and the nature of its current and potential future risks.
2. The financial undertaking verifies in a systematic manner that the strategies and procedures, referred to in the first subsection, are complied with and ensures that the identified shortcomings or deficiencies are remediated.

#### **Section 24b**

1. The risk management, referred to in section 23, sixth subsection, of a bank that may provide investment services or carry out investment activities in the Netherlands, or an investment firm as referred to in section 3:17, first and third subsections, 3:22 or 3:23, second subsection, of the Act exercises control with regard to:
  - a. the soundness and effectiveness of the procedures and measures laid down by the bank or investment firm, referred to in section 23, third subsection;
  - b. the extent in which the bank or investment firm and its employees comply with the procedures and measures, referred to in section 23, third subsection; and
  - c. the soundness and effectiveness of the measures that have been taken to remediate identified shortcomings or deficiencies.
2. The risk management reports at least annually to persons who determine the day-to-day policy of the bank or investment firm and to the body, if present, that is responsible for supervising the policy and the general course of affairs of the bank or investment firm. The annual reporting indicates, in particular, whether measures have been taken in the event of identified shortcomings.

#### **Section 25**

If an investment firm, clearing institution, credit institution, insurer or branch, as referred to in section 23, first subsection, makes use of internally developed models, it assesses the validity of these models and the underlying assumptions and variables in a systematic manner by, among others, comparing the projections of the model with the actual outcomes.

#### **Section 25a**

1. The evaluation performed by the Dutch Central Bank, as referred to in section 3:18a, first subsection, of the Act concerns at least:
  - a. the risks, referred to in section 60, first subsection;
  - b. the interest-rate risk that a bank or investment firms, as referred to in section 23, second subsection, second sentence, runs in connection with non-trading activities;

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- c. the results of stress tests performed by the financial undertaking that applies an internal model method for credit risk;
  - d. the exposure to and the management of the concentration risk, the liquidity risk and large positions by the financial undertaking;
  - e. the soundness, suitability and method of application of the procedures followed by the financial undertaking that are aimed at managing the residual risk resulting from the application of approved credit risk reduction techniques;
  - f. the question to what extent the regulatory capital, maintained by the financial undertaking in connection with the assets that it has securitised, is adequate taking into consideration the economic characteristics of the transaction, including the degree in which risk transfer takes place;
  - g. the impact of the diversification effects and the manner in which such effects are incorporated in the system of risk measurement; and
  - h. the results of the stress tests performed by the financial undertaking that makes use of internal models for the calculation of the required solvency for the risk as referred to in section 60, first subsection, under b.
2. The Dutch Central Bank checks whether the financial undertaking has tacitly supported a securitisation outside the boundaries of its contractual obligations. If it appears that the financial undertaking has tacitly provided support several times outside the boundaries of its contractual obligations, the Dutch Central Bank will take appropriate measures based on the suspicion that there is a high likelihood that the financial undertaking will also in the future support its securitisations outside the boundaries of its contractual obligations.
  3. In determining whether the qualifying capital maintained ensures a controlled and lasting coverage of risks, the Dutch Central Bank considers whether the value adjustments and provisions for positions and portfolios in the trading portfolio allow the financial undertaking to, under normal market conditions, sell or cover its positions in the short term and without incurring substantial losses.

#### **Section 25b**

1. The Dutch Central Bank takes measures in the event that the economic value of a bank or investment firm as referred to in section 23, second subsection, second sentence, decreases by more than twenty percent of the qualifying capital due to a sudden and unexpected change in interest rates.
2. The Dutch Central Bank determines the extent of the change in the interest rates, referred to in the first subsection.

#### **Section 26**

1. A management company or depositary as referred to in section 3:17, third subsection, or 3:25 of the Act has established procedures and measures that ensure that the size and composition of and changes in the financial guarantees can be determined fairly and completely.
2. In connection with the monitoring and management of solvency risks, the business operations of a management company of an institution for collective investment in transferable securities provide for the monitoring and management of, in any case, the:
  - a. nature and amount of the assets and liabilities;
  - b. off-balance sheet commitments; and
  - c. the development of the result, specified according to the separate business activities and business units.
3. In connection with the monitoring and management of liquidity risk the business operations of each collective investment scheme of which the participation rights are directly or indirectly purchased or redeemed at the request of the participants and by charge to the assets, provide for, among other things, authorisation procedures, procedures for setting and monitoring limits and procedures and measures for emergency situations with regard to the liquidity position of the collective investment scheme.

### **Chapter 5. Outsourcing of activities**

#### **Provisions for the implementation of section 3:18, second and third subsections, of the Act**

#### **Section 27**

1. A financial undertaking or branches as referred to in section 3:18, first subsection, 3:22, 3:23, 3:25, 3:26 or 3:27 of the Act, shall not outsource activities if this outsourcing may hinder the adequate supervision of the compliance of that which has been specified in the Section Prudential supervision financial undertakings of the Act.
2. A clearing institution, credit institution, insurer or branch as referred to in section 3:18, second subsection, 3:23, 3:26 or 3:27 of the Act, shall not outsource the tasks and duties of persons who

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determine the day-to-day policy, including determining the policy and rendering account with regard to the policy that has been pursued.

#### **Section 28**

A clearing institution, credit institution, insurer or branch as referred to in section 27, second subsection, shall not outsource activities if that would have a negative effect on the quality of its independent internal audit as referred to in section 17, fourth subsection.

#### **Section 29**

A clearing institution, credit institution, insurer or branch as referred to in section 27, second subsection, exercises an adequate policy and has established procedures and measures with regard to the outsourcing of activities on a structural basis.

#### **Section 30**

A clearing institution, credit institution, insurer or branch as referred to in section 27, second subsection, has adequate procedures, measures, expertise and information to be able to assess the execution of the activities that have been outsourced on a structural basis.

#### **Section 31**

1. A clearing institution, credit institution, insurer or branch as referred to in section 27, second subsection, records in writing the agreement with the third party to whom the activities are being outsourced on a structural basis.
2. In any case, the following is regulated in the agreement:
  - a. the mutual exchange of information, including agreements about providing information requested by supervisors in connection with the execution of their statutory tasks;
  - b. the possibility for the financial undertaking or the branch to at all times make changes in the manner in which the activities are carried out by the third party;
  - c. the obligation of the third party to enable the financial undertaking or the branch to continue to comply with the stipulations of the Act; and
  - d. the possibility for the supervisors to carry out or have carried out an investigation at the third party's premises; and
  - e. the manner in which the agreement is terminated, and the manner in which it is ensured that the financial undertaking or the branch is able, after the termination of the agreement, to carry out the activities again itself or have another third party carry out these activities.
3. The supervisors will only make use of the possibility, referred to in the second subsection, under d, when it is not possible to determine in another manner that the stipulations of the Act are being complied with as far as the outsourced activities are concerned.

#### **Section 32**

The sections 29 up to and including 31 do not apply to the outsourcing of activities to undertakings domiciled in a Member State, that belong to the group to which the financial undertaking belongs.

### **Chapter 6. Changes with regard to the information provided**

#### **Provisions for the implementation of the sections 3:29, third subsection, 3:41, 3:42, 3:43, second subsection, and 3:48 of the Act**

#### **Section 33**

1. A clearing institution, credit institution, or insurer as referred to in section 3:29, first subsection, 3:41, 3:42, 3:43, second subsection, or 3:49 of the Act, notifies the Dutch Central Bank in writing of the intention to a change of:
  - a. the persons that determine the day-to-day policy of the financial undertaking or determine or co-determine the policy of the financial undertaking; and
  - b. if applicable, the persons who are part of a body that is responsible for supervising the policy and the general course of affairs of the financial undertaking.
2. The financial undertaking will not carry out the intended change before the Dutch Central Bank has consented to the change. The Dutch Central Bank will take a decision concerning consent:
  - a. within six weeks of having received the notification; or
  - b. if the Dutch Central Bank requested further information within two weeks of having received the notification, within four weeks of having received that information, but in any event within 13 weeks of having received the notification.
3. With regard to the intended change the financial undertaking submits the following information:
  - a. information on the basis of which the Dutch Central Bank can reasonably assess whether that which is stipulated in section 3:8 of the Act with regard to the expertise of the person in question, is satisfied;
  - b. information on the basis of which the Dutch Central Bank, under the application *mutatis mutandis* of the sections 6 up to and including 9, can reasonably assess whether that which is stipulated in section 3:9, third subsection, of the Act with regard to the properness of the person in question,

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is satisfied.

4. The information referred to in the third subsection, under a, concerns:
  - a. a statement of the name, the address, and the position;
  - b. a curriculum vitae;
  - c. a list of the valid relevant diplomas; and
  - d. a copy of a valid identity certificate.
5. The third subsection, under b, is not applicable in the event that the intended change concerns a person whose properness has already been determined for the application of the Act by a supervisor, unless the Dutch Central Bank decides that a reasonable cause exists for a reassessment as referred to in section 3:9, second subsection, of the Act.

#### **Section 34**

1. A clearing institution, credit institution or insurer as referred to in section 33, first subsection, notifies the Dutch Central Bank in writing of a change in the information on the basis of which the Dutch Central Bank has assessed that that which is stipulated in section 3:9 with regard to the properness of the person referred to in this section, is satisfied.
2. The financial undertaking instantaneously gives written notification of a change as referred to in the first subsection after the financial undertaking has been informed of the change.

#### **Section 35**

1. A clearing institution, credit institution or insurer as referred to in section 33, first subsection, notifies the Dutch Central Bank in writing of a change in:
  - a. the name or address of the financial undertaking;
  - b. the legal form of the financial undertaking;
  - c. if applicable, the registered office, the name given in the articles of association and the trade name or trade names;
  - d. if applicable, the number of the registration in the Commercial Register;
  - e. if applicable, the articles of association of the financial undertaking;
  - f. the control structure within the financial undertaking; and
  - g. if applicable, the address of a branch located in another state.
2. The financial undertaking gives notification of a change as referred to in the first subsection within two weeks after the change has occurred.

#### **Section 36**

1. A clearing institution, credit institution, or insurer as referred to in section 3:29, second subsection, 3:41, 3:42 or 3:43, first subsection of the Act, informs the Dutch Central Bank in writing of the intention to a change of:  
the persons who determine the day-to-day policy of the branch.
2. Section 33, second up to and including the fifth subsection, applies *mutatis mutandis*.

#### **Section 37**

1. A clearing institution, credit institution or insurer as referred to in section 3:29, second subsection, of the Act with its registered offices in the Netherlands, that carries out its business operations from a branch that is located in another Member State, notifies the Dutch Central Bank and the supervisory authority of that Member State in writing of a change in the address of the branch.
2. Without prejudice to the first subsection, a credit institution as referred to in section 3:29, second subsection, of the Act with its registered office in the Netherlands, that carries out its business operations from a branch that is located in another Member State, notifies the Dutch Central Bank and the supervisory authority of that Member State in writing of a change with regard to the applicability of a deposit guarantee system to the branch.
3. The financial undertaking gives notification of a change as referred to in the first or second subsection within two weeks after the change has occurred.
4. A clearing institution or credit institution as referred to in section 3:29, second subsection, of the Act, that carries out its business operations from a branch located in another Member State, notifies the Dutch Central Bank and the supervisory authority of this Member State in writing of its intention to discontinue carrying out its business operations from the branch located in the other Member State. The clearing institution or credit institution does not carry out the intended change during the first four weeks after the notification.

#### **Section 38**

1. A life insurer or non-life insurer as referred to in section 3:29 of the Act, that carries out its business operations through a branch that is located outside of the Netherlands, notifies the Dutch Central Bank in writing of its intention to change the representative.
2. The financial undertaking will not carry out the intended change before the Dutch Central Bank has consented to the change. The Dutch Central Bank takes a decision concerning approval:
  - a. within six weeks of having received the notification; or

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- b. if the Dutch Central Bank requested further details within two weeks of having received the notification, within four weeks of having received those details, but in any event within 13 weeks of having received the notification.
3. With regard to the intended change the financial undertaking submits the following information:
  - a. information on the basis of which the Dutch Central Bank can reasonably assess whether whether that which is stipulated in section 3:8 of the Act with regard to the expertise of the representative, is satisfied; and
  - b. information on the basis of which the Dutch Central Bank, under the application mutatis mutandis of the sections 6 up to and including 9, can assess whether that which is stipulated in section 3:9 of the Act with regard to the properness of the representative, is satisfied.
4. The information referred to in the third subsection, under a, concerns:
  - a. a statement of the name, the address, and the position;
  - b. a curriculum vitae;
  - c. a list of the valid relevant diplomas; and
  - d. a copy of a valid identity certificate.
5. The third subsection is not applicable in the event that the intended change concerns a person whose properness has already been determined for the application of the Act by a supervisor, unless the Dutch Central Bank decides that a reasonable cause exists for a reassessment as referred to in section 3:9, second subsection, of the Act.

#### **Section 39**

1. A life insurer or funeral expenses and benefits in kind insurer as referred to in section 3:42, 3:43, second subsection, 3:48 or 3:52 of the Act respectively, notifies the Dutch Central Bank in writing of an intention to a change in the agreements that it intends to conclude.
2. A non-life insurer as referred to in section 3:42, 3:43, second subsection, 3:48 of the Act, that provides services to the Netherlands from a place of business located in a Member State, notifies the Dutch Central Bank of an intention to a change in the risks located in the Netherlands that it intends to cover.
3. The insurer can carry out the intended change, referred to in the first or second subsection, as from the day upon which the Dutch Central Bank has received the notification, referred to in the first or second subsection. The Dutch Central Bank confirms the receipt to the insurer forthwith.
4. If the non-life insurer intends to change the risks located in the Netherlands to such an extent that these risks include risks pertaining to the sector Liability motor vehicles, it submits the following information to the Dutch Central Bank together with the notification:
  - a. written proof that he is a member of the agency, referred to in section 2, six subsection, of the Motor Insurance Liability Act;
  - b. written proof that he has registered with the Dutch Motor Traffic Guarantee Fund [Waarborgfonds Motorverkeer] in order to meet its obligation to this fund by virtue of the sections 24, first subsection, and 24a, first subsection, of the Motor Insurance Liability Act; and
  - c. a specification of the name and the address of the loss adjuster, referred to in section 4:70, second subsection, of the Act, whom he has appointed in each other Member State.

#### **Section 40**

1. An insurer as referred to in section 3:43, second subsection, or 3:49 of the Act, notifies the Dutch Central Bank in writing of a change in the information on the basis of which the Dutch Central Bank has assessed that that which is stipulated in section 3:9 of the Act with regard to the reliability properness of the representative, is satisfied.
2. The financial undertaking immediately gives notification of a change as referred to in the first subsection, after the financial undertaking has been informed of the change.

### **Chapter 7. Insurance additional risks**

#### **Provision for the implementation of section 3:36, fourth subsection, of the Act**

#### **Section 41**

1. Contrary to the sections 3:36, second subsection, and 3:43, first subsection, of the Act, non-life insurers are permitted, when carrying out their business operations, to also insure risks that pertain to other sectors, in addition to the risks that pertain the sectors for which the licence has been granted, with the exception of the sectors Credit and Guarantee, in case these risks, in the opinion of the Dutch Central Bank, can be viewed as additional risks, because these risks:
  - a. are related to the main risk that pertains to the sector for which the licence has been granted;
  - b. are related to the interest or object that is insured against the main risk; and
  - c. are insured through the same agreement as the main risk.
2. The risks of the sector Legal Assistance may only be insured as an additional risk of the sector Assistance and of sectors whereby risks are insured that are related to the use of sea-going vessels.

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## **Chapter 8. Representative**

### **Provisions for the implementation of the sections 3:40 and 3:47, sixth subsection, of the Act**

#### **Section 42**

The address of a representative in the Netherlands of an insurer as referred to in section 3:40 of the Act to which legally valid notifications can be sent is deemed to be the branch located in the Netherlands.

#### **Section 43**

An insurer, as referred to in section 3:40, 3:47, sixth subsection or 3:50, second subsection, of the Act, is deemed, in the event that a representative is not present, to have its domicile at the Public Prosecutor's Office at the district court in the legal district where the insurer was most recently domiciled, or otherwise at the Public Prosecutor's Office at the district court in Amsterdam.

#### **Section 44**

1. The circumstances, referred to in section 3:40 and 3:47, sixth subsection, of the Act, under which the representative of an insurer as referred to in section 3:40, 3:47, sixth subsection, or 3:50, second subsection of the Act, ceases to be a representative, are the circumstances referred to in the second up to and including the fifth subsection and in the sections 45 up to and including 47.
2. The insurer that intends to terminate the representation, gives notice thereof to the Dutch Central Bank.
3. The notification, referred to in the second subsection, also states the name of the person whom the insurer intends to appoint as the successor to the representative.
4. If the successor is a legal person, the notification includes the articles of association of this legal person, an extract from the Commercial Register and proof of employment of the natural person who has been appointed as representative of the representative who is a legal person.
5. The insurer, referred to in section 3:47, first subsection, or 3:50, second subsection, of the Act, terminates the representation on the day upon which the Dutch Central Bank is notified of the termination.
6. The insurer, referred to in section 3:47, first subsection, or section 3:50, second subsection, of the Act does not carry out the intention if the Dutch Central Bank does not consent to it. In the event that the Dutch Central Bank decides not to consent to the proposed termination, it gives notice of its decision to the financial undertaking:
  - a. within six weeks of having received the notification; or
  - b. if the Dutch Central Bank requested further details within two weeks of having received the notification, within four weeks of having received those details, but in any event within 13 weeks of having received the notification.

#### **Section 45**

1. The representative, referred to in section 3:40, 3:47, sixth subsection, or 3:50, second subsection, of the Act, who intends to terminate the representation, informs the Dutch Central Bank thereof.
2. The representative of an insurer, referred to in section 3:47, first subsection, or 3:50, second subsection, of the Act, retains the capacity of representative until the day upon which the representative has notified the Dutch Central Bank of the termination.
3. The representative does not carry out the intention if the Dutch Central Bank does not consent to it. In the event that the Dutch Central Bank decides not to consent to the intention, it gives notice of its decision to the financial undertaking:
  - a. within six weeks of having received the notification; or
  - b. if the Dutch Central Bank requested further details within two weeks of having received the notification, within four weeks of having received those details, but in any event within 13 weeks of having received the notification.

#### **Section 46**

1. The representative of an insurer as referred to in section 3:40, 3:47, second subsection or 3:50, second subsection, of the Act, ceases to be the representative as from the day that the debt management scheme for natural persons has been declared applicable, a moratorium of payments has been granted, the declaration of bankruptcy, the liquidation, referred to in section 19 of Book 2 of the Dutch Civil Code, the conservation order with regard to one or several assets, referred to in Title 19 of Book 1 of the Dutch Civil Code, or the guardianship order.
2. The assignment by the representative of a natural person who is assigned as representative who is a legal person, expires by right on the day that a debt management scheme for natural persons is declared applicable, a moratorium of payments is granted, the declaration of bankruptcy, the liquidation, referred to in section 19 of Book 2 of the Dutch Civil Code, or the guardianship order in respect of the assigned natural person as well as the day that a moratorium of payments has been granted to the representative or the representative has been declared bankrupt.

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1. The insurer or the representative respectively notifies the Dutch Central Bank within seven days of the death, the declaration of the applicability of a debt management scheme for natural persons, the granting of a moratorium of payments, the declaration of bankruptcy, the liquidation, referred to in section 19 Book of the Dutch Civil Code, the conservation order in respect of one or more goods, referred to in Title 19 of Book 1 of the Dutch Civil Code, or the guardianship order of the representative or the natural person who has been assigned as representative of the representative who is a legal person, as well as the termination of the representation of the representative by this natural person.
2. The insurer, referred to in section 3:40 of the Act, submits to the Dutch Central Bank, in the events specified in the first subsection, and in the event that the representative or the natural person, referred to in the first subsection, has terminated the representation, proof of appointment of the representative as well, in the event that the representative is a legal person, the articles of association of this legal person, an extract from the Commercial Register and proof of employment of the natural person, referred to in the first subsection.
3. The insurer, referred to in the second subsection, provides the information, referred to in the second subsection, within two weeks after the appointment in question.
4. The insurer, referred to in section 3:47, second subsection, or 3:50, second subsection, of the Act, assigns, in the events specified in the first subsection, and in the event that the representative or the natural person referred to in section 3:47, fifth subsection, of the Act, has terminated the representation, a new representative or natural person respectively, within a term to be determined by the Dutch Central Bank.
5. The insurer, referred to in the fourth subsection, submits to the Dutch Central Bank proof of appointment of the new representative as well as, in the event that the new representative is a legal person, the articles of association of this legal person, an excerpt from the Commercial Register and the employment contract of the natural person, referred to in section 3:47, fifth subsection, of the Act.

## **Chapter 9. Minimum equity capital**

### **§ 9.1. Size of the minimum amount of equity capital**

#### **Provisions for the implementation of the sections 3:53, third subsection, 3:54, third subsection, and 3:55, second subsection, of the Act**

#### **Section 48**

1. The minimum amount of equity capital, referred to in section 3:53, first subsection, of the Act is:
  - a. €5 million for a bank as referred to in section 3:53, first subsection, or 3:54, first subsection, of the Act that is not a bank as referred to under b, or for a clearing institution as referred to in section 3:53, first subsection, or 3:55, first subsection, of the Act;
  - b. €2.5 million for a bank as referred to in section 2:13 of the Act;
  - c. €225,000 for a management company as referred to in section 3:53, first subsection, or 3:55, first subsection, of the Act, that is not a management company of an undertaking for collective investment in transferable securities and that manages a portfolio of at least €250 million;
  - d. €125,000 for a management company of an undertaking for collective investment in transferable securities as referred to in section 3:53, first subsection, of the Act, or for a management company as referred to in section 3:53, first subsection, of the Act that is not a management company of an undertaking for collective investment in transferable securities and that manages a portfolio of less than €250 million;
  - e. €300,000 for an investment company as referred to in section 3:53, first subsection, of the Act, that is a management company of an undertaking for collective investment in transferable securities and that does not have a separate management company;
  - f. €35,000 for an investment undertaking as referred to in section 3:53, first subsection, or 3:54, first subsection, of the Act, that only provides the investment service, referred to under a of the definition of providing an investment service in section 1:1 of the Act, and that may not provide this investment service from a branch in another Member State or through providing services to another Member State;
  - g. €50,000 for an investment undertaking as referred to in section 3:53, first subsection, or 3:54, first subsection, of the Act, that may provide the investment service, referred to under a of the definition of providing an investment service in section 1:1 of the Act, from a branch in another Member State or through providing services to another Member State;
  - h. €50,000 for an investment undertaking as referred to in section 3:53, first subsection, or 3:54, first subsection of the Act, not being an investment undertaking as referred to under g, that provides the investment service, referred to under b, c, d or f of the definition of providing an investment service in section 1:1 of the Act;



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- i. € 730,000 for an investment undertaking as referred to in section 3:53, first subsection, or 3:54, first subsection of the Act, not being an investment undertaking as referred to under f or g, that provides the investment service, referred to under e of the definition of providing an investment service in section 1:1 of the Act;
  - j. € 730,000 for an investment undertaking as referred to in section 3:53, first subsection, or 3:54, first subsection of the Act, not being an investment undertaking as referred to under f or g, that performs the investment activity, referred to under a of the definition of performing an investment activity in section 1:1 of the Act;
  - k. € 730,000 for an investment undertaking as referred to in section 3:53, first subsection, or 3:54, first subsection of the Act, that performs the investment activity, referred to under b of the definition of performing an investment activity in section 1:1 of the Act;
  - l. € 112,500 for a depositary as referred to in section 3:53, first subsection, or 3:55, first subsection, of the Act;
  - m. € 1 million for an electronic money institution as referred to in section 3:53, first subsection, or 3:54, first subsection, of the Act.
2. The first subsection does not apply to investment undertakings as referred to in section 3:53, first subsection, or 3:54, first subsection, of the Act, that are not allowed to provide any other investment service than the investment service, referred to under a or d of the definition of providing an investment services in section 1:1 of the Act, and that do not perform ancillary services as referred to under a of the definition of ancillary service in section 1:1 of the Act, in case they have:
- a. professional liability insurance or comparable insurance that covers the liability of the investment undertaking on account of errors, omissions or negligence committed in the exercising of their profession and occurring in the territory covered by the European Economic Area Agreement, for a minimum amount of € 1,000,000 per loss and a total minimum amount of € 1,500,000 per annum for all losses together; or
  - b. a combination of professional liability insurance or comparable insurance as referred to under a that results in a coverage that is at least equals € 50,000 or under a.
3. Without prejudice to the first subsection, opening words and under g or h, investment undertakings as referred to in the second subsection, to which a licence has been granted as referred to in section 2:80 or 2:86 of the Act, have:
- a. a minimum amount of equity capital of € 25,000;
  - b. professional liability insurance or comparable insurance that covers their liability on account of errors, omissions or negligence committed in the exercising of their profession and occurring in the territory covered by the European Economic Area Agreement, for a minimum amount of € 500,000 per loss and a total minimum amount of € 750,000 per annum for all losses together; or
  - c. a combination of professional liability insurance or comparable insurance as referred to under a that results in a coverage that at least equals € 25,000 or under b.

#### **Section 49**

1. The minimum amount of the guarantee fund, referred to in section 3:53, fourth subsection, is:
- a. € 3.2 million for a life insurer as referred to in section 3:53, first subsection, or 3:54, first subsection, of the Act;
  - b. € 45,378.02 for a funeral expenses and benefits in kind insurer as referred to in section 3:53, first subsection, or 3:55, first subsection, of the Act;
  - c. € 2.2 million for a non-life insurer as referred to in section 3:53, first subsection, or 3:54, first subsection, of the Act, that is not a non-life insurer as referred to under d;
  - d. € 3.2 million for a non-life insurer as referred to in section 3:53, first subsection, or 3:54, first subsection, of the Act, that carries out its business in the sector Liability Motor Vehicles, Liability Road Transport, Liability Airplanes, Liability sea-going and inland waterway vessels, General Liability or Credit and Guarantee.
2. The minimum amount of the guarantee fund, referred to in section 3:54, third subsection, or 3:55, second subsection, of the Act is:
- a. € 1.6 million for a branch of a life insurer located in the Netherlands as referred to in section 3:54, third subsection, of the Act;
  - b. € 45,378.02 for a branch of a funeral expenses and benefits in kind insurer located in the Netherlands as referred to in section 3:55, second subsection, of the Act;
  - c. € 1.1 million for a branch of a non-life insurer located in the Netherlands as referred to in section 3:54, third subsection, of the Act, that is not a non-life insurer as referred to under d;
  - d. € 1.6 million for a branch of a non-life insurer located in the Netherlands as referred to in section 3:54, third subsection, of the Act, that carries out its business in the sector Liability Motor Vehicles, Liability Road Transport, Liability Airplanes, Liability sea-going and inland waterway vessels, General Liability or Credit and Guarantee.

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3. The amounts specified in the first subsection, under a, c and d, and the second subsection, under a, c and d change automatically in accordance with the annual notification of the Commission of the European Communities to the European Parliament and the Council of the European Union concerning the percentage change of the European index rate of the consumer prices adjusted amounts published by Eurostat. The adjusted amounts are applied for the first time in the financial year that starts on 1 January of the calendar year following the notification or during that calendar year.
4. The Dutch Central Bank immediately publishes the notification and the revised amounts referred to in the previous subsection in the Government Gazette.

## **§ 9.2. Composition of the minimum amount of equity capital**

**Provisions for the implementation of the sections 3:53, third subsection, 3:54, third subsection, and 3:55, second subsection, of the Act**

### **Section 50**

1. The minimum amount of equity capital of a management company of an undertaking for collective investment in transferable securities as referred to in section 3:53, first subsection, of the Act, of an management company as referred to in section 3:53, first subsection, or 3:55, first subsection, of the Act, that is not a management company of an undertaking for collective investment in transferable securities and that manages a portfolio of less than €250 million, of an investment undertaking as referred to in section 3:53, first subsection, of the Act, of an investment undertaking as referred to in section 3:53, first subsection, or 3:54, first subsection, of the Act, of a clearing institution as referred to in section 3:53, first subsection, or 3:55, first subsection, of the Act or of a credit institution as referred to in section 2:13, 3:53, first subsection, or 3:54, first subsection, of the Act, is formed by the value of the capital components referred to in section 91, second subsection, under a up to and including g.
2. Section 89, first and second subsection, under a, will apply mutatis mutandis.

### **Section 51**

1. The minimum amount of equity capital of a management company as referred to in section 3:53, first subsection, or 3:55, first subsection, of the Act, that is not a management company of an undertaking for collective investment in transferable securities and who manages a portfolio of at least €250 million, or of a depositary as referred to in section 3:53, first subsection, or 3:55, first subsection, of the Act is formed by the value of the core capital, referred to in section 91, and the additional capital, referred to in section 92.
2. The sections 89 and 94, first subsection, under a up to and including c, will apply mutatis mutandis.

### **Section 52**

1. The minimum amount of the guarantee fund of a life insurer or non-life insurer as referred to in section 3:53, first subsection, or 3:54, first subsection, of the Act or of a branch as referred to in section 3:54, third subsection, of the Act, is formed by the value of the capital components, referred to in the sections 95, second subsection, 96 and 97, first subsection, insofar as this subsection does not concern the surplus values based on earnings forecasts, less the value of the items, referred to in section 95, third subsection.
2. The sections 89, 95, fourth and fifth subsection, and 98, first, third and fourth subsection, will apply mutatis mutandis.

### **Section 53**

1. The minimum amount of the guarantee fund of a funeral expenses and benefits in kind insurer as referred to in section 3:53, first subsection, or 3:55, first subsection, of the Act or of a branch as referred to in section 3:55, second subsection, of the Act, is formed by the value of the capital components, referred to in the sections 95, second subsection, 96 and 97, less the value of the items, referred to in section 95, third subsection.
2. The sections 89, 95, fourth and fifth subsection, and 98, second and third subsection, will apply mutatis mutandis.

## **§ 9.3. The securities that serve as coverage for the minimum amount of the guarantee fund**

**Provisions for the implementation of the sections 3:54, third subsection, and 3:55, second subsection, of the Act**

### **Section 54**

The securities that serve as coverage for the minimum amount of the guarantee fund, referred to in section 3:54, third subsection, or 3:55, second subsection, of the Act, are present in the Netherlands.

### **Section 55**

1. At least half of the minimum amount of the guarantee fund, referred to in section 54, is covered by marketable securities which are deposited in open custody with a bank that is allowed to carry on

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business in the Netherlands.

2. The Dutch Central Bank can, in view of preventing a decrease in the value of the securities referred to in the first subsection, draw up rules with regard to the conditions under which the securities can be deposited for safe custody.

#### **Section 56**

1. An insurer can agree with the bank, referred to in section 55, first subsection, that the bank can transfer the securities in the name of the insurer, that the insurer has entrusted to the bank, to a securities depository that is a legal person, in the event that:
  - a. the fulfilment of the obligations of the securities depository is safeguarded; and
  - b. the securities depository has undertaken vis-à-vis the bank to maintain in its depository either these securities or an equal number of securities of the same type in the name of the insurer and after the termination of the agreement between the insurer and the bank, to return these securities to the insurer.
2. The bank, referred to in section 55, first subsection, or the securities depository respectively, ensures independently for obtaining new coupon and dividend sheets and for custody in connection with attending shareholders' meetings by the insurer.
3. The securities are only returned to the insurer and legal acts are only performed with regard to these securities when the Dutch Central Bank has decided this upon request. The bank, referred to in section 55, first subsection, or the securities depository respectively, may, however, as from two weeks before the day of payment issue coupons and dividend certificates to the insurer for this purpose, without a decision by the Dutch Central Bank, unless the Dutch Central Bank has decided that this is not permitted. The Dutch Central Bank informs the insurer of this decision forthwith.
4. At the request of the Dutch Central Bank, the securities are entrusted to the custody of the Dutch Central Bank, in the event that the bank, referred to in section 55, first subsection:
  - a. may no longer carry on its business in the Netherlands; or
  - b. terminates the agreement with the insurer or the fulfilment of the obligation of the securities depository is no longer safeguarded.
5. The Dutch Central Bank entrusts the securities immediately after the issue, referred to in the fourth subsection, at the expense of the insurer, to the custody of a bank that is allowed to carry on its business in the Netherlands.

#### **§ 9.4. Special provisions**

##### **Provisions for the implementation of section 3:53, third subsection, of the Act**

#### **Section 57**

1. section 49, first subsection, opening words and under a, the minimum amount of the guarantee fund, referred to in section 3:53, fourth subsection, of the Act, amounts to €0 for the following life insurers:
  - a. Wederkerige Verzekeringsmaatschappij «Begrafenis Sociëteit» W.A., established in Edam;
  - b. Onderling Fonds Sliedrecht B.A., established in Sliedrecht; and
  - c. Tiels Onderling Fonds tot uitkering bij overlijden «Gustaaf Adolf» U.A., established in Tiel.
2. The first subsection only applies insofar as the life insurers specified in that subsection:
  - a. only or practically only insure payments in the event of death, of which the amount per insured is not larger than the average amount of the funeral costs;
  - b. do not expand their business in one or several sectors for which they would require a licence; and
  - c. do not open a branch in another Member State or expand their business in another Member State.

#### **Section 58**

1. Contrary to section 49, first subsection, opening words and under c or d, the minimum amount of the guarantee fund, referred to in section 3:53, fourth subsection, of the Act, amounts to €0 for the non-life insurers domiciled in the Netherlands that:
  - a. conducted the business of a non-life insurer on 1 January 1986;
  - b. have a licence as referred to in section 2:27, first subsection, of the Act;
  - c. during the last financial year before 1 August 1978 did not record a premium income of at least six times the value of the minimum amount of the guarantee fund as this applied on 1 July 1994 by virtue of the Insurance Industry (Supervision) Act 1993.
  - d. do not expand their business in one or several sectors for which they would require a licence; and
  - e. do not open a branch in another Member State or expand their business in another Member State.

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2. The first subsection applies to a non-life insurer referred to in that section until the end of the financial year in which this undertaking records a premium income of at least six times the value of the minimum amount of the guarantee fund as this applied on 1 July 1994 by virtue of the Insurance Industry (Supervision) Act 1993.

## **Chapter 10. Solvency**

### **§ 10.1. Minimum solvency requirements**

#### **Provisions for the implementation of section 3:57, second subsection, of the Act**

##### **Section 59**

1. Solvency, as referred to in section 3:57, first subsection, of the Act is sufficient under the condition that:
  - a. the qualifying capital to be taken into consideration, referred to in the sections 90 up to and including 94, at least equals the minimum amount of the qualifying capital, calculated in accordance with sections 60 up to and including 64 of paragraph 10.2, taking into consideration the paragraphs 10.3 and 10.4; or
  - b. the existing solvency margin, referred to in the sections 95 up to and including 98, at least equals the minimum amount of the solvency margin, calculated in accordance with the sections 65 up to and including 68.
2. Without prejudice to the first subsection, the solvency is at least equal to the minimum amount of equity capital required by virtue of section 48 or the minimum amount of the guarantee fund required by virtue of section 49 or 57. As long as section 58, first subsection, is applicable, the solvency margin of a non-life insurer as referred to in that section is at least equal to € 205,000.

##### **Section 60**

1. The minimum amount of the qualifying capital of bank or investment undertaking as referred to in section 3:57, first subsection, or 3:58, first subsection, of the Act or of a clearing institution as referred to in section 3:57, first subsection, or 3:61, first subsection, of the Act, is the total of:
  - a. eight percent of the total of the amounts of the risk-weighted assets and off-balance sheet items for the credit risks to be calculated in accordance with section 61, including the counterparty credit risks and dissolution risks, with regard to the whole undertaking, with the exception of the trading portfolio and the non-liquid assets of a bank, investment undertaking or clearing institution which applies section 90, second subsection;
  - b. the amount to be calculated in accordance with the second subsection of the required solvency in respect of the trading portfolio to cover the position risks, settlement risks, delivery risks, counterparty risks and, in the event of a limit breach as referred to in section 102, first or second subsection, large exposures;
  - c. the amount to be calculated in accordance with the second subsection of the required solvency with regard to the total undertaking to cover the currency risks and commodity risks; and
  - d. the amount to be calculated in accordance with the sections 62b up to and including 62e of the required solvency with regard to the whole undertaking to cover the operational risk.
2. The Dutch Central Bank lays down additional rules with regard to the calculations, referred to in the first subsection, under b and c.
3. The minimum amount of the qualifying capital of an investment undertaking as referred to in the first subsection to which section 62a applies, amounts in any case to 25 percent of the fixed costs in the past financial year. In the event that the undertaking has not conducted its business during a full financial year, the minimum amount of the qualifying capital amounts to 25 percent of the budgeted fixed costs in its programme of activities. The Dutch Central Bank can decide that a higher minimum amount applies for the investment undertaking if it is plausible that the budgeted fixed costs have been budgeted too low.
4. The fixed costs, referred to in the third subsection, comprise all costs, with the exception of:
  - a. variable costs of employees whose employment contract cannot be terminated immediately and cannot be terminated without compensation;
  - b. costs of employees whose employment contract can be terminated immediately and can be terminated without compensation;
  - c. variable costs in connection with work that has been performed for the investment undertaking;
  - d. depreciation charges;
  - e. interest expenses on subordinated loans, which form part of the qualifying capital by virtue of section 92, third subsection, under c, or section 93;
  - f. extraordinary expenses of a non-recurring nature; and
  - g. other variable expenses if the Dutch Central Bank has, upon written request, decided this.
5. The Dutch Central Bank can decide that a different minimum capital requirement applies to an investment undertaking, as referred to in the first subsection, if a substantial change has occurred in

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its activities since the previous financial year.

#### **Section 61**

1. The amount of a risk-weighted asset or off-balance sheet item, referred to in section 60, first subsection, under a, is equal to the exposure value multiplied by the risk weight allocated to that asset or off-balance sheet item by virtue of the fifth subsection, under a. Contrary to the former sentence, the amount of a risk-weighted item in the event of securitised assets and off-balance sheet items or of a risk-weighted securitisation item is calculated according to paragraph 10.4.
2. Without prejudice to the fifth subsection, under c, the exposure value of:
  - a. an asset equals its balance sheet value;
  - b. an off-balance sheet item with a full risk equals its current value;
  - c. an off-balance sheet item with a medium-large risk equals fifty percent of its current value;
  - d. an off-balance sheet item with a low to medium-large risk equals twenty percent of its current value; and
  - e. an off-balance sheet item with a low risk equals nil.
3. The exposure value, referred to in the second subsection, of securities or raw materials which are sold, deposited, or provided in connection with a retrocession agreement, reverse retrocession agreement, borrowed securities loan, provided securities loan, borrowed commodities loan, provided commodities loan or margin lending transaction, is, in the event that the financial undertaking in accordance with section 82, first subsection, applies the financial collateral comprehensive method, increased with the volatility adjustment calculated in accordance with this approach.
4. The exposure value of an asset or off-balance sheet item guaranteed by a fully-paid credit protection may be adjusted in accordance with paragraph 10.3.
5. The Dutch Central Bank lays down rules with regard to:
  - a. the classification of the assets and off-balance sheet items in categories according to counterparty and the risk weights to be allocated to these categories taking into consideration section 61a;
  - b. the classification of the off-balance sheet items in items with a full risk, items with a medium-large risk, items with a medium-large to low risk and items with a low risk, referred to in the second subsection, under b up to and including e;
  - c. the exposure value of derivative financial instrument as referred to in Annex B and outstanding credit risks with a central counterparty who acts as an exclusive counterparty for agreements with regard to financial instruments whereby the counterparty credit risk of the central counterparty in respect of all participates in its arrangements is covered daily and fully by collateral.
6. The exposure value of retrocession agreements, reverse retrocession agreements, borrowed securities loans, provided securities loans, borrowed commodities loans, provided commodities loans, transactions with settlement in the long term or margin loan transaction may, with the consent of the Dutch Central Bank, be determined based on the rules to be laid down by the Dutch Central Bank, referred to in the fifth subsection, opening words and under c.

#### **Section 61a**

1. In the allocation of a risk weight to an asset or off-balance sheet category, a bank, investment undertaking or clearing institution as referred to in section 60, first subsection, can make use, in a consistent manner, of a credit rating of a credit rating agency recognised by the Dutch Central Bank or by a supervisory authority of another Member State in accordance with paragraph 10.5 or, in the event of exposure to central governments and central banks, recognised credit ratings of an export credit insurer. The Dutch Central Bank lays down additional rules with regard to the use of a credit rating as referred to in the previous sentence.
2. The financial undertaking only uses requested credit ratings. The Dutch Central Bank can, upon request, grant the financial undertaking permission to make use of a non-requested credit rating.
3. The Dutch Central Bank allocates, in an objective and consequent manner, a risk weight to credit ratings as referred to in the first subsection while taking into consideration the following:
  - a. it distinguishes the relative risk degrees which the credit rating expresses;
  - b. in the event of a credit rating agency that has recently been established or that only has limited information on payment defaults, it demands what degree of payment default in the long term, in the opinion of the credit rating agency, is in line with all assets and off-balance sheet items to which the same credit rating has been allocated.
  - c. it compares the determined degree of payment default for each credit rating of a credit rating agency and compares these to a reference value that has been determined based on the degree of payment default that has been determined by other credit rating agencies for a group of issuers institutions with a comparable credit risk.
  - d. if it is of the opinion that for a credit rating of a credit rating agency the determined degree of

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- payment default is structurally substantially higher than the reference value, it will allocate a higher risk weight to the credit rating of the credit rating agency in question;
- e. in the event that it has increased the risk weight allocated to a credit rating and the credit rating agency demonstrates that the degree of payment default determined for its credit rating is no longer structurally substantially higher than the reference value, it can again allocate the original risk weight to the credit rating.
4. In the event that a supervisory authority of another Member State has allocated a risk weight to a credit rating in a manner comparable to the third subsection, the Dutch Central Bank can adopt this.

#### **Section 62**

1. A bank, investment undertaking or clearing institution as referred to in section 60, first subsection, is permitted to calculate the amount of the required solvency in respect of the trading portfolio to cover the position risks, settlement risks, delivery risks and counterparty risks, referred to in section 60, first subsection, under b, according to the rules laid down in accordance with section 61 if its trading portfolio under normal circumstances:
- a. does not amount to more than five percent of the total business; and
- b. does not amount to more than € 15 million.
2. The Dutch Central Bank lays down rules with regard to the calculation of the size of the trading portfolio in relation to the total business and the principles of this calculation.
3. A financial undertaking that applies the first subsection, notifies the Dutch Central Bank with a frequency to be determined by the Dutch Central Bank in consultation with the financial undertaking. The financial undertaking immediately notifies the Dutch Central Bank if it exceeds the limit as referred to in the first subsection, under a or b.
4. In the event that the trading portfolio of a financial undertaking that applies the first subsection amounts to more than six percent of its total business or more than € 20 million at any given time, the financial undertaking is no longer allowed to apply this as from six months after exceeding this limit.
5. The Dutch Central Bank can, upon request, decide that a financial undertaking that has exceeded one of the limits referred to in the fourth subsection, must again apply the first subsection if the financial undertaking demonstrates that, after exceeding the limit, it has satisfied the conditions, referred to in the first subsection, under a and b, for at least two years.

#### **Section 62a**

1. The solvency requirement to cover the operational risk, referred to in section 60, first subsection, under d, does not apply to investment undertakings of which the minimum amount of equity capital pursuant to section 48, opening words and under h, amounts to € 50,000 or clearing institutions.
2. The Dutch Central Bank can, upon request, grant permission to calculate the solvency requirement based on the third subsection, to:
- a. investment undertakings of which the minimum amount of equity capital pursuant to section 48, first subsection, opening words and under i, j or k, amounts to € 730,000 and which only trade for their own account:
- 1°. to execute orders from clients; or
- 2°. to obtain access to a clearing and settlement system or a regulated market in the capacity of authorised representative or executor of an order of a client; or
- b. investment undertakings of which the minimum amount of equity capital pursuant to section 48, first subsection, opening words and under i, j or k, amounts to € 730,000 and:
- 1°. whereby clients have not entrusted funds or securities;
- 2°. that only trade for their own account;
- 3°. that do not have any external clients; and
- 4°. of which the execution and settlement of transactions takes place under the responsibility of and is guaranteed by a clearing institution domiciled in the Netherlands.
3. If the Dutch Central Bank has granted permission as referred to in the second subsection, the investment undertaking maintains a qualifying capital that is at least equal to the total of the amounts, referred to in section 60, first subsection, under a up to and including c, and third subsection.

#### **Section 62b**

1. A bank or investment undertaking as referred to in section 60, first subsection, makes use of the basic indicator approach for the calculation of the amount of the required solvency for the total business operations to cover operational risk, as referred to in section 60, first subsection, under d.
2. The Dutch Central Bank lays down rules with regard to the basic indicator approach.

#### **Section 62c**

1. Contrary to section 62b, a bank or investment undertaking as referred to in section 60, first subsection, can make use of the standardised approach for the calculation of the amount of the

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- required solvency to cover operational risk, as referred to in section 60, first subsection, under d.
2. If the financial undertaking makes use of the standardised approach, the activities are separated into a number of business lines. The financial undertaking calculates the amount of the required solvency for each business line based on the rules to be laid down by the Dutch Central Bank.
  3. In the standardised approach, the amount, referred to in the first subsection, is the total of the required solvency for the whole of the business operations for operational risk in the individual business lines.
  4. The Dutch Central Bank lays down rules with regard to the conditions which the financial undertaking must satisfy if it wishes to apply the standardised approach and with regard to the calculation of the required solvency to cover operational risk according to this approach.

#### **Section 62d**

1. The Dutch Central Bank can, upon request, grant a bank as referred to in section 60, first subsection, permission to make use of an alternative indicator for the calculation of the required solvency to cover the operational risk with regard to the business lines "banking services for retail clients and small and medium-sized undertakings" and "corporate banking services", in the event that:
  - a. these business lines together represent at least 90 percent of its net interest income and net non-interest income; and
  - b. the bank can demonstrate that a substantial part of its activities in the area of these business lines concerns loans with a large probability of default and that the alternative indicator forms a better basis for the calculation of the operational risk.
2. The Dutch Central Bank lays down rules with regard to the alternative indicator, referred to in the first subsection.

#### **Section 62e**

1. A bank or investment undertaking, as referred to in section 60, first subsection, that once makes use of the standardised approach, is not permitted to subsequently make use of the basic indicator approach.
2. The Dutch Central Bank can, upon request, grant exemption from the first subsection, for a definite period or otherwise, if the applicant can demonstrate that there are good reasons for doing so.
3. The Dutch Central Bank can, upon request, grant permission to a bank or investment undertaking to apply the standardised approach in combination with the basic indicator approach, if the financial undertaking implements the standardised approach in accordance with a schedule agreed with the Dutch Central Bank.

#### **Section 63**

1. The minimum amount of the qualifying capital of an management company of an institution for collective investment in transferable securities as referred to in section 3:57, first subsection, of the Act amounts to € 125,000 plus two basis points of the amount with which the value of the assets under management exceed the amount of € 250 million. The minimum amount of the qualifying capital amounts to no more than € 10 million.
2. The assets under management include the assets of the collective investment schemes which are managed by the management company, including the assets for which he has outsourced the management, with the exception of those assets of which the management has been outsourced to him by third parties.
3. Section 60, fourth up to and including the sixth subsection, will apply *mutatis mutandis*.

#### **Section 64**

The minimum amount of the qualifying capital of an electronic money institution as referred to in section 3:57, first subsection, or 3:58, first subsection, of the Act, amounts to two percent of the current amount of the average amount over the last six months of its total financial obligations relating to outstanding electronic money, according to which amount is the highest. In the electronic money institution has not carried out its activities during a period of six months, the minimum amount of the qualifying capital amounts to two percent of the current amount or as apparent from its programme of activities for six months the aimed for amount of its total financial obligations that are related to outstanding electronic money, according to which amount is the highest. The Dutch Central Bank can decide that a higher minimum amount applies with regard to the electronic money institution, if the previous sentence applies and it is plausible that the amount aimed for has been estimated too low.

#### **Section 65**

1. The minimum amount of solvency margin of a life insurer as referred to in section 3:57, first subsection, or 3:58, first or second subsection, of the Act, is the total of the amounts to be calculated as follows:
  - a. insofar as it concerns insurance policies whereby the life insurer runs an investment risk: four percent of the amount of the gross technical facilities, multiplied by the ratio, which amounts to at

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- least 85 percent, between the technical facilities less the amount of the transfers by virtue of reinsurance and the gross technical facilities at the end of the past financial year;
- b. insofar as it concerns insurance policies whereby the life insurer does not run an investment risk and whereby the administration costs have been laid down for a period of more than five years: one percent of the amount of the gross technical facilities, multiplied by the ratio, which amounts to at least 85 percent, between the technical facilities, the transfers by virtue of reinsurance and the gross technical facilities at the end of the past financial year;
  - b. insofar as it concerns insurance policies whereby the life insurer does not run an investment risk and whereby the administration costs have been laid down for a period of five years or less: 25 percent of the net management costs in connection with the business operations in the past financial year;
  - d. insofar as it concerns savings banks: one percent of the capital of the savings banks;
  - e. insofar as it concerns insurance policies with risk capital, the total of the outcomes of the calculations specified below under 1 up to and including 3, multiplied by the ratio, which amounts to at least fifty percent, between the risk capital less the amount of the transfers by virtue of reinsurance and the risk capital in the past financial year:
    - 1°. term insurance policies with a maximum contract period of three years: 0.1 percent of the risk capital upon death;
    - 2°. term insurance policies with a contract period of more than three years and no more than five years: 0.15 percent of the risk capital upon death;
    - 3°. insurance policies other than term insurance policies with a maximum contract period of five years: 0.3 percent of the risk capital upon death;
  - f. insofar as it concerns supplementary insurance policies: the amount calculated in accordance with section 67, first, sixth and seventh subsection.
- 2. For the application of this section, the difference, referred to in section 98, third subsection, is regarded as gross technical facilities.
  - 3. For the application of this section, the obligations following from life insurance policies for which no technical facilities are formed in accordance with the international accounting standards, are regarded as technical facilities.
  - 4. The Dutch Central Bank can decide to limit the deduction based on the reinsurance, referred to in the first subsection, under a, b, e, last sentence, or f, in the event that:
    - a. the nature of the quality of the transfer by virtue of reinsurance has changed considerably since the past financial year; or
    - b. no or practically no risk transfer takes place by virtue of the reinsurance.

#### **Section 66**

- 1. The minimum amount of solvency margin of a funeral expenses and benefits in kind insurer as referred to in section 3:57, first subsection, or 3:61, first or second subsection, of the Act, is the total of the amounts to be calculated as follows:
  - a. insofar as it concerns insurance policies whereby the funeral expenses and benefits in kind insurer runs an investment risk: the outcome of the calculation, referred to in section 65, first subsection, under a;
  - b. insofar as it concerns insurance policies whereby the funeral expenses and benefits in kind insurer does not run an investment risk and whereby the administration costs have been laid down for a period of more than five years: the outcome of the calculation, referred to in section 65, first subsection, under b;
  - c. insofar as it concerns the outstanding deposits for funerals: one percent of the deposit amount;
  - d. insofar as it concerns insurance policies with risk capital: 0.3 percent of the risk capital upon death, multiplied by the ratio, which amounts to at least fifty percent, between the risk capital less the amount of the transfers by virtue of reinsurance and the risk capital in the past financial year; and
  - e. insofar as it concerns supplementary insurance policies: eighteen percent of the booked premiums in the past financial year and of the policy costs that were charged, insofar as these premiums and costs did not amount to more than € 10 million, plus sixteen percent of these premiums and costs, insofar as these amounted to more than € 10 million. The outcome of the calculation, referred to in the previous sentence, is multiplied by the ratio, which amounts to at least fifty percent, between the payments that are for the own account of the funeral expenses and benefits in kind insurer after transfer by virtue of reinsurance and the gross payments in the last financial year.
- 2. Section 65, second and third subsection, apply accordingly.

#### **Section 67**

- 1. The minimum amount of solvency margin of a non-life insurer as referred to in section 3:57, first



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subsection, or 3:58, first or second subsection, of the Act, is the product of the percentage calculated as specified under c in this section, multiplied by the highest amounts calculated as specified under a and b in this section. The amounts and the percentage are calculated as follows:

- a. eighteen percent of the booked or earned premiums in the past financial year, depending on which amount is the highest, and of the policy costs that were charged, insofar as these premiums and costs did not amount to more than €53.1 million, plus sixteen percent of these premiums and costs, insofar as these amounted to more than €53.1 million;
  - b. 26 percent of the average booked gross claims in the past three financial years and of the average addition to the claim provision in these years, insofar as these claims and additions do not amount to more than €37.2 million, plus 23 percent of these claims and additions, insofar as these amount to more than €37.2 million.
  - c. the ratio, which amounts to at least fifty percent, between the claims which are for the own account of the insurer after transfer by virtue of reinsurance and the gross claims in the past three financial years.
2. Insofar as it concerns the calculations with regard to the sectors Liability Airplanes, Liability Sea-going and Inland Waterway Vessels and General Liability, the booked or earned premiums, referred to in the first subsection, under a, first sentence, or the booked gross claims, referred to in the first subsection, under b, first sentence, are increased by fifty percent. The Dutch Central Bank can decide that statistical methods can be used for the allocation of the booked or earned premiums or booked gross claims to the aforementioned sectors.
  3. Insofar as it concerns a non-life insurer that primarily covers at least one of the risks of credit damage, storm damage, hail damage or frost damage, the calculation and the ratio, referred to in the first subsection, under b or under c respectively, are based on the past seven financial years.
  4. Insofar as it concerns the sector Assistance, the amount of the booked gross claims, referred to in the first subsection, under b, is based on the costs for the non-life insurer following from the assistance that has been provided.
  5. For the application of this section, the high-costs compensation, referred to in section 1, under q, of the Healthcare Insurance Decree, are regarded as reinsurance.
  6. For the application of this section, received premiums and paid out or to be paid out claims in connection with non-life insurance policies, which in accordance with international accounting standards are not regarded as such, are taken into consideration.
  7. If the minimum amount of solvency margin as calculated in accordance with this section is lower than the minimum amount of solvency margin of the previous financial year, the minimum amount of solvency margin then amounts to at least the outcome of the following calculation: the minimum amount of solvency margin of the previous financial year is multiplied by the ratio, which amounts to no more than one hundred percent, between the amounts for technical facilities for the to be paid claims less the amount of the transfers by virtue of reinsurance at the end of the financial year and the amounts for technical facilities for the to be paid claims less the amount of the transfers by virtue of reinsurance at the beginning of the financial year.
  8. Section 65, fourth subsection, will apply mutatis mutandis.
  9. Section 49, third and fourth subsection, will apply mutatis mutandis to the amounts, referred to in the first subsection, under a and b.

#### **Section 68**

1. The minimum amount of solvency margin of a non-life insurer as referred to in section 3:57, first subsection, or 3:58, first or second subsection, of the Act amounts to one third of the amount calculated according to section 67 for the amount that concerns healthcare costs insurance policies if these insurance policies are administrated in the same manner as life insurance policies and:
  - a. the levied premium is calculated according to actuarial mathematical methods;
  - b. an actuarial calculated old age provision is formed;
  - c. an additional premium is levied in order to form a realistic safety margin;
  - d. the non-life insurer cannot terminate the healthcare costs insurance before the end of the third insurance year; and
  - e. the option has been included in the healthcare costs insurance to increase the premiums or reduce the payments also for existing insurance policies.
2. By Ministerial Regulation, the minimum amount of solvency margin, referred to in the first subsection can be increased by no more than the amount calculated in accordance with section 67, in the event that the rules with regard to risk equalisation specified pursuant to paragraph 4.2 of the Healthcare Insurance Act give cause thereto.

#### **§ 10.2. Minimum qualifying capital according to internal models**

##### **Provisions for the implementation of section 3:57, second subsection, of the Act**

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#### **Section 69**

1. The Dutch Central Bank can, upon request, grant a bank or investment undertaking, as referred to in section 3:57, first subsection, or 3:58, first subsection, of the Act, permission to calculate the amounts of its risk-weighted assets or off-balance sheet items, contrary to section 61, according to the internal rating based approach, using own estimates of the probability of default. The Dutch Central Bank can also, upon request, grant permission to make use of own estimates of losses in the event of default and conversion factors.
2. The internal models used for the management and assessment of credit risks are applied with due care. The Dutch Central Bank lays down rules with regard to these internal models.
3. The permission, referred to in the first subsection, is granted in the event that the financial undertaking has demonstrated that the internal models used satisfy that which is stipulated by virtue of the second subsection.
4. The financial undertaking that submits a request for permission for the use of the internal rating based approach, submits evidence from which it is apparent that it has already made use of systems for the assessment of credit risks for a period of at least three years for the categories of assets and off-balance sheet items, referred to in section 71, first subsection, which systems are, in general terms, in accordance with the rules, referred to in the second subsection, last sentence.
5. The financial undertaking, that submits a request for permission of the use of own estimates of losses in the event of default and conversion factors, submits evidence from which it is apparent that it has already prepared its own estimates of losses in the event of default or of conversion factors for a period of at least three years and prepares and makes use of these in a manner that is, in general terms, in accordance with the rules, referred to in the second subsection, last sentence.
6. Without prejudice to the sections 70 and 76, the financial undertaking, which has been granted permission to use the internal rating based approach makes use of this method for all assets and off-balance sheet items.
7. In the event that the financial undertaking no longer satisfies the first up to and including the sixth subsection of the sections 70 up to and including 76, the financial undertaking submits a plan to the Dutch Central Bank to satisfy these subsections and sections as soon as possible again, or it demonstrates that this does not have any significant consequences for the use of the internal rating based approach.

#### **Section 70**

1. The Dutch Central Bank can, upon request, grant permission to a bank or investment undertaking as referred to in section 69, first subsection, to gradually introduce the internal rating based approach:
  - a. per category or, in the event of the category referred to in section 71, first subsection, opening words and under d, per sub-category of assets or off-balance sheet items, referred to in section 71, first subsection;
  - b. within the same business line;
  - c. for each business line within the same group; or
  - d. for the use of own estimates of losses in the event of default and conversion factors for the calculation of risk weights for amounts owed by undertakings, banks and investment undertakings and central governments and central banks.
2. The Dutch Central Bank lays down rules in order to ensure that the gradual introduction, referred to in the first subsection, takes place within a reasonable term and is not used to achieve a lower minimum capital requirement for the categories of exposures or business lines, referred to in the first subsection, for which the internal rating based approach is not applied.
3. The financial undertaking that makes use of the internal rating based approach for any category of assets or off-balance sheet items, referred to in section 71, first subsection, also uses this approach for the positions in stocks, referred to under e of the aforementioned section.
4. Without prejudice to the first up to and including the third subsection and section 76, the financial undertaking that, in accordance with section 69, first subsection, has been granted permission to use the internal rating based approach, does not fall back on section 61 for the calculation of the amounts of the risk-weighted assets and off-balance sheet items, unless the Dutch Central Bank agrees to this.
5. Without prejudice to the first and second subsection and section 79, the financial undertaking that, in accordance with section 69, first subsection, has been granted permission to make use of its own estimates of losses in the event of default and conversion factors, is not allowed for the calculation of the amount of the risk-weighted assets and off-balance sheet items to later then still make use of the value of losses in the event of default and conversion factors determined by the Dutch Central Bank in accordance with section 73, second subsection, unless the Dutch Central Bank agrees to this.

#### **Section 71**

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1. A bank or investment undertaking as referred to in section 69, first subsection, that makes use of the internal rating based approach, classifies its assets and off-balance sheet items according to a suitable and over time consistent method in the following categories:
  - a. exposures or conditional exposures to central governments and central banks;
  - b. exposures or conditional exposures to banks and investment undertakings;
  - c. exposures or conditional exposures to undertakings, including exposures arising from specialised lending;
  - d. immediately exposures or conditional exposures to retail clients or small and medium-sized undertakings;
  - e. positions in stocks;
  - f. securitisation positions; and
  - g. other assets or off-balance sheet items that do not represent a credit obligation.
2. Assets or off-balance sheet items that represent a credit obligation that are not classified in one of the categories, referred to in the first subsection, under a, b or d up to and including f, are classified in the category, referred to under c.
3. The Dutch Central Bank lays down rules with regard to the classification in categories, referred to in the first subsection.

#### **Section 72**

1. Taking sections 73 and 74 into consideration, the Dutch Central Bank lays down rules with regard to:
  - a. the calculation of the amount of the credit-risk weighted assets and off-balance sheet items, referred to in section 71, first subsection, under a up to and including e or g, insofar as this amount is not deducted from the qualifying capital; and
  - b. the calculation of the amount of the dilution-risk weighted assets and off-balance sheet items in connection with the purchased short-term trade receivables, with and without recourse to the counterparty.
2. The amount of the risk-weighted item in the event of securitised assets and off-balance sheet times or of a risk-weighted securitisation item, as referred to in section 71, first subsection, under f, is calculated according to paragraph 10.4.

#### **Section 73**

1. The rules, referred to in section 72, first subsection, provide for calculation based on the following parameters:
  - a. the probability of default;
  - b. the loss in the event of default;
  - c. the term; and
  - d. the value of the assets and off-balance sheet items in question, is determined by, among other things, the conversions factors.
2. The rules to be laid down by the Dutch Central Bank, in accordance with section 72, first subsection, also include rules with regard to the value of the loss in event of default and the conversion factors as well as conditions for the use of own estimates of the probability of default, the loss in the event of default, the term and the conversion factors.
3. In the rules to be laid down by the Dutch Central Bank in accordance with section 72, first subsection, the Dutch Central Bank can depart from the first subsection insofar as this concerns the calculation of the amount of the credit-risk weighted positions in stocks, referred to in section 71, first subsection, under e, including positions in institutions for collective investment, exposures arising from specialised lending, referred to in section 71, first subsection, under c, or other assets or off-balance sheet items that do not represent a credit obligation, referred to in section 71, first subsection, under g.

#### **Section 74**

1. A bank or investment undertaking as referred to in section 69, first subsection, which has been granted permission to make use of the internal rating based approach uses its own estimates of the probability of default for the calculation of the amount of the risk-weighted assets and off-balance sheet items, referred to in section 71, first subsection, under a up to and including d.
2. The financial undertaking, which pursuant to section 69, first subsection, last sentence, has also been granted permission for the assets and off-balance sheet items, referred to in section 71, first subsection, under d, used for the calculation of the amount of the risk-weighted assets and off-balance sheet items, to use its own estimates of loss in the event of default and conversion factors.
3. For the categories, referred to in section 71, first subsection, under a up to and including c, the financial undertaking makes use of the values of losses in the event of default and conversion factors determined in accordance with section 73, second subsection, for the calculation of the amount of the risk-weighted assets and off-balance sheet items, unless the financial undertaking, referred to in the first subsection has also been granted permission for these assets and off-balance

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sheet items in accordance with section 69, first subsection, last sentence. In that case, the financial undertaking uses its own estimates of losses in the event of default and conversion factors for the calculation of the amount of the risk-weighted assets and off-balance sheet items.

#### **Section 75**

1. The Dutch Central Bank lays down rules with regard to the calculation of the expected loss items in connection with:
  - a. assets and off-balance sheet items, referred to in section 71, first subsection, under a up to and including e;
  - b. positions in institutions for collective investment, referred to in section 73, third subsection; and
  - c. the dilution risk of purchased short-term trade receivables.
2. The expected loss in connection with securitisation positions, referred to in section 71, first subsection, under f, are calculated according to paragraph 10.4.
3. The expected loss for assets or off-balance sheet items that does not represent a credit obligation, referred to in section 71, first subsection, under g, equals nil.

#### **Section 76**

1. The Dutch Central Bank can, upon request, grant a bank of investment undertaking, as referred to in section 69, first subsection, which uses the internal rating based approach for the calculation of the amount of the risk-weighted assets and off-balance sheet items and the expected loss for one or more categories, referred to in section 71, first subsection, permission to make use of the standardised approach, referred to in section 61, for assets and off-balance sheet items in the event that:
  - a. it concerns assets or off-balance sheet items, as referred to in section 71, first subsection, under a and b, the number of counterparties are limited and it would be too burdensome for the financial undertaking to introduce the internal rating based approach for these counterparties;
  - b. it concerns assets or off-balance sheet items in connection with non-important business lines and in categories that have no significant size and of which the risk profile can be considered low;
  - c. it concerns exposures to the State of the Netherlands or, if there is no difference in risk by virtue of certain public law regulations between exposures to the State of the Netherlands and these exposures, Dutch provinces, municipalities, water boards or other public bodies as referred to in section 134 of the Constitution, and to exposures to the State of the Netherlands by virtue of section 61, fifth subsection, under a, a risk weight of nil percent is allocated;
  - d. it concerns exposures to a counterparty, which is its parent company, subsidiary or a subsidiary of its parent company, in the event that this counterparty is a bank, investment undertaking, financial holding, financial institution, asset manager or company that performs ancillary services to which the chapters 9, 10, and 12 of this Decree apply or an affiliated undertaking as referred to in section 12, first subsection, of the consolidated financial statements directive;
  - e. it concerns positions in shares of a legal person to whose credit obligations in accordance with section 61, fifth subsection, under a, a risk weight of nil percent is allocated.
  - f. it concerns positions in stocks, amounting to no more than ten percent of the total of the amount of the core capital, referred to in section 91, and the amount of the additional capital, referred to in section 92, that has been included in connection with government programmes with which aid is provided to certain economic sectors and whereby the financial undertaking receives sizeable subsidies for its investments and the investments are in some way subjected to government supervision and restrictions.
  - g. it concerns exposures to undertakings in the form of minimum reserves that the financial undertaking is required to maintain by the European Central Bank or a central bank of a Member State;
  - h. it concerns government guarantees or guarantees that are reinsured by the government that satisfy rules to be laid down by the Dutch Central Bank.
2. Without prejudice to that which is specified under a up to and including g of the first subsection, the Dutch Central Bank grants the permission referred to in the opening words of that subsection if it concerns positions in stocks as referred to in the first subsection, under e or f, for which permission to make use of the standardised approach has been granted in another member state.
3. For the application of the first subsection, opening words and under b, positions in stocks are regarded as sizeable if the total value thereof amounts to on average more than ten percent with the exception of the positions in stock in the previous year specified in the first subsection, under f, or more than five percent of the qualifying capital of the financial undertaking if a position in stocks has been built up in fewer than ten individual undertakings.

#### **Section 77**

1. The Dutch Central Bank can, upon request, grant a bank or investment undertaking as referred to in

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section 69, first subsection, permission to calculate the amount of the required solvency for the position risks in connection with the trading portfolio, referred to in section 60, first subsection, under b, or for the currency risks or commodity risks, referred to in section 60, first subsection, under c, in contravention to section 60, second subsection, on the basis of internal models.

2. The Dutch Central Bank lays down rules with regard to internal models as referred to in the first subsection and the use thereof.

#### **Section 78**

1. The Dutch Central Bank can, upon request, grant a bank or investment undertaking, as referred to in section 69, first subsection, permission to calculate the amount with regard to the required solvency in relation to the total business operations to cover the operational risk, referred to in section 60, first subsection, under b, based on the advanced measurements approach that is based on a risk measurement system.
2. Before the Dutch Central Bank grants permission for the application of the advanced measurements approach, referred to in the first subsection, the Dutch Central Bank validates the risk measurement system and it checks whether the:
  - a. internal validation procedures of the financial undertaking function adequately; and
  - b. data flows and procedures for the risk measurement system of the financial undertaking are transparent and accessible.
3. The Dutch Central Bank lays down rules with regard to the risk measurement system and the risk management system for the calculation of the required solvency to cover the operational risk.
4. If a Dutch EU parent investment undertaking or Dutch EU parent credit institution and its subsidiaries or the subsidiaries of a Dutch financial EU parent holding applies an advanced method for the operational risk centrally, the Dutch Central Bank can, upon request, grant permission for the parent company and its subsidiaries to jointly comply with the rules specified in this Decree with regard to the advanced measurements approach.
5. The Dutch Central Bank lays down rules that the request, referred to in the fourth subsection, must satisfy.

#### **Section 79**

1. A bank or investment undertaking, as referred to in section 69, first subsection, that once makes use of the advanced measurements approach, is not permitted to make subsequent use of the basic indicator approach or standardised approach.
2. The Dutch Central Bank can, upon request, whether or not for a definite period, grant exemption from the first subsection, if the applicant can demonstrate that there are good reasons for this.
3. The Dutch Central Bank can, upon request, grant permission to a financial undertaking, as referred to in the first subsection to apply the advanced measurements approach in combination with the basic indicator approach or standardised approach, in the event that:
  - a. this combined application of approaches takes into consideration all operational risks that the financial undertaking can run;
  - b. it agrees with the method that the financial undertaking applies to take into consideration the operational risks of its various activities, business units, legal structures or other factors that it considers relevant; and
  - c. the rules laid down in this Decree regard the method used are complied with.
4. The Dutch Central Bank can attach the condition to the permission, referred to in the third subsection, that:
  - a. at the time that the advanced measurements approach is introduced, this approach is applied to a considerable part of the operational risks of the financial undertaking; and
  - b. the financial undertaking implements the advanced measurements approach for a considerable part of its activities according to a time schedule agreed with the Dutch Central Bank.

### **§ 10.3. Credit risk mitigation**

#### **Provisions for the implementation of section 3:57, second subsection, of the Act**

#### **Section 80**

A bank, investment undertaking or clearing institution as referred to in section 3:57, first subsection, 3:58, first subsection, or 3:61, first subsection, of the Act, which calculates the amount of the risk-weighted assets and off-balance sheet items in accordance with section 61 or paragraph 10.2, whereby it does not make use of own estimates of losses in the event of default and conversion factors, only takes credit risk mitigation into consideration in this calculation or, if applicable, in the calculation of the expected losses in accordance with section 92, second subsection, under d, or section 94, second subsection, under f, if section 81 has been satisfied.

#### **Section 81**

1. A security arrangement is only agreed in connection with credit risk mitigation, in the event that it is

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legally valid and enforceable in all relevant jurisdictions.

2. A financial undertaking as referred to in section 80 that is a lending financial undertaking, takes all appropriate measures to ensure the effectiveness of the credit risk mitigation and to limit the risks connected thereto.
3. In the event of funded credit protection, no assets are taken into consideration that offer insufficient security with regard to the protection of the asset.
4. Funded credit protection is only taken into account as credit risk mitigation, in the event that the lending financial undertaking has the right in the event of default, insolvency or bankruptcy of the debtor, or, if applicable, the depositary of the security of in the event of another event specified in the agreement in question that results in payment under the agreement or settlement of the agreement, to liquidate or retain the assets that serve as security as soon as possible. The value of the assets that are used as security, may not be too closely correlated with the credit quality of the debtor.
5. In the event of unfunded credit protection, the issuer of the guarantees may only be taken into consideration if the issuer is reliable and the credit protection agreement is legally valid and enforceable in the relevant jurisdictions.
6. The Dutch Central Bank lays down additional rules with regard to the conditions under which credit risk reducing techniques are acceptable and the limitation of the risks connected to credit risk mitigation.

#### **Section 82**

1. A financial undertaking as referred to in section 80, first subsection, that takes credit risk mitigation into consideration, adjusts the calculation of the risk-weighted assets and off-balance sheet items, and, if applicable, the calculation of the expected losses accordingly. The Dutch Central Bank lays down rules with regard to the adjustment of these calculations.
2. Taking credit risk mitigation into consideration does not result in a higher amount of the risk-weighted assets or off-balance sheet items or a higher expected loss than the amount of the risk-weighted assets and off-balance sheet items or, respectively, expected loss of in all other aspects identical assets or off-balance sheet items whereby no credit risk mitigation is taken into consideration.
3. If credit risk mitigation is taken into account in the calculation of the amount of the risk-weighted assets and off-balance sheet items in accordance with section 61 or in accordance with an internal model method, credit risk mitigation in accordance with this paragraph is not taken into account once again.

#### **§ 10.4. Securitisation**

##### **Provisions for the implementation of section 3:57, second subsection, of the Act**

#### **Section 83**

A bank, investment undertaking or clearing institution, as referred to in section 3:57, first subsection, 3:58, first subsection, or 3:61, first subsection, of the Act, calculates the amount of risk-weighted items in the event of securitised assets and off-balance sheet items and of risk-weighted securitisation positions in the manner, specified in accordance with this paragraph.

#### **Section 84**

1. If a substantial part of the credit risk connected to securitised items has been transferred by a financial undertaking, as referred to in section 83, which is the initiator, it may:
  - a. in the event of a traditional securitisation, refrain from taking the securitised items into account by virtue of paragraph 10.1 or 10.2 in the calculation of the amount of the risk-weighted assets and off-balance sheet items and, if applicable, the expected losses;
  - b. in the event of a synthetic securitisation, calculate the risk-weighted assets and off-balance sheet items and, if applicable, the expected losses for the securitised items in accordance with rules to be laid down by the Dutch Central Bank instead of in accordance with paragraph 10.1 or 10.2.
2. If the first subsection applies, the financial undertaking calculates the amount of the risk-weighted securitisation positions in accordance with section 85.
3. If the first subsection is not applicable, the financial undertaking calculates the amount of the risk-weighted assets and off-balance sheet items as if no securitisation has taken place.
4. The Dutch Central Bank lays down rules with regard to the conditions under which the transfer of the credit risk connected to the securitisation positions is taken into account.

#### **Section 85**

1. The risk-weighted exposure amount of a securitisation position equals the exposure value of the securitisation position multiplied by the risk weight allocated to the securitisation position. Each tranche of a securitisation position is thereby regarded as a separate securitisation position.
2. The Dutch Central Bank lays down rules, taking into consideration the third up to and including the

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fifth subsection, with regard to the taking into account of items such as securitisation positions and the risk weights that are to be allocated to securitisation positions. It makes a distinction thereby between cases in which section 61 is applied for the calculation of the risk-weighted assets and off-balance sheet items for the category in which the securitised items in accordance with section 61, fifth subsection, under a, would have been classified and all other cases.

3. In the allocation of a risk weight to a securitisation position, a financial undertaking, as referred to in section 83, can make use, in a consistent manner, of a credit rating of a by the Dutch Central Bank or by a supervisory authority of another Member State in accordance with paragraph 10.5 recognised credit rating agency. The Dutch Central Bank lays down additional rules with regard to the use of a credit rating as referred to in the previous sentence.
4. The Dutch Central Bank allocates, in an objective and consequent manner, a risk weight to credit ratings as referred to in the third subsection taking into consideration the following:
  - a. it distinguishes the relative risk degrees which the credit rating expresses;
  - b. it ensures that the same risk weight is allocated to securitisation positions that run an equivalent credit risk based on credit ratings, where appropriate, it adjusts the allocation of a risk weight based on credit ratings to a securitisation position.

Section 61a, fourth subsection, will apply *mutatis mutandis*.

#### **Section 86**

1. If an early redemption clause applies to a securitisation of revolving loans, a financial undertaking, as referred to in section 83, which is the initiator, calculates an additional risk-weighted item.
2. The Dutch Central Bank lays down rules with regard to the calculation of the additional risk-weighted item.
3. The Dutch Central Bank can, after consultation with the relevant supervisory authorities in other Member States, allow a financial undertaking, as referred to in the first subsection, to calculate the additional risk-weighted item in a manner that does not significantly depart from the rules, referred to in the second subsection, in the event that it concerns a securitisation:
  - a. of receivables owed by retail clients or by small and medium-sized undertakings that have not been promised and unconditionally, with a period of notice, can be terminated; and
  - b. whereby a quantitative value, that is not related to the three-monthly average of the remaining interest margin, is the cause for the early redemption.
4. The Dutch Central Bank makes public which views and reservations were voiced by the supervisory authorities at the consultation, referred to in the third subsection.

#### **Section 87**

1. In the event section 84, first and second subsection, applies to a financial undertaking, as referred to in section 83 or in the event a financial undertaking, as referred to in section 83, which is the sponsor, gives support to a securitisation, it does not exceed the limits of its contractual obligations in order to limit the possible or actual losses of the investors.
2. In the event that the financial undertaking, which is the initiator or sponsor of a securitisation, does not comply with the first subsection, then it maintains for all securitised items as much qualifying capital as would have been necessary if these items were not securitised.
3. The financial undertaking makes public that it has exceeded the limits of its contractual obligations in giving support and what the resulting consequences are for its qualifying capital.

### **§ 10.5. Recognition of credit ratings of credit rating agencies and export credit insurers**

#### **Section 88**

1. The Dutch Central Bank recognises, upon request, whether or not for a fixed period, a credit rating agency in the event that it satisfies the criteria, referred to in the sections 81, second subsection, and 97, second subsection, and the Annexes VI, part 2 and IX, part 3, item 1, of the *Recast Banking Directive*.
2. The Dutch Central Bank adopts a procedure for the recognition, referred to in the first subsection, and publishes this.
3. When a credit rating agency no longer satisfies the criteria, referred to in the first subsection, the Dutch Central Bank can revoke the recognition.
4. If a supervisory authority of another Member State has recognised a credit rating agency, the Dutch Central Bank will recognise the credit rating agency without an assessment.
5. The Dutch Central Bank provides for the registration of a recognised credit rating agency in the register, referred to in section 1:107, first subsection, of the Act.

#### **Section 88a**

The Dutch Central Bank recognises, upon request, whether or not for a fixed period, the credit ratings of an export-credit insurer, if the credit ratings satisfy the criteria specified in Annex VI, part 1, item 6, of the *Recast Banking Directive*.

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## **§ 10.6. Composition of the qualifying capital and the solvency margin**

### **Provisions for the implementation of the sections 3:57, second subsection, 3:59, second subsection, and 3:62, second subsection, of the Act**

#### **Section 89**

1. In the calculation of the qualifying capital, referred to in the sections 90 up to and including 94, or the available solvency margin, referred to in the sections 95 up to and including 98, for each individual item the foreseeable amount of the taxes due on this item are taken into account. The capital components, referred to in section 91, second subsection, under a up to and including j, or 95, second subsection, are immediately and without restriction at the disposal of the financial undertaking in question.
2. The Dutch Central Bank lays down rules with regard to:
  - a. the recognition as qualifying capital or available solvency margin of innovative financial instruments that can be equated with the capital components referred to in the sections 90 up to and including 98;
  - b. taking assets into consideration as intangible assets as referred to in the sections 91, third subsection, under c, and 95, third subsection under e.

#### **Section 90**

1. The regulatory capital of a bank, investment undertaking or clearing institution as referred to in section 3:57, first subsection, 3:58, first subsection, or 3:61, first subsection, of the Act, is formed by the total of the core capital and the additional capital to be taken into consideration according to section 94, first subsection, under a up to and including c, second, third and fourth subsection.
2. Contrary to the first subsection, the financial undertaking can opt that its regulatory capital is formed, only as coverage for the amounts, referred to in section 60, first subsection, under b, insofar as it concerns the required solvency for the coverage of the position risks and large exposures, and under c, and the requirement, referred to in section 60, third subsection, by the total of the in accordance with section 94, to be taken into consideration core capital, additional capital and other capital. The components of this regulatory capital cannot also serve as the coverage for other in section 60, first subsection, referred to amounts.
3. The regulatory capital of a management company of an undertaking for collective investment in transferable securities, as referred to in section 3:57, first subsection, of the Act is formed by the total of the core capital and additional capital in accordance with section 94, first subsection, under a up to and including c.
4. The regulatory capital of an electronic money institution, as referred to in section 3:57, first subsection, or 3:58, first subsection, of the Act is formed by the total of the core capital and additional capital in accordance with section 94, first subsection, under a and b, second and third subsection.

#### **Section 91**

1. The core capital is formed by the value of the capital components, referred to in the second subsection, less the value of the items, referred to in the third subsection.
2. The capital components to be recognised for the determination of the core capital are:
  - a. for a public or private limited liability company: the issued and fully paid-up share capital, with the exception of cumulative preference shares and preference shares with a fixed term;
  - b. for a general partnership: the separated paid up capital components of the managing partners;
  - c. for a limited partnership: the separated paid up capital components of the managing partners as well as the paid up limited partnership capital;
  - d. for a cooperative society: the capital paid up or contributed by the members;
  - e. for a company that has a legal form other than the forms listed above: the positive difference between assets and liabilities;
  - f. reserves, with the exception of the revaluation reserves;
  - g. positive interim results reviewed by an auditor, less the dividends to be paid out and, in the event that the financial undertaking is an initiator of a securitisation, with the exception of the net profits that have arisen from the capitalisation of future income from the securitised assets and that serve as credit enhancement for the securitisation positions;
  - h. the fund for the coverage of general banking risks;
  - i. the third party interests, insofar as it comprises capital components as referred to in this subsection;
  - j. the negative components of the revaluation reserves, insofar as they have arisen from changes in values of investments in non-interest bearing securities; and
  - k. negative interim results.
3. The items to be taken into consideration for the determination of the core capital are:



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- a. reserves, insofar as resulting from unrealised results on the financial undertaking's own creditworthiness;
- b. the book value of the securities issued by the financial undertaking and of the derivative financial instruments on the securities issued by the financial undertaking, insofar as these comprise capital components as referred to in the second subsection;
- c. intangible assets;
- d. reserves, insofar as resulting from changes in the values of hedging transactions that have not yet been recorded in the profit and loss account; and
- e. in the case of a financial undertaking that applies section 90, second subsection, or a management company of an undertaking for collective investment in transferable securities, the following non-liquid assets:
  - 1°. tangible fixed assets other than land and buildings that can be taken into consideration against loans for which they serve as collateral;
  - 2°. the items, referred to in section 94, second subsection, opening words and under a up to and including e, whereby the fifth up to and including the seventh subsection of that subsection apply mutatis mutandis;
  - 3°. not immediately tradable participations and other investments in undertakings that are not financial undertakings, reinsurers, credit institutions or insurers;
  - 4°. deficits at subsidiaries;
  - 5°. deposits, with the exception of deposits that can be called up within ninety days or margin payments in connection with term transfer rights of commodities and option contracts;
  - 6°. loans and other amounts due, which do not have to be repaid within ninety days; and
  - 7°. physical inventories.

## **Section 92**

1. The additional capital is formed by the core additional capital and the supplementary additional capital.
2. The core additional capital is formed by the value of:
  - a. the revaluation reserves, insofar as not already included in section 91, second subsection, under j, and insofar as not resulting from a change in value of hedging transactions that have not yet been recorded in the profit and loss account or by the valuation of interest-bearing securities at the current value;
  - b. the paid up part of debt instruments with an indefinite term and other financing instruments in the event that:
    - 1°. redemption only takes place in the event that the Dutch Central Bank, at the request of the financial undertaking, grants permission;
    - 2°. the debt agreement specifies that the financial undertaking can postpone the interest payment on the debt;
    - 3°. the documents with regard to the issue of debt instruments specify that debt and unpaid interest can be used to absorb losses, while the financial undertaking can continue its activities; and
    - 4°. the amount owed to the creditor are fully subordinated to the amounts due to all unsubordinated creditors;
  - c. cumulative preference shares with an indefinite term, insofar as comprising part of the paid-up capital;
  - d. the difference, if positive, of the total of the value adjustments and provisions in connection with the expected losses in connection with the assets and off-balance sheet items, referred to in section 71, first subsection, under a up to and including d, and the total of the expected losses calculated in accordance with section 75, first subsection, under a and c, if the financial undertaking applies paragraph 10.2 and this difference is taken into account up to a maximum of 0.6 percent of the total of the risk-weighted assets and off-balance sheet items, provided that in the calculation of the risk-weighted assets and off-balance sheet items the securitisation positions to which a risk weight of 1250 percent is allocated are not taken into account; the value adjustments and provisions are only taken into account as qualifying capital of the financial undertaking in accordance with this subsection; and
  - e. the third party interests, insofar as these comprise capital components as referred to in this subsection;
3. The supplementary additional capital is formed by the value of:
  - a. liability obligations of members, if it concerns a cooperative society, i.e. the unpaid capital and the obligations of the members by virtue of the articles of association to make additional non-redeemable payments in the event of a loss, provided that the payments can immediately be demanded in that case;

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- b. preference and cumulative preference shares with a fixed term, insofar as comprising part of the paid-up capital;
- c. the paid-up part of long-term subordinated loans in the event that:
  - 1°. the amount owed to the creditor, insofar as it concerns the repayment of the loan amount, is fully subordinated to the amounts due to all other creditors;
  - 2°. the subordinated loan has an original fixed term of at least five years or, if the term is indefinite, a period of notice of at least five years;
  - 3°. early redemption only takes place in the event that the Dutch Central Bank, at the request of the financial undertaking, decides this;
  - 4°. the amount for which the subordinated loan can be taken into account as supplementary additional capital is reduced straight line during at least the five years that precede the date of the redemption; and
  - 5°. the loan agreement does not contain a provision on the basis of which the subordinated loan must be redeemed before the end of the term, other than in the event of liquidation; and
- d. the third party interests, insofar as these comprise capital components as referred to in this subsection.

#### **Section 93**

The other capital is formed by the value of the paid-up part of short-term subordinated loans in the event that:

- a. the subordinated loan has an original term of at least two years;
- b. the loan agreement does not contain a provision on the basis of which the subordinated loan must be redeemed before the end of the term, other than in the event of liquidation, unless the Dutch Central Bank, decides this, upon the request of the financial undertaking; and
- c. if the qualifying capital amounts to less than 120 percent of the minimum amount of the qualifying capital, referred to in section 60, the subordinated loan may not be redeemed, unless the financial undertaking notifies the Dutch Central Bank of this.

#### **Section 94**

1. For the application of the sections 90 up to and including 93:
  - a. the is taken fully into account for the calculation of the qualifying capital;
  - b. the additional capital is only taken into account for the calculation of the qualifying capital insofar as it does not amount to more than the core capital;
  - c. the supplementary additional capital is only taken into account for the calculation of the qualifying capital insofar as it does not amount to more than fifty percent of the core capital;
  - d. the other capital is taken into account for the calculation of the qualifying capital insofar as it does not amount to more than two hundred and fifty percent of the core capital that can be taken into consideration for the coverage of these amounts and that requirement;
  - e. the additional capital, plus the other capital, is only taken into account for the calculation of the qualifying capital insofar as it does not amount to more than the core capital; and
  - f. may, if which is specified under b, c and e is satisfied, for the calculation of the qualifying capital the other capital be substituted by additional capital.
2. The core capital and additional capital of a bank, investment undertaking or clearing institution to be taken into account as qualifying capital in accordance with the first subsection, as referred to in section 90, first subsection, or electronic money institution, as referred to in section 90, fourth subsection, are both decreased by half of the total of the value of:
  - a. shares that represent an interest of more than ten percent of the issued share capital of a financial undertaking or credit institution;
  - b. in the event that the bank, clearing institution or electronic money institution holds an interest as referred to under a, the subordinated loans and the items, referred to in section 92, second subsection, under b and c, and third subsection, under b and c, that are considered as components of the qualifying capital of the financial institution or credit institution;
  - c. shares that represent an interest of ten percent or less of the issued share capital of a financial institution or credit institution, subordinated loans and items, referred to in section 92, second subsection, under b and c, and third subsection, under b and c, that are considered as components of the qualifying capital of other than the under b referred to financial institutions or credit institutions, insofar as the value exceeds ten percent of the qualifying capital of the bank, clearing institution or electronic money institution without the application of this subsection, and if the aforementioned items form part of the trading portfolio of the bank, clearing institution or electronic money institution insofar as the value for each individual financial institution or credit institution exceeds ten percent of the qualifying capital of the bank, clearing institution or electronic money institution without the application of this subsection;
  - d. participations, as referred to in section 3:268, first subsection, under b, of the Act in a reinsurer

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- or insurer;
  - e. in the event that the bank, clearing institution or electronic money institution holds a participation as referred to under d, the items referred to in section 96, that are considered as components of the solvency margin of the reinsurer or insurer;
  - f. in the event that the financial undertaking for the calculation of the risk-weighted assets and off-balance sheet items in accordance with paragraph 10.2 applies an internal model method:
    - 1°. the difference, if negative, of the total of the value adjustments and provisions related to the expected losses in connection with the assets and off-balance sheet items, referred to in section 71, first subsection, under a up to and including d, and the total of the expected losses, calculated in accordance with section 75, first subsection, under a and c;
    - 2°. the expected losses in connection with positions in stocks, as referred to in section 71, first subsection, under e, calculated in accordance with section 75, first subsection, under a or b;and
  - g. the receivables in connection with securitisation positions to which, in accordance with section 85, second subsection, a risk weight of 1250 percent is allocated, insofar as these have not been taken into account in the calculation of the risk-weighted assets and off-balance sheet items, referred to in section 85.
3. Contrary to the second subsection, the core capital and additional capital of the financial undertaking, which applies section 90, second subsection, which is taken into account as qualifying capital, is decreased by half of the total of the value of the items, referred to in the second subsection, under f and g.
  4. If half of the total of the value of the assets, referred to in the second subsection, amounts to more than the as qualifying capital to be taken into account additional capital, the difference is deducted from the core capital that is taken into account as qualifying capital.
  5. The Dutch Central Bank can, upon request, decide that the financial undertaking, referred to in the second subsection, opening words, whether or not for a fixed period, does not have to deduct the value of the items referred to in the second subsection from the core capital and additional capital that can be taken into account as qualifying capital, if the interest in the financial institution, reinsurer, credit institution, insurer or insurance holding, or the subordinated loans issued by these financial undertakings or other items are held temporarily in connection with a financial assistance operation, intended to restructure or rescue this financial undertaking.
  6. The financial undertaking, referred to in the second subsection, opening words, can apply the methods 1, 2 or 3, referred to in Annex B of the Decree on Prudential Supervision of Financial Groups in a similar manner, instead of the reduction with the value of the items, referred to in the second subsection, under d and e, provided that method 1 can only be applied when the Dutch Central Bank, upon request, has decided that it is permitted to do so. The Dutch Central Bank decides this if the integrated management and the internal audit of the undertakings to be included in the consolidation are adequate.
  7. If the financial undertaking, referred to in the opening words of the second subsection, is supervised on a consolidated basis in accordance with section 3.6.2 of the Act or at which prudential supervision of financial conglomerates in accordance with section 3.6.4. of the Act is held, it does not have to deduct the value of the in the second subsection referred to items that are held in a financial institution, reinsurer, credit institution, insurer or insurance holding that is included in that consolidated supervision or prudential supervision of financial conglomerates from the core capital and additional capital that is taken into account as qualifying capital.
  8. The Dutch Central Bank can, upon request, decide in exceptional circumstances that a financial undertaking is allowed to exceed, for a specific period, one of the limits, referred to in the first subsection, under b up to and including e.

#### **Section 95**

1. The available solvency margin of an insurer as referred to in section 3:57, first subsection, 3:58, first or second subsection, or 3:61, first or second subsection, of the Act is formed by the value of the capital components, referred to in the second subsection, less the value of the items, referred to in the third subsection.
2. The capital components referred to in the first subsection are:
  - a. the paid-up share capital or guarantee capital, plus the member accounts, if applicable, in the event that:
    - 1°. the member accounts have a subordinated character by virtue of the articles of association;
    - 2°. the articles of association specify that payments to the members from the member accounts only take place if this does not cause the solvency margin to drop below the minimum amount, or in the event of the liquidation of the insurer, all other debts have been paid;
    - 3°. the articles of association specify that each payment from the member accounts for purposes

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- other than for the individual termination of the membership does not take place before thirty days after the Dutch Central Bank has been notified of this; the Dutch Central Bank can decide that a proposed payment may not take place; and
- 4°. the provisions in the articles of association with regard to the member accounts can only be changed in the event that the Dutch Central Bank, upon request, decides this;
- b. the reserves, including the revaluation reserves, insofar as not resulting from a change in value of hedging transactions that have not yet been recorded in the profit and loss account;
  - c. the unallocated profit, less dividends to be paid out; and
  - d. the negative difference between the outcome of the net assets value method and the outcome of the equity method or the cost price of interests in subsidiaries, in participations in undertakings in which the insurer can exercise significant influence on the operating and financial policy and in legal persons which are participated in by virtue of a mutual cooperation arrangement.
3. The items referred to in the first subsection are:
- a. reserves, insofar as resulting from unrealised results on the insurer's own creditworthiness;
  - b. the equalisation reserve for the Credit sector, referred to in section 114, second subsection;
  - c. the unallocated loss;
  - d. the book value of the securities issued by the insurer and of the derivative financial instruments on the securities issued by the insurer, insofar as these comprise capital components as referred to in the second subsection;
  - e. intangible assets;
  - f. participations as referred to in section 3:268, first subsection, under b, of the Act in an investment undertaking, financial institution, reinsurer, credit institution, insurer or insurance holding, as referred to in section 3:268, first subsection, under j, of the Act; and
  - g. if the insurer holds a participation as referred to under f: the items, referred to in the sections 92, second subsection, under b and c, and third subsection, under b and c, and 96, that are considered as components of the solvency margin or the qualifying capital of the financial undertaking, referred to under f.
4. The Dutch Central Bank can, upon request, decide that an insurer, as referred to in the first subsection, whether or not for a fixed period, does not have to reduce its available solvency margin by the value of the items, referred to in the third subsection, under f and g, if these items are held temporarily in view of a financial assistance operation, intended to restructure or rescue the financial undertaking referred to in the third subsection, under f.
5. The insurer, referred to in the first subsection, can apply the methods 1, 2 or 3, referred to in Annex A or B of the Decree on Prudential Supervision of Financial Groups in a similar manner, instead of the reduction with the value of the items, referred to in the third subsection, under f and g, provided that method 1 can only be applied when the Dutch Central Bank, upon request, has decided that it is permitted to do so. The Dutch Central Bank decides this, if the integrated management and the internal audit of the in undertakings to be included in the consolidation are adequate.

#### **Section 96**

The available solvency margin, referred to in section 95, first subsection, is also formed by the value of:

- a. cumulative preference shares;
- b. the paid-up part of subordinated loans if the conditions, referred to in section 92, third subsection, under c, under 1 up to and including 5, are satisfied, and the loan agreement can only be changed if the Dutch Central Bank decides, upon request, to do this; and
- c. the paid-up part of the debt instruments with an indefinite term and other financing instruments, if the conditions, referred to in section 92, second subsection, under b, under 1 up to and including 4, are satisfied.

#### **Section 97**

1. The Dutch Central Bank can, upon request, agree that the insurer in the calculation of the available solvency margin, referred to in section 95, first subsection, also includes the value of:
- a. surplus values in connection with undervaluation of assets or overvaluation of the technical facilities in accordance with section 121, fourth subsection, or, in the event of a life insurer or funeral expenses and benefits in kind insurer, surplus values based on profit expectations;
  - b. supplementary contributions that a mutual association that operates a funeral expenses and benefits in kind insurance business or non-life insurance business, during the financial year by virtue of the articles of association can demand from its members up to a maximum of fifty percent of the difference between the maximum contributions and the actually demanded contributions; or
  - c. half of the issued, non paid-up capital or of the guarantee capital divided into shares in the event that at least 25 percent of the issued capital has been paid up.
2. The Dutch Central Bank lays down additional rules with regard to the conditions under which the

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supplementary contributions, referred to in the first subsection, under b, can be included in the calculation.

#### **Section 98**

1. For the application of the sections 95 up to and including 97 with regard to life insurers and non-life insurers:
  - a. the value of the capital components, referred to in section 95, second subsection, less the value of the items, referred to in section 95, third subsection, is taken fully into consideration for the calculation of the available solvency margin;
  - b. the value of the capital components, referred to in the sections 96 and 97, insofar as not concerning the surplus values in connection with the undervaluation of assets or overvaluation of the technical facilities in accordance with section 121, fourth subsection, is only taken into consideration collectively for the calculation of the available solvency margin insofar as this does not amount to more than fifty percent of the total of the available solvency margin or the minimum amount of solvency margin, depending on which amount is the lowest, and
  - c. the value of the capital components, referred to in section 96, under a and b, with a fixed term and, in the event of a life insurer, a maximum of fifty percent of the value of the surplus values based on profit expectations, referred to in section 97, first subsection, under a, is only taken into consideration collectively for the calculation of the available solvency margin insofar as this does not amount to more than 25 percent of the total of the available solvency margin or the minimum amount of solvency margin, depending on which amount is the lowest.
2. For the application of the sections 95 up to and including 97 with regard to funeral expenses and benefits in kind insurers:
  - a. the value of the capital components, referred to in section 95, second subsection, less the value of the items, referred to in section 95, third subsection, is taken fully into consideration for the calculation of the available solvency margin;
  - b. the value of the capital components, referred to in the sections 96 and 97, first subsection, under b, is only taken into consideration collectively for the calculation of the available solvency margin insofar as this does not amount to more than fifty percent of the minimum amount of solvency margin; and
  - c. the value of the capital components, referred to in the section 96, under a and b, with a fixed term is only taken into consideration collectively for the calculation of the available solvency margin insofar as this does not amount to more than 25 percent of the minimum amount of solvency margin.
3. For the calculation of the available solvency margin of a life insurer or funeral expenses and benefits in kind insurer, the positive difference is not taken into account between the discounted technical facilities that are not covered by interest-bearing investments with the same maturity, calculated with a conservative fixed discounting rate and with the discount rate that is used for the test, referred to in section 121, second subsection, unless this has already been taken into account in the balance sheet valuation of the technical facilities. The Dutch Central Bank sets the conservative fixed discounting rate.
4. For the calculation of the available solvency margin of a non-life insurer, which performs the test of the adequacy of the balance sheet value of the provisions, in accordance with section 121, second subsection, the positive difference between the outcome of the test without discounting and the balance sheet value of the technical facilities, referred to in section 121, fourth subsection, is not taken into account for all obligations that are not related to the sectors Accidents and Illness and that do not result in periodical payments. The third subsection applies mutatis mutandis to the in the test of the adequacy of the balance sheet value of the provisions included obligations in connection with the sectors Accidents and Illness or that result in periodic payments.

#### **Section 99**

1. The sections 89, 96, 96, 97, first subsection, insofar as this subsection does not concern the surplus values based on profit expectations, and 98, first, third and fourth subsections, apply mutatis mutandis to the guarantee fund of a life insurer or non-life insurer as referred to in section 3:57, first subsection, or 3:58, first or second subsection, of the Act.
2. The sections 89, 95 up to and including 97 and 98, second and third subsections, apply mutatis mutandis to the guarantee fund of a funeral expenses and benefits in kind insurer, as referred to in section 3:57, first subsection, or 3:61, first or second subsection, of the Act.

#### **Section 100**

1. The sections 89, 95 up to and including 97, 98, first, third and fourth subsections, and 99, apply mutatis mutandis to branches, as referred to in section 3:59, first subsection, of the Act.
2. The sections 89, 95 up to and including 97, 98, second and third subsections, and 99, apply mutatis mutandis to branches, as referred to in section 3:62, first subsection, of the Act.

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**§ 10.7. The securities that serve as coverage for the guarantee fund and the minimum amount of the solvency margin**

**Provisions for the implementation of the sections 3:59, second subsection, and 3:62, second subsection, of the Act**

**Section 101**

1. The securities that serve as coverage for the guarantee fund of a branch, as referred to in section 3:59, first subsection, or 3:62, first subsection, of the Act, are present in the Netherlands.
2. The securities that serve as coverage for the minimum amount of solvency margin of a branch, as referred to in the first subsection, are present in one or several Member States.

**§ 10.8. Maintaining balance sheet items and off-balance sheet items**

**Provisions for the implementation of section 3:57, seventh subsection, of the Act**

**Section 102**

1. The value of the large positions of a bank or investment undertaking, as referred to in section 3:57, seventh subsection, or 3:58, first subsection, of the Act or of a clearing institution, as referred to in section 3:57, seventh subsection, or 3:61, first subsection, of the Act, including the value of the large positions of its branches in a state that is not a Member State, amounts in respect of a counterparty or group of affiliated counterparties to no more than 25 percent of its qualifying capital.
2. The total value of the large positions of a financial undertaking, as referred to in the first subsection, does not amount to more than eight hundred percent of its qualifying capital.
3. For the application of this section, the value of an asset equals the balance sheet value and the value of an off-balance sheet item equals the current value. The Dutch Central Bank lays down additional rules with regard to the valuation of assets and off-balance sheet items for the application of this section, the fully or partially not taking into account of specific assets and off-balance sheet items for the application of this section and the allocation of risk weights to specific assets and off-balance sheet items.
4. The financial undertaking immediately notifies the Dutch Central Bank when a limit, as referred to in the first or second subsection, is exceeded. The Dutch Central Bank can, upon request, decide that a financial undertaking is allowed to exceed a limit for a limited period. The Dutch Central Bank lays down rules with regard to the conditions under which it allows an over limit. It can thereby determine that the first sentence of this subsection is not applicable.

**Section 103**

1. The value of property and equipment, operating assets, participations in undertakings that are not financial undertakings, and loans to undertakings that are not financial undertakings, if participations are held therein, less the value of any security provided, of a bank as referred to in section 3:57, seventh subsection, or 3:58, first subsection, of the Act, or of a clearing institution, as referred to in section 3:57, seventh subsection, or 3:61, first subsection, of the Act, does not amount to more than its qualifying capital, reduced by the other capital, referred to in section 93.
2. Without prejudice to the first subsection, the value of property and equipment of a financial undertaking, as referred to in the first subsection, other than for own use, does not amount to more than 25 percent of its qualifying capital.
3. For the application of the second subsection, a financial undertaking, as referred to in the first subsection, can:
  - a. value property, which it has rented out in accordance with a lease, at the current value, less the present value of the agreed lease instalments during the period of the lease based on the lease rate;
  - b. value property, which it has rented out for a period of two years or longer, at the current value, less the present value of the lease instalments and the value of any security provided. As value of the security is taken into consideration the value calculated in accordance with standards that are customary in the banking sector, with the exception of mortgage coverage, that is set at the forced sale value of the mortgaged property.
4. The calculation of the value of the assets, referred to in the first and second subsection, takes place with the exception of the value of property and equipment in development for the account and risk of third parties, or of property and equipment that have been sold, whereby the obligatory sales agreement has not yet been completed.

**Section 104**

1. A management company of an institution for collective investment in transferable securities, institution for collective investment in transferable securities that is an investment undertaking, or depositary that is connected to an institution for collective investment in transferable securities, as referred to in section 3:57, seventh subsection, of the Act, does not provide any loans for the

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account of third parties, does not issue guarantees and does not enter into any surety obligations.

2. A financial undertaking, as referred to in the first subsection, does not sell any financial instruments that the institution for collective investment in transferable securities does not own.
3. The financial undertaking does not take out loans as a debtor with the exception of:
  - a. short-term loans that together do not amount to more than ten percent of the assets of the institution for collective investment in transferable securities;
  - b. loans for purchasing property and equipment that are directly necessary for the pursuit of the business of the investment company and that together do not amount to more than ten percent of its assets, insofar as the amount of these loans together with the amount of the loans specified under a do not amount to more than fifteen percent of its assets; or
  - c. loans with as purpose the purchase of foreign currencies as a result of which the net debt of the institution for collective investment in transferable securities does not change or will not change.

#### **Section 105**

1. An electronic money institution as referred to in section 3:57, seventh subsection, or 3:58, first subsection of the Act, to coverage its financial obligations in connection with outstanding electronic money, only holds the following assets, valued at the historical cost price or the current value, depending upon which is the lowest:
  - a. assets that are sufficiently liquid, to which, in accordance with section 61, third subsection, under a, a risk weight of nil percent has been allocated;
  - b. deposits withdrawable on demand at a bank domiciled in the Netherlands, in another Member State, or in accordance with section 3:2, first subsection, under c, under 2, of the Act, appointed state; and
  - c. other sufficiently liquid debt instruments, as referred to in section 113, first subsection, that have not been issued by a person with whom the electronic money institution is connected in a formal or actual control structure, in the event that the Dutch Central Bank, has decided this, upon request.
2. If the financial obligations of the electronic money institution that are related to outstanding electronic money are not fully covered by the assets, referred to in the first subsection, the Dutch Central Bank can, upon request, decide that the electronic money institution can cover these obligations for a limited period with other assets. The value of these other assets amounts to no more than five percent of its total financial obligations that are related to outstanding electronic money or its qualifying capital, depending on which amount is the lowest.
3. Section 102, first up to and including third and fourth subsections, first, second and fourth sentences, applies mutatis mutandis to the assets, referred to in the first subsection, under b and c, provided that the total value of these assets does not amount to more than twenty times the qualifying capital of the electronic money institution, and that section 102, first subsection, does not apply to an electronic money institution of which the financial obligations in connection with outstanding electronic money, amount to less than €50 million. An electronic money institution does not enter into any risk in respect of persons that formally or actually have control over it.
4. The Dutch Central Bank lays down additional rules with regard to restrictions of and imposing conditions on the holding of assets and off-balance sheet items by an electronic money institution.

### **Chapter 11. Liquidity**

#### **§ 11.1. Minimum liquidity**

##### **Provisions for the implementation of section 3:63, second subsection, of the Act**

#### **Section 106**

The liquidity of a financial undertaking, as referred to in section 3:63, first subsection, 3:64, 3:65 or 3:66 of the Act, is sufficient if the existing liquidity, referred to in section 111, 112 or 113, at least equals the required liquidity, referred to in section 108, 109 or 110.

#### **Section 107**

1. A bank or clearing institution, as referred to in section 3:63, 3:64, 3:65 or 3:66 of the Act is allowed to:
  - a. allocate both the interest received to the present liquidity as well as the interest to be paid to the required liquidity;
  - b. not include subsidiaries and branches that each make up less than one percent of the balance sheet total in the liquidity calculations, if at least 95 percent of the total consolidated balance sheet total is included in the calculation;
  - c. not include indirect participations and branches of participations whereby it is not the case, in relation to the bank or clearing institution as a whole, that there is a large liquidity requirement, while the liquidity provision thereof mainly depends on the parent company, or the head office respectively, in the liquidity calculations; or

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- d. compensate a liquidity shortage in convertible or inconvertible currencies with a surplus in convertible currencies, insofar as from a country from which free transfer of liquidity is not possible.
2. If a bank or clearing institution opts for the application of the first subsection, under b or c, it includes the intra-group transactions in the calculation of the liquidity.

#### **§ 11.2. Calculation of the minimum liquidity**

##### **Provisions for the implementation of section 3:63, second subsection, of the Act**

###### **Section 108**

1. The required liquidity of a bank or clearing institution, as referred to in section 3:63, 3:64, 3:65 or 3:66 of the Act, is the total of the weighted outgoing cash flows based on the scheduled items, plus the weighted entrusted funds and other items not included in the maturity schedule that can be called up or could lead to a payment obligation during the weekly period or the monthly period respectively.
2. The Dutch Central Bank lays down rules with regard to the items referred to in the first subsection and the weighting thereof.

###### **Section 109**

1. The required liquidity of a collective investment scheme, as referred to in section 3:63 or 3:66 of the Act, amounts to ten percent of the assets under management.
2. Contrary to the previous subsection, if it is known in advance from an agreed termination arrangement which amount on a certain date will be redeemed, this amount will suffice.

###### **Section 110**

The required liquidity of an electronic money institution, as referred to in section 3:63 or 3:65 of the Act, equals the amount of the payment obligations in connection with the outstanding electronic money and the other obligations.

#### **§ 11.3. Composition of the liquidity**

##### **Provisions for the implementation of section 3:63, second subsection, of the Act**

###### **Section 111**

1. The existing liquidity of a bank or clearing institution, as referred to in section 3:63, 3:64, 3:65 or 3:66 of the Act, in the weekly period is formed by the weighted inventory items, the weighted cash inflow of the schedule items during the weekly period and the official stand-by facilities.
2. The financial undertaking includes in the calculation of the existing liquidity in the weekly period only the assets that are at its disposal in connection with the daily liquidity management in order to be able to provide for the direct liquidity requirement and the incoming cash flows from the core activities, which are taken into account in connection with the daily liquidity management. The following are in any case included:
  - a. financial instruments on the basis of which liquid assets can be obtained in a short term by means of selling or lending without incurring more than marginal costs or losses;
  - b. inter-bank assets, payable on demand; and
  - c. amounts owed by governments and professional money market parties, payable on demand.
3. The existing liquidity of the financial undertaking in the monthly period is formed by the weighted inventory items and the weighted cash inflow during the monthly period.
4. The financial undertaking includes, notwithstanding the first and third subsection, the liquidity surplus of a branch or a subsidiary domiciled outside of the Netherlands in the calculation of the existing liquidity, which liquidity surplus is calculated based on this Decree or, if lower, in accordance with the rules that apply according to the state of the registered office, only insofar as:
  - a. the transfer of the liquidity surplus does not lead to a liquidity shortage at the branch or subsidiary according to the local liquidity test;
  - b. it concerns a surplus in convertible currencies; and
  - c. free and cross-border transfer of liquidity is possible.
5. In the calculation of the existing liquidity, the financial undertaking does not include:
  - a. assets that cannot be transferred unrestrictedly;
  - b. deposits payable on demand with persons that are not credit institutions or professional money market parties.
6. The Dutch Central Bank lays down rules with regard to the items referred to in the first, second and third subsection and the weighting thereof.

###### **Section 112**

The existing liquidity of a collective investment scheme, as referred to in section 3:63 or 3:66 of the Act, is formed by the following items:

- a. cash, redeemable funds and deposits payable on demand at banks that have a licence as



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referred to in section 2:11 of the Act or over which supervision of the pursuit of the business of a bank is exercised that provides sufficient safeguards with regard to the interests that the Act seeks to protect;

- b. short-term bearer debt instruments;
- c. financial instruments that are admitted to the trade on a regulated market or a market in financial instruments of which the holder is established in a state that forms part of the G10 or another regulated market appointed by the Dutch Central Bank;
- d. official stand-by facilities made available by banks that have a licence as referred to in section 2:11 of the Act or over which supervision of the pursuit of the business of a bank is exercised that provides sufficient safeguards with regard to the interests that the Act seeks to protect; and
- e. unconditional guarantees of banks and insurers that have a licence as referred to in section 2:11 or section 2:27 of the Act respectively or over which supervision of the pursuit of the business of a bank or insurer is exercised that provides sufficient safeguards with regard to the interests that the Act seeks to protect.

### **Section 113**

1. The existing liquidity of an electronic money institution, as referred to in section 3:63 or 3:65 of the Act, is formed by assets, as referred to in section 105, first subsection, insofar as these investments are assets or investments that can be called up directly in cash:
  - a. for which bid and sell prices are regularly and at least daily issued by a regulated market or by various, unrelated, professional market parties;
  - b. that are regularly traded;
  - c. of which the selling or lending can take place daily;
  - d. of which the sales value or the lending value is not influenced more than marginally by the size or speed of the sale or the lending respectively;
  - e. of which the liquidity equals at least the lending to central government bodies of a state appointed by virtue of section 3:2, first subsection, under c, under 2, of the Act; and
  - f. of which the settlement in the market where the asset in question is traded takes place according to a fixed and non-negotiable timetable.
2. The financial undertaking holds at least twenty percent of the payment obligations, referred to in section 110, in the form of:
  - a. deposits payable on demand;
  - b. irrevocable official stand-by facilities at banks domiciled in a Member State or a state that forms part of the G10; or
  - c. paper eligible for refinancing directly at a central bank at the refinancing value.

## **Chapter 12. Technical provisions**

### **§ 12.1. The calculation of the technical provisions**

#### **Provisions for the implementation of section 3:67, fourth subsection, under a, of the Act**

### **Section 114**

1. A life insurer or non-life insurer, as referred to in section 3:67, first subsection, or 3:68, first subsection, of the Act, or a funeral expenses and benefits in kind insurer, as referred to in section 3:67, first subsection, or 3:69, first subsection, of the Act, taking into consideration section 427, third subsection, of Book 2 of the Dutch Civil Code, maintains the technical provisions, referred to in section 435, first subsection, of Book 2 of the Dutch Civil Code, insofar as this applies to it.
2. An insurer, as referred to in the first subsection, which prepares its financial statements in accordance with the international accounting standards, maintains an equalisation reserve instead of an equalisation provision for the Credit sector. The insurer can depart from the classification, referred to in the section 435, first subsection, of Book 2 of the Dutch Civil Code, or the calculation of the technical provisions, referred to in the sections 115 up to and including 119, in the event that the international accounting standards stipulate this.

### **Section 115**

1. The provision for unearned premiums and current risks, including the catastrophe provision if this has been made to be maintained by an insurer, as referred to in section 114, first subsection, includes, among other things:
  - a. the premiums received in the financial year for risks that relate to the next financial year or financial years; and
  - b. the claims and expenses from current insurance policies that can arise after the end of the financial year that cannot be covered from the provision for unearned premiums together with the premiums to be received in the next financial year or financial years.
2. The provision for unearned premiums is determined in a prudential manner for each individual non-life insurance policy. The use of statistical or mathematical methods is allowed if the nature of the

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insurance policy allows for this and if these methods are expected to produce the same results as the individual calculations.

#### **Section 116**

1. The provision to be maintained by an insurer, as referred to in section 114, first subsection, for life insurance policies is calculated based on a sufficiently cautious prospective actuarial method, taking into account the premiums to be received in the future and all future obligations in accordance with the terms and conditions of each existing life insurance policy, including:
  - a. all guaranteed payments and guaranteed surrender values;
  - b. the profit sharing to which the policyholder, insured person or the person entitled to the payment, collectively or individually, is entitled;
  - c. all option possibilities available to the policyholder, insured person or person entitled to payments, according to the terms and conditions of the life insurance policy; and
  - d. the operating costs, including commissions.
2. Section 115, second subsection, will apply *mutatis mutandis*.
3. Contrary to the first subsection, a retrospective method can be applied if the technical provisions calculated based on this method are not lower than the provisions when applying a prospective method or if the use of a prospective method is not possible due to the nature of the type of life insurance in question.

#### **Section 117**

1. The provision to be maintained by an insurer, as referred to in section 114, for the payment of claims or for the fulfilment of payments includes the amount of the to be expected claims, taking into consideration:
  - a. the claims or obligations to make payments that arose before the balance sheet date that have been reported and not yet settled and the claims and obligations to make payments that have not yet been reported;
  - b. the costs in connection with the settlement of claims or payments; and
  - c. the income from subrogation and acquiring the ownership of insured goods expected in connection with claims or payments.
2. Section 115, second subsection, will apply *mutatis mutandis*. In the event of periodically to be paid payments, the determination takes place in accordance with recognised actuarial methods.
3. Discounting of the provision claims or payments to be paid or fulfilled, other than periodic payments, is only allowed if the settlement of the claims will last at least four years after the moment of preparing the financial statements and this settlement takes place in accordance with a reliable claim settlement schedule, in which factors that increase the costs of the settlement of the claim are taken into account. If the provision for claims or payments to be paid or fulfilled is lowered due to discounting of the to be paid claims, the notes to the balance sheet state the amount of the provision before discounting and the discounting method used.
4. With regard to a Community co-insurance, the provisions for claims or payments to be paid or fulfilled are proportionally equal to that which the co-insurance company that acts as first insurer, maintains in accordance with the rules or customs that apply in the Member State from which the first insurer has entered into its obligation by virtue of the Community co-insurance.

#### **Section 118**

1. If the obligations pursuant to insurance policies at the moment of preparing the financial statement cannot reasonably be estimated due to a lack of sufficient accurate information with regard to the premiums to be received and the claims to be paid and costs of settlement of the claims is an underwriting year, an insurer, as referred to in section 114, first subsection, can, in contravention to section 117:
  - a. include as provision for claims or payments to be paid or fulfilled:
    - 1°. a percentage of the booked premiums with regard to the underwriting year in which the insurance policy commenced; or
    - 2°. the positive difference between, on the one hand, the booked premiums and, on the other hand, the paid claims and costs of settlement of the claims with regard to the underwriting year in which the insurance policies commenced; or
  - b. for the determination of the provision for claims or payments to be paid or fulfilled, information is used, as referred to under a, which relates to a year that is not more than twelve months before the financial year.
2. The provision made in accordance with that which is stipulated in the first subsection must at all times be adequate to meet the present and future obligations. The amount of the provision is, as soon as this appears to be necessary, increased in such a manner that it is adequate.
3. If the calculation, referred to in the first subsection, under a, is applied, as soon as sufficient accurate information, referred to in the first subsection, opening words, is known, although no later

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than at the end of the third financial year following the underwriting year, referred to in the first subsection, the provision is determined for claims or payments to be paid or fulfilled in accordance with section 117.

#### **Section 119**

The provision for profit sharing and rebates of an insurer, as referred to in section 114, first subsection, includes the amounts in the form of profit sharing that are designated for the policyholders, insured persons or persons entitled to payments, insofar as these have not resulted in an increase in the provision for life insurance policies, as well as the amounts that represent a partial refund of premiums based on the result of the insurance policies, insofar as this has not led to an increase of the member account.

#### **Section 120**

1. An insurer, as referred to in section 114, first subsection, maintains an equalisation provision for the Credit sector for:
  - a. all obligations entered into if a non-life insurer with its registered office in the Netherlands is involved;
  - b. the obligations entered into from its branches located in the Netherlands if a non-life insurer domiciled in a state that is not a Member State is involved.
2. The first subsection will not apply to non-life insurers:
  - a. domiciled in the Netherlands that are active in one or several other sectors besides the Credit sector from an office in a Member State, if the premiums booked by them annually with regard to their obligations entered into from offices in a Member State in the Credit sector are less than four percent of the total amount of the annually booked premiums and amount to less than € 2,500,000; or
  - b. domiciled in a state that is not a Member State that are active in one or several other sectors besides the Credit sector from a branch in the Netherlands, if the premiums booked by them annually with regard to their obligations entered into from offices in the Netherlands in the Credit sector are less than four percent of the total amount of the annually booked premiums and amount to less than € 2,500,000.
3. The equalisation provision is formed to cover a technical loss during the financial year in the Credit sector and amounts to at least 134 percent of the average of the premiums booked annually in the five previous financial years less the amount of the transfers by virtue of reinsurance and after the addition of the approved reinsurance policies.
4. An addition is made to the equalisation provision in each of the consecutive financial years in which the Credit sector books a technical surplus, amounting to 75 percent of this technical surplus, until the provision is equal or higher than the minimum calculated in accordance with the third subsection.
5. This section applies mutatis mutandis to the equalisation reserve for the Credit sector, referred to in section 114, second subsection.

#### **Section 121**

1. Without prejudice to the sections 115, 116, 117 and 119, an insurer, as referred to in section 114, first subsection, carries out a test of the adequacy of the balance sheet value of the provisions for:
  - a. unearned premiums and current risks, including the catastrophe provision if this is maintained;
  - b. life insurance policies;
  - c. claims or payments to be paid or fulfilled;
  - d. profit sharing and rebates; and
  - e. deferred profit sharing obligations.In carrying out the test, the insurer uses future payment obligations as the point of departure, insofar as applicable, appropriate uncertainty margins and method to value future obligations on the balance sheet date.
2. If discounting is used in determining the balance sheet value of the provisions, as referred to in the first subsection, the Dutch Central Bank lays down rules for the application of the test, referred to in that subsection, notwithstanding the sections 114, 116, 117 and 119 and taking into consideration the international accounting standards, regard the to be used standards and calculation principles for the discounting rate, mortality and disability.
3. If the securities that serve as coverage for the technical provisions are not valued at the current value, the insurer includes the difference between the current value and the balance sheet value of these securities in the test, referred to in the second subsection.
4. The balance sheet value of the technical provisions equal at least the value that follows from the test, referred to in the second subsection, taking into consideration the third subsection.

#### **§ 12.2. The securities that serve as coverage for the technical provisions**

**Provisions for the implementation of section 3:67, fourth subsection, under a, of the Act**

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## **Section 122**

1. A life insurer or non-life insurer, as referred to in section 3:67, first subsection, or 3:68, first subsection of the Act, or a funeral expenses and benefits in kind insurer as referred to in section 3:67, first subsection, or 3:69, first subsection, of the Act, ensures that the nature of the securities that serve as coverage for the technical provisions corresponds with the nature of the obligations that have been entered into. These securities are diversified and spread adequately. Securities with a high risk are limited to a prudent level.
2. The technical provisions of a life insurer or non-life insurer, as referred to in section 3:67, first subsection, or 3:68, first subsection, of the Act, are covered by:
  - a. the following investments:
    - 1°. bonds and other money market and capital market instruments;
    - 2°. loans;
    - 3°. equities and other non-interest bearing investments that can be equated with equities;
    - 4°. participation rights in institutions for collective investment in transferable securities and participations in other unit trusts;
    - 5°. land and buildings, including land and buildings for own use, as well as real rights to property; and
    - 6°. derivative financial instruments, insofar as these are used to limit the investment risk or to enable an efficient portfolio management;
  - b. the following receivables:
    - 1°. amounts owed by reinsurers, including the share of reinsurers in the technical provisions;
    - 2°. deposits and receivables by virtue of reinsurance;
    - 3°. amounts owed by policyholders and intermediaries by virtue of insurance policies and reinsurance contracts, insofar as demandable within ninety days;
    - 4°. receivables of a non-life insurer by virtue of the right of recourse or subrogation;
    - 5°. advances on policies of a life insurer;
    - 6°. tax credits; and
    - 7°. amounts owed by guarantee funds;
  - c. the following other assets:
    - 1°. tangible fixed assets, other than land and buildings;
    - 2°. cash and deposits at credit institutions or at foreign other institutions that have a licence to receive deposits;
    - 3°. deferred acquisition costs;
    - 4°. current interest and rent and other accrued and deferred items; and
    - 5°. real rights of which the enjoyment is postponed of a life insurer.
3. An amount owed by a reinsurer by virtue of a reinsurance contract concluded by the insurer, referred to in the first subsection, as policyholder, is taken into account as a value for the coverage of the technical provisions insofar as:
  - a. no counter claim is outstanding; and
  - b. it is plausible that the receivable:
    - 1°. in the event of a life insurer or non-life insurer domiciled in the Netherlands: will be paid in a Member State or that the insurer in a state that is not a Member State will have to pay its payment to the insured persons or the persons entitled to the payment;
    - 2°. in the event of a life insurer or non-life insurer domiciled in a state that is not a Member State: will be paid in the Netherlands or that the insurer will have to pay his payments to the insured persons or persons entitled to the payments outside of the Netherlands; or
    - 3°. in the event of a funeral expenses and benefits in kind insurer: will be paid in the Netherlands or that the insurer will have to pay his payments to the insured persons or persons entitled to the payments outside of the Netherlands.
4. In the event of investment in a subsidiary of the life insurer or non-life insurer that manages all or part of the investment of this insurer, the underlying assets in the possession of this subsidiary are taken into consideration for the application of the second subsection.
5. In individual cases, the Dutch Central Bank can decide that the securities that serve as coverage for the technical provisions for the application of this Decree will be valued at a lower amount.

## **Section 123**

1. Without prejudice to section 122, the securities that serve as coverage for the technical provisions of a life insurer or non-life insurer, as referred to in the first subsection of that section, in relation to the total of the technical provisions, per asset category, as referred to in section 122, second subsection, are divided while taking account of the following maximum percentages:
  - a. loans, as referred to in section 122, second subsection, under a, under 2, to undertakings and institutions that are not a collective investment scheme, credit institution or insurance company

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- that are domiciled in a Member State, insofar as these loans are not accompanied by a guarantee, mortgage, or other security: five percent;
- b. cash: three percent; and
  - c. investments, as referred to in section 122, second subsection, under a, under 1 and 3, insofar as these investments are not traded on a regulated market: ten percent.
2. The securities that serve as coverage for the technical provisions, are divided, in relation to the total of the technical provisions, per individual asset, as referred to in section 122, second subsection, while taking account of the following maximum percentages:
    - a. a plot of land or a building, as referred to in section 122, second subsection, under a, under 5, or a complex of different plots of land and buildings that can be regarded as an investment: ten percent per object; and
    - b. a specific loan, as referred to in section 122, second subsection, under a, under 2, to undertakings and institutions that are not a collective investment scheme, credit institution or insurance company domiciled in a Member State, insofar as these loans are not accompanied by a guarantee, mortgage, or other security: one percent per loan.
  3. The securities that serve as coverage for the technical provisions consist, in relation to the total of the technical provision, for a maximum of five percent of investments, as referred to in section 122, second subsection, under a, under 1 and 3, issued by a specific issuer or of loans to a specific borrower, combined. Securities issued by or guaranteed by, or, respectively, loans to or guaranteed by central, regional or local government bodies or international institutions or organisations of which one or several Member States are a member, are not taken into consideration here.
  4. The Dutch Central Bank can, upon request, decide to raise the maximum, referred to in the first subsection, under a, for a life insurer to eight percent of the technical provisions and the maximum, referred to in the second subsection, under b, to two percent of the technical provisions if the interests of the policyholders, insured persons or persons entitled to payments dictate otherwise.
  5. The Dutch Central Bank can, upon request, decide that, for the application of the third subsection, a specific credit institution domiciled in the Netherlands be regarded as equivalent to a government body, in the event that the shares of this credit institution are held by the State of the Netherlands or Dutch provinces, municipalities, water boards or other public bodies, as referred to in section 134 of the Constitution, and the activities of the credit institution by virtue of its articles of association consist of though its mediation providing loans to, or with a guarantee of the State of the Netherlands or other government bodies, or providing loans to institutions that are closely connected to the State of the Netherlands or the local government bodies.
  6. The maximum, referred to in the third subsection, is set at ten percent of the technical provisions, if the securities that serve as coverage for the technical provisions consist for no more than forty percent of loans to or securities of borrowers and issuers in which the insurer has invested more than five percent of its assets.

#### **Section 124**

Without prejudice to section 123, the Dutch Central Bank lays down additional rules with regard to the use of the securities that serve as coverage for the technical provisions of life insurers and non-life insurers, as referred to in section 122, first subsection, and the conditions to be taken into consideration with regard to:

- a. the loan for which a security has not been provided through a bank guarantee, a guarantee issued by an insurer, a right of mortgage or in another manner;
- b. participations in a collective investment scheme, insofar as the UCITS Directive does not apply;
- c. securities that are not traded on a regulated market; and
- d. investments, as referred to in section 122, second subsection, under a, under 1, issued by an issuer not being a central, regional or local government or another public body, an international organisation of which one or several Member States are a part or a credit institution domiciled in the Netherlands, in another Member State or in an appointed state in accordance with section 3:2, first subsection, under c, under 2, of the Act.

#### **Section 124a**

In derogation from section 123, third subsection, a life insurer or non-life insurer may invest no more than 40 percent of the securities serving as coverage for the technical facilities in registered covered bonds of a particular issuing bank.

#### **Section 124b**

1. The Dutch Central Bank, at the request of a bank having its registered office in the Netherlands, shall decide to include a category of bonds issued or to be issued by that bank as well as the issuing bank itself in a public register, if that bank demonstrates that the bonds can be classified as covered bonds. Rules shall be laid down by ministerial regulation with regard to the manner in which the bank can demonstrate this.

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2. The Dutch Central Bank shall notify the Commission of the European Communities of a list showing the bond categories and banks registered in accordance with the first subsection, as well as the amendments to that registration, with a view to the application of Article 22(4) of the UCITS Directive. The Dutch Central Bank shall inform the issuing bank without delay of any notification as referred to in the preceding sentence with regard to that bank and the bond categories it has issued.

3. If a bond category no longer fulfils the requirement for registration referred to in the first subsection, or if the issuing bank does not comply or no longer complies with section 124c, the Dutch Central Bank may decide to cancel the registration of the bond categories or of the issuing bank referred to in the first subsection. In that case, it shall notify the Commission of the European Communities without delay and publish this immediately on its website.

#### **Section 124c**

A bank that has issued bonds pertaining to a category which has been registered in accordance with section 124b:

a. shall keep a record that includes:

1°. the issued bonds pertaining to that category, and

2°. the assets serving as coverage for those bonds; and

b. shall demonstrate at least annually to the Dutch Central Bank that the bond category still fulfils the requirement for registration referred to in section 124b, first subsection.

#### **Section 125**

1. The technical provisions of a life insurer or non-life insurer, as referred to in section 122, first subsection, with regard to the payments that, according to the insurance policy, are directly linked to the value of a participation in an institution for collective investment in transferable securities, or to the value of assets that are included in a fund held by the insurer that is usually divided into units, are covered by these rights of participation or units respectively, in the event that no units have been created, by these assets.

2. The technical provisions in connection with payments that are directly linked according to the insurance policy to a reference value other than that referred to in the first subsection, are covered by the units that these reference values represent. If these units are lacking, the technical provisions are covered by the assets that correspond as closely as possible to those on which the reference value in question is based.

3. The sections 122 up to and including 124 are not applicable to the technical provisions that are directly related to the payments, referred to in the first and second subsection, insofar as there is no guaranteed return or guaranteed payment level in these payments.

#### **Section 126**

1. If the coverage for a life insurance or non-life insurance policy of an insurer, as referred to in section 122, first subsection, is expressed in a specific currency, the obligations of this insurer are due and payable in this currency.

2. If the coverage for a non-life insurance policy is not expressed in a specific currency, the obligations of the non-life insurer are due and payable in the currency of the state in which the risk lies. However, the non-life insurer can select the currency in which the premium is expressed, if good grounds exist for such a choice.

3. The Dutch Central Bank can, upon request, grant permission for the obligations of the non-life insurer to be due and payable in the currency that it will make use of in accordance with past experience, or, in the absence thereof, the currency of the state in which the branch is located from which the non-life insurance policy has been entered into for non-life insurance policies for the coverage of risks that are classified in:

a. the sectors Bodywork rolling railway equipment, Airplane bodywork, Sea-going and inland waterway vessel Bodywork, Transported goods, Liability airplanes, Liability sea-going and inland waterway vessels and General liability, as far as it concerns product liability; and

b. the other sectors if, in accordance with the nature of the risks, the obligations have to be paid in another currency than that which follows from the previous subsection.

4. In the event that payments have to take place in connection with a non-life insurance policy in another currency than that which follows from the previous sections, the obligations of the non-life insurer are due and payable in the currency, in particular in which the damage compensation payable by the non-life insurer has been determined in a court verdict or in an agreement between the non-life insurer and the insured party.

5. If a claim is estimated in a currency that is known in advance by the non-life insurer but that differs from the currency, which follows from the previous subsections, its obligations can be due and payable in this currency.

6. The Dutch Central Bank can, upon request, decide that the life insurer or non-life insurer is allowed

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not to set off its technical provisions with securities that are collectable or can be realised in the currency in which the coverage of the insurance policy is expressed, if it follows from the previous sections that the insurer, in order to satisfy section 127, first subsection, first sentence, must maintain securities in a certain currency for an amount of no more than seven percent of the securities in other currencies.

7. The Dutch Central Bank can, upon request, grant exemption to a life insurer or a non-life insurer from section 127, first subsection, first sentence, in the event that:
  - a. the obligations are due and payable in another currency than that of one of the Member States;
  - b. rules exist for investments in this currency;
  - c. transfer restrictions apply to this currency; or
  - d. this currency is unsuitable for similar reasons to be used as coverage for technical provisions.
8. The life insurer or non-life insurer may cover a maximum amount of twenty percent of its obligations expressed in a specific currency with securities that are due and payable or realisable in another currency than the currency in which the coverage of the insurance is expressed. The total securities in all currencies combined must at least equal the total obligations in all currencies combined.
9. The Dutch Central Bank can, upon request, decide that, in the event that securities must be maintained, pursuant to the previous subsections, against obligations that are expressed in the currency of a Member State, this condition has also been satisfied in the event that the securities concerned are in Euro.
10. This section does not apply to insurance policies as referred to in section 125.

#### **Section 127**

1. The securities that serve as coverage for the technical provisions of a life insurer or non-life insurer, as referred to in section 122, first subsection, must be sufficiently collectible and realisable in the same currency as that in which the obligations in accordance with section 126 are denominated. The securities that serve as coverage for the technical provisions of a funeral expenses and benefits in kind insurer, as referred to in section 122, first subsection, must be sufficiently collectible or realisable in the currency of the state in which the insured person is domiciled at the time of concluding the funeral expenses and benefits in kind insurance policy.
2. Insofar as the securities, referred to in the first subsection, first sentence, serve as coverage for the technical provisions for obligations entered into, they must:
  - a. in the event of a life insurer or non-life insurer domiciled in the Netherlands: be present in a Member State in the event that, with regard to a life insurance policy, the policyholder has his normal place of residence in a Member State, or, if the policyholder is a legal person, the registered office of the policyholder is located in a Member State, and with regard to a non-life insurer, that the risk is located in a Member State; or
  - b. in the event of a life insurer or non-life insurer domiciled in a state that is not a Member State: be present in the Netherlands.
3. Insofar as the securities, referred to in the first subsection, second sentence, serve as coverage for the technical provisions for obligations entered into from the branches in the Netherlands, they must:
  - a. in the event of a funeral expenses and benefits in kind insurer domiciled in the Netherlands: be present in a Member State; or
  - b. in the event of a funeral expenses and benefits in kind insurer domiciled in a non-appointed state: be present in the Netherlands.

### **§ 12.3. The securities that serve as coverage for the obligations that follow from claims of employees**

#### **Provisions for the implementation of section 3:67, fourth subsection, under a, of the Act**

#### **Section 128**

1. The sections 122 up to and including 126 and 127, first and second subsections, apply mutatis mutandis to the securities, referred to in section 3:67, third subsection, or 3:68, third subsection, of the Act that serve as coverage for the obligations of a life insurer or non-life insurer, as referred to in these sections, that follow from claims, as referred to in section 3:198, second subsection, under b, c and d, third subsection, under a, b and c of the Act.
2. The sections 122, first, third subsection, opening words and under a and b, under 2, and fifth subsection, and 127, first and third subsection, apply mutatis mutandis to the securities, referred to in section 3:67, third subsection, or 3:69, second subsection, of the Act, that serve as coverage for the obligations of a funeral expenses and benefits in kind insurer, as referred to in those sections that follow from claims as referred to in section 3:198, fourth subsection, under a, b and c of the Act.

## **Chapter 13. Accounting and reporting**

### **§ 13.1. Provision of the annual report**

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**Provision for the implementation of the sections 3:71, second subsection, and 3:81, second subsection, of the Act**

**Section 129**

A clearing institution, reinsurer, credit institution or insurer as referred to in section 3:71, first subsection, 3:81, first subsection, or 3:85, first or second subsections, of the Act, provides the documents, referred to in section 3:71, first subsection, or 3:81, first subsection, of the Act, with regard to the presentation and contents in the form in which these have been prepared in accordance with Title 9 of Book 2 of the Dutch Civil Code, the international accounting standards or the law of the state in which this financial undertaking has its registered office respectively. A financial undertaking domiciled in the Netherlands states whether the annual accounts have been adopted and approved in accordance with the articles of association or the partnership deed.

**§ 13.2. Provision of the statements**

**Provision for the implementation of the sections 3:72, fifth and seventh subsections, and 3:73, of the Act**

**Section 130**

1. The statements to be provided by an investment undertaking or credit institution, as referred to in section 3:72, first subsection, or 3:82, first subsection, of the Act, or by a clearing institution, as referred to in section 3:72, first subsection, or 3:86, first subsection of the Act, include exclusively:
  - a. balance sheet and profit and loss information as well as additional financial information for the supervision of the compliance with the Section Prudential supervision of financial undertakings of the Act;
  - b. other information for the supervision of the compliance with the rules with regard to:
    - 1°. the solvency in accordance with section 3:57, first subsection, 3:58, first subsection, or 3:61, first subsection of the Act;
    - 2°. maintaining balance sheet items and off-balance sheet items in accordance with section 3:57, seventh subsection, 3:58, first subsection, or 3:61, first subsection of the Act; and
    - 3°. the liquidity in accordance with section 3:63, first subsection, 3:64 or 3:65 of the Act.
2. The statements to be provided by an insurer, as referred to in section 3:27, third subsection, of the Act, or branch, as referred to in section 3:82, second subsection, or 3:86, second subsection of the Act, include exclusively:
  - a. annual financial statements as well as additional financial information for the supervision of the compliance with the Section Prudential supervision of financial undertakings of the Act;
  - b. other information for the supervision of the compliance with the rules with regard to:
    - 1°. the solvency in accordance with section 3:57, first subsection, 3:58, first or second subsection, 3:59, 3:61, first or second subsection, or 3:63 of the Act; and
    - 2°. the technical provisions in accordance with section 3:67, 3:68, 3:69 or 3:73 of the Act.
3. The statements to be provided by a branch, as referred to in section 3:77 of the Act, include exclusively information for the supervision of the liquidity in accordance with section 3:64.

**Section 131**

1. The Dutch Central Bank, taking into consideration the provisions pursuant to the Section Prudential supervision financial undertakings of the Act, as well as taking into consideration Title 9 of Book 2 of the Dutch Civil Code and the international accounting standards, lays down rules with regard to the statements, referred to in section 130. These include exclusively:
  - a. the models of the statements;
  - b. the scope of the application of the statements and the degree of detail of the data to be filled in; this does not include an expansion or further categorisation of the statements;
  - c. the scope of the consolidation in accordance with the rules with regard to the consolidation that the financial undertaking applies in its financial statements, insofar as the Act does not dictate otherwise;
  - d. the valuation of the items in accordance with valuation methods that the financial undertaking applies in its financial statements;
  - e. the currency and unit of account used;
  - f. the rounding off;
  - g. the term within which the statements are to be provided, provided that this is not shorter than necessary to exercise the supervision of the compliance with the Section Prudential supervision of financial undertakings of the Act; and
  - h. the frequency with which the statements are provided, provided that this is at least once a year.
2. The rules, referred to in the first subsection, under b, f, g and h, are tailored to the nature and the size of the financial undertaking, as well as to its solvency position. The frequency, referred to in the first subsection, under h; however, does not exceed:



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- a. twelve times a year for the statements for the supervision of the liquidity, referred to in section 130, first subsection, under b, under 3 and third subsection;
  - b. once a year for the annual financial statements, referred to in section 130, second subsection, under a and the statements for the supervision of the technical provisions, referred to in section 130, second subsection, under b, under 2; and
  - c. four times a year for the other statements referred to in section 130, first and second subsection.
3. The Dutch Central Bank can decide in individual cases that a financial undertaking, as referred to in section 130, must periodically report on whether its solvency or liquidity is higher than a signalling value determined by the Dutch Central Bank. The frequency of reporting does not exceed once a month and is tailored to the nature and the size of the financial undertaking, as well as to the solvency position of the financial undertaking.
4. An investment undertaking, as referred to in section 48, first subsection, under i, j or k, makes the report referred to in the third subsection, substantiated with grounds, to the Dutch Central Bank in every month in which it does not provide the statements in accordance with the second subsection, under c. It states thereby, in any case, the value of its qualifying capital, how this value has been calculated and how this value compares to the value of its qualifying capital as stated in the last statements provided.

#### **Section 132**

In the event that an investment undertaking, clearing institution, credit institution, insurer or branch, as referred to in section 130, does not provide the statements electronically, the Dutch Central Bank can decide, upon the request of the financial undertaking, that the financial undertaking is allowed to use other data carriers than the models, referred to in section 131, first subsection, under a, if these do not deviate from the models with regard to presentation and content.

#### **Section 133**

1. The examination of the statements by the auditor, referred to in section 130, resulting in a statement concerning the fair presentation, as referred to in section 3:72, seventh subsection, first sentence, of the Act, is performed once a year. The Dutch Central Bank lays down rules specifying which statements the accountant must include in the audit. The auditor certifies these statements.
2. The audit of the actuarial report of an insurer as referred to in section 130, second subsection, by the actuary, resulting in a statement as referred to in section 3:73 of the Act, is performed once a year and includes:
  - a. the audit, referred to in section 121, first subsection, under a, insofar as it concerns insurance policies with a contract period of more than four years whereby during the contract period:
    - 1°. the premium cannot be increased annually or only to a limited extent; and
    - 2°. the risks are rising significantly; and
  - b. the audit, referred to in section 121, second subsection, taking into consideration the sections 98, third and fourth subsections, and 121, third and fourth subsections.

#### **Section 134**

1. An insurer, as referred to in section 130, second subsection, publishes the statements, referred to in that subsection, under a, accompanied by the statement, referred to in section 3:73 of the Act, annually within a period of six months, insofar as it concerns statements containing:
  - a. the financial statements, the annual accounts and the other information and with regard to presentation and contents in the form in which these have been prepared in accordance with Title 9 of Book 2 of the Dutch Civil Code or the international accounting standards.
  - b. if applicable: information on the profit sharing for the benefit of policyholders per product group; and
  - c. if applicable: financial information on health insurance, referred to in section 1, under d, of the Healthcare Insurance Act.
2. The insurer makes the statements to be published available in all of its offices in the Netherlands and sends these, upon request, to everyone until eighteen months after the end of the financial year at no more than the cost price.

#### **§ 13.3. Providing an overview of the insurance policies concluded**

**Provisions for the implementation of the sections 3:74, second subsection, 3:78, second subsection, 3:83, second subsection, of the Act**

#### **Section 135**

1. A life insurer, as referred to in section 3:74, first subsection, 3:78, first subsection, or 3:83, first subsection, of the Act, states in the overview of concluded life insurance policies per sector the premiums booked in the financial year, without deducting the amount of the reinsurance.
2. A non-life insurer, as referred to in section 3:74, first subsection, 3:78, first subsection, or 3:83, first

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subsection, of the Act, states in the overview of concluded non-life insurance policies per sector category the premiums, claims and commissions booked in the financial year, without deducting the amount of the reinsurance. This information as well as the frequency and the average costs of the claims, are specified separately for the Liability motor vehicles sector. The Dutch Central Bank specifies the sector categories.

3. A funeral expenses and benefits in kind insurer, as referred to in section 3:87, first subsection, of the Act, specifies in the overview of concluded funeral expenses and benefits in kind insurance policies the premiums booked in the financial year without deducting the amount of the reinsurance.
4. An insurer, as referred to in section 3:74, first subsection, or 3:83, first subsection, of the Act specifies the information, referred to in the first and second subsections, for each Member State in the overview referred to in that subsection.
5. The sections 131, first subsection, opening words and under a, and 132, apply mutatis mutandis to the provision of the overviews, referred to in the first up to and including the third subsection.

#### **Chapter 14. Obligation to report of the auditor and the actuary**

##### **Provisions for the implementation of the sections 3:88, fourth subsection, and 3:89, first subsection of the Act**

###### **Section 136**

1. The information to be provided by an auditor, as referred to in section 3:88, second subsection, 3:90, 3:91, or 3:93 of the Act is:
  - a. the auditor's report to the Executive Board and the Supervisory Board;
  - b. the management letters;
  - c. other correspondence between the auditor and the financial undertaking that directly concerns the statement concerning the fair presentation of the annual financial statements or the records of the financial undertaking; and
  - d. if the Dutch Central Bank requests such, a further explanation of this information, as referred to under a up to and including c.
2. The information to be provided by an actuary, as referred to in section 3:89, first subsection, 3:92 or 3:94 of the Act is:
  - a. the actuarial report and the actuarial account to the Executive Board and the Supervisory Board;
  - b. other documents that follow from the activities, referred to in section 3:73 of the Act; and
  - d. if the Dutch Central Bank requests this, a further explanation of this information, as referred to under a and b.

###### **Section 137**

1. The auditor or actuary who intends to provide information, as referred to in section 136, first or second subsection respectively, notifies the financial undertaking.
2. If the financial undertaking wishes to do so, it can provide the information to the Dutch Central Bank itself. In that case, the financial undertaking notifies the auditor or the actuary. The auditor or the actuary checks whether the Dutch Central Bank has received the information and that the contents of the information does not give cause for him to provide information to the Dutch Central Bank as yet.
3. If the auditor or actuary provides written information to the Dutch Central Bank, he immediately sends a copy of the financial information and, if applicable, a copy of the accompanying letter, to the financial undertaking.

#### **Chapter 15. Qualifying holdings**

##### **Provisions for the implementation of section 3:95, second subsection, and section 3:96, second, third and fourth subsection of the Act**

###### **Section 138**

The information referred to in section 3:95, second subsection, and 3:96, second subsection, of the Act, concerns:

- 1°. an overview of the size of a qualifying holding as referred to in section 3:95 of the Act;
- 2°. information on the basis of which the Dutch Central Bank can assess whether that which has been specified, in accordance with section 3:99 of the Act, is satisfied with regard to the properness of the applicant or holder of declaration of no objection, who based on its qualifying holding could determine or co-determine the policy of the undertaking in question; and
- 3°. documents from which the financial position and the legal group structure of the applicant or holder of the declaration of no objection are apparent.

###### **Section 139**

The liquid assets of a company, as referred to in section 3:96 (3), of the Act, only include:

- a. present coins or banknotes;

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- b. deposits payable on demand;
- c. current receivables that are deposits not payable on demand; and
- d. assets that are not current receivables and that can be converted in a very short term and without substantial losses into coins or banknotes or deposits payable on demand.

#### **Section 140**

1. A declaration of no objection concerning a qualifying holding, as referred to in section 3:96, first subsection, under c, of the Act is issued, in the event that:
  - a. the value of the qualifying holding upon acquisition or after increasing the qualifying holding does not exceed fifteen percent of the qualifying capital of the bank, as calculated in accordance with the sections 90 up to and including 94, with the exception of the reduction, referred to in section 94, second subsection, opening words and under f and g; and
  - b. the total value of the qualifying holdings of the bank in undertakings that are not financial undertakings, does not exceed, due to the new or increased qualifying holding, 60 percent of the qualifying capital of the bank, as calculated in accordance with the sections 90 up to and including 94, with the exception of the reduction, referred to in section 94, second subsection and under f and g.
2. A declaration of no objection concerning a qualifying holding, as referred to in section 3:96, first subsection, under c, of the Act is issued, notwithstanding the first subsection, in the event that:
  - a. the qualifying holding is acquired and held in connection with a debt restructuring or rescue operation at the company in question;
  - b. the qualifying holding is acquired or held in connection with the underwriting of a share issue; or
  - c. the qualifying holding is acquired and temporarily held in connection with a suspense account transaction in the own name of the bank but for the account of third parties.
3. A declaration of no objection for a qualifying holding, as referred to in the second subsection is issued for a fixed period; the qualifying holding is not included in the calculation pursuant to the first subsection.

### **Chapter 16. Final provisions**

#### **Section 141**

1. Without prejudice to the second subsection, chapter 5 is not applicable to agreements with regard to the outsourcing of activities that:
  - a. have been concluded by a clearing institution, credit institution, insurer or branch, as referred to in section 3:18, first subsection, 3:23, 3:25, 3:26 or 3:27 of the Act, prior to the time of the entry into force of this Decree; and
  - b. satisfy the applicable regulations at that time.
2. If the agreement, referred to in the first subsection, is modified materially, chapter 5 then applies to the entire agreement as of that point in time.

#### **Section 142**

For the financial year 2007, the minimum amount of the solvency margin for non-life insurers that provide health insurance as referred to in section 1, under d, of the Healthcare Insurance Act, or healthcare costs insurance supplementary thereto, is determined in the manner as referred to in section 67, provided that in the calculation and the ratio, referred to in the first subsection, under b or c respectively, of that section, instead of the past three financial years, the financial years 2006 and 2007 are taken as point of departure.

#### **Section 143**

[Amends this Decree.]

#### **Section 144**

1. The statements to be provided in accordance with this Decree are provided for the first time over the financial year that commences on or after 1 January 2007.
2. The provisions pursuant to section 55, second subsection of the Act on the Supervision of the Credit System of 1992, the Decree Financial Statements Insurance Industry 1994, the Decree Financial Instruments Funeral Expenses and Benefit in Kind Insurance Industry and section 8 of the Further Regulations on the Prudential Supervision of the Securities Trade 2002 continue to apply to the records over the financial year ending in 2006.

#### **Section 145**

A decision, taken by virtue of one of the sections, referred to in column A, is deemed to be a decision in the sense of the subsequently in column B listed section of this Decree from the moment of the entry into force of this Decree. The restrictions or conditions attached to the decision remain in force.

A	B
2, second subsection, under b, of the Decree on	95, second subsection, under a, under 4°

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the Solvency Margin of Funeral Expenses and Benefit in Kind Insurers	
2, second subsection, under e, of the Decree on the Solvency Margin of Funeral Expenses and Benefit in Kind Insurers	97, first subsection, opening words and under a
2, second subsection, under f, of the Decree on the Solvency Margin of Funeral Expenses and Benefit in Kind Insurers	96, under b
6, fourth subsection, first sentence, of the Decree on the Solvency Margin of Funeral Expenses and Benefit in Kind Insurers	56, third subsection, first sentence
6, fourth subsection, second sentence, of the Decree on the Solvency Margin of Funeral Expenses and Benefit in Kind Insurers	56, third subsection, second sentence
1, second subsection of the Decree on the Solvency Margin of Insurers 1994	67, second subsection
3, second subsection, under a, of the Decree on the Solvency Margin of Insurers 1994	95, second subsection, under a, under 3°
3, second subsection, under b, of the Decree on the Solvency Margin of Insurers 1994	95, second subsection, under a, under 4°
{3, second subsection, under c, d, or e, of the Decree on the Solvency Margin of Insurers 1994	97, first subsection, opening words
3, second subsection, under f, of the Decree on the Solvency Margin of Insurers 1994	96, under b
9, fourth subsection, first sentence, of the Decree on the Solvency Margin of Insurers 1994	56, third subsection, first sentence
9, fourth subsection, second sentence, of the Decree on the Solvency Margin of Insurers 1994	56, third subsection, second sentence
10, first subsection, annex B under 3 of the Decree on Technical facilities of Insurers 1994	126, third subsection
10, first subsection, annex B under 6 of the Decree on Technical facilities of Insurers 1994	126, sixth subsection
10, first subsection, annex B under 7 of the Decree on Technical facilities of Insurers 1994	126, seventh subsection
10, first subsection, annex B under 9 of the Decree on Technical facilities of Insurers 1994	126, ninth subsection
10, first subsection, annex C, under 2 of the Decree on Technical facilities of Insurers 1994	126, sixth subsection
10, first subsection, annex C, under 3 of the Decree on Technical facilities of Insurers 1994	126, seventh subsection
10, first subsection, annex C, under 5 of the Decree on Technical facilities of Insurers 1994	126, ninth subsection
16, fifth subsection, of the Decree on the Supervision of Collective Investment Schemes 2005	63, third subsection, in conjunction with 60, sixth subsection
16, seventh subsection, under g, of the Decree on the Supervision of Collective Investment	63, third subsection, in conjunction with 60, fifth subsection, under g

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Schemes 2005	
3, first subsection, Annex 1, under 1.2, under 1, under e, of the Further Regulations on the Prudential Supervision of the Securities Trade 2002	92, third subsection, under c, under 3°
3, first subsection, Annex 1, under 1.2, under 1, under f, of the Further Regulations on the Prudential Supervision of the securities trade 2002	93, under b
4, second subsection, under g, of the Further regulations on the Prudential Supervision of the Securities Trade 2002	60, fifth subsection, under g
4, third subsection, of the Further Regulations on the Prudential Supervision of the Securities Trade 2002	60, sixth subsection
4, fourth subsection, of the Further Regulations on the Prudential Supervision of the Securities Trade 2002	60, fourth subsection
3, third subsection, under c, under 2. of the Regulation of the Prudential Supervision of Collective Investment Schemes	92, third subsection, under c, under 3°
3, fourth subsection, of the Regulation of the Investment of Technical facilities of Insurers 1994	123, fourth subsection
3, fifth subsection, of the Regulation of the Investment of Technical facilities of Insurers 1994	123, fifth subsection
69, second subsection of the Act on the Supervision of the Insurance Industry 1993	57, second subsection

#### **Section 146**

In the event that the Dutch Central Bank has taken a decision with regard to a bank or electronic money institution that corresponds with a decision as referred to in section 60, first subsection, under a, or third subsection, 62, fifth subsection, 64, 92, second or third subsections, 93, 102, fourth subsection, or 105, second subsection, the aforementioned decision is deemed to be a decision in the sense of the respective section. The restrictions or conditions attached to the Decree remain in force.

#### **Section 147**

The sections of this Decree enter into force at a moment to be determined by Royal Decree, which time can be set differently for different sections and parts thereof.

#### **Section 148**

This Decree will be cited as: Decree on Prudential Rules pursuant to the Act on Financial Supervision.

We hereby order and command that this Decree and the accompanying explanatory notes be published in the Bulletin of Acts and Decrees (*Staatsblad*).

The Hague, 12 October 2006

The Minister of Finance,  
G. Zalm

Beatrix

Published on the thirty-first of October 2006

The Minister of Justice,  
E. M. H. Hirsch Ballin

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## **ANNEX A to section 6**

### **1. Criminal antecedents as referred to in section 6, under a**

#### **1.1. Convictions**

The person concerned has been convicted in a final judgment in the Netherlands or abroad of an attempt to commit, the preparation of, the commissioning of, the incitement to, the co-perpetration of, the complicity in or perpetration of:

- conducting or effecting transactions in certain securities in or from the Netherlands while in possession of inside information (sections 5:53 and 5:56 of the Act);
- passing on inside information as referred to in sections 5:53 and 5:56 of the Act, or expressly recommending that certain transactions be carried out without passing on the inside information (section 5:57 of the Act);
- participating in a criminal and/or terrorist organisation (sections 140 to 140a of the Criminal Code (*Wetboek van Strafrecht*));
- forgery of documents (section 225 of the Criminal Code);
- deliberately providing untruthful information (section 227a of the Criminal Code);
- deliberately breaching the obligation to provide information (section 227b of the Criminal Code);
- aggravated theft (sections 311 and 312 of the Criminal Code);
- embezzlement (sections 321 to 323 of the Criminal Code);
- prejudice to creditors or entitled parties (sections 340 to 348 of the Criminal Code);
- deliberately handling stolen goods (section 416 of the Criminal Code);
- money laundering (sections 420bis to 420ter of the Criminal Code);
- infringement of a provision of financial supervision legislation that has been made punishable as a crime in section 2 in conjunction with section 6 of the Economic Offences Act (*Wet op de economische delicten*) and for which the person concerned was given a non-suspended prison sentence or a fine of at least the fourth category; or
- infringement of one or more penal provisions applicable abroad that are comparable with the foregoing.

### **2. Other criminal antecedents as referred to in section 6, under a**

#### **2.1. Convictions**

The person concerned has been convicted by a court order in the Netherlands or abroad with regard to an attempt to commit, the preparation of, commissioning of, incitement to, failed incitement to, co-perpetration of, complicity in or perpetration of:

#### **Criminal Code:**

- public order and discrimination (sections 131 to 151a);
- violent and heinous crimes (Sections 157 to 175);
- public authorities (sections 177 to 207a);
- currency offences (sections 208 to 215);
- other forgery offences than currency offences (sections 216 to 235);
- deliberately providing untruthful information (section 227a);
- deliberately breaching the obligation to provide information (Section 227b);
- serious offences against public decency (Sections 242, 246, 243 to 245, 247 to 250, 250ter);
- threat of violence or crime (Section 285);
- violent crimes against life (Sections 287 to 294);
- assault (Sections 300 to 306);
- involuntary manslaughter and physical injury (Sections 307 to 309);
- simple theft (Section 310);
- aggravated theft (Section 311);
- violent robbery (Section 312);
- extortion (Section 317);
- embezzlement (Sections 321 to 323);
- fraud (Sections 326 to 337);
- prejudice to creditors or entitled parties (Sections 340 to 348);
- vandalism (Sections 350 to 354);
- offences committed by a public servant while in office (Sections 355 to 380);
- handling stolen goods and knowingly handling stolen goods (Sections 416 to 417bis);
- money laundering (Sections 420bis to 420quinquies);
- giving a false name, academic title, etc. (Section 435);
- unauthorised conduct of an estate agency business (Section 436a);
- creating the impression of acting with official support or recognition (Section 435b);
- acting without authorisation during a moratorium (Section 442);
- providing untruthful information (Section 447c); or

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- breaching the obligation to provide information (Section 447d).

**State Taxes Act (*Algemene wet inzake de rijksbelastingen*):**

- infringement of tax legislation (Sections 68 and 69).

**Opium Act (*Opiumwet*):**

- the deliberate smuggling, preparation, sale, delivery, possession, etc. of hard drugs (Section 2(1));
- the deliberate smuggling, preparation, sale, delivery, possession and production of soft drugs (Section 3(1)); or
- preparatory operations as regards the preparation, sale, delivery, etc. and smuggling of hard drugs (Section 10a(1)).

**Economic Offences Act (*Wet op de economische delicten*):**

Actions penalised by the Economic Offences Act, in particular prohibitory provisions from financial supervision legislation and infringement of Sections 2, 3(1), 4(1), 5(1) and (3), 8, 16, 17(2), 23(1) and (2), 33 and 34 of the Money Laundering and Terrorist Financing Prevention Act.

**Weapons and Ammunition Act (*Wet wapens en munitie*):**

- unauthorised manufacture of weapons or ammunition, etc. (Section 9(1)), manufacture, possession, etc. of certain weapons (Section 13(1));
- importing or exporting certain weapons or ammunition without consent, etc. (Section 14(1));
- transporting certain weapons or ammunition without a licence or permission (Section 22(1));
- prohibited possession of certain weapons or ammunition (Section 26(1)); or
- prohibited transfer of certain weapons or ammunition (Section 31(1)).

**Road Traffic Act 1994 (*Wegenverkeerswet 1994*):**

- involuntary manslaughter or injury (Section 6);
- failure to stop after an accident (Section 7);
- drunk driving (Section 8);
- driving a motor vehicle while disqualified from driving (Section 9);
- joyriding (Section 11); or
- refusal to cooperate in an investigation (Section 163).

**Penal provisions in other countries**

Convictions will also include convictions in other countries for infringing one or more penal provisions applicable abroad that are comparable with those set out above.

**2.2. Compromises with the Public Prosecutor**

The person concerned has reached a compromise as referred to in Section 74 of the Criminal Code in respect of one or more of the criminal offences referred to in section 2.1 above. Compromises will also include compromises with the competent authorities of other countries in respect of infringement of one or more penal provisions applicable in the country concerned that are comparable with those set out above.

**2.3. Conditional or unconditional dismissal, acquittal or discharge from prosecution**

The person concerned is not or is no longer prosecuted, or is not or is no longer prosecuted subject to conditions, or has been acquitted or discharged from prosecution, with regard to one or more of the criminal offences referred to in section 2.1 above.

Conditional or unconditional dismissal, foregoing further prosecution, acquittal or dismissal from prosecution will also include similar judgments and measures in other countries in respect of infringement of one or more of the penal provisions applicable in the country concerned that are comparable with those set out above.

**2.4. Other facts or circumstances**

Other facts or circumstances that may reasonably be relevant to the Dutch Central Bank (*De Nederlandsche Bank*, DNB) in assessing the properness of the person concerned, as shown by the official records or reports drawn up by officers authorised to investigate criminal offences, which show that the person concerned is or was involved in one or more of the criminal offences set out in section 2.1. Official records or reports will also include similar documents with equal evidential value, drawn up by officers in other countries who are authorised to investigate criminal offences in respect of penal provisions applicable in the country concerned that are comparable with those set out in section 2.1.

**3. Financial antecedents as referred to in Section 6, under b**

**3.1. Personal**

- the person concerned experienced major personal financial problems, which resulted in legal proceedings, collection measures or the involvement of a debt-collection agency;
- a petition was filed in respect of the person concerned for a moratorium, bankruptcy, debt restructuring or a creditors' agreement, or such a petition was granted;
- the person concerned is currently involved, either in the Netherlands or elsewhere, in one or more legal proceedings resulting from personal financial problems, or expects to be involved in

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such proceedings; or

- the personal financial obligations of the person concerned, measured by general standards, are disproportionate to this person's income or assets.

### **3.2. Business**

- the current or one of the former employers of the person concerned, or any company or legal person in which the person concerned holds or held a position as a person determining or co-determining the policy, exercises or exercised actual control over the policy, or is or was (jointly) responsible for the policy in another way, experienced major financial problems, which resulted in legal proceedings in the Netherlands or elsewhere;
- a petition for a moratorium or liquidation was filed or granted with regard to the current or one of the former employers, or with regard to any company or legal person in which the person concerned holds or held a position as a person determining or co-determining the policy, exercises or exercised actual control over the policy, or is or was (jointly) responsible for the policy in another way; or
- the person involved was ordered to discharge outstanding debts resulting from liability for the liquidation of a company or legal person pursuant to the applicable provisions of Book 2 of the Dutch Civil Code (Sections 50a, 138, 149, 248, 259 and 300a).

### **3.3. Other facts or circumstances**

Other facts or circumstances that suggest that the person concerned may be involved in one or more financial actions, insofar as these may reasonably be relevant to DNB in assessing this person's properness.

## **4. Supervision antecedents as referred to in Section 6, under c**

### **4.1. Supervision antecedents**

- the incorrect or incomplete provision of information to a supervisor or supervising authority;
- the person concerned, or a company or legal person in which the person concerned holds or held a position as a person determining or co-determining the policy, exercises or exercised actual control over the management, or is or was (jointly) responsible for the policy in another way, has been denied admission, a licence or dispensation by a supervisor or supervisory authority;
- the person concerned, or a company or legal person in which the person concerned holds or held a position as a person determining or co-determining the policy, exercises or exercised actual control over the management, or is or was (jointly) responsible for the policy in another way, has been denied admission, a licence or dispensation by a supervisor or supervisory authority;
- the person concerned, or his current or one of his former employers, or a company or legal person in which the person concerned holds or held a position as a person determining or co-determining the policy, exercises or exercised actual control over the management, or is or was (jointly) responsible for the policy in another way, has been in conflict with a supervisor or supervisory authority and this conflict resulted in any measure in respect of the person concerned or in respect of the company or legal person in which the person concerned holds or held a position as a person determining or co-determining the policy, exercises or exercised actual control over the policy, or is or was (jointly) responsible for the policy in another way;
- the person concerned, or a company or legal person in which the person concerned holds or held a position as a person determining or co-determining the policy, exercises or exercised actual control over the management, or is or was (jointly) responsible for the policy in another way, has been denied a certificate by the Minister of Justice with regard to the incorporation or amendment of the articles of association of a company on grounds referred to in Sections 68(2), 179 (2), 125(2) or 235(2) respectively of Book 2 of the Dutch Civil Code.

### **4.2. Other facts or circumstances**

Other facts or circumstances that suggest that the person concerned was involved in one or more actions in respect of which rules have been laid down in Dutch or foreign financial supervision legislation, which action or actions may reasonably be relevant to the Dutch Central Bank in assessing this person's properness.

## **5. Fiscal antecedents under administrative law as referred to in Section 6, under d**

### **5.1. Personal**

The person concerned has been given a punitive fine pursuant to the State Taxes Act in respect of one or more of the criminal offences listed below:

- deliberately filing an incorrect or incomplete tax return (Section 67d);
- owing to an intentional act or gross negligence on the part of the taxpayer, a tax assessment was imposed that was too low, or too little tax was levied in another way (Section 67e); or
- owing to an intentional act or gross negligence on the part of the taxpayer or the withholding



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agent, tax was not paid, was not paid in full or was not paid within the specified period (Section 67f).

### **5.2. Business**

The current or one of the former employers, or any company or legal person in which the person concerned holds or held a position as a person determining or co-determining the policy, exercises or exercised actual control over the management, or is or was (jointly) responsible for the policy in another way, has been given a punitive fine pursuant to the State Taxes Act in respect of one or more of the criminal offences listed below:

- deliberately filing an incorrect or incomplete tax return (Section 67d);
- owing to an intentional act or gross negligence on the part of the taxpayer, a tax assessment was imposed that was too low, or too little tax was levied in another way (Section 67e); or
- owing to an intentional act or gross negligence on the part of the taxpayer or the withholding agent, tax was not paid, was not paid in full or was not paid within the specified period (Section 67f).

### **5.3. Other facts or circumstances**

Other facts or circumstances that suggest that the person concerned may be involved in one or more tax-related actions that may reasonably be relevant to the Dutch Central Bank in assessing this person's properness.

### **6. Other antecedents as referred to in Section 6, under e**

- the registration of the person concerned with the Dutch Securities Institute has been terminated by the Dutch Securities Institute;
- the person concerned is or has been subject to proceedings aimed at taking disciplinary or comparable measures and brought by or on behalf of an organisation of his professional colleagues within or outside the Netherlands, which proceedings resulted in measures against the person concerned; or
- the person concerned is or has been involved in any conflict with his current or a former employer with regard to the correct performance of his duties or compliance with standards of conduct relating to those duties, and this conflict resulted in the imposition of a sanction under employment law against the person concerned (for instance in the form of a warning, reprimand, suspension or dismissal).

### **Annex B. to section 61, fifth subsection, under c**

Derivative financial instruments within the meaning of section 61, third subsection, under c, are:

1. Interest rate contracts:
  - a. Interest rate swaps in respect of one currency;
  - b. Basic swaps;
  - c. Forward rate agreements;
  - d. Interest rate futures;
  - e. Purchased interest rate options;
  - f. Other contracts of a similar nature;
2. Contracts with regard to exchange rates or gold:
  - a. Cross-currency interest rate swaps;
  - b. Forward exchange contracts;
  - c. Currency futures;
  - d. Purchased currency options;
  - e. Other contracts of a similar nature;
  - f. Contracts of a similar nature are as the contracts under a up to and including e that relate to gold;
3. Contracts of a similar nature as the contracts under 1, under a up to and including e, or under 2, under a up to and including d, that relate to other underlying values or indices.