Unofficial translation of *Besluit prudentieel toezicht financiële groepen Wft* dated 12 October 2006.
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Decree of 12 October 2006, containing rules relating to supplementary prudential supervision of credit institutions, life insurers, non-life insurers and investment firms that form part of a financial group (Decree on the Prudential Supervision of Financial Groups pursuant to the Wft)

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 2006-01503 M;
Having regard to Directive 2002/87/EC of the European Parliament and of the Council of 16 December 2002 on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate and amending Council Directives 73/239/EEC, 79/267/EEC, 92/49/EEC, 92/96/EEC, 93/6/EEC and 93/22/EEC and Directives 98/78/EC and 2000/12/EC of the European Parliament and of the Council (OJEU 2003 L 35), Directive 2000/12/EC of the European Parliament and of the Council of 20 March 2000 relating to the taking up and pursuit of the business of credit institutions (OJEC L 126) and Directive 98/78/EC of the European Parliament and of the Council of 27 October 1998 on the supplementary supervision of insurance undertakings in an insurance group (OJEC L 330) and Sections 3:270(2), 3:280(4), 3:284(3), 3:285, 3:286 and 3:296 to 3:299 of the Act on Financial Supervision;
Having consulted the Council of State (opinion of 26 July 2006, no. W06.06.0260/IV);
Having seen the more detailed report of Our Minister of Finance of 9 October 2006, no. FM 2006-01859U;

Have approved and decreed the following:

(statutory text on 02-09-2008)

CHAPTER 1. INTRODUCTORY PROVISIONS

Section 1

In this Decree, 'the Act' shall mean: the Act on Financial Supervision (*Wet op het financieel toezicht*, Wft).

Section 2

The financial undertakings referred to in this Decree shall apply the methods described in this Decree consistently.

CHAPTER 2. CONSOLIDATED SUPERVISION OF INVESTMENT FIRMS AND CREDIT INSTITUTIONS

Provisions implementing Sections 3:270(2) and 3:280(4) and 3:280b of the Act

Section 3

1. An undertaking shall be of negligible importance, as referred to in Section 3:270(1)(b) of the Act, if the balance sheet total of that undertaking, together with that of other undertakings of negligible importance to be included in the supervision of the credit institution concerned, is less than the lower of the following two amounts:
a. € 10,000,000; or
b. one percent of the balance sheet total of the parent undertaking or of the undertaking that owns the holding.
2. For the purposes of this section, an undertaking shall be understood to mean an investment firm, a financial institution, a credit institution or an undertaking that provides ancillary services and that is a subsidiary of a Dutch investment firm or a Dutch credit institution or in which that Dutch investment firm or Dutch credit institution owns a holding.

Section 4

1. An investment firm or credit institution as referred to in Section 3:280(1) of the Act shall submit the report referred to in Subsection (3) of that section to the Dutch Central Bank (*De Nederlandsche Bank*) once a year, unless the Dutch Central Bank decides that reports must be submitted more frequently because of developments at the credit institution that pose or might pose a threat to its solvency.
2. Significant intra-group contracts or positions as referred to in Section 3:280(3) of the Act shall be understood to mean contracts or positions that exceed a threshold to be determined by the Dutch Central Bank in relation to the available solvency. Before determining the threshold, the Dutch Central Bank shall consult the Dutch credit institution concerned. The Dutch Central Bank shall not set any qualitative or other quantitative thresholds.
3. The Dutch Central Bank shall lay down rules with regard to the categories of contracts and positions to be included in the report and with regard to the report itself.
4. The rules referred to in Subsection (3) shall only relate to:
a. the model of the statement;
b. the scope of application of the statement and the degree of detail of the data to be filled in; these data shall not include an expansion or further categorisation of the statement;
c. the valuation of the items in accordance with the valuation methods that the financial undertaking applies in its annual accounts;
d. the currency and unit of account used;
e. the rounding off; and
f. the term within which the report is to be provided, on the understanding that this term shall not be shorter than necessary for the purpose of the supervision of compliance with Chapter 6 of the part of the Act concerning Prudential Supervision of Financial Undertakings.

CHAPTER 3. SUPPLEMENTARY SUPERVISION OF DUTCH LIFE INSURERS AND NON-LIFE INSURERS IN AN INSURANCE GROUP

Provisions implementing Sections 3:284(3), 3:285 and 3:286 of the Act

Part 3.1. Calculation of the adjusted solvency of Dutch life insurers and non-life insurers

1. Reporting of intra-group contracts and positions, choice of calculation method and general principles

Section 5

1. An insurer as referred to in Section 3:284(1), opening words of the Act shall submit the report referred to in Subsection (2) of that section once a year. If developments at an insurer pose or may pose a threat to its solvency, the Dutch Central Bank may decide that the insurer must report more frequently.
2. Significant intra-group contracts or positions as referred to in Section 3:284(1) of the Act shall be understood to mean contracts or positions that exceed a threshold to be determined by the Dutch Central Bank in relation to the required solvency. Before determining the threshold, the Dutch Central Bank shall consult the insurer concerned. The Dutch Central Bank shall not determine any qualitative or other quantitative thresholds.
3. The Dutch Central Bank shall draw up rules with regard to the categories of contracts and positions to be included in the report and with regard to the report itself. Section 4(4) shall apply.

Section 6

1. An insurer as referred to in Section 3:285(1) of the Act shall calculate the adjusted solvency in accordance with the rules laid down in this part.
2. In making the calculation of the adjusted solvency, the insurer shall include:
   a. the solvency, calculated in accordance with the Act, of affiliated management companies of undertakings for collective investment in transferable securities that hold a licence as referred to in Section 2:65(1)(a) or (2) of the Act;
   b. the solvency, calculated in accordance with the Act, of affiliated management companies with their registered office in another country which, if they had their registered office in the Netherlands, would be management companies of an undertaking for collective investment in transferable securities that would be eligible for a licence pursuant to Section 2:65(2) of the Act.
3. Subsection (2) shall not apply if the management company concerned is included in the supervision, as referred to in Part 3.6.2 of the Act, of a Dutch credit institution.
4. The insurer shall report the adjusted solvency once a year, unless the Dutch Central Bank decides that reports must be submitted more frequently if developments at the insurer pose or might pose a threat to the adjusted solvency.
5. The Dutch Central Bank shall draw up rules with regard to the report referred to in Subsection (4). Section 4(4) shall apply.

Section 7

1. An insurer as referred to in Section 6 that is affiliated to Dutch or European life insurers or non-life insurers shall, when calculating the adjusted solvency in accordance with method 1 or 2 as referred to in Annex A, include in this calculation the part of the issued capital that represents its interest, or, when applying method 3 as referred to in the said Annex, the percentages used to compile its consolidated annual accounts as referred to in Section 405 of Book 2 of the Dutch Civil Code (*Burgerlijk Wetboek*).
2. Where an affiliated Dutch or European life insurer or non-life insurer is a subsidiary and has a solvency deficit, the insurer, irrespective of the method used, shall take the total solvency deficit of the subsidiary into account.
3. The Dutch Central Bank may decide that the insurer is only required to include the proportional part of the solvency deficit of the subsidiary referred to in Subsection (2) in the calculation, if it is of the opinion that the insurer's liability is strictly and unequivocally limited to its interest in that subsidiary.
4. If there are no capital ties between the insurer and the undertaking included in the supplementary supervision, the Dutch Central Bank shall determine what part of the solvency deficit shall be included in the calculation.

Section 8

1. Without prejudice to Section 12 and irrespective of the chosen method as referred to in Section 20, an insurer as referred to in Section 6 shall not make multiple use of the assets taken into account in the calculation of the solvency margin in respect of the various Dutch and European life insurers and non-life insurers involved in that calculation.
2. Insofar as the methods referred to in Section 20 do not yet provide accordingly, the insurer shall disregard the following elements when calculating its adjusted solvency:

a. the value of its assets that serve to cover the minimum amount of solvency margin of the affiliated Dutch and European life insurers and non-life insurers;

b. the value of the assets of affiliated Dutch and European life insurers and non-life insurers that serve to cover the minimum amount of solvency margin of other Dutch and European life insurers and non-life insurers affiliated to the aforementioned affiliated life insurers and non-life insurers.

Section 9

1. Without prejudice to Section 8, an insurer as referred to in Section 6 shall, in making the calculation, only take into account undistributed profits reserves and future profits generated by affiliated life insurers as referred to in Section 3:281 of the Act, as well as the issued but non paid-up share capital of affiliated Dutch and European life insurers and non-life insurers, as far as these were taken into account when determining the coverage of the minimum amount of solvency margin of those affiliated Dutch and European life insurers and non-life insurers.
2. In making the calculation, the insurer shall disregard issued but non paid-up share capital that constitutes a potential obligation on its part.

3. In making the calculation, the insurer shall disregard issued but non paid-up share capital that constitutes a potential obligation on the part of an affiliated Dutch or European life insurer or non-life insurer.
4. In making the calculation, the insurer shall disregard issued but non paid-up share capital of an affiliated Dutch or European life insurer or non-life insurer that constitutes a potential obligation on the part of another affiliated undertaking.

Section 10

In making the calculation of the solvency margin of affiliated Dutch and European life insurers and non-life insurers as referred to in Section 6, an insurer as referred to in that section shall only take into account assets other than those referred to in Section 9 that are eligible for inclusion in the calculation that, in the opinion of the Dutch Central Bank, are not available to cover the minimum amount of solvency margin of the insurer, as far as these were taken into account in determining the coverage of the minimum amount of solvency margin of those affiliated life insurers or non-life insurers.

Section 11

The total value of the assets referred to in Sections 9 and 10 shall not exceed the minimum amount of solvency margin of the affiliated Dutch and European life insurers and non-life insurers.

Section 12

1. In making the calculation of the adjusted solvency, an insurer as referred to in Section 6 shall disregard any assets originating from the mutual financing between that insurer and:
a. affiliated undertakings;
b. undertakings participating in that insurer; or
c. other undertakings that are affiliated to undertakings participating in that insurer.
2. In making the calculation, the insurer shall also disregard assets of an affiliated Dutch or European life insurer or non-life insurer originating from the mutual financing between that affiliated life insurer or non-life insurer and another undertaking affiliated with it.

2. Application of the calculation methods

Section 13

1. An insurer as referred to in Section 6 shall take into account every directly or indirectly affiliated Dutch, European and non-European life insurer and non-life insurer in calculating the adjusted solvency, irrespective of the chosen method as referred to in Section 20.
2. The Dutch Central Bank may decide that the insurer is not required to calculate any adjusted solvency if:
a. the insurer is an affiliated life insurer or non-life insurer of another Dutch life insurer or non-life insurer, and the insurer is included in the calculation carried out for that other insurer;

b. the insurer has as its parent undertaking the same insurance holding company, reinsurer or non-European life insurer or non-life insurer as another Dutch life insurer or non-life insurer, and is included in the calculation carried out for that other insurer; or

c. the insurer has as its parent undertaking the same insurance holding company, reinsurer or non-European life insurer or non-life insurer as a non-European life insurer or non-life insurer and Section 3:288 of the Act has been applied.

3. The Dutch Central Bank shall only take a decision as referred to in Subsection (2) if the assets eligible for the calculation of the solvency margin of the life insurers or non-life insurers involved in the calculation are adequately spread among the undertakings referred to in that subsection.

4. The Dutch Central Bank may decide that, in making the calculation, the insurer shall take into account the solvency of an affiliated life insurer or non-life insurer with its registered office in another Member State, as determined by the supervisory authority of that other Member State.

Section 14

1. For the purpose of calculating the adjusted solvency in accordance with this part, a reinsurer affiliated to the insurer shall be regarded as an affiliated Dutch or European life insurer or non-life insurer.

2. The theoretical minimum amount of solvency margin shall be calculated for every affiliated reinsurer in accordance with the minimum amount of solvency margin referred to in Sections 3:53(3) and 3:57(2) of the Act that must be calculated for Dutch non-life insurers. The Dutch Central Bank may decide that a life reinsurer shall calculate the theoretical minimum amount of solvency margin in the same manner as the minimum amount of solvency margin for Dutch life insurers, as referred to in Sections 3:53(3) and 3:57(2) of the Act.

Section 15

An insurer as referred to in Section 6 that participates in a life insurer or non-life insurer as referred to in Section 3:281 of the Act or a reinsurer as referred to in Section 1:1 of the Act through an intermediate insurance holding company shall include this intermediate insurance holding company in the calculation of the adjusted solvency, and determines with that the minimum amount of solvency margin of the intermediate insurance holding company at zero. The provisions arising from Sections 3:53(3) and 3:57(2) of the Act in respect of the assets that may be included in the calculation of the minimum amount of solvency margin of a Dutch life insurer or non-life insurer shall apply mutatis mutandis on that occasion.

Section 16

1. In making the calculation of the adjusted solvency of a Dutch life insurer or non-life insurer that participates in a non-European life insurer or non-life insurer, the non-European life insurer or non-life insurer shall for the calculation be treated as an affiliated Dutch life insurer or non-life insurer.

2. If the non-European life insurer or non-life insurer referred to in Subsection (1) is licensed in the State where it has its registered office and has a solvency margin that is at least equivalent to the solvency prescribed under Sections 3:53(3) and 3:57(2) of the Act, the Dutch Central Bank may decide that the insurer, referred to in Section 6, in making the calculation in respect of that life insurer or non-life insurer, shall take into account the minimum amount of solvency margin and the assets eligible for compliance with that minimum amount as prescribed by the State where the non-European life insurer or non-life insurer has its registered office.

Section 17

Without prejudice to Sections 14 and 16(2), the Dutch Central Bank may decide that an insurer as referred to in Section 6, in making the calculation of the adjusted solvency with regard to an affiliated reinsurer with its registered office in a non-Member State, shall take into account the minimum amount of equity capital and of the assets eligible for inclusion in the calculation of that minimum amount as prescribed by the State where that reinsurer has its registered office. Where that State has laid down such regulations only in respect of life insurers or non-life insurers, the insurer may calculate the theoretical minimum amount of equity capital of the affiliated reinsurer as if the affiliated reinsurer were an affiliated life insurer or non-life insurer with its registered office in that State. In making this calculation, the insurer shall take into account the assets eligible for compliance with that theoretical minimum amount that have been designated pursuant to Sections 3:53(3) and 3:57(2) of the Act.

Section 18

In making the calculation of the adjusted solvency of a Dutch life insurer or non-life insurer that is a participating undertaking in an investment firm, financial institution or credit institution, the provisions arising from Section 3:57(2) of the Act with regard to the possible offsetting of such a participation and the possibility of permitting alternative methods shall apply mutatis mutandis.

Section 19

Where the Dutch Central Bank does not possess the information required for the supervision of the calculation in accordance with this part in respect of an affiliated undertaking, the insurer referred to in Section 6 shall deduct from the book value of that undertaking the assets eligible for the calculation of the adjusted solvency. In that case, any surplus values attached to this participation shall not be included as assets in this calculation.

3. Calculation methods

Section 20

In making the calculation of the adjusted solvency, an insurer as referred to in Section 6 shall apply one of the calculation methods included in Annex A to this Decree.

Part 3.2. Supplementary supervision of life insurers and non-life insurers that are a subsidiary of an insurance holding company, a reinsurer or a life insurer or non-life insurer with its registered office in a non-Member State

Section 21

1. A life insurer or non-life insurer as referred to in Section 3:286(1) of the Act shall calculate the adjusted solvency in accordance with Part 3.1.
2. Sections 6(2), 13(3) and 19 shall apply mutatis mutandis.
3. Where it is question of indirect participations in the insurer, the Dutch Central Bank may decide that the insurer shall only include in the calculation the ultimate parent undertaking of the life insurer or non-life insurer that can be considered as an insurance holding company, reinsurer or non-European life insurer or non-life insurer.

Section 22

1. The insurer referred to in Section 21 shall apply Sections 6 to 20 in making the calculation of the adjusted solvency in respect of an insurance holding company, reinsurer or non-European life insurer or non-life insurer participating in it.
2. For this calculation, the undertakings referred to in Subsection (1) shall be regarded as a life insurer or non-life insurer to which applies:
   a. a minimum amount of solvency margin equal to zero if the undertaking is an insurance holding company;
   b. the theoretical minimum amount of solvency margin referred to in Section 14 if the undertaking is a reinsurer, or Section 17 if that section applies; and
   c. the minimum amount of solvency margin calculated in accordance with Section 16 if the undertaking is a non-European life insurer or non-life insurer.
3. The provisions arising from Sections 3:53(3) and 3:57(2) of the Act in respect of the assets eligible for inclusion in the calculation of the solvency margin shall apply mutatis mutandis to the undertakings referred to in Subsection (1).

CHAPTER 4. FINANCIAL CONGLOMERATES

Provisions implementing Sections 3:296 to 3:299 of the Act

Part 4.1. Supplementary capital adequacy

Section 23

1. An undertaking as referred to in Section 3:296(1) of the Act shall calculate the supplementary capital adequacy of the financial conglomerate in accordance with the rules laid down pursuant to this chapter.
2. In calculating the supplementary capital adequacy, the undertaking shall apply one of the calculation methods set out in Annex B to this Decree.

3. The supplementary capital adequacy shall be sufficient if the outcome of the calculation referred to in Subsection (2) is not negative.

4. Without prejudice to Subsection (2), the Dutch Central Bank, if it is the coordinator as referred to in Section 3:293 of the Act, may, after consultation with the other relevant supervisory authorities and the financial conglomerate, decide which of those methods the undertaking must apply in making the calculation.

Section 24

1. An undertaking as referred to in Section 3:296(1) of the Act shall submit the calculation referred to in Subsection (4) of that section once a year. Where developments in the supplementary capital adequacy give sufficient reason to do so, the Dutch Central Bank may decide that that undertaking must submit the calculation more frequently.

2. The Dutch Central Bank shall, with due observance of the provisions arising from the part of the Act concerning Prudential Supervision of Financial Undertakings, and with due observance of Title 9 of Book 2 of the Dutch Civil Code and the international accounting standards, lay down further rules with regard to reports on the supplementary capital adequacy. Section 4(4) shall apply.

3. Furthermore, the undertaking referred to in Subsection (1) shall submit, once a year at a time to be determined by the undertaking after consultation with the Dutch Central Bank, the information on the supplementary capital adequacy that is supplied to the group executive board of the financial conglomerate and that is compiled in accordance with the procedures referred to in Section 28(1)(a).

Section 25

1. Regardless of which of the methods referred to in Section 23(2) is applied, the undertaking referred to in Section 23 shall include the total solvency deficit of a subsidiary in the calculation if the group member is a subsidiary and has a solvency deficit or if the group member is a non-regulated entity from the financial market sector and has a theoretical solvency deficit.

2. Where the Dutch Central Bank is the coordinator as referred to in Section 3:293 of the Act and it is of the opinion that the liability of the parent undertaking that owns part of the subsidiary's capital is strictly and unequivocally limited to that part of the capital, it may decide that the undertaking must take account of a pro rata part of that subsidiary's solvency deficit. If there are no capital ties between the group members, the Dutch Central Bank, where it is the coordinator as referred to in Section 3:293 of the Act, shall, after consultation with the relevant supervisory authorities, determine the part of the solvency deficit that the undertaking must include in the calculation, taking account of the liability ensuing from the existing relations.

3. Regardless of which of the methods referred to in Section 23(2) is applied:

a. the multiple use of assets eligible for inclusion in the calculation of the equity capital at the level of the financial conglomerate or the creation of equity capital within the group shall not be permitted; the relevant rules of the sectoral regulations concerned shall apply mutatis mutandis in this regard;

b. the undertaking, in calculating the available solvency for each subsector in the financial conglomerate, shall include in the calculation the equity components as described in the sectoral regulations applicable to the subsector concerned; if there is an equity deficit at the level of the financial conglomerate, the undertaking shall include in the calculation only those equity components that are eligible under each of the sectoral regulations;

c. the undertaking, in calculating the equity capital of the financial conglomerate, shall take account of the limits regarding the calculation of the equity capital pursuant to the sectoral regulations applicable to each of the subsectors;

d. the undertaking, in calculating the equity capital of the financial conglomerate, shall only include the equity capital insofar as it is effectively transferable and available among the various group members in light of the objectives of the capital adequacy regulations;

e. the undertaking shall calculate the theoretical solvency requirement for a non-regulated group member from the financial market sector in accordance with the rules with which that group member would have to comply pursuant to the relevant sectoral regulations if it had been a regulated entity of that specific subsector;

f. the undertaking shall calculate the theoretical solvency requirement of a mixed financial holding company in accordance with the sectoral regulations of the most important subsector in the financial conglomerate.

Part 4.2. Risk concentration, intra-group contracts and positions and risk management and internal control procedures

Section 26

1. An undertaking as referred to in Section 3:297(1) of the Act shall submit the report referred to in that section with regard to significant risk concentrations once a year. Where the circumstances of a particular undertaking give sufficient reason to do so, the Dutch Central Bank may decide that that undertaking must submit reports more frequently.
2. Significant risk concentrations shall be understood to mean risk concentrations that exceed an appropriate threshold to be determined by the Dutch Central Bank after consultation with the other relevant supervisory authorities and the financial conglomerate, which threshold is related to the prescribed equity capital or the technical facilities.
3. After consultation with the other supervisory authorities, the Dutch Central Bank shall determine which categories of risks of the regulated entities in a particular financial conglomerate must be reported on the basis of Section 3:297(1) of the Act. On that occasion, the Dutch Central Bank shall take account of the specific group and risk management structure of the financial conglomerate.
4. The Dutch Central Bank shall lay down further rules as regards reports on risk concentrations with due observance of the provisions arising from the part of the Act concerning Prudential Supervision of Financial Undertakings, and with due observance of Title 9 of Book 2 of the Dutch Civil Code and the international accounting standards. Section 4(4) shall apply.
5. Furthermore, the undertaking referred to in Subsection (1) shall submit, once a year at a time to be determined by the undertaking after consultation with the Dutch Central Bank, the information on risk concentrations that is supplied to the group executive board of the financial conglomerate and that is compiled in accordance with the procedures referred to in Section 28(1)(b).

Section 27

1. An undertaking as referred to in Section 3:298(1) of the Act shall submit the report referred to in that section with regard to significant intra-group contracts and positions once a year. Where the circumstances of a particular undertaking give sufficient reason to do so, the Dutch Central Bank may decide that that undertaking must submit reports more frequently.
2. Significant intra-group contracts and positions shall be understood to mean intra-group contracts and positions that exceed an appropriate threshold related to the prescribed equity capital or the technical facilities, which threshold shall be determined by the Dutch Central Bank after consultation with the other relevant supervisory authorities and the financial conglomerate.
3. After consultation with the other supervisory authorities, the Dutch Central Bank shall determine which categories of contracts or positions of the regulated entities in a particular financial conglomerate must be reported on the basis of Section 3:298(1) of the Act. On that occasion, the Dutch Central Bank shall take account of the specific group and risk management structure of the financial conglomerate.
4. The Dutch Central Bank shall, with due observance of the provisions arising from the part of the Act concerning Prudential Supervision of Financial Undertakings, and with due observance of Title 9 of Book 2 of the Dutch Civil Code and the international accounting standards, lay down further rules as regards reports on the intra-group contracts and positions. Section 4(4) shall apply.
5. Furthermore, the undertaking referred to in Subsection (1) shall submit, once a year at a time to be determined by the undertaking after consultation with the Dutch Central Bank, the information on intra-group contracts and positions that is supplied to the group executive board of the financial conglomerate and that is compiled in accordance with the procedures referred to in Section 28(1)(b).

Section 28

1. An undertaking as referred to in Section 3:299(1) of the Act shall have:

a. adequate procedures in respect of capital adequacy for identifying and measuring all existing material risks and gearing the equity capital to the risks in an appropriate manner;

b. proper reporting and accounting systems, with a view to identifying, measuring, monitoring and controlling the intra-group contracts and positions and the risk concentration.

2. With a view to the risk management referred to in Section 3:299(1)(a) of the Act, the undertaking shall also have:

a. a proper administration and management, with provisions for the approval and periodic evaluation of the strategies and policies by the appropriate administrative bodies at the level of the financial conglomerate with regard to all the risks they assume;

b. an adequate capital adequacy policy in order to anticipate the consequences of the business strategy of the regulated entities in the financial conglomerate for the risk profile and the capital adequacy referred to in Section 3:296 of the Act;

c. adequate procedures for ensuring that the risk monitoring systems of the regulated entities in the financial conglomerate are properly integrated in their organisation and that all measures have been taken to guarantee that the systems applied in all the undertakings subject to supplementary supervision are in agreement with each other, so that the risks at the level of the financial conglomerate may be measured, monitored and controlled.

CHAPTER 5. FINAL PROVISIONS

Section 29

The sections of this Decree shall enter into force at a time to be determined by Royal Decree. Different times may be set for different sections or parts thereof.

Section 30

This Decree shall be cited as: Decree on the Prudential Supervision of Financial Groups pursuant to the Wft (*Besluit prudentieel toezicht financiële groepen Wft*).

The opinion of the Council of State shall not be published pursuant to Section 25a(5) in conjunction with (4)(b) of the Council of State Act (*Wet op de Raad van State*), as it is unconditionally positive.

We hereby order and command that this Decree and the accompanying Explanatory Memorandum be published in the Bulletin of Acts, Orders and Decrees (*Staatsblad*).

The Hague, 12 October 2006

Beatrix

The Minister of Finance,
G. Zalm

Published on the *thirty-first* of October 2006

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

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Annex to Section 20

Method 1. Deduction and aggregation

Method whereby the adjusted solvency of the participating life insurer or non-life insurer is calculated as the difference between:

i. the sum of:

– the assets eligible for inclusion in the calculation of the solvency margin of the participating life insurer or non-life insurer;

and

– the pro rata part owned by the participating life insurer or non-life insurer of the assets eligible for inclusion in making the calculation of the solvency margin of the affiliated life insurer or non-life insurer;

and

ii. the sum of:

– the book value of the affiliated life insurer or non-life insurer in the accounts of the participating life insurer or non-life insurer;

and

– the minimum amount of solvency margin of the participating life insurer or non-life insurer;

and

– the proportional part of the minimum amount of solvency margin of the affiliated life insurer or non-life insurer.

Where the holding in the affiliated life insurer or non-life insurer consists wholly or partly of an indirect interest, the value of this interest will be included in the calculation in item ii), first indent, taking account of the relevant successive holdings. Furthermore, the proportional parts of the assets eligible for inclusion in making the calculation of the solvency margin of the affiliated life insurer or non-life insurer and the minimum amount of solvency margin of that life insurer or non-life insurer will be included in the calculation in items i), second indent, and ii), third indent, respectively.

Method 2. Deduction of a requirement

Method whereby the adjusted solvency of the participating life insurer or non-life insurer is calculated as the difference between:

i. the sum of the assets eligible for inclusion in the calculation of the solvency margin of the participating life insurer or non-life insurer;

and

ii. the sum of:

– the minimum amount of solvency margin of the participating life insurer or non-life insurer;

and

– the proportional part of the minimum amount of solvency margin of the affiliated life insurer or non-life insurer.

In valuing the assets eligible for inclusion in the calculation of the solvency margin, holdings shall be stated at their net asset value, in accordance with Section 389(2) of Book 2 of the Dutch Civil Code.

Method 3. Method based on accounting consolidation

Method whereby the adjusted solvency of the participating life insurer or non-life insurer is calculated on the basis of the consolidated accounts and is the difference between:

i. the assets eligible for inclusion in the calculation of the solvency margin based on the consolidated data;

and

ii.– either the sum of the minimum amount of solvency margin of the participating life insurer or non-life insurer and the pro rata part of the minimum amount of solvency margin of the affiliated life insurers or non-life insurers as taken into account for the compilation of the consolidated accounts;

– or the minimum amount of solvency margin calculated on the basis of the consolidated data.

The provisions arising from Sections 3:53(3) and 3:57(2) of the Act shall apply mutatis mutandis to the identification of the assets eligible for inclusion in the calculation of the solvency margin and the calculation of the minimum amount of solvency margin based on the consolidated data.

Annex to Section 23(2)

Method 1. Method based on accounting consolidation

Method whereby the capital adequacy of the regulated entities in a financial conglomerate is calculated on the basis of the consolidated accounts.

The capital adequacy is calculated as the difference between:

i. the equity capital of the financial conglomerate, calculated on the basis of the group's consolidated position; the eligible assets are those assets that are classified as such in the relevant sectoral regulations;

and

ii. the sum of the solvency requirements for each subsector of the group, where applicable including the solvency requirements for the mixed financial holding company; the solvency requirements for each subsector are calculated in accordance with the relevant sectoral regulations.

A theoretical solvency requirement is calculated for non-regulated entities from the financial market sector that were not taken into account in the aforementioned calculations of the sectoral solvency requirements, and, where applicable, for the mixed financial holding company of the financial conglomerate.

Method 2. Deduction and aggregation

Method whereby the capital adequacy of the regulated entities in a financial conglomerate is calculated on the basis of the annual accounts of each of the entities in the group.

The capital adequacy is calculated as the difference between:

i. the sum of the equity capital of each regulated and non-regulated entity from the financial market sector belonging to the financial conglomerate, where applicable including the mixed financial holding company; the eligible assets are those assets that are classified as such in the relevant sectoral regulations;

and

ii. the sum of:

– the solvency requirements for each regulated and non-regulated entity from the financial market sector belonging to the group, where applicable including the solvency requirements for the mixed financial holding company; these solvency requirements are calculated in accordance with the relevant sectoral regulations;

and

– the book value of the holdings in other entities of the group.

A theoretical solvency requirement is calculated for non-regulated entities from the financial market sector and, where applicable, for the mixed financial holding company of the financial conglomerate.

The equity capital and the solvency requirements are taken into account to the extent of their proportional part pursuant to Subsection (3).

Method 3. Deduction of a requirement

Method whereby the capital adequacy of the regulated entities in a financial conglomerate is calculated on the basis of the annual accounts of each of the entities in the group.

The capital adequacy is calculated as the difference between:

i. the equity capital of the parent undertaking or the entity heading the financial conglomerate; the eligible assets are those assets that are classified as such in the relevant sectoral regulations;

and

ii. the sum of:

– the solvency requirement of the parent undertaking or the entity referred to under i);

and

– the book value of the parent undertaking's holdings in other group entities, or the solvency requirements of these entities, whichever is higher;

these solvency requirements are taken into account to the extent of their proportional part pursuant to Subsection (3).

A theoretical solvency requirement is calculated for non-regulated entities.

In valuing the assets that are eligible for the calculation of the capital adequacy, holdings may be valued on the basis of the equity method, in accordance with the option referred to in Article 59(2)(b) of the Fourth Council Directive 78/660/EEC of 25 July 1978 based on Article 54(3)(g) of the Treaty on the annual accounts of certain types of companies (OJEC L 222).

Method 4. Combination of methods 1, 2 and 3

Method whereby the capital adequacy of the regulated entities in a financial conglomerate is calculated on the basis of a combination of methods 1, 2 and 3 or a combination of two of those methods.

In calculating the capital adequacy requirements for a financial conglomerate by means of **method 1**, the equity capital and the solvency requirements of the group members are calculated by applying the sectoral regulations regarding the format and degree of consolidation, which are laid down in particular in Article 54 of the Banking Directive and Annex I, point 1(B) of Directive 98/78/EC of the European Parliament and of the Council of 27 October 1998 on the supplementary supervision of insurance undertakings in an insurance group (OJEC L 330).

In calculating the capital adequacy requirements for a financial conglomerate by means of **methods 2 or 3**, account is taken of the pro rata part of the parent undertaking or the undertaking that owns a holding in another group member. The term 'pro rata part' refers to the portion of the issued capital held directly or indirectly by the undertaking.

EXPLANATORY MEMORANDUM

General notes

This Decree provides further rules with regard to the prudential supervision of financial groups. The foundations for this Decree can be found in Chapter 3.6 of the Act on Financial Supervision (the Act). This Decree is arranged along the lines of that chapter. Accordingly, there are chapters on the consolidated supervision of credit institutions, the supplementary supervision of life insurers and non-life insurers in an insurance group and the supplementary supervision of financial conglomerates.

In general terms, the objective of the consolidated supervision of credit institutions, the supplementary supervision of life insurers and non-life insurers in an insurance group and the supplementary supervision of financial conglomerates is the same: the Dutch Central Bank (*De Nederlandsche Bank*, DNB) must be able to form a correct picture of the financial soundness of the group, so as to ensure that the group's solvency is not presented in an excessively favourable light. For example, it is not acceptable for a financial undertaking to extend a loan to its parent undertaking, only for the latter to use the amount involved to fund an expansion of its shareholding in that subsidiary. This kind of circular financing may (considerably) increase the available solvency, without resulting in a material improvement in the group's financial position. In essence, a situation must be prevented in which an asset is used several times within the group in calculating the solvency margin. This phenomenon is known internationally as 'multiple gearing'.

The Banking Directive[1] prescribes the consolidation circle for credit institutions, because, under the Banking Directive, the Dutch Central Bank may exclude a credit institution from solvency supervision if this credit institution is a subsidiary and is included in the parent's consolidated accounts. This is regulated by the Act. With regard to credit institutions, this means that the entity supervision regulated by the Decree on Prudential Rules pursuant to the Wft (*Besluit prudentiële regels Wft*) is based on the consolidated accounts. With regard to the other categories of financial undertakings, the solo supervision is based on the individual accounts.

There are various ways of calculating the supplementary solvency requirement for the other categories of financial undertakings. These different methods have been elaborated on in this Decree. This Decree concerns the methods laid down in the Insurance Groups Directive[2] and the Financial Conglomerates Directive[3]. Because the Act contains the rules on the consolidation circle as well as on the authority of DNB to grant an exemption, the provisions of this Decree on the consolidated supervision of credit institutions need not be as detailed as those on the supplementary supervision of life insurers and non-life insurers in an insurance group and those on the supplementary supervision of financial conglomerates.

The Banking Directive includes rules concerning the consolidation of banking groups. The Insurance Groups Directive provides rules on the supplementary supervision of life insurers and non-life insurers in an insurance group. These two directives relate to homogenous groups and only to a limited extent, and often indirectly, to financial conglomerates. Therefore the Financial Conglomerates Directive, which contains rules on the supplementary supervision of mixed groups, was required as a final element. In terms of elaboration, this directive is more or less comparable to the Insurance Groups Directive.

[1] Directive 2000/12/EC of the European Parliament and of the Council of 20 March 2000 relating to the taking up and pursuit of the business of credit institutions (OJEC L 126).
[2] Directive 98/78/EC of the European Parliament and of the Council of 27 October 1998 on the supplementary supervision of insurance undertakings in an insurance group (OJEC L 330).
[3] Directive 2002/87/EC of the European Parliament and of the Council of 16 December 2002 on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate and amending Council Directives 73/239/EEC, 79/267/EEC, 92/49/EEC, 92/96/EEC, 93/6/EEC and 93/22/EEC and Directives 98/78/EC and 2000/12/EC of the European Parliament and of the Council (OJEU L 35).

Chapter 2. Consolidated supervision of credit institutions

A credit institution heading a group that includes other credit institutions or financial institutions is supervised on the basis of its consolidated financial position, as determined in accordance with the scope of the consolidation. This means that the consolidated financial position of a credit institution must comply with the supervision requirements. The supervision requirements relate in particular to solvency and liquidity, capital adequacy with a view to the market risks as well as limits on major lending.

The consolidated supervision of credit institutions therefore extends to the group environment in which the credit institution operates. This also includes the financial holding company. One of the reasons for its inclusion is that a financial holding company (including its subsidiaries) performs comparable activities and is therefore exposed to financial risks comparable to those of a credit institution. In order to prevent the risks borne by other group members from adversely affecting the credit institution concerned, the supervision of the credit institution must include the consolidated financial position of the financial holding company. The basic principle of the supervision is that the consolidation is restricted to the banking undertakings within the group and the units closely related to them, and that holdings not related to any banking activities are left out of the consolidation and are therefore presented as holdings in the consolidated accounts. The consolidated banking group consists of the financial holding company and its interests in the credit institutions and other financial institutions within the group. The consolidated balance sheet can be used to determine the capital available for solvency purposes. Furthermore, it will identify the banking and related activities for which this capital must be maintained.

Share investments and holdings in non-banking undertakings are weighted in accordance with the banking solvency guidelines in order to determine the extent of the capital available to cover the risks entailed by the banking activities under the financial holding company.

Chapter 3. Supplementary supervision of Dutch life insurers and non-life insurers in an insurance group

Where insurance groups are concerned, this Decree incorporates the substance of the Decree on the Supplementary Supervision of Insurers in an Insurance Group (*Besluit aanvullend toezicht verzekeraars in een verzekeringsgroep*, Batvv). In incorporating the substance, an attempt was made to simplify the wording of the provisions where possible, without changing the content. Furthermore, this Decree in principle imposes the obligations on the insurer, whereas under the Batvv the obligations – less correctly – often rested with the supervisory authority. The Batvv was based on the Act on the Supervision of the Insurance Industry 1993 (*Wet toezicht verzekeringsbedrijf 1993*, Wtv 1993) and implemented the Insurance Groups Directive, which provides rules on the supplementary supervision of life insurers and non-life insurers in an insurance group. When the Wtv 1993 was repealed, the aforementioned Decree ceased to apply by operation of law.

Choice of method for calculating adjusted solvency

Since each of the methods set out in this chapter for calculating the adjusted solvency of a group insurer produces a similar result, provided that it is applied correctly, there is no need to prescribe one of these methods as mandatory. However, in order to prevent a situation in which the supervisory authority, in assessing the adjusted solvency of the individual life insurers or non-life insurers, is confronted with constantly changing calculation methods, the life insurers or non-life insurers must consistently apply the calculation method that they have chosen.

Assets to be taken into account

The assets that may be included in the statutory solvency calculations also contain elements of an implicit nature, such as future profits and the non paid-up part of the issued share capital. This chapter states the manner in which these assets must be taken into account in parent-subsidiary relationships and other participation relationships. If, in the opinion of DNB, assets are involved that cannot be transferred by the subsidiary to the parent undertaking, then these assets must be disregarded when calculating the adjusted solvency. This will be the case, for example, if the said assets do not serve to cover the minimum amount of solvency margin of the subsidiary.

Avoiding duplicate calculations

This chapter also describes the levels at which the solvency calculations must be carried out. The basic principle in this respect is that the adjusted solvency must be calculated for each supervised Dutch life insurer or non-life insurer in the group that owns a holding in another life insurer, non-life insurer or reinsurer. If there are more insurers affiliated to that insurer, then those insurers must be included in the calculation where applicable. In order to restrict the administrative burden entailed by the application of the provisions of the present Decree, the calculation need not be carried out if the adjusted solvency of that affiliated Dutch life insurer or non-life insurer is already taken into account in the calculation of the adjusted solvency of the participating Dutch life insurer or non-life insurer involved. The calculation will not be required either if the participating life insurer or non-life insurer is affiliated to an insurance holding company or a reinsurer with its registered office in the Netherlands, provided that the said holding company or reinsurer is already included in an adjusted solvency calculation elsewhere. Furthermore, a situation may occur in which a life insurer or non-life insurer is affiliated to one or more life insurers or non-life insurers with their registered office outside the Netherlands via an insurance holding company, reinsurer or non-European life insurer or non-life insurer. If the calculation must be carried out in the other Member State, the Dutch life insurer or non-life insurer will not be required to make the calculation again. All these cases are subject to the condition that the assets of the solvency margin must be adequately distributed among the undertakings involved. This means that there must be no concentration of lesser assets at a particular life insurer or non-life insurer.

Finally, the calculation of the adjusted solvency may be based on the solvency data of affiliated undertakings with their registered office in another Member State that were calculated in that other Member State.

Reinsurers and (intermediate) insurance holding companies

Exclusively for the purpose of calculating the adjusted solvency, reinsurers belonging to an insurance group will be regarded as direct life or non-life insurers. This definitely does not mean that reinsurers are therefore implicitly subject to supervision. A reinsurer belonging to an insurance group only has to comply with a pro forma solvency requirement – derived from the solvency requirements applicable to supervised life or non-life insurers – for the purpose of calculating the solvency of the group as a whole.

Any (intermediate) insurance holding company that does not require a licence will be assigned a zero solvency requirement for the purpose of the calculation.

Holdings owned by insurers in a non-Member State will be treated in accordance with the rules of that State insofar as the solvency requirements of that State are similar to those of the European Community, and otherwise they will be treated in accordance with the solvency rules applicable in the European Community. The European Community requirements will also be applied pro forma with regard to reinsurers in a non-Member State in the absence of similar solvency requirements in that State.

Finally, there is the general rule that where it is not possible to obtain relevant information on the solvency of (re)insurers outside the Netherlands, the book value of the holding as a whole will be offset against the solvency of the participating Dutch life or non-life insurer.

Supplementary supervision of life or non-life insurers that are a subsidiary of an insurance holding company, a reinsurer or a non-European life or non-life insurer

The objective of the provisions of Part 3.2 of Chapter 3 is to calculate an adjusted solvency for the entire insurance group, including insurance holding companies and reinsurers that are not subject to supervision in the Netherlands. In addition, this part contains provisions regarding life or non-life insurers that are a subsidiary of parent undertakings with their registered office in a non-Member State and that also have subsidiaries in other Member States. The supervision of strongly internationally oriented life or non-life insurers that are part of an insurance group may involve situations in which it is not always clear what actions are performed by the supervisory authorities responsible for supervising those group undertakings. Part 3.2 contains a number of provisions in this respect. An important element in this context is that supervisory authorities will have to reach agreements among themselves as regards the calculation of the adjusted solvency of life or non-life insurers that operate as part of an insurance group. Furthermore, the operations of multinational undertakings often involve greatly diversified activities that are not exclusively or primarily confined to insurance activities. In order to deal properly with these situations where the adjusted solvency calculations are concerned, this part contains provisions that result in the equal treatment of European life or non-life insurers and non-European life or non-life insurers.

Chapter 4. Financial conglomerates

Chapter 4 of this Decree contains specific rules with regard to additional requirements for financial conglomerates.
The Financial Conglomerates Directive contains rules to prevent situations in which parts of financial conglomerates are not subject to regulations at all, or in which undertakings within one conglomerate must comply with a variety of rules and regulations. See also the explanatory notes to the third memorandum of amendment pertaining to the proposed Act on Financial Supervision[1].

[1] Parliamentary Documents II 2004/05, 29708, no. 17.

Annex I to the Financial Conglomerates Directive, which sets out the methods for calculating the supplementary capital adequacy, largely derives from the Insurance Groups Directive. Accordingly, the objective is the same, i.e. to prevent the financial position of the financial conglomerate from being presented in an excessively favourable light. The provisions of Chapter 3 in respect of the assets to be taken into account will therefore apply in full. The calculation methods also derive from the aforementioned Directive, with the proviso that account was taken of the situation in which, apart from life, non-life and reinsurers, a financial conglomerate may also include other financial undertakings. Furthermore, the Financial Conglomerates Directive allows a fourth calculation method, namely a combination of the three other methods. Annex II to the Financial Conglomerates Directive does not derive from the Insurance Groups Directive. Where insurance groups are concerned, there are no requirements with regard to risk concentrations.

Pursuant to Sections 3:296(1), 3:297(3) and (4), 3:298(3) and (4) and 3:299(2) of the Act, further rules may be laid down in respect of supplementary capital adequacy, risk concentration, intra-group contracts and positions and risk management and internal control procedures respectively.

This Decree provides greater clarity as to what must be reported and when by the undertaking that – either on its own or with another undertaking – is at the head of a financial conglomerate. Therefore more specific requirements have been laid down in respect of the undertakings at the head of the conglomerate in the four above-mentioned areas, which are important for the stability of a financial conglomerate.

The content of Chapter 4 is based on the Financial Conglomerates Directive. Consideration was also given to regulations and reports from the protocol between De Nederlandsche Bank NV and the Pensions and Insurance Supervisory Authority (*Pensioen- en Verzekeringskamer*, PVK), which contain arrangements (with a view to the merger between these two bodies) about the manner in which financial and non-financial conglomerates were involved in the supervision of the credit institutions and insurers belonging to these conglomerates.

The level of regulations in Chapter 4 is comparable to the system applied in the Act and the regulations based upon the Act. The standards laid down in the Act have been worked out in more detail in this Decree. Highly technical calculations have been delegated to DNB and will therefore be included in supervisor's rules.

Chapter 4 confers a number of supervisory powers on DNB.

Three of the sections that constitute the basis for this chapter (Sections 3:296 to 3:299 of the Act) provide that the obligations for the undertaking at the head of a financial conglomerate (either on its own or with another undertaking), where the financial conglomerate includes a regulated entity with its registered office in the Netherlands, will only apply if DNB is the coordinator.

DNB therefore exercises the powers conferred on it in the capacity of coordinator.

One of DNB's powers is that it, after consultation with the other relevant supervisory authorities and the financial conglomerate, may decide which method the financial conglomerate must apply when calculating the capital adequacy. The fact that this, unlike the calculation of the adjusted solvency of a group insurer, is not always left to the conglomerate itself, is due to the Financial Conglomerates Directive.

As is the case in the Act, the rules in Chapter 4 apply to financial conglomerates, and the obligations to comply with the requirements regarding capital adequacy, the reports on risk concentrations, intra-group contracts or positions and the risk management and internal control procedures are imposed on the undertaking at the head of the financial conglomerate. In a number of situations, DNB may decide that the obligation must be fulfilled by a regulated entity that forms part of the group and has its registered office in the Netherlands. Where this happens, the obligations arising from Chapter 4 will also apply to this entity. This is the case for Sections 3:296(4), 3:297(2) and 3:298(2). In addition, the obligation to submit reports on capital adequacy under Section 3:296(3) also applies to regulated entities with their registered office in the Netherlands that form part of a financial conglomerate, if the undertaking at the head of that conglomerate fails to fulfil its obligation.

Chapter 4 is structured as follows. Part 4.1 contains rules on the supplementary capital adequacy for financial conglomerates and Part 4.2 contains rules concerning risk concentration, intra-group contracts and positions and risk management and internal control procedures. This structure follows the structure of the Financial Conglomerates Directive in particular. In that Directive, Annex I deals with capital adequacy, while Annex II collectively addresses the risk concentration and intra-group contracts and positions, which contain many similar elements.

Administrative burden

Chapter 2 might lead to an increase in the administrative burden. Pursuant to the Financial Conglomerates Directive, a provision on reporting intra-group contracts and positions was inserted into the Banking Directive, which is incorporated in Section 4 of Chapter 2. In as far as is known at present, however, there are no mixed holding companies of banking groups that would have to submit reports.

Chapter 3 does not entail any additional administrative burden. This chapter incorporates the substance of the Batvv.

The obligations in Chapter 4 and the Act upon which it is based are partly new, i.e. insofar as they go beyond the protocol mentioned above.

As already explained in the section on administrative burden in the explanatory notes to the third memorandum of amendment pertaining to the proposed Act on Financial Supervision[1], in practice the protocol already entailed charges.

With regard to reporting in accordance with the DNB format, this Decree provides for a frequency of once a year in respect of capital adequacy and risk concentrations as well as intra-group contracts and positions.

The calculation in the explanatory notes to the third memorandum of amendment indicates that the reporting costs will be € 14,000 per annum in that case. This amount also includes the charges that may arise from Section 28.

The charges primarily relate to the changeover to the new reporting statements; the structural charges will be lower.

As regards the reporting frequency for financial conglomerates, NVB/Association and Euronext/REB indicated in their second recommendation that two reports per annum would be acceptable, if one of the two reports was based on management information available internally in respect of capital adequacy, intra-group contracts or positions and risk concentrations. This second report will have little or no effect on the administrative burden, since the report is based on information available internally which can be supplied to the supervisory authority without any changes being made.

[1] Parliamentary Documents II 2004/05, 29 708, no. 17, pp. 20 and 21.

Compared to the previous practice, the structural charges will be lower now that the second report entails little or no costs. A reduction of the administrative burden is also possible because some groups, which used to be a financial conglomerate in practice, no longer fall under the definition of a financial conglomerate in the Wft. It is not possible to specify the extent of this reduction.

Advice received

The Decree was prepared in close consultation with DNB. The supervisory authority was involved in the draft texts at an early stage. DNB's comments with regard to the various drafts and consultation rounds have been incorporated as well as possible and in consultation with DNB.

Following the informal submission of the Decree to the sector, a formal consultation procedure took place. A large number of market parties were involved in these consultations. Some parties did not respond. Others, i.e. the Netherlands Association of Insurance Advisers and Financial Service Providers (*Nederlandse Vereniging van Assurantieadviseurs en Financiële Dienstverleners*), the Netherlands Association of Authorised Insurance Companies (*Nederlandse Vereniging van Gevolmachtigde Assurantiebedrijven*), the Dutch Association for Lending to Private Individuals (*Nederlandse Vereniging voor Volkskrediet*) and the Association of Mortgage Advisers in the Netherlands (*Vereniging van Hypotheekadviseurs in Nederland*), indicated that they did not have any comments with regard to content.

A formal response regarding the content of the Decree was received from the Netherlands Bankers' Association (*Nederlandse Vereniging van Banken*, NVB). The Dutch Association of Insurers (*Verbond van Verzekeraars*) formally endorsed this response and provided additional comments from the NVB and the Association together. These responses will be referred to as 'NVB/Association'. In addition, a formal response with regard to content was received from the Royal Netherlands Institute of Registered Accountants (*Koninklijk Nederlands Instituut voor Registeraccountants*, NIVRA), while Euronext Amsterdam N.V. (Euronext) and the Securities Industry Council (*Raad van de Effectenbranche*, REB) submitted a joint response. The latter response will hereinafter be referred to as 'Euronext/REB'.

In addition to the general notes below, notes on individual sections have been included in an attempt to answer or clarify as much as possible the questions and ambiguities that emerged during the formal market consultations.

General comments

As regards the reporting frequency for financial conglomerates, NVB/Association and Euronext/REB indicated in their second recommendation that two reports per annum would be acceptable, if one of the two reports was based on management information available internally in respect of capital adequacy, intra-group contracts and positions and risk concentrations. That report will then have little or no effect on the administrative burden, since it is based on information available internally which can be supplied to the supervisory authority without any changes being made. This second recommendation has been adopted.

NVB/Association indicated that the need for the basis from Section 3:296(8) of the Act had not been sufficiently substantiated. Under that section, rules may be laid down by or pursuant to an order in council with regard to groups that are classified as a financial conglomerate under the aforementioned protocol, but are not a financial conglomerate within the meaning of the Act. In the explanatory memorandum on the Act, it is already indicated in the notes on individual sections that this basis will only be used if the need to do so has been demonstrated. Therefore this Decree provides no further rules based on the aforementioned section.

NVB/Association also argued that an overlap between existing reports for banks and insurers and supplementary reports for financial conglomerates should be prevented, or, if this is not possible, that the consolidated reports of insurers and banks should be replaced by the supplementary reports for financial conglomerates. However, the Financial Conglomerates Directive assumes supplementary supervision, which means that the above proposals are not possible.

The current directives also preclude gains, such as diversification gains, from being included in the capital adequacy calculations.

Euronext/REB suggested that a distinction should be made between normal circumstances and emergency situations when describing the duties of the coordinator in the event of supplementary supervision.

Making a distinction in the Decree between normal circumstances and emergency situations would not be appropriate. The supervisory authority is assigned particular powers under the Wft and must take the measures that are expedient in the given circumstances. Therefore DNB, as the coordinator, cannot follow a totally different procedure just because there is an emergency situation.

Further to the notes presented under the heading 'administrative burden', Euronext/REB asked whether the regulations would be amended if it turned out that the regulations resulted in a net cost increase. This will not be the case where obligations under the Directive are concerned. Although no calculation can yet be made of the extent to which the regulations not only increase but also decrease the administrative charges, an increase in the administrative charges will be inevitable because of the Financial Conglomerates Directive.

Comments on individual sections

The responses contained a number of comments on individual sections. In some cases, these comments resulted in – usually technical and editorial – adjustments or in a further explanation. It would go too far to discuss each and every adjustment in this explanatory memorandum. Therefore, the extent to which the comments on individual sections resulted in major amendments is indicated below for each chapter.

Chapter 1

NVB/Association wondered whether Section 2 should not be included in Chapter 3 of the Decree. However, Section 2 applies to the entire Decree and therefore belongs in Chapter 1.

In the event that Section 2 were not moved, NVB/Association then wondered how Section 2 related to Section 23(4), under which DNB may prescribe a particular method. The fact that a method must be consistently applied is separate from the choice of a particular method, however. DNB will opt for the method that is most suitable for the financial conglomerate concerned, with due regard for the wishes of the financial conglomerate and for the views of the other relevant supervisory authorities. Once the method has been prescribed by DNB, it must be consistently applied.

Chapter 2

The comments made in respect of Chapter 2 concern Section 4 and related sections from Chapters 3 and 4. These comments are discussed collectively below.

NVB/Association asked whether, by analogy with Sections 26(2) and 27(2), Sections 4(2) and 5(3) could provide that the threshold above which intra-group contracts or positions are classified as significant would be determined by DNB after prior consultation with the financial conglomerate involved. As the directives do not preclude such consultations, the option of prior consultations was added to the text of the sections. In this respect it must be borne in mind that the supervisory authority, when determining the threshold above which intra-group agreements or positions are classified as significant, cannot determine anything for the group as a whole.

Furthermore, NVB/Association argued that a provision should be added to the text of the Decree to the effect that DNB was not permitted to set any quantitative or qualitative limits in excess of the thresholds that it could determine pursuant to Sections 4(2), 5(3), 26(2) and 27(2). Although this is not included in the text of the Decree, DNB may not set any qualitative requirements and quantitative limits under Section 26(2) and Section 27(2), because the Decree does not confer the power to do so. This had already been set out in the notes on Sections 26 and 27. As regards the thresholds which DNB may determine, NVB/Association asked why the Decree did not provide for a minimum threshold which DNB, after consultation with the conglomerate concerned, could increase. The notes on Section 26 of the Decree explain that the threshold is determined by the supervisory authority in accordance with the Financial Conglomerates Directive, and that this threshold is determined for each conglomerate individually. Viewed in this light, it is not possible to include a minimum threshold in the legislative text.

The following comments apply to the question from NVB/Association as to why Sections 4(2) (available solvency), 5(3) (required solvency) and 26(2) and 27(2) (prescribed equity capital or technical facilities) name different benchmarks to which the threshold must be related. In accordance with the request from the business sector, the Decree incorporated existing practice where possible. This resulted in the text of Sections 4(2) (available solvency) and 5(3) (required solvency).

Thereby these texts differ from Sections 26(2) and 27(2) (prescribed equity capital or technical facilities), because the latter sections are an elaboration of Annex II to the Financial Conglomerates Directive.

Chapter 3

With regard to Section 5(1), NVB/Association observed that criteria should be formulated on the basis of which DNB could decide that developments were taking place at an insurer that posed a threat to solvency. The text derives from Sections 69j and 69k of the Wtv 1993 and indicates that there must be a negative trend that will result in a solvency deficit. This provision is comparable to that of Section 3:132(1) of the Wft. This 'principle-based' approach allows the supervisory authority some freedom, but that is inherent in a principle-based approach.

With regard to Section 5(2), NVB/Association observed that the categories of significant intra-group contracts or positions had disappeared from the Act and had been incorporated in supervisor's rules, whereas a situation in which these categories were regulated by the legislator, and the risks and positions to be reported were in agreement where possible with the provisions of IFRS 7 and/or Pillar 3 of Basle II, would be preferable.

The Insurance Groups Directive (as well as the Batvv) contains examples of intra-group contracts and positions. These examples have now been included in the explanatory notes.

To the extent that 'categories' refers to the question of why the Act does not specify what is meant by 'significant intra-group contracts', it should be noted that, as in the case of the Financial Conglomerates Directive, this is left to DNB for the purpose of tailor-made solutions.

NVB/Association asked whether the adjusted solvency under Section 12(1) was the required or available solvency, and whether the deductible items applied to both the adjusted solvency and the available solvency. The calculated adjusted solvency should be regarded as an assessment. The calculation is used to assess whether the available solvency as presented by an insurer in an insurance group meets the required solvency level, without any solvency elements being counted more than once in the calculation.

With regard to Section 12(1)(a), NVB/Association asked whether the term 'affiliated undertakings' should be read in accordance with the Dutch legal principles or in accordance with the basic premises of IFRS, as set out in IAS 38.2. The term 'affiliated undertaking' has been defined in the Directive and in the Act. Therefore this definition must be applied.

NVB/Association wondered whether the reference in Section 21(2) to Section 3:53(3) of the Act was correct, and whether this section also involved a frequency of once a year. In the case of insurers, the minimum equity capital is part of the solvency margin. From that perspective, the reference to Section 3:53(3) is correct. As Section 21 refers to Part 3.1, the frequency is indeed once a year. In the interests of clarity, the text now refers to Section 6(2).

Chapter 4

Euronext/REB asked which criteria DNB applied in prescribing a method, and how much weight was assigned to the contribution of the conglomerate concerned when a method was prescribed. DNB will choose the method which, in view of the conglomerate, gives a good representation of reality. In addition, DNB will take its decision in consultation with the other relevant supervisory authorities. The wishes of the conglomerate are an important factor in this process. This is shown in Section 23, which incorporates the principal standard that the conglomerate itself may choose the method.

Euronext/REB argued that it would be preferable if a number of the further rules which DNB may lay down in respect of reports under Sections 24(2), 26(4) and 27(4) were incorporated in this Decree. NVB/Association also suggested that DNB's regulatory powers pursuant to Section 24(2)(b) and (e), 26(4)(f) and 27(4)(f) might be better vested in the legislator. Euronext/REB and NVB/Association referred specifically to the term within which a report must be submitted.

The regulatory powers ensue from the sector's wish to provide the financial conglomerates with tailor-made solutions. To make this possible, it is not advisable to specify the terms in this Decree. In addition, reports are often submitted via DNB's electronic reporting system. This system, known as 'E-line DNB', is designed in such a way that the financial undertaking is presented only with the statements that it has to fill in. A particular format is then required to retrieve the reports. It is not necessary to fill in all reports every time (see the notes on Section 4). In the present text of Sections 24, 26 and 27, reference is made to the list in Section 4.

NVB/Association asked whether a provision could be inserted in the text of Section 25(3)(b) to the effect that the calculation of solvency must allow for elimination on the grounds of consolidation. However, the provisions in Section 25 are listed irrespective of the calculation method used. This is indicated in the opening words of Section 25(3). Furthermore, it is not clear why a further provision should be inserted in Subsection (3)(b) in respect of the method based on consolidation of accounts.

NVB/Association observed that, because several sectors are added together in the reports of financial conglomerates, a situation would arise in which an asset may be counted as part of the qualifying capital under one type of supervision, but not under another type. This situation is undesirable.
The conclusion that a distinction is made is correct. However, the directives leave no other option. The Netherlands has already pressed for the directives to be amended.

NVB/Association and Euronext/REB argued that the basis under Section 4:4, pursuant to which DNB can lay down further rules as regards calculation methods and the rules of Section 25, was too wide and had been insufficiently substantiated. Further to these comments, Section 4:4 has been deleted because DNB can also interpret the calculation methods and the rules of Section 25 in policy rules.

NVB/Association asked why DNB could lay down further rules as regards the valuation of the items in the report pursuant to Sections 26(4)(c) and 27(4)(c), while the Decree also provided that the valuation had to be in accordance with the valuation methods laid down in the Dutch Civil Code. Further to these comments, the notes on Section 4 explain how DNB can exercise its power to lay down rules. The Decree and the explanatory memorandum both refer to Section 4(4).

NIVRA pointed out that it was not clear how the risk concentrations from Part 4.2 related to the requirements of Basle II and Solvency II. As stated earlier, NVB/Association also observed that the risks and positions to be reported had to be in agreement where possible with the provisions of IFRS 7 and/or Pillar 3 of Basle II. The basic principle is that DNB should follow Basle II as closely as possible in its supervisor's rules.
Since Solvency II has not yet been adopted, it is not yet possible to take it into account.

The Decree was submitted to the Ministry of Justice for legislative assessment. Agreement was reached.

The draft Decree was submitted for advice to the Advisory Board on Administrative Burden (*Adviescollege toetsing administratieve lasten*, Actal). The Board did not select the Decree for assessment, given the small administrative burden that the Decree entails for the business sector.

Notes on individual sections

Section 2

This section incorporates Section 2(2) of the Batvv. The consequences of a change of method may cause DNB to request an explanation. Only if the methods described in this Decree are applied consistently will multiple gearing be prevented.

Section 3

This section implements Article 52(3), second indent of the Banking Directive and is based on Section 3:270 of the Act.
DNB is not required to include an undertaking in the supervision if the balance sheet total of that undertaking is less than € 10,000,000 or less than one percent of the balance sheet total of the credit institution. This will be different if there are several of these small undertakings and they are collectively of sufficient importance to be included in the consolidated supervision of the credit institution.

Section 4

This section, which is based on Section 3:280 of the Act, sets out the details of the obligation to report significant intra-group contracts and positions between a Dutch credit institution, the mixed holding company and its subsidiaries. The Banking Directive – as well as the Insurance Groups Directive – does not specify what is meant by significant intra-group contracts and positions. The Member States may therefore give their own interpretation to this term. Under the Financial Conglomerates Directive, the specific group and management culture must be taken into account, from which it follows that the supervisory authority will interpret the term 'significant'. This also applies in the present case.
With a view to reducing the administrative burden, the Decree provides that a credit institution is in principle required to submit a report only once a year.
Pursuant to Subsection (3), DNB may lay down further rules as regards the report. In this respect, the Decree has followed the requirements with which the statements must comply under Section 3:72 of the Act.
Subsection (4)(a) to (f) restricts the power of DNB to lay down rules.
Subsection (a): DNB lays down the model of the statement in its supervisor's rules. The model is in fact the (electronic) form that the financial undertaking must fill in and supply to DNB. In view of the administrative burden, the model only asks for the information that is required for the prudential supervision of financial groups.
Subsection (b): the supervisor's rules must specify which statements have to be filled in by which (categories of) financial undertakings. Not all the statements have to be filled in by all financial undertakings. The electronic reporting system 'E-line DNB' takes this into account. This system has been designed in such a way that the financial undertaking is only presented with the statements that it has to fill in. In addition, the supervisor's rules must specify the required level of detail. Subsection (b) ensures that DNB can apply the so-called materiality principle. The supervisor's rules must in no circumstances contain any obligations to provide information in addition to the information included in the models.

Subsection (c): This subsection guarantees single-track reporting by means of the condition that DNB must ensure that the contents of the statement are in line with the valuation rules laid down in IAS/IFRS and Title 9. This prevents DNB from prescribing valuation principles for intra-group relationships, for example, that differ from those that the undertaking uses in its commercial annual accounts. That would result in more than one set of reporting standards, which is now precluded.

Subsection (f): DNB will lay down rules as regards the terms within which the statement must be submitted. This basis is restricted as well, in order to ensure that the administrative burden is kept to a minimum. The term must not be shorter than necessary for adequate supervision.

Section 5

The notes on Section 4 apply mutatis mutandis.

Section 6

This section incorporates Section 2 of the Batvv.

This section provides that the calculation of the adjusted solvency must be done using one of the calculation methods set out in the annex to Section 20. The general point of departure in this respect is that the adjusted solvency must be calculated for Dutch life or non-life insurers in a group. The choice of method is left to the individual insurer. Once a method has been chosen, this method must in principle be applied every year.

Subsections (2) and (3) serve to implement Article 30 of the Financial Conglomerates Directive. The prudential rules for credit institutions provide that management companies of collective investment schemes, including management companies of undertakings for collective investment in transferable securities (UCITS), must be included in the consolidated solvency calculation of the credit institution concerned. By likewise including the solvency of management companies of collective investment schemes in the supplementary supervision of insurers, a level playing field is created on this point between the consolidated supervision of banks and the supplementary supervision of insurers.

This means that the supplementary solvency calculation may also take account of the capital requirement and any existing solvency surplus of management companies of collective investment schemes that are affiliated to the insurer. Because a management company of a collective investment scheme may simultaneously be a holding of a Dutch credit institution and a holding of an insurer, and in both cases any solvency deficit or solvency surplus might therefore be included in the calculation, due care must be taken to preclude any element (of either a deficit or a surplus) from being counted more than once. In order to prevent solvency elements from being counted more than once, the Decree provides, in line with Article 30, second paragraph of the Financial Conglomerates Directive, that in the supplementary supervision of life or non-life insurers, the solvency of a management company of a collective investment scheme is only taken into account where it was not taken into account in the consolidated supervision of a Dutch credit institution. As this provision also affects the Decree on Prudential Rules pursuant to the Wft, the insurer concerned may include any solvency surplus in a holding in a management company of collective investment schemes pro rata in the calculation of the solvency margin. This would not be permitted without this provision and the full value of the holding in a management company of collective investment schemes would have to be offset against the available solvency.

Section 7

Subsection (1) provides that, when calculating the adjusted solvency, a solvency surplus may be included pro rata in the calculation. Where a holding, not being a subsidiary, has a deficit, this deficit may be included pro rata.

Where a subsidiary has a solvency deficit, the entire deficit will be included in the calculation pursuant to Subsection (2).

However, under Subsection (3), an insurer may, upon request, include a pro rata part of the deficit if the insurer's liability is limited to its interest in the subsidiary.

Subsection (4) provides that DNB will indicate what part of any deficit must be included in the calculation if there are no capital ties between the insurer and the other undertaking.

Section 8

This section incorporates Section 4 of the Batvv.

This section contains the core of this chapter, which is that, irrespective of the method used to calculate the adjusted solvency, assets may not be used several times in order to fulfil the various solvency requirements for the various life or non-life insurers involved in the calculation of the adjusted solvency.

The wording of Subsection (1) of this section shows that, when applying the methods, no account needs to be taken of institutions other than life or non-life insurers (such as credit institutions). As different solvency requirements apply to these institutions, the value of the holding will be entirely or partly unavailable. The general rule (see the Decree on Prudential Rules pursuant to the Wft) is that the value of the holding must be offset against the available solvency. Section 18 offers the possibility of taking surplus solvency in the holding into account. See the notes on that section for more details. However, this does not alter the fact that assets resulting from mutual financing between the insurer concerned and other group members, which may include credit institutions or UCITS, must be taken into account in the calculation of the available adjusted solvency.

Subsection (2) provides that the value of a group member's assets that serve to cover the minimum amount of solvency margin of another group member must not be used in the calculation of the adjusted solvency margin. An example of such an asset is a subordinated loan extended within the group.

Sections 9 and 10

These sections incorporate Sections 5 and 6 of the Batvv.

These sections provide how a number of specific assets must be taken into account when calculating the adjusted solvency. One of the provisions states that where the assets that serve to cover the solvency margin are not transferable to the participating life or non-life insurer (such as liability attached to shares, or share capital that has been issued but not paid up), these assets may only be taken into account when calculating the adjusted solvency insofar as they form part of the required solvency of the holding, because the available solvency margin will otherwise not be sufficient. Therefore solvency margin surpluses based on non-transferable assets of the holding must not serve as cover for the solvency margin of the participating undertaking.

Section 11

Where the use of the non-transferable assets leads to an available supplementary solvency that is larger than necessary on the basis of the supplementary solvency calculation, this non-transferable part must not be used in the calculation. This prevents the group from presenting a solvency surplus as long as unsound assets are used.

Section 12

This section provides in general terms that equity creation or multiple use of the assets, which may occur via intra-group relationships, will not be permitted when calculating the supplementary solvency. A similar provision in respect of financial conglomerates has been laid down in Section 25(2)(a).

Section 13

This section incorporates Section 9 of the Batvv, with the exception of Subsection (1), because that subsection did not have any added value. Subsections (2) and (3) of the Batvv have been combined. For the purpose of the calculation, the substance of these subsections was the same.

Subsection (3) has been slightly amended compared to Section 9(4)(c) of the Batvv. Subsection (3) provides that assets must have been adequately distributed among the undertakings referred to in Subsection (2)(a) to (c), because Annex I, point 2.1, last paragraph but one of the Insurance Groups Directive provides that the assets must have been adequately distributed in all cases.

Under this section, an insurer need not be repeatedly included in a calculation of the supplementary solvency if its repeated inclusion does not provide any additional information.

Pursuant to Subsection (4), the insurer may also use the calculations already made by insurers with their registered office in another Member State.

This section may restrict the administrative burden entailed by the calculation.

Section 14

This section incorporates Section 10 of the Batvv.

Unlike Section 10(2) of the Batvv, Subsection (2) is now in line with existing practice. The operations of a life reinsurer that focuses on reinsuring the risk elements of life insurance contracts are usually structured in accordance with the operations of a non-life insurance business because a life reinsurer will only pay out after a particular event has occurred. This means that this undertaking does not form any provisions that correspond to those of a life insurer. In such a situation, it is logical to base the theoretical minimum amount of solvency margin on the non-life insurance business. Because of this structure, a Dutch life or non-life insurer will not, in principle, be required to apply for a decision from DNB if this practice is applied. Only in exceptional cases will a decision from DNB be required (i.e. where the theoretical minimum amount of solvency margin for a life reinsurer is calculated as if this insurer were a life insurer). This will help reduce the administrative burden.

Section 15

This section incorporates Section 11 of the Batvv.

The aim of this section is to ensure that an intermediate insurance holding company is treated as an insurer with a zero solvency requirement. This means that if this holding company has positive equity (and there is no double gearing or equity creation), these assets may be included in the calculation of the insurer's solvency. Conversely, this also means that if the holding company has negative equity, this equity must be offset against the insurer.

Section 16

This section incorporates Section 12 of the Batvv.

The words 'at least' in Subsection (2) indicate that the requirements imposed on non-European life or non-life insurers must be equivalent to the requirements imposed on Dutch or European life or non-life insurers. Accordingly, the level and quality of the solvency margin must correspond to the level and quality required from Dutch or European life or non-life insurers.

Section 17

Under this section, DNB may decide that an insurer that owns a holding in a reinsurer with its registered office in a non-Member State and that is not subject to supervision may apply the solvency rules that apply to reinsurers with their registered office in that State. If that State has no rules for reinsurers, the insurer may apply the rules for life insurers or non-life insurers. Where DNB does not take such a decision, the reinsurer will have to be included in the calculation in accordance with Section 14.

Section 18

This section provides that holdings in an investment firm, financial institution or credit institution must in principle be offset when calculating the adjusted solvency.

The Financial Conglomerates Directive added point 2.4bis to Annex I, point 2 of the Insurance Groups Directive. This point has been incorporated in the present section. This section refers to the Decree on Prudential Rules pursuant to the Wft,

which provides that holdings in an investment firm, financial institution, credit institution, insurers or reinsurers must in principle be offset against the available solvency. The reason for this offsetting is that these institutions have their own solvency requirement and that therefore the value of the holding is not fully available to the parent undertaking. This calculation is easy to perform but will produce a cautious approximation in the event of the holding generating excessive solvency.

For example, in the case of insurer A that owns a holding in credit institution B, the value at which the holding is shown on insurer A's balance sheet will not be fully available to insurer A for inclusion in the calculation of its available solvency. A part of B's equity capital (and therefore of insurer A's holding) is intended to meet the solvency requirements and will therefore not be available for inclusion in the calculation of insurer A's equity capital (solvency).

Including it would lead to multiple use of the same assets. Where an undertaking owns a holding in a holding company, multiple gearing is also involved and the holding must likewise be offset. Thanks to the Financial Conglomerates Directive, which provides how the solvency of a bank-insurance combination can be calculated, the solo calculation can be improved as well. This calculation means that, rather than fully offsetting a holding subject to a solvency requirement, an undertaking may opt to calculate the part of the value of the holding that is not subject to a solvency requirement and that may therefore be included in the solo calculation under the Decree on Prudential Rules pursuant to the Wft. The present section means that this calculation may also be used to calculate the supplementary solvency.

As this calculation method has been laid down in the Decree on Prudential Rules pursuant to the Wft, the insurer has the opportunity to provide a better picture of its solvency position not only for the purpose of supplementary supervision but also in the context of individual supervision. Furthermore, it will be easier to calculate the supplementary solvency if the group relationships are taken into account in the individual (i.e. non-group) calculation.

Section 19

This section incorporates Section 14 of the Batvv.

It should be pointed out, although it is perhaps not necessary to do so, that the term 'affiliated undertaking' refers not only to affiliated undertakings with their registered office in a Member State, but also to affiliated undertakings with their registered office in a non-Member State.

Section 20

This section incorporates Section 15 of the Batvv.

The annex to this section (Annex A) contains three calculation methods for determining the adjusted solvency of a life or non-life insurer that belongs to an insurance group. The general principle in this respect is that the technique of pro rata consolidation is used. This means that the share (as a percentage) of a life or non-life insurer in the capital of another group company is taken into account for the purpose of the calculations. The exception to this rule is described in Section 7 and involves situations in which there is a solvency deficit on the part of a subsidiary and the parent undertaking (the life or non-life insurer) has an interest of less than 100% in that subsidiary. In such cases, the full deficit of that subsidiary will be allocated to the parent undertaking. However, if DNB is of the opinion that the parent undertaking can only be held liable for its share in the subsidiary, the solvency deficit may still be included pro rata in the calculation of the adjusted solvency. If, on the other hand, there is a solvency surplus on the part of the subsidiary, the pro rata part of that surplus may be taken into account at the parent undertaking as a component of the solvency margin.

Where holdings are owned indirectly within an insurance group (parent, subsidiary and sub-subsidiary relationships), the same method will apply when eliminating multiple gearing within those relationships. First the adjusted solvency is calculated for the subsidiary in relation to the sub-subsidiary, and subsequently the adjusted solvency of the parent company is calculated in relation to the subsidiary.

The recognition of subordinated loans extended by the parent undertaking to a subsidiary is a good example. because they may only be taken into account if and insofar as they were used by the subsidiary concerned to cover the minimum amount in solvency margin.

Finally, the methods are based on the assumption of identical valuation of intra-group financial relationships, for example the valuation of internal loans and internal current account relationships.

All three methods for calculating the adjusted solvency of group insurers are equivalent and may be applied by the life insurers or non-life insurers. Methods 1 (deduction and aggregation) and 2 (requirement deduction) concern a situation in which no calculation is made on the basis of consolidated accounts. The adjusted solvency is obtained by netting the solvency requirements and the solvency margins of the individual undertakings. In this context, method 1 assumes that the holding was stated at acquisition value on the balance sheet of the participating life insurer or non-life insurer, and that the financial position of the holding is different from that expressed in the value of the holding on the balance sheet of the participating life or non-life insurer. In relation to method 2, the valuation of the solvency surplus will therefore have to be adjusted. Method 3 (method based on consolidated accounts) starts from the consolidated information. Where this method is applied, separate account will have to be taken of any deficits in the solvency margins of the subsidiaries because these – unlike under methods 1 and 2 – will not follow directly from that method.

Section 23

This section, which is based on Section 3:296 of the Act, implements Annex I, opening words, to the Financial Conglomerates Directive.

Under Subsections (2) and (3), the capital adequacy will be sufficient if it was calculated in accordance with one of the methods described in Annex B, and the outcome of this calculation was not negative, which means that the outcome of the calculation may be zero. When it comes to the choice of a method for calculating the capital adequacy, the main rule is that the undertaking heading a financial conglomerate chooses the method.

However, it is always possible for DNB to do so. One reason why DNB may want to choose the method is that the method used by the undertaking cannot be applied consistently, as a result of which the outcome does not provide proper insight into the capital adequacy of the financial group. However, this is subject to the condition that DNB only makes the choice for the financial conglomerate concerned after it has consulted the other relevant supervisory authorities and the conglomerate.

Annex B to this section describes the four methods that may be applied when calculating the capital adequacy of the financial conglomerate. The methods are based on the methods set out in Annex I, section II, Technical Calculation Methods, to the Financial Conglomerates Directive.

One of the four methods must be chosen. Method 4 offers the possibility of a calculation based on a combination of methods 1, 2 and 3.

Method 1 is the method most commonly used. Previously, insight into the solvency of the conglomerate was also provided on the basis of consolidated information. It is logical to extend this line to the calculation of the capital adequacy. Furthermore, the annex implements Article 6(4), first paragraph of the Directive with regard to the elaboration of the calculation based on method 1. This means that the calculation of the capital adequacy of the financial conglomerate may be based on the calculations already performed for the subsectors.

Methods 2 and 3 both start from a calculation based on the annual accounts of each of the group members.

If either of these methods is used, the last paragraph of the annex must also be taken into account. This is the implementation of Article 6(4), second paragraph of the Financial Conglomerates Directive and means that the capital may only be included pro rata, in order to ensure that the solvency is not presented in an excessively favourable light.

The various methods sometimes also refer to the 'mixed financial holding company', in addition to the 'financial market sector'. Where this is the case, it will only effectively influence the calculation at the moment when this holding company also performs activities other than directing the group members, i.e. when the holding company's balance sheet consists of more than holdings in the group members.

The calculation methods set out in Annex B with regard to the capital adequacy of financial conglomerates are based on the sectoral regulations.

Section 24

Subsection (1) of this section sets the reporting frequency in accordance with the DNB format for capital adequacy at once a year. Under Article 6(2), fourth paragraph of the Financial Conglomerates Directive (implemented in Section 3:296 of the Act), this report must be submitted at least once a year. The frequency of once a year constitutes a deviation from the half-yearly reporting that previously applied pursuant to the aforementioned protocol between DNB and the PVK. The lower frequency therefore means a reduction of the administrative burden.

DNB may decide that an undertaking must report more frequently where developments in the capital adequacy of the conglomerate give sufficient reason to do so. For example, a greater frequency may be demanded at a time when the capital adequacy has dropped sharply during a short period and is in danger of no longer complying with Section 25.

Another reason for demanding a higher frequency may be the occurrence of a takeover or other important change in the group structure shortly after the previous report was submitted. To prevent a six-month wait until the next report is submitted, DNB may decide to require a greater reporting frequency on a one-off basis.

For an explanation of Subsection (2), please refer to Section 4(3) and (4).

Subsection (3) constitutes a compromise between the market parties and DNB. DNB wished to receive two reports a year, whereas the market parties wanted to limit the reporting frequency to one report a year, so as to keep the increase in the administrative burden to a minimum. The market parties and DNB reached agreement about the reporting frequency. Reports will be submitted once a year in accordance with the DNB format, while DNB will be supplied once a year with reports which the financial conglomerates already provide to their group executive boards (so-called management information). As this information will be available anyway, supplying it will not entail any significant administrative burden.

Section 25

This section, which is also based on Section 3:296 of the Act, implements the general requirements laid down in Annex I, section I, Technical Principles, to the Financial Conglomerates Directive as regards the calculation of the supplementary capital adequacy of the financial conglomerate.

Subsection (3) contains several references to 'the level of the financial conglomerate'. This term, which was taken over from the Financial Conglomerates Directive, was used to indicate that such cases involve the entire conglomerate. This does not always mean the 'level of the holding company' at the head of the financial conglomerate because situations may also exist in which there is no holding company and several group members are organised 'side-by-side' in a group structure. Therefore the term 'level of the financial conglomerate' comprises the latter situation as well, which also concerns the entire conglomerate.

Subsection (3)(a) speaks about 'the multiple use of assets eligible for inclusion in the calculation of the equity capital'. This is a reference to the aforementioned 'multiple gearing'.

Subsection (3)(b) speaks about 'the equity components that are eligible under each of the sectoral regulations'. This is a reference to the so-called 'cross-sector capital', i.e. capital that can be used to make up a deficit of equity components at the level of the financial conglomerate.

Section 26

This section, which implements Article 7 and Annex II, first paragraph of the Financial Conglomerates Directive, is based on Section 3:297 of the Act and focuses on significant risk concentrations.

This Decree sets the reporting frequency at once a year. As in Section 24 of this Decree, this frequency constitutes a deviation from the aforementioned protocol between DNB and the PVK, under which comparable reports had to be submitted twice a year.

This section offers DNB the opportunity to decide (as in the case of the capital adequacy report) that an undertaking must report more frequently if circumstances give sufficient reason to do so. A change in the annual reporting frequency will be conceivable, for instance, if a report shows that particular risk concentrations are greater than customary in the sector, or if these risk concentrations have greatly increased and thus pose a threat to the capital adequacy of a financial conglomerate.

Under this section, DNB, by determining a threshold, may decide when a risk concentration is significant and when the conglomerate concerned will therefore have to report this risk concentration. This is where the Decree implements Annex II to the Financial Conglomerates Directive.

In determining this threshold, the fact that a report was previously required if the risk concentration exceeded 20 percent of the corporate capital base of the financial conglomerate may be taken as a guideline. However, this must be done with due consideration of the developments in other Member States.

Article 7(3) of the Financial Conglomerates Directive gives Member States the opportunity to lay down quantitative limits for the risk concentration.

This opportunity has not been used to date, because no such limits are included either in the current European regulations or in the Dutch regulations that were previously applicable.

Therefore this section primarily concerns the reporting obligation and does not contain any limits as regards the level of risk concentration. The report must provide DNB with a picture of the risk concentrations within the conglomerate. This picture may be a reason for entering into discussions with the mixed financial holding company at the head of the conglomerate, or with a regulated entity that belongs to the group, about potential threats and the related solutions.

More in general terms, Annex II to the Financial Conglomerates Directive stipulates that DNB, where it is the coordinator, must pay particular attention, when supervising the risk concentrations and intra-group contracts and positions, to possible risks of contagion in the financial conglomerate, the risk of conflicts of interest, the risk of circumvention of sectoral regulations and the level or the extent of the risks. DNB may apply this provision when identifying the risks referred to in Subsection (3) that the conglomerate must report or need not report.

Pursuant to Subsection (4), DNB may lay down further rules as regards the report. In this respect, the Decree has followed the requirements with which the statements must comply under Section 3:72 of the Act. See Section 4(3) and (4) for an explanation of Subsection (4).

See the explanatory notes to Section 24(3) for an explanation of Subsection (5). Subsection (5) does not refer to 'significant' risk concentrations. Accordingly, no additional requirements are set in respect of the reports and the group is not required to bring the management reports into line with Section 26. This prevents an increase in the administrative burden.

Section 27

This section, which is based on Section 3:298 of the Act, implements Article 8 and Annex II, first paragraph of the Financial Conglomerates Directive and focuses on intra-group contracts and positions.

The notes on Section 26 apply mutatis mutandis.

Pursuant to Article 8(3) of the Financial Conglomerates Directive, the Member States may lay down both quantitative and qualitative limits in respect of intra-group contracts and positions. As in the case of Section 26, this opportunity has not been taken. Therefore this section sets no limits on the number of intra-group contracts and positions.

In principle, the threshold will be determined in line with the existing practice of the supplementary supervision of insurance groups. This approach offers sufficient guarantees for the assessment of the intra-group contracts and positions.

See the explanatory notes to Section 4(3) and (4) for an explanation of Subsection (4).

See the explanatory notes to Section 24(3) for an explanation of Subsection (5). Subsection (5) does not refer to 'significant' intra-group contracts and positions. Accordingly, no additional requirements are set in respect of the reports and the group is not required to bring the management reports into line with Section 27. This prevents an increase in the administrative burden.

Section 28

This section is based on Section 3:299 of the Act.

Pursuant to the Act, the individual regulated entities of the group must ensure that their operations are organised in such a way so as not to jeopardise the financial soundness of the entity.

The undertaking heading the financial conglomerate will act as the point of contact for DNB at the moment when the operations of a group member are such that they pose a potential threat to the financial soundness of the group as a whole or the financial soundness of the regulated entities in the group. In that situation, DNB may hold the undertaking to account if this is important for the soundness of the holding company and the regulated entities. In such cases, the holding company will not be required to prove that the operations are adequate. If the undertaking is held to account, this will be intended primarily as an indication that DNB noticed that the operations might give rise to problems for the soundness of the holding company and the regulated entities.

Subsections (1) and (2) provide a more detailed explanation, based on Article 9 of the Financial Conglomerates Directive, of what is meant by operations that do not jeopardise the financial soundness of the regulated entities and the undertaking itself.

Subsection (1) sets out the minimum elements required in any case in internal control procedures that are part of the operations, in order to prevent any threat to the financial soundness of the regulated entities or of the undertaking heading the conglomerate.

Subsection (2) provides further details on another aspect of the operations, namely the risk management.

Subsections (1) and (2) of this section, in combination with the requirements set for regulated entities pursuant to the Act as regards operating on the financial markets, are intended to ensure that the regulated entities and the holding company heading the group operate properly and that the holding company can be held to account in this regard.

Subsection (2) also refers to 'the level of the financial conglomerate'. As in Section 25, this refers to the entire conglomerate.

The foregoing not only applies to the operations, including the internal control procedures, as well as to the risk management, but also to Subsections (b), (c) and (d) of Section 3:299(1) of the Act. The subjects mentioned in these subsections must not pose a threat to the financial soundness of the regulated entities either. Again, the undertaking heading the group will be responsible for ensuring that the operations of the group members are organised in such a way as not to jeopardise the regulated entities, and thereby perhaps the holding company.

The Minister of Finance,
G. Zalm

Unofficial translation of *Besluit prudentieel toezicht financiële groepen Wft* dated 12 October 2006.
Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.

Table of Concordance
Decree on the Prudential Supervision of Financial Groups pursuant to the Wft – Decree on the Supplementary Supervision of Insurers in an Insurance Group

Decree on the Prudential Supervision of Financial Groups pursuant to the Wft	Decree on the Supplementary Supervision of Insurers in an Insurance Group
1	1
2	2(2)
3	-
4	-
5	69i(3) of the Wtv 1993
6(1) and (2)	2
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Annex A to Section 20	15
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Table of Concordance
Decree on the Prudential Supervision of Financial Groups pursuant to the Wft – Banking Directive, Directive on the Supplementary Supervision of Insurance Undertakings in an Insurance Group and the Financial Conglomerates Directive

Decree on the Prudential Supervision of Financial Groups pursuant to the Wft	Banking Directive	Directive on the Supplementary Supervision of Insurance Undertakings in an Insurance Group	Financial Conglomerates Directive
1			-
2	-	-	-
3	52(3), second indent		-
4	55bis, first paragraph	-	-
5	-	8	-
6(1)		Annex I, point 1, A	-
6(2) and (3)		Annex I, point 1, E	30
6(4)			
7		Annex I, point 1, B	
8		Annex I, point 1, C	
9		Annex I, point 1, C2	
10		Annex I, point 1, C3	
11		Annex I, point 1, C4	
12		Annex I, point 1, D	
13		Annex I, point 2.1	
14		Annex I, point 2.2	
15		Annex I, point 2.3	
16		Annex I, point 2.4, A	
17		Annex I, point 2.4, B	
18		Annex I, point 2.4bis	
19		Annex I, point 2.5	
20		Annex I, point 3	
21		Annex I, point 1.2; Annex II, point 4	
22		Annex II, point 3	
23			Annex I, opening words and section I, Technical calculation methods
24			6(2), fourth paragraph
25			Annex I, section I, Technical principles
26			7(2); Annex II
27			8(2); Annex II
28			9(2) and (3)
29	-	-	-
30	-	-	-
Annex A to Section 20		Annex I, point 3 (Calculation methods)	
Annex B to Section 23(2)			Annex I, section II, Technical calculation methods; 6(4)

Opmerking: