

Unofficial translation of *Besluit Markttoegang financiële ondernemingen Wft* dated 12 October 2006.

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Decree of 12 October 2006, containing rules implementing the Act on Financial Supervision with regard to the scope and access to the financial markets (Decree on Market Access of Financial Undertakings pursuant to the Act on Financial Supervision)

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

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 12 July 2006, no. FM 2006-01703 M;

Taking into consideration Sections 1:102(1), 2:5(2), 2:6(2), 2:7(2), 2:9(1), 2:12(3), 2:13(2), 2:17(2), 2:21(3), 2:22(2), 2:31(2), 2:32(2), 2:33(2), 2:36(3), 2:37(2), 2:39(1), 2:41(2), 2:42(2), 2:43(2), 2:45(2), 2:46(2), 2:49(2), 2:50(2), 2:51(2), 2:53(1), 2:58(2), 2:63(2), 2:67(2) and (4), 2:68(3), 2:69(2), 2:78(2), 2:81(4), 2:83(2), 2:89(2), 2:94(2), 2:99(3), 2:105(5), 2:107(2), 2:108(2), 2:110(2), 2:111(2), 2:112(2), 2:115(2), 2:118(2), 2:120(2), 2:121(2), 2:122(2), 2:127(2) and 2:130(1) of the Act on Financial Supervision and Directives 73/239/EEC, 85/611/EEC, 88/357/EEC, 91/674/EEC, 92/49/EEC, 93/6/EEC, 93/22/EEC, 2000/12/EC, 2000/46/EC, 2002/83/EC and 2002/92/EC;

Having consulted the Council of State (opinion of 17 August 2006, no. W06.06.0335);

Having seen the more detailed report of Our Minister of Finance of 9 October 2006, FM 2006-1822 U;

Have approved and decreed the following:

CHAPTER 1. INTRODUCTORY PROVISIONS

§ 1.1. Definition

Section 1

For the purpose of this Decree and the provisions based upon it, 'Act' shall have the following meaning: the Act on Financial Supervision (*Wet op het financieel toezicht*, Wft).

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§ 1.2. Procedures

Provisions implementing Section 1:102(1) of the Act

Section 2

1. An application as referred to in Sections 2:5(2), 2:7(2), 2:9(1), 2:12(3), 2:13(2), 2:17(2), 2:21(3), 2:22(2), 2:31(2), 2:32(2), 2:36(3), 2:37(2), 2:39(1), 2:41(2), 2:42(2), 2:45(2), 2:46(2), 2:49(2), 2:51(2), 2:53(1), 2:55(2), 2:58(2) and (3), 2:60(2), 2:63(3), 2:65(2), 2:67(4) and (5), 2:68(3) and (4), 2:75(2), 2:78(2) and (3), 2:80(2) and (3), 2:83(2) and (3), 2:86(2), 2:89(2) and (3), 2:92(2), 2:94(2) and (3), 2:99(3) and (4), 2:107(2), 2:108(2), 2:110(2), 2:111(2), 2:112(2), 2:115(2), 2:117, 2:118(2), 2:120(2), 2:121(2), 2:122, 2:127 and 2:130 of the Act shall be submitted using the form to be designated by the supervisory authority for that purpose, which form shall be made available to the applicant upon request.

2. The application form and the details to be provided on that occasion pursuant to this Decree shall be submitted as one single copy.

Section 3

1. The format of the details referred to in this Decree shall be such, as to enable a proper assessment by the supervisory authority.
2. The authors of statements and reports shall sign or certify these documents.

CHAPTER 2. ACCESS TO THE DUTCH FINANCIAL MARKETS

§ 2.1. Conducting the business of a clearing institution

Provisions implementing Sections 2:5(2), 2:6(1), 2:7(2) and 2:9(1) of the Act

Section 4

1. The details referred to in Section 2:5(2) of the Act shall be:
 - a. a statement of the name, address, telephone and fax number of the clearing institution;
 - b. a statement of the legal form of the clearing institution;
 - c. if the clearing institution is a legal person, a statement of the registered office, the name according to the articles of association and the trade name or names;
 - d. if the clearing institution is listed in the Trade Register, a statement of the registration number;
 - e. if available, a certified copy of the articles of association;
 - f. a statement of the activities that the clearing institution intends to perform;
 - g. details enabling the Dutch Central Bank to assess whether the provisions arising from Section 3:8 of the Act are met with regard to the expertise of the persons determining day-to-day policy;

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h. details enabling the Dutch Central Bank to assess whether the provisions arising from Section 3:9 of the Act are met with regard to the properness of the persons who determine or co-determine policy or belong to a body that is responsible for supervising the policy and general affairs;

i. a description of the proposed policy with regard to the conduct of business in a controlled and sound manner as referred to in Section 3:10(1) of the Act;

j. a description of the control structure, enabling the Dutch Central Bank to assess whether Section 3:16 of the Act is complied with;

k. a description of the operational structure with regard to the controlled and sound conduct of business as referred to in Section 3:17(1) of the Act; and

l. documents from which the minimum amount of own funds, as referred to in Section 3:53(1) of the Act, and the expected solvency, as referred to in Section 3:57(1) and (2) of the Act, and liquidity, as referred to in Section 3:69(1) of the Act are apparent.

2. The details referred to in Subsection (1)(g) shall be:

a. a statement of the name, date of birth, place of birth, nationality, private address, telephone and fax number and position of the person in question;

b. a curriculum vitae;

c. a list of the relevant diplomas;

d. a copy of a valid identity document; and

e. a list of referees.

3. The details referred to in Subsection (1)(h) shall be:

a. a statement of the name, date of birth, place of birth, nationality, private address, telephone and fax number and position of the person in question;

b. a copy of a valid identity document;

c. details with regard to the antecedents referred to in the annex to this Decree; and

d. a list of referees.

4. Subsection (1)(h) shall not apply if the properness of the person concerned has already been established for the purpose of the Act by a supervisory authority.

Section 5

By virtue of Section 2:6(1) of the Act, Our Minister may designate a state as a state where the supervision offers sufficient safeguards with regard to the interests that the Act is intended to protect if:

a. the applicable rules in that state for conducting the business of a clearing institution and the supervision of compliance with those rules are equivalent to that which has been stipulated by virtue of the Act with regard to:

1°. expertise and properness;

2°. financial guarantees;

3°. business operations, including the measures aimed at promoting and enforcing the conduct of business in a controlled and sound manner; and

4°. guarantees of adequate supervision of compliance with the applicable rules in that state;

b. the cooperation between the Dutch Central Bank and the competent authorities in that state is guaranteed; and

c. rules apply to the competent authorities in that state which are equivalent to the rules in Chapter 1.4 of the Act.

Section 6

1. The details referred to in Section 2:7(2) of the Act shall be:

a. a statement of the name, address, telephone and fax number of the clearing institution;

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- b. a statement of the legal form of the clearing institution;
 - c. if the clearing institution is a legal person, a statement of the registered office, the name according to the articles of association and the trade name or names;
 - d. if the clearing institution is listed in the Trade Register, a statement of the registration number;
 - e. the address of the branch office;
 - f. if available, a certified copy of the articles of association;
 - g. a statement of the activities that the clearing institution intends to perform from the branch office;
 - h. details enabling the Dutch Central Bank to assess whether the provisions arising from Section 3:8 of the Act are met with regard to the expertise of the persons determining the day-to-day policy;
 - i. details enabling the Dutch Central Bank to assess whether the provisions arising from Section 3:9 of the Act are met with regard to the properness of the persons who determine or co-determine the policy or belong to a body that is responsible for supervising the policy and general affairs;
 - j. a description of the proposed policy with regard to the conduct of business from the branch office in a controlled and sound manner, as referred to in Section 3:10(1) and (2) of the Act;
 - k. a description of the operational structure with regard to the controlled and sound conduct of business from the branch office, as referred to in Section 3:17(1) of the Act; and
- 1. details from which the minimum amount of own funds, as referred to in Section 3:53(1) and (3) of the Act, the expected solvency, as referred to in Section 3:57(1) and (2) of the Act, and liquidity, as referred to in Section 3:63(1) and (2) of the Act are apparent.
 - 2. The details referred to in Subsection (1)(h) shall be:
 - a. a statement of the name, date of birth, place of birth, nationality, private address, telephone and fax number and position of the person in question;
 - b. a curriculum vitae;
 - c. a list of the relevant diplomas;
 - d. a copy of a valid identity document; and
 - e. a list of referees.
 - 3. The details referred to in Subsection (1)(i) shall be:
 - a. a statement of the name, date of birth, place of birth, nationality, private address, telephone and fax number and position of the person in question;
 - b. a copy of a valid identity document;
 - c. details with regard to the antecedents referred to in the annex to this Decree; and
 - d. a list of referees.
 - 4. Subsection (1)(i) shall not apply if the properness of the person concerned has already been established for the purpose of the Act by a supervisory authority.

Section 7

The details referred to in Section 2:9(1) of the Act shall be:

- a. the address of the registered office of the clearing institution and of the place of business from which the clearing institution intends to perform the services;
 - b. a certified copy of the articles of association;
 - c. a statement confirming the authority to conduct the business of a clearing institution in the state where the registered office is located;
 - d. a statement regarding whether the institution actually conducts the business of a clearing institution from the Member State where the registered office is located;
 - e. details from which the minimum amount of own funds of the clearing institution, as referred to in Section 3:53(1) of the Act, and the expected solvency of the clearing institution, as referred to in Section 3:57(1) of the Act, are apparent;
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- f. the name and the private address of the persons who determine the day-to-day policy of the branch office of the clearing institution; and

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g. the name and the private address of the persons who determine or co-determine the policy of the branch office of the clearing institution.

§ 2.2. *Conducting the business of a credit institution*

Provisions implementing Sections 2:12(3), 2:17(2), 2:21(3), and 2:22(2) of the Act

Section 8

1. The details referred to in Section 2:12(3) of the Act shall be:
 - a. a statement of the name, address, telephone and fax number of the credit institution;
 - b. a statement of the legal form of the credit institution;
 - c. if the credit institution is a legal person, a statement of the registered office, the name according to the articles of association and the trade name or names;
 - d. if the credit institution is listed in the Trade Register, a statement of the registration number;
 - e. if available, a certified copy of the articles of association;
 - f. a statement of the activities that the credit institution intends to perform;
 - g. details enabling the Dutch Central Bank to assess whether the provisions arising from Section 3:8 of the Act are met with regard to the expertise of the persons determining day-to-day policy;
 - h. details enabling the Dutch Central Bank to assess whether the provisions arising from Section 3:9 of the Act are met with regard to the properness of the persons who determine or co-determine policy or belong to a body that is responsible for supervising the policy and general affairs;
 - i. a description of the proposed policy with regard to the conduct of business in a controlled and sound manner as referred to in Section 3:10(1) of the Act;
 - j. a description of the control structure, enabling the Dutch Central Bank to assess whether Section 3:16 of the Act is complied with;
 - k. description of the operational structure with regard to the controlled and sound conduct of business as referred to in Section 3:17(1) of the Act;
 1. if applicable, a description of the consolidated supervision referred to in Section 3:31 of the Act;
 - m. documents from which the minimum amount of own funds, referred to in Section 3:53(1) of the Act, the expected minimum amount of own funds, referred to in Section 3:53(1) of the Act, the expected solvency, referred to in Section 3:57(1) of the Act and the liquidity, referred to in Section 3:63(1) of the Act, are apparent;
 - n. if applicable:
 - 1°. a statement of the size of a qualifying holding as referred to in Section 3:95 of the Act;
 - 2°. details based upon which the Dutch Central Bank can assess compliance with the provisions ensuing from Section 3:99 of the Act regarding the properness of the applicant or holder of a declaration of no objection who could determine or co-determine, or would determine or co-determine, the policy of the undertaking in question based on being the holder of a qualified holding; and
 - 3°. documents from which the financial position and the legal group structure of the applicant or holder of the declaration of no objection are apparent; and

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0. if the credit institution is a subsidiary of a credit institution with a registered office in another state: a statement from the supervisory authority of the state in which the credit institution has its registered office, from which it is apparent that this supervisory authority has approved the aforementioned credit institution having a subsidiary that intends to conduct the business of a credit institution in the Netherlands.

2. The details referred to in Subsection (1)(g) shall be:

a. a statement of the name, date of birth, place of birth, nationality, private address, telephone and fax number and position of the person in question;

b. a curriculum vitae;

c. a list of the relevant diplomas;

d. a copy of a valid identity document; and

e. a list of referees.

3. The details referred to in Subsection (1)(h) shall be:

a. a statement of the name, date of birth, place of birth, nationality, private address, telephone and fax number and position of the person in question;

b. a copy of a valid identity document;

c. details with regard to the antecedents referred to in the annex to this Decree; and

d. a list of referees.

4. Subsection (1)(h) and (n)(2°) shall not apply if the properness of the person concerned has already been established for the purpose of the Act by a supervisory authority.

Section 9

The details referred to in Section 2:13(2) of the Act shall describe:

a. the operational structure referred to in Section 4:14 of the Act;

b. the measures referred to in Section 4:87 of the Act; and

c. the proposed policy referred to in Section 4:88 of the Act.

Section 10

1. The details referred to in Section 2:17(2) and 2:21(3) of the Act shall be:

a. a statement of the name, address, telephone and fax number of the credit institution;

b. a statement of the legal form of the credit institution;

c. if the credit institution is a legal person, a statement of the registered office, the name according to the articles of association and the trade name or names;

d. if the credit institution is listed in the Trade Register, a statement of the registration number;

e. the address of the branch office;

f. if available, a certified copy of the articles of association;

g. a statement of the activities that the credit institution intends to perform from the branch office;

h. details enabling the Dutch Central Bank to assess whether the provisions arising from Section 3:8 of the Act are met with regard to the expertise of the persons determining the day-to-day policy of the branch office of the credit institution;

i. details enabling the Dutch Central Bank to assess whether the provisions arising from Section 3:9 of the Act are met with regard to the properness of the persons determining or co-determining the policy of the branch office of the credit institution;

j. a description of the proposed policy with regard to the conduct of business in a controlled and sound manner from the branch office, as referred to in Section 3:10(1) and (2) of the Act;

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k. a description of the operational structure with regard to the controlled and sound conduct of business from the branch office, as referred to in Section 3:17(1) of the Act;

1. if applicable, a description of the consolidated supervision; and

m. details from which the minimum amount of own funds of the credit institution, as referred to in Section 3:53(1) and (3) of the Act, the expected solvency of the credit institution, as referred to in Section 3:57(1) and (2) of the Act, and the liquidity of the credit institution, as referred to in Section 3:63(1) and (2) of the Act, are apparent.

2. The details referred to in Subsection (1)(h) shall be:

a. a statement of the name, date of birth, place of birth, nationality, private address, telephone and fax number and position of the person in question;

b. a curriculum vitae;

c. a list of the relevant diplomas;

d. a copy of a valid identity document; and

e. a list of referees.

3. The details referred to in Subsection (1)(i) shall be:

a. a statement of the name, date of birth, place of birth, nationality, private address, telephone and fax number and position of the person in question;

b. a copy of a valid identity document;

c. details with regard to the antecedents referred to in the annex to this Decree; and

d. a list of referees.

4. Subsection (1)(i) shall not apply if the properness of the person concerned has already been established for the purpose of the Act by a supervisory authority.

Section 11

The details referred to in Section 2:22(2) of the Act shall describe:

a. the operational structure referred to in Section 4:14 of the Act;

b. the measures referred to in Section 4:87 of the Act; and

c. the proposed policy referred to in Section 4:88 of the Act.

§ 2.3. Conducting the business of a life insurer or a non-life insurer

Provisions implementing Sections 2:31(2), 2:32(2), 2:33(2), 2:36(3), 2:37(2), 2:39(2), 2:41(1), 2:42(2), 2:43(2), 2:45(2) and 2:46(2) of the Act

Section 12

1. The details referred to in Section 2:31(2) of the Act shall be:

a. a statement of the name, address, telephone and fax number of the insurer;

b. a statement of the legal form of the insurer;

c. a statement of the registered office, the name according to the articles of association and the trade name or trade names;

d. if the insurer is listed in the Trade Register, a statement of the registration number;

e. a certified copy of the articles of association;

f. a programme of activities that the insurer intends to perform;

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g. details enabling the Dutch Central Bank to assess whether the provisions arising from Section 3:8 of the Act are met with regard to the expertise of the persons determining the day-to-day policy;

h. details enabling the Dutch Central Bank to assess whether the provisions arising from Section 3:9 of the Act are met with regard to the properness of the persons who determine or co-determine the policy or belong to a body that is responsible for supervising the policy and general affairs;

i. a description of the proposed policy with regard to the conduct of business in a controlled and sound manner as referred to in Section 3:10(1) of the Act;

j. a description of the control structure, enabling the Dutch Central Bank to assess whether Section 3:16 of the Act is complied with;

k. a description of the operational structure with regard to the controlled and sound conduct of business as referred to in Section 3:17(1) of the Act;

l. documents showing the minimum amount of own funds referred to in Section 3:53(1) of the Act and the expected solvency referred to in Section 3:57(1) of the Act; and

m. if applicable:

1°. a statement of the size of a qualifying holding as referred to in Section 3:95 of the Act;

2°. details based upon which the Dutch Central Bank can assess compliance with the provisions ensuing from Section 3:99 of the Act regarding the properness of the applicant or holder of a declaration of no objection who could determine or co-determine, or would determine or co-determine, the policy of the undertaking in question based on being the holder of a qualified holding; and

3°. documents from which the financial position and the legal group structure of the applicant or holder of the declaration of no objection are apparent.

2. The details referred to in Subsection (1)(g) shall be:

a. a statement of the name, date of birth, place of birth, nationality, private address, telephone and fax number and position of the person in question;

b. a curriculum vitae;

c. a list of the relevant diplomas;

d. a copy of a valid identity document; and

e. a list of referees.

3. The details referred to in Subsection (1)(h) shall be:

a. a statement of the name, date of birth, place of birth, nationality, private address, telephone and fax number and position of the person in question;

b. a copy of a valid identity document;

c. details with regard to the antecedents referred to in the annex to this Decree; and

d. a list of referees.

4. Subsection (1)(h) and (m)(2°) shall not apply if the properness of the person concerned has already been established for the purpose of the Act by a supervisory authority.

Section 13

The programme of activities referred to in Section 12(1)(f) – which shall be submitted by the party who is applying for a licence to conduct the business of a life insurer – shall include the following:

a. a statement of the nature of the agreements that the life insurer intends to conclude;

b. an explanation of the guiding principles in respect of reinsurance;

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c. an estimate of the costs for the structuring of the administration and of the production network, and documents from which it is evident that the insurer has the financial resources to cover these costs;

d. an estimate for the first three financial years of the management costs other than those referred to in (c), estimating in particular the overhead costs and commission fees;

e. an estimate for the first three financial years of the premiums and of the claims;

f. an estimate for the first three financial years of the liquidity position; and

g. an estimate for the first three financial years of the financial resources to cover the obligations and to cover the solvency margin, as referred to in Section 3:57(3) of the Act.

Section 14

1. The programme of activities, referred to in Section 12(1)(f), which shall be submitted by the party who is applying for a licence to conduct the business of a non-life insurer, shall contain the following:

a. a statement of the nature of the risks that the non-life insurer intends to cover;

b. an explanation of the guiding principles in respect of reinsurance;

c. an estimate of the costs of arranging the administration and the production network, documentary evidence showing that the non-life insurer has the financial resources to cover these costs, and, if any of the risks to be covered pertains to the Assistance class, a statement of the financial resources at the disposal of the non-life insurer for providing the agreed assistance;

d. an estimate for the first three financial years of the management costs other than those referred to in (c), estimating in particular the overhead costs and the commission fees;

e. an estimate for the first three financial years of the premiums and of the claims;

f. an estimate for the first three financial years of the liquidity position; and

g. an estimate for the first three financial years of the financial resources to cover the obligations and to cover the solvency margin, as referred to in Section 3:57(3) of the Act.

2. If the non-life insurer intends to cover risks pertaining to the Assistance class, the programme of activities shall include a specification of the resources available to the non-life insurer for providing the agreed assistance.

Section 15

The details referred to in Section 2:32(2) of the Act shall be:

a. written proof that the applicant is a member of the agency referred to in Section 2(6) of the Motor Vehicle Liability Insurance Act (*Wet aansprakelijkheidsverzekering motorrijtuigen*);

b. written proof that the applicant has reported to the Dutch Motor Traffic Guarantee Fund (*Waarborgfonds Motorverkeer*) in order to meet his obligations to that fund by virtue of Sections 24(1) and 24a(1) of the Motor Vehicle Liability Insurance Act; and

c. a statement of the name and the address of the loss adjusters, referred to in Section 4:70(2) of the Act.

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Section 16

1. In the event that an applicant for a licence to conduct the business of a non-life insurer intends to conduct this business only in the Legal assistance insurance class, the details referred to in Section 2:33(2) of the Act shall depend on the choice that the applicant has made regarding compliance with Section 4:65(1)(a), (b), or (c) of the Act:

a. a description of the structure of the business operations from which it is apparent that the staff members that handle the legal assistance insurance claims or provide legal advice in connection with these claims do not perform the same or similar activities at the same time on behalf of another insurer with which the applicant has financial, commercial or administrative ties and which conducts business in another class;

b. a statement from the legal settlement office, as referred to in Section 4:65(1)(b) of the Act; or

c. a statement of the provision referred to in Section 4:65(1)(c) of the Act.

2. In the event that an applicant for a licence to conduct the business of a non-life insurer intends to conduct that business in another class in addition to the Legal assistance insurance class, the details referred to in Section 2:33(2) of the Act shall depend on the choice that the applicant has made regarding compliance with Section 4:65(2)(a) or (b) of the Act:

a. a statement from the legal settlement office, as referred to in Section 4:65(2)(a) of the Act; or

b. a statement of the provision referred to in Section 4:65(2)(b) of the Act.

3. Details regarding the legal settlement office shall also include a description of the structure of the business operations from which it is apparent that the staff members and the members of the managing body who handle legal assistance claims adjusting or who provide legal advice in connection with that claims adjusting do not perform the same or similar activities at the same time for another class of an insurer with which the legal settlement office has financial, commercial or administrative ties.

Section 17

The details referred to in Section 2:36(3) of the Act shall be:

a. the address of the registered office of the insurer and of the place of business from which it intends to perform the services;

b. a statement of the nature of:

1°. the agreements that the insurer intends to conclude, if the insurer is a life insurer;

2°. the risks in the Netherlands that the insurer intends to cover, if the insurer is a non-life insurer; and

c. details from which the expected solvency with regard to the insurer's entire business operations is apparent.

Section 18

1. The details referred to in Section 2:37(2) and 2:41(2) of the Act shall be:

a. a statement of the name, address, telephone and fax number of the insurer;

b. a statement of the legal form of the insurer;

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- c. a statement of the registered office, the name according to the articles of association and the trade name or names;
- d. if the insurer is listed in the Trade Register, a statement of the registration number;
- e. the address of the branch office;
- f. a certified copy of the articles of association;
- g. a programme of activities that the insurer intends to perform from the branch office;
- h. details enabling the Dutch Central Bank to assess whether the provisions arising from Section 3:8 of the Act are met with regard to the expertise of the persons determining the day-to-day policy of the branch office of the insurer;
- i. details enabling the Dutch Central Bank to assess whether the provisions arising from Section 3:9 of the Act are met with regard to the properness of the persons determining or co-determining the policy of the branch office of the insurer;
- j. a description of the proposed policy with regard to the conduct of business in a controlled and sound manner from the branch office, as referred to in Section 3:10(1) of the Act;
- k. a description of the operational structure with regard to the controlled and sound conduct of business from the branch office, as referred to in Section 3:17(1) of the Act;
 - l. the statement regarding the authority to conduct the business of an insurer;
 - m. a statement of the representative of the insurer, as referred to in Section 2:74 of the Act, and if the representative is a legal person, the articles of association of this legal person, an excerpt from its listing in the Trade Register and the proof of employment of the natural person, as referred to in Subsection (5) of the aforementioned section;
 - n. details based upon which the Dutch Central Bank can assess compliance with the provisions pursuant to Section 3:47(8) of the Act regarding the expertise of the representative of the insurer or the natural person, as referred to in Section 3:47(5) of the Act;
 - o. details based upon which the Dutch Central Bank can assess compliance with the provisions pursuant to Section 3:47(8) of the Act regarding the properness of the representative of the insurer or the natural person, as referred to in Section 3:47(5) of the Act; and
 - p. documents showing the minimum amount of own funds, referred to in Section 3:53(1) of the Act, of the branch office of the insurer, based on which the Dutch Central Bank can assess compliance with the provisions pursuant to that section, and from which the expected solvency of the branch office of the insurer, as referred to in Section 3:57(1) of the Act, is apparent.
- 2. The details referred to in Subsection (1)(h) and (n) shall be:
 - a. a statement of the name, date of birth, place of birth, nationality, private address, telephone and fax number and position of the person in question;
 - b. a curriculum vitae;
 - c. a list of the relevant diplomas;
 - d. a copy of a valid identity document; and
 - e. a list of referees.
- 3. The details referred to in Subsection (1)(i) and (o) shall be:
 - a. a statement of the name, date of birth, place of birth, nationality, private address, telephone and fax number and position of the person in question;
 - b. a copy of a valid identity document;
 - c. details with regard to the antecedents referred to in the annex to this Decree; and
 - d. a list of referees.

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4. Subsection (1)(i) and (o) shall not apply if the properness of the person concerned has already been established for the purpose of the Act by a supervisory authority.

Section 19

The details referred to in Section 2:39(1) of the Act shall be:

- a. a statement, issued by the supervisory authority of the Member State in which the registered office is located:
 - 1°. stating that the insurer has the required solvency margin;
 - 2°. stating that the licence that this supervisory authority has granted to the insurer permits the insurer to perform services from the state in which the branch office is located; and
 - 3°. which states the classes for which the insurer has a licence in the Member State where the registered office is located;
- and
- b. a statement of the nature of:
 - 1°. the agreements that the insurer intends to conclude, if the insurer is a life insurer;
 - 2°. the risks in the Netherlands that the insurer intends to cover, if the insurer is a non-life insurer.

Section 20

The details referred to in Section 2:42(2) of the Act shall be:

- a. written proof that the applicant is a member of the agency referred to in Section 2(6) of the Motor Vehicle Liability Insurance Act (*Wet aansprakelijkheidsverzekering motorrijtuigen*);
- b. written proof that the applicant has registered with the Dutch Motor Traffic Guarantee Fund (*Waarborgfonds Motorverkeer*) in order to meet his obligations to that fund by virtue of Sections 24(1) and 24a(1) of the Motor Vehicle Liability Insurance Act; and
- c. a statement of the name and the address of the loss adjusters referred to in Section 4:70(2) of the Act.

Section 21

1. In the event that an applicant for a licence to conduct the business of a non-life insurer intends to conduct this business only in the Legal assistance insurance class, the details referred to in Section 2:43(2) of the Act shall depend on the choice that the applicant has made regarding compliance with Section 4:65(1)(a), (b), or (c) of the Act:

- a. a description of the structure of the business operations from which it is apparent that the staff members that handle the legal assistance insurance claims or provide legal advice in connection with these claims do not perform the same or similar activities at the same time on behalf of another insurer with which the applicant has financial, commercial or administrative ties and which conducts business in another class;
- b. a statement from the legal settlement office, as referred to in Section 4:65(1)(b) of the Act; or
- c. a statement of the provision referred to in Section 4:65(1)(c) of the Act.

2. In the event that an applicant for a licence to conduct the business of a non-life insurer intends to conduct that business in another class in addition to the Legal assistance insurance class, the details referred to in Section 1a:40(2) of the Act shall depend on the choice that the applicant has made regarding compliance with Section 4:65(2)(a) or (b) of the Act:

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- a. a statement from the legal settlement office, as referred to in Section 4:65(2)(a) of the Act; or
 - b. a statement of the provision, referred to in Section 4:65(2)(b) of the Act in the agreement regarding legal assistance cover.
3. Details regarding the legal settlement office shall also include a description of the structure of the business operations from which it is apparent that the staff members and the members of the managing body who handle legal assistance claims adjusting or who provide legal advice in connection with that claims adjusting do not perform the same or similar activities at the same time for another class of an insurer with which the legal settlement office has financial, commercial or administrative ties.

Section 22

1. The programme of activities referred to in Section 18(g), which is submitted by the party applying for a licence as referred to in Section 2:36(1) or Section 2:40 of the Act to conduct the business of a life insurer, shall contain the following:
- a. a statement of the nature of the agreements that the life insurer intends to conclude from the branch office;
 - b. an explanation of the guiding principles in respect of reinsurance;
 - c. documentary evidence from which it is apparent that the branch office has the minimum amount of the guarantee fund that applies for the class or classes concerned by virtue of Section 3:58(2) in conjunction with Section 3:57(4) of the Act, or the minimum amount of solvency margin that is required by virtue of Section 3:59(2) in conjunction with Section 3:57(1), (2) and (3) of the Act, if the minimum amount of solvency margin is higher than the minimum amount of the guarantee fund;
 - d. an estimate of the costs for the structuring of the administration and of the production network, and documents from which it is evident that the branch office has the financial resources to cover these costs;
 - e. an estimate for the first three financial years of the liquidity position of the branch office;
 - f. a detailed estimate for the first three financial years of the expected income and expenditure of the branch office, concerning the direct transactions and the accepted reinsurance as well as the transfers by virtue of reinsurance; and
 - g. an estimate for the first three financial years of the financial resources of the branch office to cover the obligations and to cover the solvency margin, as referred to in Section 3:57(3) of the Act.
2. The applicant shall append the annual accounts of each of the last three financial years to the programme of activities. In the event that three financial years have not passed since the establishment of the undertaking concerned in the application, the annual accounts only have to be submitted for the closed financial years.
3. The programme of activities shall also contain documentary evidence with regard to the size of the solvency margin, as referred to in Section 3:58(2) in conjunction with Section 3:57(3) of the Act.

Section 23

1. The programme of activities referred to in Section 18(g), which is submitted by the party applying for a licence as referred to in Section 2:36(1) or Section 2:40 of the Act to conduct the business of a non-life insurer, shall contain the following:

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a. a statement of the nature of the risks that the non-life insurer intends to cover;

b. an explanation of the guiding principles in respect of reinsurance;

c. documentary evidence from which it is apparent that the branch office, taking into consideration Section 3:58(2) in conjunction with Section 3:59(2) of the Act, has the minimum amount of the guarantee fund that applies by virtue of Section 3:59(2) in conjunction with Section 3:57(4) of the Act for the class or classes concerned, or the minimum amount of solvency margin that is required by virtue of Section 3:58(2) in conjunction with Section 3:57(1) and (2) of the Act based on the classes in which the applicant is or has already been active, if this minimum amount of solvency margin is higher than the minimum amount of the guarantee fund;

d. an estimate of the costs of arranging the accounts and the production network and documentary evidence showing that the branch office has the financial resources to cover these costs, and, if any of the risks to be covered pertains to the Assistance class, a statement of the financial resources at the disposal of the non-life insurer for providing the agreed assistance;

e. an estimate for the first three financial years of the management costs of the branch office other than those referred to in (d), estimating in particular the overhead costs and commission fees;

f. an estimate for the first three financial years of the premiums and claims of the branch office;

g. an estimate for the first three financial years of the liquidity position of the branch office; and

h. an estimate for the first three financial years of the financial resources of the branch office to cover the obligations and to cover the solvency margin, as referred to in Section 3:57(3) of the Act.

2. The non-life insurer shall append the annual accounts of each of the last three financial years to the programme of activities. In the event that three financial years have not passed since the establishment of the undertaking of the non-life insurer, the annual accounts only have to be submitted for the closed financial years.

3. The programme of activities shall also include documentary evidence concerning the size of the minimum amount of solvency margin, as referred to in Section 3:57(3) of the Act.

Section 24

1. The details referred to in Section 2:45(2) of the Act shall be:

a. a statement of the name, address, telephone and fax number of the insurer;

b. a statement of the legal form of the insurer;

c. a statement of the registered office, the name according to the articles of association and the trade name or names;

d. if the insurer is listed in the Trade Register, a statement of the registration number;

e. a certified copy of the articles of association;

f. a statement of the address of the registered office of the insurer and of the place of business from which the insurer intends to perform the services;

g. a statement confirming the authority to conduct the direct business of an insurer and in which classes the insurer is authorised to conduct its business in the state in which the registered office is located;

h. a statement confirming the actual conduct of the direct business of an insurer from the Member State in which the registered office is located;

i. details from which the expected solvency referred to in Section 3:57(1) of the Act regarding all of the business operations of the insurer is apparent.

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j. details enabling the Dutch Central Bank to assess whether the provisions arising from Section 3:8 of the Act are met with regard to the expertise of the persons determining the day-to-day policy;

k. details enabling the Dutch Central Bank to assess whether the provisions arising from Section 3:9 of the Act are met with regard to the properness of the persons who determine or co-determine the policy or belong to a body that is responsible for supervising the policy and general affairs; and

1. a statement of the nature of:

1°. the agreements that the insurer intends to conclude, if the insurer is a life insurer;

2°. the risks in the Netherlands that the insurer intends to cover, if the insurer is a non-life insurer.

2. If the insurer intends to conduct the business of an insurer in the Motor Vehicle Liability Insurance class by providing services to the Netherlands these details shall also include:

a. written proof that the applicant is a member of the agency referred to in Section 2(6) of the Motor Vehicle Liability Insurance Act (*Wet aansprakelijkheidsverzekering motorrijtuigen*);

b. written proof that the applicant has registered with the Dutch Motor Traffic Guarantee Fund (*Waarborgfonds Motorverkeer*) in order to meet his obligations to that fund by virtue of Sections 24(1) and 24a(1) of the Motor Insurance Liability Act; and

c. a statement of the name and address of the loss adjuster, as referred to in Section 4:70(2) of the Act, whom the undertaking has appointed in each other state that is not a Member State.

3. The details referred to in Subsection (1)(j) shall be:

a. a statement of the name, date of birth, place of birth, nationality, private address, telephone and fax number and position of the person in question;

b. a curriculum vitae;

c. a list of the relevant diplomas;

d. a copy of a valid identity document; and

e. a list of referees.

4. The details referred to in Subsection (1)(k) shall be:

a. a statement of the name, date of birth, place of birth, nationality, private address, telephone and fax number and position of the person in question;

b. a copy of a valid identity document;

c. details with regard to the antecedents referred to in the annex to this Decree; and

d. a list of referees.

5. Subsection (1)(k) shall not apply if the properness of the person concerned has already been established for the purpose of the Act by a supervisory authority.

Section 25

1. The details referred to in Section 2:46(2) of the Act shall be:

a. the address of the registered office of the insurer and of the place of business from which it intends to perform the services;

b. a statement, issued by the supervisory authority of the Member State in which the office is located from which the insurer intends to perform services for the Netherlands, from which it is apparent that the insurer is authorised to conduct its business in the classes named in the statement;

c. a statement of the nature of:

1°. the agreements that the insurer intends to conclude, if the insurer is a life insurer;

2°. the risks in the Netherlands that the insurer intends to cover, if the insurer is a non-life insurer; and

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d. details from which the expected solvency with regard to all the business operations of the insurer is apparent.

2. If the insurer intends to conduct the business of an insurer in the Motor Vehicle Liability Insurance class by providing services for the Netherlands these details shall also include:

a. written proof that the applicant is a member of the agency referred to in Section 2(6) of the Motor Vehicle Liability Insurance Act (*Wet aansprakelijkheidsverzekering motorrijtuigen*);

b. written proof that the applicant has registered with the Dutch Motor Traffic Guarantee Fund (*Waarborgfonds Motorverkeer*) in order to meet his obligations to that fund by virtue of Sections 24(1) and 24a(1) of the Motor Vehicle Liability Insurance Act; and

c. a statement of the name and address of the loss adjuster, as referred to in Section 4:70(2) of the Act, whom the undertaking has appointed in each other state that is not a Member State.

§ 2.4. Conducting the business of a funeral expenses and benefits in kind insurer

Provisions implementing Sections 2:49(2), 2:50(1), 2:51(2) and 2:53(1) of the Act

Section 26

1. The details referred to in Section 2:49(2) of the Act shall be:

a. a statement of the name, address, telephone and fax number of the funeral expenses and benefits in kind insurer;

b. a statement of the legal form of the funeral expenses and benefits in kind insurer;

c. if the funeral expenses and benefits in kind insurer is a legal person, a statement of the registered office, the name according to the articles of association and the trade name or names;

d. if the funeral expenses and benefits in kind insurer is listed in the Trade Register, a statement of the registration number;

e. a certified copy of the articles of association;

f. a programme of activities that the funeral expenses and benefits in kind insurer intends to perform;

g. details enabling the Dutch Central Bank to assess whether the provisions arising from Section 3:8 of the Act are met with regard to the expertise of the persons determining day-to-day policy;

h. details enabling the Dutch Central Bank to assess whether the provisions arising from Section 3:9 of the Act are met with regard to the properness of the persons who determine or co-determine the policy or belong to a body that is responsible for supervising the policy and general affairs;

i. a description of the proposed policy with regard to the conduct of business in a controlled and sound manner as referred to in Section 3:10(1) of the Act;

j. a description of the control structure, enabling the Dutch Central Bank to assess compliance with Section 3:16 of the Act;

k. a description of the operational structure with regard to the controlled and sound conduct of business as referred to in Section 3:17(1) of the Act;

l. details from which the minimum amount of own funds referred to in Section 3:53(1) and the expected solvency referred to in Section 3:57(1) of the Act are apparent; and

m. if applicable:

1°. a statement of the size of a qualifying holding as referred to in Section 3:95 of the Act;

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2°. details based upon which the Dutch Central Bank can assess compliance with the provisions ensuing from Section 3:99 of the Act regarding the properness of the applicant or holder of a declaration of no objection who could determine or co-determine, or would determine or co-determine, the policy of the undertaking in question based on being the holder of a qualified holding; and

3°. documents from which the financial position and the legal group structure of the applicant or holder of the declaration of no objection are apparent.

2. The details referred to in Subsection (1)(g) shall be:

a. a statement of the name, date of birth, place of birth, nationality, private address, telephone and fax number and position of the person in question;

b. a curriculum vitae;

c. a list of the relevant diplomas;

d. a copy of a valid identity document; and

e. a list of referees.

3. The details referred to in Subsection (1)(h) shall be:

a. a statement of the name, date of birth, place of birth, nationality, private address, telephone and fax number and position of the person in question;

b. a copy of a valid identity document;

c. details with regard to the antecedents referred to in the annex to this Decree; and

d. a list of referees.

4. Subsection (1)(h) and (m)(2°) shall not apply if the properness of the person concerned has already been established for the purpose of the Act by a supervisory authority.

Section 27

The programme of activities referred to in Section 26(1)(f) shall contain the following:

a. a statement of the nature of the agreements that the funeral expenses and benefits in kind insurer intends to conclude;

b. an explanation of the guiding principles in respect of reinsurance;

c. an estimate of the costs for the structuring of the administration and of the production network and documents from which it is evident that the funeral expenses and benefits in kind insurer has the financial resources to cover these costs;

d. an estimate for the first three financial years of the liquidity position;

e. a detailed estimate for the first three financial years of the expected income and expenditure, concerning the direct transactions and the accepted reinsurance as well as the transfers by virtue of reinsurance;

f. an estimate for the first three financial years of the financial resources to cover the obligations and to cover the solvency margin, as referred to in Section 3:57(3) of the Act; and

g. a statement as to whether the funeral expenses and benefits in kind insurer also conducts the business of undertaker on behalf of its insured persons.

Section 28

Pursuant to Section 2:50(1) of the Act, Our Minister may designate a state as a state where the supervision offers sufficient safeguards with regard to the interests that the Act intends to protect if:

a. the applicable rules in that state for conducting the business of a funeral expenses and benefits in kind insurer and the supervision of the compliance with these rules are equivalent to that which has been stipulated by virtue of the Act regarding:

1°. expertise and properness;

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2°. financial guarantees;

3°. business operations, including the measures aimed at promoting and enforcing the conduct of business in a controlled and sound manner; and

4°. guarantees of adequate supervision of compliance with the applicable rules in that state;

b. the cooperation between the supervisory authority and the competent authorities in that state is guaranteed; and

c. rules apply for the competent authority in that state which are equivalent to the rules in Chapter 1.4 of the Act.

Section 29

1. The details referred to in Section 2:51(2) of the Act shall be:

a. a statement of the name, address, telephone and fax number of the funeral expenses and benefits in kind insurer;

b. a statement of the legal form of the funeral expenses and benefits in kind insurer;

c. a statement of the registered office, the name according to the articles of association and the trade name or names;

d. if the funeral expenses and benefits in kind insurer is listed in the Trade Register, a statement of the registration number;

e. a certified copy of the articles of association;

f. a programme of activities that the funeral expenses and benefits in kind insurer intends to perform from the branch office;

g. details enabling the Dutch Central Bank to assess whether the provisions arising from Section 3:8 of the Act are met with regard to the expertise of the persons determining day-to-day policy;

h. details enabling the Dutch Central Bank to assess whether the provisions arising from Section 3:9 of the Act are met with regard to the properness of the persons who determine or co-determine the policy or belong to a body that is responsible for supervising the policy and general affairs;

i. a description of the proposed policy with regard to the conduct of business from the branch office in a controlled and sound manner, as referred to in Section 3:10(1) of the Act;

k. a description of the operational structure with regard to the controlled and sound conduct of business from the branch office, as referred to in Section 3:17(1) of the Act;

k. a statement confirming the authority to conduct the business of a funeral expenses and benefits in kind insurer;

l. the representative of the funeral expenses and benefits in kind insurer, referred to in Section 3:47 in conjunction with Section 3:50(2) of the Act; and

m. details from which the minimum amount of own funds referred to in Section 3:53(1) of the Act and the expected solvency referred to in Section 3:57(1) of the Act are apparent.

2. The details referred to in Subsection (1)(g) shall be:

a. a statement of the name, date of birth, place of birth, nationality, private address, telephone and fax number and position of the person in question;

b. a curriculum vitae;

c. a list of the relevant diplomas;

d. a copy of a valid identity document; and

e. a list of referees.

3. The details referred to in Subsection (1)(h) shall be:

a. a statement of the name, date of birth, place of birth, nationality, private address, telephone and fax number and position of the person in question;

b. a copy of a valid identity document;

c. details with regard to the antecedents referred to in the annex to this Decree; and

d. a list of referees.

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4. Subsection (1)(h) shall not apply if the properness of the person concerned has already been established for the purpose of the Act by a supervisory authority.

Section 30

1. The programme of activities referred to in Section 29(1)(f) shall contain the following:
 - a. a statement of the nature of the agreements that the funeral expenses and benefits in kind insurer intends to conclude;
 - b. an explanation of the guiding principles in respect of reinsurance;
 - c. documentary evidence from which it is apparent that the funeral expenses and benefits in kind insurer has the minimum amount of the guarantee fund that applies for the class or classes concerned by virtue of Section 3:58(2) in conjunction with Section 3:57(4) of the Act, or the minimum amount of solvency margin that is required by virtue of Section 3:59(2) in conjunction with Section 3:57(1), (2) and (3) of the Act, if the minimum amount of solvency margin is higher than the minimum amount of the guarantee fund;
 - d. an estimate of the costs for the structuring of the administration and of the production network and documents from which it is evident that the funeral expenses and benefits in kind insurer has the financial resources to cover these costs;
 - e. an estimate for the first three financial years of the liquidity position;
 - f. a detailed estimate for the first three financial years of the expected income and expenditure, concerning the direct transactions and the accepted reinsurance as well as the transfers by virtue of reinsurance;
 - g. an estimate for the first three financial years of the financial resources to cover the obligations and to cover the solvency margin, as referred to in Section 3:57(3) of the Act; and
 - h. a statement as to whether the funeral expenses and benefits in kind insurer also conducts the business of undertaker on behalf of its insured persons.
2. The funeral expenses and benefits in kind insurer shall append the annual accounts of each of the last three financial years to the programme of activities. In the event that three financial years have not passed since the establishment of the undertaking of the funeral expenses and benefits in kind insurer, the annual accounts only have to be submitted for the closed financial years.
3. The programme of activities shall also include documentary evidence concerning the size of the minimum amount of solvency margin, as referred to in Section 3:57(3) of the Act.

Section 31

- The details referred to in Section 2:53(1) of the Act shall be:
- a. the address of the registered office of the insurer and of the place of business from which the funeral expenses and benefits in kind insurer intends to perform the services;
 - b. a certified copy of the articles of association;
 - c. a statement confirming the authority to conduct the direct business of a funeral expenses and benefits in kind insurer in the state where the registered office is located;
 - d. a statement confirming the actual conduct of the direct business of a funeral expenses and benefits in kind insurer from the Member State in which the registered office is located;
 - e. details from which the minimum amount of own funds referred to in Section 3:53(1) and the expected solvency referred to in Section 3:57(1) of the Act are apparent;
 - f. the name and the private address of the persons who determine the day-to-day policy of the funeral expenses and benefits in kind insurer; and

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g. the name and the private address of the persons who determine or co-determine the policy of the funeral expenses and benefits in kind insurer.

§ 2.5. *Offering investment objects*

Provisions implementing Section 2:58(2) of the Act

Section 32

1. The details referred to in Section 2:58(2) of the Act shall be:

- a. a statement of the name, address, telephone and fax number of the offeror;
 - b. a statement of the legal form of the offeror;
 - c. if the offeror is a legal person: a statement of the registered office, the name according to the articles of association and the trade name or trade names;
 - d. if the offeror is registered in the Trade Register: a statement of the registration number;
 - e. if Section 2:105 of the Act has been applied: the details referred to under (a) to (d) with regard to every undertaking affiliated with the offeror to which the licence also applies;
 - f. where applicable: a statement regarding the participation in a system of self-supervision with which the Netherlands Authority for the Financial Markets has concluded a covenant;
 - g. a statement of the financial service for which the licence is being requested and the financial product to which this service relates;
 - h. details enabling the Netherlands Authority for the Financial Markets to assess whether the provisions arising from Section 4:9 of the Act are met with regard to the expertise of the persons who determine the day-to-day policy and of the employees and other persons who are directly involved in providing financial services under the supervision of the offeror;
 - i. details enabling the Netherlands Authority for the Financial Markets to assess whether the provisions arising from Section 4:10 of the Act are met with regard to the properness of the persons who determine or co-determine the policy or belong to a body that is responsible for supervising the policy and general affairs;
 - j. details enabling the Netherlands Authority for the Financial Markets to assess compliance with the provisions arising from the Act pertaining to the policy with regard to the conduct of business in a controlled and sound manner, as referred to in Section 4:11(2) and (3) of the Act;
 - k. a description of the control structure, enabling the Netherlands Authority for the Financial Markets to assess compliance with Section 4:13 of the Act; and
 1. details enabling the Netherlands Authority for the Financial Markets to assess whether the provisions arising from Section 4:15 (1) and (2) of the Act are met with regard to the conduct of business.
2. The details referred to in Subsection (1)(h) shall be:
- a. regarding persons who determine the day-to-day policy:
 - 1°. a statement of the name, date of birth, place of birth, nationality, private address, telephone and fax number and position of the person concerned;
 - 2°. a curriculum vitae;
 - 3°. a list of the relevant diplomas;
 - 4°. a copy of a valid identity document; and
 - 5°. a list of referees;
 - b. regarding the employees and other persons who are directly involved in providing the financial service under the responsibility of the offeror: a description of the manner in which the expertise of these persons is guaranteed.

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3. The details referred to in Subsection (1)(i) shall be:
 - a. a statement of the name, date of birth, place of birth, nationality, private address, telephone and fax number and position of the person in question;
 - b. a copy of a valid identity document;
 - c. details with regard to the antecedents referred to in the annex to this Decree; and
 - d. a list of referees.
4. Subsection (1)(i) shall not apply if the properness of the person concerned has already been established for the purpose of the Act by a supervisory authority.
5. The details referred to in Subsection (1)(j) shall be:
 - a. a description of the manner in which the properness of the employees and other natural persons who are directly involved in providing financial services under the responsibility of the offeror is guaranteed; and
 - b. a description of the procedures and measures regarding the handling and recording of incidents.
6. The details referred to in Subsection (1)(l) shall be:
 - a. a description of the business operations that enable the offeror to comply with the obligation to retain documentation in connection with the provision of advice; or
 - b. in the event that the offeror departs from the obligation to retain documentation: the protocol of the advisory process.

§ 2.6. Offering loans

Provisions implementing Section 2:63(2) of the Act

Section 33

1. The details referred to in Section 2:63(2) of the Act shall be:
 - a. a statement of the name, address, telephone and fax number of the offeror;
 - b. a statement of the legal form of the offeror;
 - c. if the offeror is a legal person: a statement of the registered office, the name according to the articles of association and the trade name or trade names;
 - d. if the offeror is registered in the Trade Register: a statement of the registration number;
 - e. if Section 2:105 of the Act has been applied: the details referred to under (a) to (d) with regard to every undertaking affiliated with the offeror to which the licence also applies;
 - f. where applicable: a statement regarding the participation in a system of self-supervision with which the Netherlands Authority for the Financial Markets has concluded a covenant;
 - g. a statement of the financial service for which the licence is being requested and the financial product to which this service relates;
 - h. details enabling the Netherlands Authority for the Financial Markets to assess whether the provisions arising from Section 4:9 of the Act are met with regard to the expertise of the persons who determine the day-to-day policy and of the employees and other persons who are directly involved in providing financial services under the responsibility of the offeror;
 - i. details enabling the Netherlands Authority for the Financial Markets to assess whether the provisions arising from Section 4:10 of the Act are met with regard to the properness of the persons who determine or co-determine the policy or belong to a body that is responsible for supervising the policy and general affairs;

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j. a description of the intended policy regarding the conduct of business in a sound and controlled manner, which enables the Netherlands Authority for the Financial Markets to assess whether the provisions arising from Section 4:11 (2) and (3) of the Act are met;

k. a description of the control structure, as referred to in Section 4:13 of the Act;

l. details enabling the Netherlands Authority for the Financial Markets to assess whether the provisions arising from Section 4:15 (1) and (2) of the Act are met with regard to the conduct of business; and

m. proof of participation in a system of credit registration as referred to in Section 4:32 of the Act.

2. The details referred to in Subsection (1)(h) shall be:

a. regarding persons who determine the day-to-day policy:

1°. a statement of the name, date of birth, place of birth, nationality, private address, telephone and fax number and position of the person concerned;

2°. a curriculum vitae;

3°. a list of the relevant diplomas;

4°. a copy of a valid identity document; and

5°. a list of referees.

b. regarding the employees and other persons who are directly involved in providing the financial service under the responsibility of the offeror: a description of the manner in which the expertise of these persons is guaranteed.

3. The details referred to in Subsection (1)(i) shall be:

a. a statement of the name, date of birth, place of birth, nationality, private address, telephone and fax number and position of the person in question;

b. a copy of a valid identity document;

c. details with regard to the antecedents referred to in the annex to this Decree; and

d. a list of referees.

4. Subsection (1)(i) shall not apply if the properness of the person concerned has already been established for the purpose of the Act by a supervisory authority.

5. The details referred to in Subsection (1)(j) shall be:

a. a description of the manner in which the properness of the employees and other natural persons who are directly involved in providing financial services under the responsibility of the offeror is guaranteed; and

b. a description of the procedures and measures regarding the handling and recording of incidents.

6. The details referred to in Subsection (1)(l) shall be:

a. a description of the business operations that enable the offeror to comply with the obligation to retain documentation in connection with the provision of advice; or

b. in the event that the offeror departs from the obligation to retain documentation: the protocol of the advisory process.

§ 2.7. Offering units in collective investment schemes

Provisions implementing Sections 2:66(1), 2:67(4), 2:68(3) and 2:69(2) of the Act

Section 34

Pursuant to Section 2:66(1) of the Act, Our Minister may designate a state as a state where the supervision offers sufficient safeguards with regard to the interests that the Act is intended to protect if:

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a. the applicable rules in that state for offering units in a collective investment scheme and the supervision of compliance with those rules are equivalent to that which has been stipulated by virtue of the Act regarding:

- 1°. expertise and properness;
 - 2°. financial guarantees;
 - 3°. conduct of business;
 - 4°. the information to be provided to the unit holders in the collective investment scheme and the supervisory authority; and
 - 5°. guarantees of adequate supervision of compliance with the applicable rules in that state;
- b. the cooperation between the supervisory authority and the competent authorities in that state is guaranteed; and
- c. rules apply for the competent authority in that state that are equivalent to the provisions in Chapter 1.4 of the Act.

Section 35

1. The details referred to in Sections 2:67(4), 2:68(3) and 2:69(2) of the Act shall be:

- a. the registration document referred to in Section 4:48 of the Act;
- b. the management company's articles of association;
- c. details enabling the Netherlands Authority for the Financial Markets to assess whether the provisions arising from Section 4:9 of the Act are met with regard to the expertise of the persons determining day-to-day policy;
- d. details enabling the Netherlands Authority for the Financial Markets to assess whether the provisions arising from Section 4:10 of the Act are met with regard to the properness of the persons who determine or co-determine the policy or belong to a body that is responsible for supervising the policy and general affairs;
 - e. a description of the proposed policy with regard to the conduct of business in a controlled and sound manner as referred to in Section 4:11(1) of the Act;
 - f. a description of the control structure, enabling the Netherlands Authority for the Financial Markets to assess compliance with Section 4:13 of the Act;
 - g. a description of the conduct of business at the management company and, if applicable, the custodians, as referred to in Section 4:14 of the Act;
 - h. a statement of the persons who determine the day-to-day policy, as referred to in Section 4:39 of the Act, and the location where they carry out their activities, as referred to in Section 4:40 of the Act;
 - i. where applicable: the agreement referred to in Section 4:43 of the Act;
 - j. where applicable: the legal form and objective according to the articles of association of the custodians, as referred to in Section 4:44 of the Act; and
 - k. where applicable:
 - 1°. a statement of the size of a qualifying holding as referred to in Section 3:95 of the Act;
 - 2°. details based upon which the Dutch Central Bank can assess compliance with the provisions ensuing from Section 3:99 of the Act regarding the properness of the applicant or holder of a declaration of no objection who could determine or co-determine, or would determine or co-determine, the policy of the undertaking in question based on being the holder of a qualified holding; and
 - 3°. documents from which the financial position and the legal group structure of the applicant or holder of the declaration of no objection are apparent.

2. The details referred to in Subsection (1)(c) shall be:

- a. a statement of the name, date of birth, place of birth, nationality, private address, telephone and fax number and position of the person in question;

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- b. a curriculum vitae;
 - c. a list of the relevant diplomas;
 - d. a copy of a valid identity document; and
 - e. a list of referees.
3. The details referred to in Subsection (1)(d) and (k)(2°) shall be:
- a. a statement of the name, date of birth, place of birth, nationality, private address, telephone and fax number and position of the person in question;
 - b. a copy of a valid identity document;
 - c. details with regard to the antecedents referred to in the annex to this Decree; and
 - d. a list of referees.
4. Subsection (1)(d) and (k)(2°) shall not apply if the properness of the person concerned has already been established for the purpose of the Act by a supervisory authority.

§ 2.8. *Providing Advice*

Provisions implementing Section 2:78(2) of the Act

Section 36

1. The details referred to in Section 2:78(2) of the Act shall be:
- a. a statement of the name and address of the advisor;
 - b. a statement of the legal form of the advisor;
 - c. if the advisor is a legal person: a statement of the registered office, the name according to the articles of association and the trade name or trade names;
 - d. if the advisor is registered in the Trade Register: a statement of the registration number;
 - e. if Section 2:105 of the Act has been applied: the details referred to under (a) to (d) with regard to every undertaking affiliated with the advisor to which the licence also applies;
 - f. where applicable: a statement regarding the participation in a system of self-supervision with which the Netherlands Authority for the Financial Markets has concluded a covenant;
 - g. a statement of the financial service for which the licence is being requested and the financial product to which this service relates;
 - h. details enabling the Netherlands Authority for the Financial Markets to assess whether the provisions arising from Section 4:9 of the Act are met with regard to the expertise of the persons who determine the day-to-day policy and of the employees and other persons who are directly involved in providing financial services under the responsibility of the advisor;
 - i. details enabling the Netherlands Authority for the Financial Markets to assess whether the provisions arising from Section 4:10 of the Act are met with regard to the properness of the persons who determine or co-determine the policy or belong to a body that is responsible for supervising the policy and general affairs;
 - j. a description of the proposed policy with regard to the conduct of business in a controlled and sound manner as referred to in Section 4:11(2) and (3) of the Act;
 - k. a description of the control structure, enabling the Netherlands Authority for the Financial Markets to assess compliance with Section 4:13 of the Act; and
- 1. details enabling the Netherlands Authority for the Financial Markets to assess whether the provisions arising from Section 4:15(1) and (2) of the Act are met with regard to the conduct of business.
2. The details referred to in Subsection (1)(h) shall be:

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a. regarding persons who determine the day-to-day policy:

1°. a. a statement of the name, date of birth, place of birth, nationality, private address, telephone and fax number and position of the person concerned;

2°. a curriculum vitae;

3°. a list of the relevant diplomas;

4°. a copy of a valid identity document; and

5°. a list of referees;

b. regarding the employees and other persons who are directly involved in providing the financial service under the responsibility of the advisor: a description of the manner in which the expertise of these persons is guaranteed.

3. The details referred to in Subsection (1)(i) shall be:

a. a statement of the name, date of birth, place of birth, nationality, private address, telephone and fax number and position of the person in question;

b. a copy of a valid identity document;

c. details with regard to the antecedents referred to in the annex to this Decree; and

d. a list of referees.

4. Subsection (1)(i) shall not apply if the properness of the person concerned has already been established for the purpose of the Act by a supervisory authority.

5. The details referred to in Subsection (1)(j) shall be:

a. a description of the manner in which the properness of the employees and other natural persons who are directly involved in providing financial services under the responsibility of the advisor is guaranteed; and

b. a description of the procedures and measures regarding the handling and recording of incidents.

6. The details referred to in Subsection (1)(l) shall be:

a. a description of the business operations that enable the advisor to comply with the obligation to retain documentation in connection with the provision of advice; or

b. in the event that the advisor departs from the obligation to retain documentation: the protocol of the advisory process.

§ 2.9. *Providing intermediary services*

Provisions implementing Sections 2:81(4) and 2:83(2) of the Act

Section 37

The details referred to in Section 2:81(4) of the Act shall be:

a. a statement of the name and address of the affiliated intermediary;

b. a statement of the legal form of the affiliated intermediary;

c. if the affiliated intermediary is a legal person: a statement of the registered office, the name according to the articles of association and the trade name or trade names;

d. if the affiliated intermediary is registered in the Trade Register: a statement of the registration number;

e. where applicable: a statement regarding the participation in a system of self-supervision with which the Netherlands Authority for the Financial Markets has concluded a covenant;

f. a statement of the financial service and the financial product to which this service pertains, for which the intermediary acts as an affiliated intermediary; and

g. details which enable the Netherlands Authority for the Financial Markets to assess whether the offeror is fully responsible for the intermediary as referred to in Section 2:81(2)(a) of the Act.

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Section 38

1. The details referred to in Section 2:83(2) of the Act shall be:
 - a. a statement of the name and address of the intermediary;
 - b. a statement of the legal form of the intermediary;
 - c. if the intermediary is a legal person: a statement of the registered office, the name according to the articles of association and the trade name or trade names;
 - d. if the intermediary is registered in the Trade Register: a statement of the registration number;
 - e. if Section 2:105 of the Act has been applied: the details referred to under (a) to (d) with regard to every undertaking affiliated with the intermediary to which the licence also applies;
 - f. where applicable: a statement regarding the participation in a system of self-supervision with which the Netherlands Authority for the Financial Markets has concluded a covenant;
 - g. a statement of the financial service for which the licence is being requested and the financial product to which this service relates;
 - h. details enabling the Netherlands Authority for the Financial Markets to assess whether the provisions arising from Section 4:9 of the Act are met with regard to the expertise of the persons who determine the day-to-day policy and of the employees and other persons who are directly involved in providing financial services under the responsibility of the intermediary;
 - i. details enabling the Netherlands Authority for the Financial Markets to assess whether the provisions arising from Section 4:10 of the Act are met with regard to the properness of the persons who determine or co-determine the policy or belong to a body that is responsible for supervising the policy and general affairs;
 - j. a description of the proposed policy with regard to the conduct of business in a controlled and sound manner as referred to in Section 4:11(2) and (3) of the Act;
 - k. a description of the control structure, enabling the Netherlands Authority for the Financial Markets to assess compliance with Section 4:13 of the Act;
 - l. details enabling the Netherlands Authority for the Financial Markets to assess whether the provisions arising from Section 4:15(1) and (2) of the Act are met with regard to the conduct of business; and
 - m. if the application is for a licence to provide intermediary services with regard to insurance: a copy of the policy and the terms and conditions of the policy for the professional liability insurance or information with regard to a comparable provision, as referred to in Section 4:75 of the Act.
2. The details referred to in Subsection (1)(h) shall be:
 - a. regarding persons who determine the day-to-day policy:
 - 1°. a statement of the name, date of birth, place of birth, nationality, private address, telephone and fax number and position of the person concerned;
 - 2°. a curriculum vitae;
 - 3°. a list of the relevant diplomas;
 - 4°. a copy of a valid identity document; and
 - 5°. a list of referees;
 - b. regarding the employees and other persons who are directly involved in providing the financial service under the responsibility of the intermediary: a description of the manner in which the expertise of these persons is guaranteed.
3. The details referred to in Subsection (1)(i) shall be:
 - a. a statement of the name, date of birth, place of birth, nationality, private address, telephone and fax number and position of the person in question;
 - b. a copy of a valid identity document;

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- c. details with regard to the antecedents referred to in the annex to this Decree; and
- d. a list of referees.
- 4. Subsection (1)(i) shall not apply if the properness of the person concerned has already been established for the purpose of the Act by a supervisory authority.
- 5. The details referred to in Subsection (1)(j) shall be:
 - a. a description of the manner in which the properness of the employees and other natural persons who are directly involved in providing financial services under the responsibility of the intermediary is guaranteed; and
 - b. a description of the procedures and measures regarding the handling and recording of incidents.
- 6. The details referred to in Subsection (1)(l) shall be:
 - a. a description of the business operations that enable the intermediary to comply with the obligation to retain documentation in connection with the provision of advice; or
 - b. in the event that the intermediary departs from the obligation to retain documentation: the protocol of the advisory process.

§ 2.10. Providing reinsurance intermediary services

Provisions implementing Section 2:89(2) of the Act

Section 39

- 1. The details referred to in Section 2:89(2) of the Act shall be:
 - a. a statement of the name and address of the reinsurance intermediary;
 - b. a statement of the legal form of the reinsurance intermediary;
 - c. if the reinsurance intermediary is a legal person: a statement of the registered office, the name according to the articles of association and the trade name or trade names;
 - d. if the reinsurance intermediary is registered in the Trade Register: a statement of the registration number;
 - e. if Section 2:105 of the Act has been applied: the details referred to under (a) to (d) with regard to every undertaking affiliated with the reinsurance intermediary to which the licence also applies;
 - f. where applicable: a statement regarding the participation in a system of self-supervision with which the Netherlands Authority for the Financial Markets has concluded a covenant;
 - g. a statement of the financial service for which the licence is being requested and the financial product to which this service relates;
 - h. details enabling the Netherlands Authority for the Financial Markets to assess whether the provisions arising from Section 4:9 of the Act are met with regard to the expertise of the persons who determine the day-to-day policy and of the employees and other persons who are directly involved in the provision of financial services under the responsibility of the reinsurance intermediary;
 - i. details enabling the Netherlands Authority for the Financial Markets to assess whether the provisions arising from Section 4:10 of the Act are met with regard to the properness of the persons who determine or co-determine the policy or belong to a body that is responsible for supervising the policy and general affairs;
 - j. a description of the proposed policy with regard to the conduct of business in a controlled and sound manner as referred to in Section 4:11(2) and (3) of the Act;

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k. a description of the control structure, enabling the Netherlands Authority for the Financial Markets to assess compliance with Section 4:13 of the Act;

l. details enabling the Netherlands Authority for the Financial Markets to assess whether the provisions arising from Section 4:15(1) and (2) of the Act are met with regard to the conduct of business; and

m. a copy of the policy and the terms and conditions of the policy for the professional liability insurance or information with regard to a comparable provision, as referred to in Section 4:76 of the Act.

2. The details referred to in Subsection (1)(h) shall be:

a. regarding persons who determine the day-to-day policy:

1°. a statement of the name, date of birth, place of birth, nationality, private address, telephone and fax number and position of the person concerned;

2°. a curriculum vitae;

3°. a list of the relevant diplomas;

4°. a copy of a valid identity document; and

5°. a list of referees;

b. regarding the employees and other persons who are directly involved in providing the financial service under the responsibility of the reinsurance intermediary: a description of the manner in which the expertise of these persons is guaranteed.

3. The details referred to in Subsection (1)(i) shall be:

a. a statement of the name, date of birth, place of birth, nationality, private address, telephone and fax number and position of the person in question;

b. a copy of a valid identity document;

c. details with regard to the antecedents referred to in the annex to this Decree; and

d. a list of referees.

4. Subsection (1)(i) shall not apply if the properness of the person concerned has already been established for the purpose of the Act by a supervisory authority.

5. The details referred to in Subsection (1)(j) shall be:

a. a description of the manner in which the properness of the employees and other natural persons who are directly involved in providing financial services under the responsibility of the reinsurance intermediary is guaranteed; and

b. a description of the procedures and measures regarding the handling and recording of incidents.

6. The details referred to in Subsection (1)(l) shall be:

a. a description of the business operations that enable the reinsurance intermediary to comply with the obligation to retain documentation in connection with the provision of advice; or

b. in the event that the reinsurance intermediary departs from the obligation to retain documentation: the protocol of the advisory process.

§ 2.11. Acting as an authorised agent or authorised sub-agent

Provisions implementing Section 2:94(2) of the Act

Section 40

1. The details referred to in Section 2:94(2) of the Act shall be:

a. a statement of the name and address of the authorised agent or authorised sub-agent;

b. a statement of the legal form of the authorised agent or authorised sub-agent;

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- c. if the authorised agent or authorised sub-agent is a legal person: the registered office, the name according to the articles of association and the trade name or trade names;
 - d. if the authorised agent or authorised sub-agent is registered in the Trade Register: a statement of the registration number;
 - e. if Section 2:105 of the Act has been applied: the details referred to under (a) to (d) with regard to every undertaking affiliated with the authorised agent or authorised sub-agent to which the licence also applies;
 - g. a statement of the financial service for which the licence is being requested and the financial product to which this service relates;
 - g. where applicable: a statement regarding the participation in a system of self-supervision with which the Netherlands Authority for the Financial Markets has concluded a covenant;
 - h. details enabling the Netherlands Authority for the Financial Markets to assess whether the provisions arising from Section 4:9 of the Act are met with regard to the expertise of the persons who determine the day-to-day policy and of the employees and other persons who are directly involved in providing financial services under the responsibility of the authorised agent or authorised sub-agent;
 - i. details enabling the Netherlands Authority for the Financial Markets to assess whether the provisions arising from Section 4:10 of the Act are met with regard to the properness of the persons who determine or co-determine the policy or belong to a body that is responsible for supervising the policy and general affairs;
 - j. a description of the proposed policy with regard to the conduct of business in a controlled and sound manner as referred to in Section 4:11(1) of the Act;
 - k. a description of the control structure, enabling the Netherlands Authority for the Financial Markets to assess compliance with Section 4:13 of the Act;
 - 1. details enabling the Netherlands Authority for the Financial Markets to assess whether the provisions arising from Section 4:15(1) and (2) of the Act are met with regard to the conduct of business; and
 - m. a statement from the authorising insurer or, in the case of an authorised sub-agent, a statement from the authorising authorised agent or sub-agent and from the authorising insurer.
2. The details referred to in Subsection (1)(h) shall be:
- a. regarding persons who determine the day-to-day policy:
 - 1°. a statement of the name, date of birth, place of birth, nationality, private address, telephone and fax number and position of the person concerned;
 - 2°. a curriculum vitae;
 - 3°. a list of the relevant diplomas;
 - 4°. a copy of a valid identity document; and
 - 5°. a list of referees;
 - b. regarding the employees and other persons who are directly involved in providing the financial service under the responsibility of the authorised agent or authorised sub-agent: a description of the manner in which the expertise of these persons is guaranteed.
3. The details referred to in Subsection (1)(i) shall be:
- a. a statement of the name, date of birth, place of birth, nationality, private address, telephone and fax number and position of the person in question;
 - b. a copy of a valid identity document;
 - c. details with regard to the antecedents referred to in the annex to this Decree; and

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d. a list of referees.

4. Subsection (1)(i) shall not apply if the properness of the person concerned has already been established for the purpose of the Act by a supervisory authority.

5. The details referred to in Subsection (1)(j) shall be:

a. a description of the manner in which the properness of the employees and other natural persons who are directly involved in providing financial services under the responsibility of the authorised agent or authorised sub-agent is guaranteed; and

b. a description of the procedures and measures regarding the handling and recording of incidents.

6. The details referred to in Subsection (1)(l) shall be:

a. a description of the business operations that enable the authorised agent or the authorised sub-agent to comply with the obligation to retain documentation in connection with the provision of advice; or

b. in the event that the authorised agent or the authorised sub-agent departs from the obligation to retain documentation: the protocol of the advisory process.

§ 2.12. Providing investment services

Provisions implementing Section 2:99(3) of the Act

Section 41

1. The details referred to in Section 2:99(3) of the Act shall be:

a. a statement of the name and address of the investment firm;

b. a statement of the legal form of the investment firm;

c. if the investment firm is a legal person: a statement of the registered office, the name according to the articles of association and the trade name or trade names;

d. if the investment firm is registered in the Trade Register: a statement of the registration number;

e. if Section 2:105 of the Act has been applied: the details referred to under (a) to (d) with regard to every undertaking affiliated with the investment firm to which the licence also applies;

g. a statement of the financial service for which the licence is being requested and the financial product to which this service relates;

g. details enabling the Netherlands Authority for the Financial Markets to assess whether the provisions arising from Section 4:9 of the Act are met with regard to the expertise of the persons determining the day-to-day policy;

h. details enabling the Netherlands Authority for the Financial Markets to assess whether the provisions arising from Section 4:10 of the Act are met with regard to the properness of the persons who determine or co-determine the policy or belong to a body that is responsible for supervising the policy and general affairs;

i. a description of the proposed policy with regard to the conduct of business in a controlled and sound manner as referred to in Section 4:11 of the Act;

j. a description of the control structure, enabling the Netherlands Authority for the Financial Markets to assess compliance with Section 4:13 of the Act;

k. a description of the conduct of business, as referred to in Section 4:14 of the Act;

l. where applicable, a description of the measures, as referred to in Section 4:87 of the Act;

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- m. a description of the proposed policy, as referred to in Section 4:88 of the Act.
- n. an auditor's statement that the investment firm satisfies the minimum amount of own funds requirement stipulated in Section 3:53(1) and (3) of the Act; and
- o. where applicable:
 - 1°. a statement of the size of a qualifying holding as referred to in Section 3:95 of the Act;
 - 2°. details based upon which the Dutch Central Bank can assess compliance with the provisions ensuing from Section 3:99 of the Act regarding the properness of the applicant or holder of a declaration of no objection who could determine or co-determine, or would determine or co-determine, the policy of the undertaking in question based on being the holder of a qualified holding; and
 - 3°. documents from which the financial position and the legal group structure of the applicant or holder of the declaration of no objection are apparent.
- 2. The details referred to in Subsection (1)(g) shall be:
 - a. regarding persons who determine the day-to-day policy:
 - 1°. a. a statement of the name, date of birth, place of birth, nationality, private address, telephone and fax number and position of the person concerned;
 - 2°. a curriculum vitae;
 - 3°. a list of the relevant diplomas;
 - 4°. a copy of a valid identity document; and
 - 5°. a list of referees.
 - 3. The details referred to in Subsection (1)(h) and (o)(2°) shall be:
 - a. a statement of the name, date of birth, place of birth, nationality, private address, telephone and fax number and position of the person in question;
 - b. a copy of a valid identity document;
 - c. details with regard to the antecedents referred to in the annex to this Decree; and
 - d. a list of referees.
 - 4. Subsection (1)(h) and (o)(2°) shall not apply if the properness of the person concerned has already been established for the purpose of the Act by a supervisory authority.

§ 2.13. Other provisions

Provisions implementing Section 2:105(5) of the Act

Section 42

In the event of an application for a licence as referred to in Section 2:105(1) of the Act, the following details shall be submitted, notwithstanding the sections referred to in that subsection:

- a. details from which the affiliation with the legal person, as referred to in Section 2:105(1) of the Act, is apparent;
- b. details from which it is apparent that the legal person has sufficient authority over the affiliated undertakings to ensure that these organisations do not act contrary to the provisions arising from the Act and to ensure that instructions issued by the supervisory authority are followed;
- c. details from which it is apparent that the legal person has sufficient resources to provide expert support to the affiliated undertakings; and
- d. details from which it is apparent that the legal person is authorised to represent the affiliated undertakings in the application process and also in the application of the parts of the Act referred to in Section 2:105(3) of the Act.

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CHAPTER 3. ACCESS TO FOREIGN FINANCIAL MARKETS

§ 3.1. Conducting the business of a clearing institution

Provision implementing Section 2:107(2) of the Act

Section 43

In the case of a clearing institution that intends to conduct its business from a branch office located in another state, the details referred to in Section 2:107(2) of the Act shall be:

- a. a statement of the state in which the clearing institution intends to conduct its business from a branch office;
- b. a statement of the address of the branch office;
- c. a statement of the activities that the clearing institution intends to carry out from the branch office;
- d. a statement of the name and private address of the persons who shall determine the day-to-day policy of the branch office;
- e. a description of the proposed policy with regard to the conduct of business in a controlled and sound manner as referred to in Section 3:10(1) and (2) of the Act; and
- f. a description of the proposed operational structure with regard to the controlled and sound conduct of business as referred to in Section 3:17(1) of the Act.

§ 3.2. Conducting the business of a credit institution and a financial institution

Provisions implementing Sections 2:108(2), 2:111(2) and 2:112 (2) of the Act

Section 44

The details referred to in Section 2:108(2) of the Act shall be:

- a. a statement of the Member State in which the credit institution intends to conduct its business from a branch office;
- b. a statement of the address of the branch office;
- c. a statement of the activities that the credit institution intends to carry out from the branch office;
- d. a statement of the name and private address of the persons who shall determine the day-to-day policy of the branch office;
- e. a description of the proposed policy with regard to the conduct of business in a controlled and sound manner as referred to in Section 3:10(1) and (2) of the Act; and
- f. a description of the operational structure for the controlled and sound conduct of business as referred to in Section 3:17(1) of the Act.

Section 45

The details referred to in Section 2:111(2) of the Act shall be:

- a. a statement of the state in which the credit institution intends to conduct its business from a branch office;
- b. a statement of the address of the branch office;
- c. a statement of the activities that the credit institution intends to carry out from the branch office;
- d. a statement of the name and private address of the persons who shall determine the day-to-day policy of the branch office;

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e. a description of the proposed policy with regard to the conduct of business in a controlled and sound manner as referred to in Section 3:10(1) and (2) of the Act; and

f. a description of the operational structure for the controlled and sound conduct of business as referred to in Section 3:17(1) of the Act.

Section 46

The details referred to in Section 2:112(2) of the Act shall be:

a. a statement of the Member State in which the financial institution intends to conduct its business from a branch office;

b. a statement of the address of the branch office;

c. a statement of the activities that the financial institution intends to carry out from the branch office;

d. a statement of the name and private address of the persons who shall determine the day-to-day policy of the branch office;

e. a description of the proposed policy with regard to the conduct of business in a controlled and sound manner as referred to in Section 3:10(1) and (2) of the Act; and

f. a description of the proposed policy with regard to the conduct of business in a controlled and sound manner as referred to in Section 3:17(1) of the Act.

§ 3.3. Conducting the business of a life insurer and a non-life insurer

Provisions implementing Sections 2:115(2), 2:117, 2:118(2) and 2:120(2) of the Act

Section 47

1. The details referred to in Section 2:115(2) of the Act shall be:

a. a statement of the Member State in which the insurer intends to conduct its business from a branch office;

b. a statement of the address of the branch office;

c. a programme of activities;

d. details enabling the Dutch Central Bank to reasonably assess whether the provisions arising from Section 3:8 of the Act are met with regard to the expertise of the persons determining the day-to-day policy of the insurer;

e. a statement of the name and address of the representative referred to in Section 3:37(1) of the Act, and, if the representative is a legal person, the articles of association of this legal person, an excerpt from its entry in the Trade Register and the name and private address of the natural person, as referred to in Section 3:37(3) of the Act;

f. details enabling the Dutch Central Bank to reasonably assess whether the provisions arising from Section 3:8 of the Act are met with regard to the expertise of the representative, as referred to in Section 3:37(1) of the Act, or the natural person, as referred to in Section 3:37(3) of the Act;

g. details enabling the Dutch Central Bank to assess whether the provisions arising from Section 3:9 of the Act are met with regard to the properness of the representative, as referred to in Section 3:37(1) of the Act, or the natural person, as referred to in Section 3:37(3) of the Act; and

h. a description of the operational structure with regard to the controlled and sound conduct of business as referred to in Section 3:17(1) of the Act.

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2. If the non-life insurer intends to cover risks pertaining to the Motor Vehicle Liability class, the details referred to in Section 3:115(2) shall furthermore be written proof from which it is apparent that the non-life insurer is a member of the national agency and the national motor traffic guarantee fund of the Member State in question that are the equivalent, respectively, of the agency referred to in Section 2(6) of the Motor Vehicle Liability Insurance Act (*Wet aansprakelijkheid motorrijtuigen*) and the Dutch Motor Traffic Guarantee Fund (*Waarborgfonds Motorverkeer*), as referred to in Section 23(1) of that Act.

3. The details referred to in Subsection (1)(f) shall be:

- a. a statement of the name, date of birth, place of birth, nationality, private address, telephone and fax number and position of the person in question;
- b. a curriculum vitae;
- c. a list of the relevant diplomas;
- d. a copy of a valid identity document; and
- e. a list of referees.

4. The details referred to in Subsection (1)(g) shall be:

- a. a statement of the name, date of birth, place of birth, nationality, private address, telephone and fax number and position of the person in question;
- b. a copy of a valid identity document;
- c. details with regard to the antecedents referred to in the annex to this Decree; and
- d. a list of referees.

5. Subsection (1)(g) shall not apply if the properness of the person concerned has already been established for the purpose of the Act by a supervisory authority.

6. The details referred to in Subsections (1) and (2) shall be accompanied by a translation insofar as the Dutch Central Bank so requires. The Dutch Central Bank may only require a translation thereafter if so required by the supervisory authority of the Member State in which the insurer intends to conduct its business from a branch office.

Section 48

The programme of activities referred to in Section 47(1)(c) that shall be submitted by a life insurer with its registered office in the Netherlands on behalf of a branch office in another Member State shall contain the following:

- a. a statement of the nature of the agreements that the life insurer intends to conclude;
- b. a description of the operational structure for the controlled and sound conduct of business of the branch office as referred to in Section 3:17(1);
- c. an estimate of the costs for structuring the administration and the production network as well as documents showing that the insurer has the financial resources to cover these costs; and
- d. a detailed estimate for the first financial year of the expected income and expenditure, concerning both the direct transactions and the accepted reinsurance as well as the transfers due to reinsurance.

Section 49

1. The programme of activities referred to in Section 47(1)(c) that shall be submitted by a non-life insurer with its registered office in the Netherlands on behalf of a branch office in another Member State shall contain the following:

- a. a statement of the risks that the non-life insurer intends to cover;

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b. a description of the operational structure for the controlled and sound conduct of business of the branch office as referred to in Section 3:17(1);

c. an estimate of the costs for structuring the administration and the production network as well as documents showing that the insurer has the financial resources to cover these costs;

d. an estimate for the first financial year of the management costs other than those referred to in (c), estimating in particular the overhead costs and the commission fees; and

e. for the first financial year, an estimate of the premiums and of the claims.

2. If the non-life insurer intends to cover risks pertaining to the Assistance class, the programme of activities shall also contain a statement of the resources of the non-life insurer for providing the agreed assistance.

Section 50

1. The details referred to in Section 2:117 of the Act shall be:

a. a statement of the Member State in which the insurer intends to provide the services; and

b. in the case of a life insurer, a description of the nature of the agreements that it intends to conclude; and

c. in the case of a non-life insurer, a description of the nature of the risks that it intends to cover.

2. If the insurer intends to conduct the business of an insurer in the Motor Vehicle Liability Insurance class by providing services in the Netherlands these details shall also include:

a. a statement of the name and address of the loss adjuster in the Member State in question that will be responsible for the settlement of claims of injured parties on behalf of the insurer that follow from risks pertaining to the Motor Vehicle Liability class; and

b. written proof that the insurer is a member of the national agency and the national motor traffic guarantee fund of the Member State in question that are the equivalent, respectively, of the agency referred to in Section 2(6) of the Motor Vehicle Liability Insurance Act (*Wet aansprakelijkheidsverzekering motorrijtuigen*) and the Dutch Motor Traffic Guarantee Fund (*Waarborgfonds Motorverkeer*), as referred to in Section 23(1) of that Act.

3. The details referred to in Subsections (1) and (2) shall also be accompanied by a translation insofar as required by the Dutch Central Bank. The Dutch Central Bank may only require a translation thereafter if so required by the supervisory authority of the Member State in which the insurer intends to conduct its business from a branch office.

Section 51

1. The details referred to in Section 2:118(2) of the Act shall be:

a. a statement of the Member State in which the insurer intends to provide the services; and

b. in the case of a life insurer, a description of the nature of the agreements that it intends to conclude; and

c. in the case of a non-life insurer, a description of the nature of the risks that it intends to cover.

2. The details referred to in Subsections (1) and (2) shall also be accompanied by a translation insofar as required by the Dutch Central Bank.

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Section 52

1. The details referred to in Section 2:120(2) of the Act shall be:
 - a. a statement of the Member State in which the life or non-life insurer intends to conduct its business from a branch office;
 - b. a statement of the address of the branch office;
 - c. a programme of activities;
 - d. details enabling the Dutch Central Bank to assess whether the provisions arising from Section 3:8 of the Act are met with regard to the expertise of the persons determining the day-to-day policy of the insurer;
 - e. details enabling the Dutch Central Bank to assess whether the provisions arising from Section 3:9 of the Act are met with regard to the properness of the persons determining or co-determining the policy of the branch office;
 - e. a statement of the name and address of the representative referred to in Section 3:37(1) of the Act, and, if the representative is a legal person, the articles of association of this legal person, an excerpt from its entry in the Trade Register and the name and private address of the natural person, as referred to in Section 3:37(3) of the Act;
 - g. details enabling the Dutch Central Bank to assess whether the provisions arising from Section 3:8 of the Act are met with regard to the expertise of the representative, as referred to in Section 3:37(1) of the Act, or the natural person, as referred to in Section 3:37(3) of the Act;
 - h. details enabling the Dutch Central Bank to assess whether the provisions arising from Section 3:9 of the Act are met with regard to the properness of the representative, as referred to in Section 3:37(1) of the Act, or the natural person, as referred to in Section 3:37(3) of the Act; and
 - i. a description of the proposed policy with regard to the conduct of business in a controlled and sound manner as referred to in Section 3:17(1) of the Act.
2. If the non-life insurer intends to cover risks pertaining to the Motor Vehicle Liability class, the details referred to in Section 2:115(2) shall furthermore be written proof from which it is apparent that the non-life insurer is a member of the national agency and the national motor traffic guarantee fund of the Member State in question that are the equivalent, respectively, of the agency referred to in Section 2(6) of the Motor Vehicle Liability Insurance Act (*Wet aansprakelijkheid motorrijtuigen*) and the Dutch Motor Traffic Guarantee Fund (*Waarborgfonds Motorverkeer*) as referred to in Section 23(1) of that Act.
3. The details referred to in Subsection (1)(d) and (g) shall be:
 - a. a statement of the name, date of birth, place of birth, nationality, private address, telephone and fax number and position of the person in question;
 - b. a curriculum vitae;
 - c. a list of the relevant diplomas;
 - d. a copy of a valid identity document; and
 - e. a list of referees.
4. The details referred to in Subsection (1)(e) and (h) shall be:
 - a. a statement of the name, date of birth, place of birth, nationality, private address, telephone and fax number and position of the person in question;
 - b. a copy of a valid identity document;
 - c. details with regard to the antecedents referred to in the annex to this Decree; and
 - d. a list of referees.
5. The details referred to in Subsections (1) and (2) shall also be accompanied by a translation insofar as required by the Dutch Central Bank.

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Section 53

The programme of activities referred to in Section 52(1)(c) that shall be submitted by a life insurer with its registered office in the Netherlands on behalf of a branch office in a state that is not a Member State shall contain the following:

- a. the nature of the life insurance agreements to be concluded by the branch office; and
- b. a description of the operational structure with regard to the controlled and sound conduct of business of the branch office as referred to in Section 3:17(1).

Section 54

The programme of activities referred to in Section 52(1)(c) that shall be submitted by a non-life insurer with its registered office in the Netherlands on behalf of a branch office in a state that is not a Member State shall contain the following:

- a. the nature of the risks of the non-life insurance that shall be covered by the branch office; and
- b. a description of the operational structure with regard to the controlled and sound conduct of business of the branch office as referred to in Section 3:17(1).

§ 3.4. Conducting the business of a funeral expenses and benefits in kind insurer

Provision implementing Section 2:121(2) of the Act

Section 55

1. The details referred to in Section 2:121(2) of the Act shall be:

- a. a statement of the state in which the funeral expenses and benefits in kind insurer intends to conduct its business from a branch office;
- b. a statement of the address of the branch office;
- c. a programme of activities;
- d. details enabling the Dutch Central Bank to assess whether the provisions arising from Section 3:8 of the Act are met with regard to the expertise of the persons determining the day-to-day policy of the insurer;
- e. details enabling the Dutch Central Bank to assess whether the provisions arising from Section 3:8 of the Act are met with regard to the expertise of the representative, as referred to in Section 3:37(1) of the Act, or the natural person, as referred to in Section 3:37(3) of the Act;
- f. if the representative referred to in Section 3:37(1) of the Act is a legal person: a statement of the name, the address, the articles of association, and an excerpt from the entry in the Trade Register; and
- g. details enabling the Dutch Central Bank to assess whether the provisions arising from Section 3:9 of the Act are met with regard to the properness of the representative referred to in Section 3:37(1) of the Act, if the representative is a natural person, or with regard to the properness of the natural person referred to in Section 3:37(3) of the Act.

2. The details referred to in Subsection (1)(d) and (e) shall be:

- a. a statement of the name, date of birth, place of birth, nationality, private address, telephone and fax number and position of the person in question;
- b. a curriculum vitae;
- c. a list of the valid diplomas;
- d. a copy of a valid identity document; and
- e. a list of referees.

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3. The details referred to in Subsection (1)(g) shall be:
 - a. a statement of the name, date of birth, place of birth, nationality, private address, telephone and fax number and position of the person in question;
 - b. a copy of a valid identity document;
 - c. details with regard to the antecedents referred to in the annex to this Decree; and
 - d. a list of referees.
4. Subsection (1)(g) shall not apply if the properness of the person concerned has already been established for the purpose of the Act by a supervisory authority.

Section 56

The programme of activities referred to in Section 55(1)(c) shall contain the following:

- a. a statement of the nature of the funeral provision insurance agreements that will be concluded by the branch office;
- b. a description of the proposed policy with regard to the conduct of business from the branch office in a controlled and sound manner, as referred to in Section 3:10(1) of the Act; and
- c. a description of the operational structure with regard to the controlled and sound conduct of business of the branch office as referred to in Section 3:17(1) of the Act.

§ 3.5. Offering units in undertakings for collective investment in transferable securities

Provisions implementing Section 2:122 of the Act

Section 57

The details referred to in Section 2:122(2) of the Act shall be:

- a. a statement of the Member State in which the management company intends to open the branch office;
- b. a statement of the financial services that the management company intends to provide;
- c. a statement of the address in the host Member State where documents can be requested; and
- d. a statement of the identity of the persons who determine the day-to-day policy of the branch office.

§ 3.6. Providing investment services

Provisions implementing Sections 2:127(2) and 2:130(2) of the Act

Section 58

The details referred to in Section 2:127(2) of the Act shall be:

- a. a statement of the Member State in which the investment firm intends to open the branch office;
- b. a statement of the financial services that the investment firm intends to provide;
- c. a statement of the address in the host Member State where documents can be requested; and
- d. a statement of the identity of the persons who determine the day-to-day policy of the branch office.

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Section 59

1. The details as referred to in Section 2:130(1) of the Act shall be:
 - a. a statement of the state in which the investment firm intends to open the branch office;
 - b. a statement of the financial services that the investment firm intends to provide;
 - c. a description of the measures aimed at promoting and enforcing the conduct of business in a controlled and sound manner;
 - d. the address in the host state where documents can be requested; and
 - e. a statement of the identity of the persons who determine the day-to-day policy of the branch office.
2. The investment firm shall include a translation of the details referred to in Subsection (1) together with those details if so required by the Netherlands Authority for the Financial Markets.

CHAPTER 4. FINAL PROVISIONS

Section 60

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 of this Decree.

Section 61

This Decree shall be cited as: Decree on Market Access of Financial undertakings pursuant to the Act on Financial Supervision (*Besluit Markttoegang financiële ondernemingen Wft*).

We order and command that this Decree shall be published in the Bulletin of Acts, Orders and Decrees (*Staatsblad*), and that all ministerial departments, authorities, bodies and officials whom it may concern shall diligently implement it.

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

The opinion of the Council of State shall not be published pursuant to Section 25a(5) and (4)(b) of the Council of State Act (*Wet op de Raad van State*), because it is an opinion stating unqualified approval.

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ANNEX

1 Criminal antecedents

1.1 Convictions

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

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

2 Other criminal antecedents

2.1 Convictions

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

Criminal Code:

- public order and discrimination (Sections 131 to 151a);
- crimes endangering general safety (Sections 157 to 175);
- public authorities (Sections 177 to 207a);
- currency offences (Sections 208 to 215);
- forgery offences other than currency offences (Sections 216 to 235);
- deliberately providing untruthful information (Section 227a);
- deliberately breaching the obligation to provide information (Section 227b);
- serious offences against public decency (Sections 242, 246, 243 to 245, 247 to 250, 250ter);
- threat of violence or crime (Section 285);

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- violent crimes against life (Sections 287 to 294);
- assault (Sections 300 to 306);
- involuntary manslaughter and physical injury (Sections 307 to 309);
- simple theft (Section 310);
- aggravated theft (Section 311);
- robbery (Section 312);
- extortion (Section 317);
- embezzlement (Sections 321 to 323);
- fraud (Sections 326 to 337);
- prejudice to creditors or entitled parties (Sections 340 to 348);
- vandalism (Sections 350 to 354);
- serious offences committed by a public servant while in office (Sections 355 to 380);
- handling stolen goods and knowingly handling stolen goods (Sections 416 to 417bis);
- money laundering (Sections 420bis to 420quinquies);
- giving a false name, academic title, etc. (Section 435);
- unauthorised conduct of an estate agency business (Section 436a);
- creating the impression of acting with official support or recognition (Section 435b);
- acting without authorisation during a moratorium (Section 442);
- providing untruthful information (Section 447c); or
- breaching the obligation to provide information (Section 447d).

State Taxes Act (Algemene wet inzake de rijksbelastingen):

- infringement of tax legislation (Sections 68 and 69).
- *Opium Act (Opiumwet):*
 - the deliberate smuggling, preparation, sale, delivery, possession, etc. of hard drugs (Section 2(1));
 - the deliberate smuggling, preparation, sale, delivery, possession and production of soft drugs (Section 3(1)); or
 - preparatory operations as regards the preparation, sale, delivery, etc. and smuggling of hard drugs (Section 10a(1)).

Economic Offences Act (Wet op de economische delicten):

Actions penalised by the Economic Offences Act, in particular prohibitory provisions from financial supervision legislation, Section 9 of the Act on the Disclosure of Unusual Transactions (Financial Services) (*Wet melding ongebruikelijke transacties*) and Sections 2(1), (2) and (6), 5, 6, 7 and 8 of the Act on Identification (Provision of Services) 1993 (*Wet identificatie bij dienstverlening 1993*).

Weapons and Ammunition Act (Wet wapens en munitie):

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

Road Traffic Act 1994 (Wegenverkeerswet 1994):

- involuntary manslaughter or injury (Section 6);

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

Penal provisions in other countries

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

2.2 Settlements with the Public Prosecutor

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

2.3 Conditional or unconditional dismissal, acquittal or discharge from prosecution

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

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

2.4 Other facts or circumstances

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

3 Financial antecedents

3.1 Personal

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

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

3.2 Business

– the current or one of the former employers of the person concerned, or any company or legal person, in which the person concerned holds or held a position as a person determining or co-determining the policy, exercises or exercised actual control over the policy, or is or was responsible (whether or not jointly) for the policy in another way, experienced major financial problems, which resulted in legal proceedings in the Netherlands or elsewhere;

– a petition for a moratorium or liquidation was filed or granted with regard to the current or one of the former employers, or with regard to any company or legal person, in which the person concerned holds or held a position as a person determining or co-determining the policy, exercises or exercised actual control over the policy, or is or was responsible (whether or not jointly) for the policy in another way; or

– the person involved was ordered to discharge outstanding debts resulting from liability for the liquidation of a company or legal person pursuant to the applicable provisions of Book 2 of the Dutch Civil Code (Sections 50a, 138, 149, 248, 259 and 300a).

3.3 Other facts or circumstances

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

4 Supervision antecedents

4.1 Supervision antecedents

-the incorrect or incomplete provision of information to a supervisor or supervisory authority;

-the person concerned, or a company or legal person in which the person concerned holds or held a position as a person determining or co-determining the policy, exercises or exercised actual control over the management, or is or was responsible (whether or not jointly) for the policy in another way, has been denied admission, a licence or dispensation by a supervisor or supervisory authority;

-a supervisor or supervisory authority has withdrawn a right of admission, a licence or a dispensation granted to the person concerned, or to a company or legal person in which the person concerned holds or held a position as a person determining or co-determining the policy, exercises or exercised actual control over the management, or is or was responsible (whether or not jointly) for the policy in another way;

-the person concerned, or his current or one of his former employers, or a company or legal person in which the person concerned holds or held a position as a person determining or co-determining the policy, exercises or exercised actual control over the management, or is or was responsible (whether or not jointly) for the policy in another way, has been in conflict with a supervisor or supervisory authority and this conflict resulted in any measure in respect of the person concerned or in respect of the company or legal person in which the person concerned holds or held a position as a person determining or co-determining the policy, exercises or exercised actual control over the policy, or is or was responsible (whether or not jointly) for the policy in another way;

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-the person concerned, or a company or legal person in which the person concerned holds or held a position as a person determining or co-determining the policy, exercises or exercised actual control over the management, or is or was responsible (whether or not jointly) for the policy in another way, has been denied a certificate by the Minister of Justice with regard to the incorporation or amendment of the articles of association of a company on grounds referred to in Sections 68(2), 179(2), 125(2) or 235(2) respectively of Book 2 of the Dutch Civil Code.

4.2 Other facts or circumstances

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

5 Fiscal antecedents under administrative law

5.1 Personal

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

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

5.2 Business

The current or one of the former employers, or any company or legal person, in which the person concerned holds or held a position as a person determining or co-determining the policy, exercises or exercised actual control over the management, or is or was responsible (whether or not jointly) for the policy in another way, has been given a punitive fine pursuant to the State Taxes Act in respect of one or more of the criminal offences listed below:

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

5.3 Other facts or circumstances

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

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6 Other antecedents

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

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EXPLANATORY MEMORANDUM

General notes

This decree serves to implement provisions of the Market Access and General parts of the Act on Financial Supervision (Wft). Most of the provisions relate to the details that have to be provided as part of the licence application process. This Decree follows the sequence used in its statutory basis, i.e. the rules are stated per activity, whereby the rules governing access to the Dutch market are stated first, followed by the rules governing access to foreign markets. The provisions were largely taken over from the previously existing regulations. The explanatory notes per section indicate the regulations from which the provisions originate.

Details to be provided in the licence application process

The Act lays down the legal basis pursuant to which the details to be submitted when applying for a licence may be determined by Order in Council. This Decree stipulates which details are required. Under Section 4:5 in conjunction with Section 4:2(2) of the General Administrative Law Act (*Algemene wet bestuursrecht*), the supervisory authorities (the Dutch Central Bank and the Netherlands Authority for the Financial Markets) have the power to request the submission of details other than those listed in this Decree, if these details are necessary for the decision on the application and the applicant can reasonably obtain these details.

There was no regulation stipulating which details must be submitted under the Financial Services Act (*Wet financiële dienstverlening* (Wfd)). As regards Wfd activities, the provisions of this Decree are derived from the preventative assessment set out in the Wfd and the Financial Services Decree (*Besluit financiële dienstverlening* (Bfd)) and the application form for a Wfd licence drawn up by the Netherlands Authority for the Financial Markets. The sequence in which the details are arranged per section corresponds with the sequence in which the Act lists the licence requirements. General details that cannot be attributed to a specific licence requirement have been placed at the beginning.

Administrative burdens

As most of the provisions have been taken over from previously existing regulations or, as regards the details to be submitted, from the practice of the supervisory authorities, there are only a few small changes in the administrative burden. These changes are as follows:

The regulation in the Act concerning clearing institutions is new. Consequently, the regulation in the Decree concerning the details to be provided when applying for a licence to conduct the business of a clearing institution is also new. The operational effects thereof have already been discussed in § 8.6 of the explanatory notes to the first Memorandum of Amendment (*Nota van Wijziging*) to the Financial Supervision Bill (Parliamentary Documents II 2004/05, 29 708, no. 10, p. 147, in section 2.2 on access to the financial markets). Based on the situation involving one 'specialised firm' and five investment firms that were previously not required to have a licence but are now required to have a licence under the Wft, the total costs amount to €90,000. In its advice concerning the first Memorandum of Amendment, Actal saw no cause to make any comments on this issue.

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In the case of the undertakings covered by the Prudential Supervision part of the Act there are a number of relatively small differences with regard to the details to be submitted between the former regulation and the new regulation. As part of the harmonisation process, it was decided to require the registration number in the Trade Register from candidate credit institutions; this rule already applied with regard to candidate insurers. Candidate insurers were also required to submit a copy of their deed of incorporation and a copy of their articles of association. Under the Act on the Supervision of the Credit System 1992 (Wtk 1992) this requirement did not apply for candidate credit institutions. The requirement to submit articles of association is also imposed on candidate credit institutions in the Wft, at least insofar as they are legal persons. In view of the fact that the articles of association are documents that are already available, this requirement has a negligible effect on the administrative burden. The requirement that the deed of incorporation be submitted appears to have little added value. Moreover, the undertaking concerned is sometimes a foreign financial undertaking that has existed for a long time and that now wishes to conduct its business from a branch office in the Netherlands; such undertakings do not always have their deed of incorporation available. It was decided not to maintain the requirement to submit the deed of incorporation in the Wft.

Another difference concerns the details of the programme of activities. As a result of the directives, a description of the details required in the programme of activities for life and non-life insurance companies was included – under the Act on the Supervision of the Insurance Industry 1993 (Wtv 1993) – in the Regulation on the Programme of Activities for the Insurance Industry 1994 (*Regeling programma van werkzaamheden verzekeringsbedrijf 1994*). The corresponding details were also indicated for funeral expenses and benefits in kind insurers. No details were stipulated for the programme of activities for credit institutions. In order to avoid a situation in which unlimited information could be required from credit institutions for a programme of activities for which no further details had been specified, it has now been stipulated that the party applying for a credit institution licence must submit 'a statement of the activities that the credit institution intends to carry out'.

Another more precise formulation concerns the details regarding consolidated supervision. Under the Wtk 1992, a licence could be refused on the grounds that the supervisory authority of the state in which the registered office was located did not exercise any or insufficient consolidated supervision, but it was not stipulated that details concerning consolidated supervision had to be submitted. The present Order in Council does stipulate that these details must be submitted.

Another difference in details to be submitted concerns the details that form the basis for the assessment of compliance with the financial requirements. The Wtv 1993 required the submission of 'documentary evidence', whereas the Wtk 1992 stipulated the submission of annual accounts or the opening balance sheet. The rules under the Wtv 1993 were therefore less strict: documentary evidence other than the annual accounts or the opening balance sheet was sufficient. The Wtv 1993 rules have been followed in the present situation. Therefore, the administrative burden has been lightened in those cases where the opening balance sheet or the annual accounts is/are not available but neither document has to be submitted to demonstrate compliance with the financial requirements.

If a candidate credit institution intends to also provide investment services, certain aspects from the supervision of conduct are also assessed: see Section 2:13 (1a:12 in the parliamentary history) and the explanatory notes to the first Memorandum of Amendment (Parliamentary Documents II 2004/05, 29 708, no. 10, p. 206 ff.). Details must be submitted to enable the supervisory authority to assess these aspects of conduct: see Section 9 of this Decree.

Section 26 of the Wtv 1993 stipulated that 'names and addresses' of the directors, the persons who determine the day-to-day policy of the group and the persons who determine the policy of the group had to be submitted, whereas

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'identity details' had to be submitted for holders of a qualifying holding. Section 9 of the Wtk 1992 stipulated, however, that the 'identity and the antecedents' had to be submitted. An annex to this Decree states precisely what must be submitted in this regard. This annex is based on what was already required by the Dutch Central Bank, but was not explicitly stated in the Act or in an Order in Council. The fact that the applicant now knows exactly what must be submitted and especially what is not required can be seen as a reduction in the administrative burden.

Sections 2:16 and 2:36 of the Act concern financial undertaking financial undertakings with a registered office in another Member State that are not defined as credit institutions or insurance companies in that Member State but are defined as such under the definitions included in the Wft. Such a rule could be derived from the Wtv 1993, but was not explicitly included. A provision that stipulated which details had to be provided in such a case was not included in the Wtv 1993, nor in the Wtk 1992. This Decree, however, does stipulate which details have to be provided in such a case. There will only be a minimal number of cases in which a financial undertaking falls under a Wft definition but not under the definition applied by the Member State in which the registered office is located and applies in the Netherlands for a licence to conduct its business from a branch office located in the Netherlands. Consequently, the regulations that stipulate which details must be submitted in such a case have a negligible effect on the administrative burden.

The details referred to in Section 13(1)(h) of the Decree on the Supervision of Collective Investment Schemes 2005 (Btb 2005) (annual accounts, statements concerning these annual accounts and half-yearly figures) are not included in Section 35 of this Decree, as these details are not required to assess an application for a licence to manage a collective investment scheme.

Overview of the administrative burden

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Measure

Reduction of burden

Increase of burden

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Statement of registration number in Trade Register Submission of Articles of Association

Submission of the deed of incorporation is not required

Statement of activities instead of a statement of a programme of activities for credit institutions

Statement of consolidated supervision details

Provision of 'documentary evidence' involving financial details where possible instead of annual accounts or opening balance sheet

Statement of details regarding aspects of conduct for banks that also provide investment services

Precise description of details regarding 'antecedents'

Submission of annual accounts and annual figures is not required for collective investment schemes

Small reduction of burden for insurers Reduction of burden for credit institutions

Already existed in practice

Reduction of burden in a few cases

Limitation of burden

Small reduction of burden for many management companies managing collective investment schemes

Negligible increase of burden for credit institutions Negligible increase of burden for credit institutions

Now also assessed preventatively instead of ongoing supervision from first day; in practice no increase

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Both the increases and the decreases in administrative burdens are so small that the difference compared with the previous situation is not expected to amount to more than €100 per licence application. The baseline measurement of administrative burden for the financial markets assumes one application for an insurance licence per year, two applications for a credit institution licence per year and 35-40 applications per year from management companies managing collective investment schemes.

Advice received

The Decree was prepared in consultation with the Dutch Central Bank and the Netherlands Authority for the Financial Markets. Both supervisory authorities were involved in the draft texts at an early stage. Meetings regarding the draft texts were held on several occasions. The Dutch Central Bank and the Netherlands Authority for the Financial Markets were also involved in the informal and formal consultations regarding the Decree.

The draft Decree was first presented to the class on an informal basis, after which the market parties were formally consulted. A large number of market parties were involved in this consultation process. No reaction was received from some of the parties. Other parties have made it known that they have no comments; these parties include the Netherlands Association of Insurance Intermediaries and Financial Service Providers (*Nederlandse vereniging van assurantiebemiddelaars en financiële dienstverleners*) and the Dutch Association of Municipal Money-Lending and Debt Counselling Institutions (*Nederlandse Vereniging voor Volkskrediet*).

The reactions received include a relatively large number of comments relating to specific sections. These comments have given rise to – mainly technical and editorial – amendments or to a further explanation. It would be excessive to discuss all amendments individually in the explanatory memorandum. The most important items are therefore set out below.

The Dutch Central Bank pointed out that the Minister designates states where sufficient supervision is exercised in respect of collective investment schemes, clearing institutions and funeral expenses and benefits in kind insurers, which is not in line with the designation of states within the meaning of Section 3:2(1)(c)(1°) of the Act. In response to this comment, it has now been decided that the Minister will also designate states as referred to in Section 3:2, rather than – as the Dutch Central Bank proposed – having the first category of states designated by Order in Council. This decision has been made because there is a need for flexibility so that the designations can be changed if necessary.

The Dutch Central Bank also commented that the fact that the details to be submitted by the applicant are specified per type of financial undertaking results in a great deal of repetition and therefore a relatively long Decree. My response is as follows. On the advice of the Council of State, the transparency of the Act has been increased by including a separate part that addresses the individual classes: Market Access for Financial Undertakings. Increasing the transparency has mainly been achieved by regulating access to the financial markets per category of financial services. Because this Decree has its statutory basis in many provisions in the part of the Act that concerns Market Access for Financial Undertakings, it would not be consistent if the provisions in this Decree were structured differently.

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With regard to the details to be submitted regarding the assessment of properness, the Dutch Central Bank commented that it would prefer the requirement for the name, address and position as well as details of antecedents to be replaced by a reference to a model to be set up by the supervisory authorities. However, it was decided in the Act that a universally binding regulation – i.e. this Decree – would specify which details may be requested for the properness assessment. Section 2 stipulates that the application is made using a form to be designated for this purpose by the supervisory authority.

Incidentally, specific rules regarding the properness assessment are not stipulated in this Decree. This Order in Council only specifies the details that must be provided when applying for a licence, including details for the properness assessment. The specific rules are laid down in the parts of the Act concerning Prudential Supervision of Financial Undertakings and Supervision of the Conduct of Financial Markets and in the Orders in Council based on those parts of the Act. Of course, the regulations regarding the details to be submitted are in line with those specific rules.

The Dutch Central Bank also had three comments regarding the provision in the draft Decree presented for consultation concerning the details about a qualifying holding and the related declaration of no objection that have to be submitted when applying for a licence. First, it was stipulated that details must be provided from which the minimum amount of own funds, the solvency and the liquidity of the holder of the declaration of no objection are apparent. The Dutch Central Bank was of the opinion that this requirement is too stringent, and proposed a stipulation to the effect that documents must be submitted from which 'the financial position and the legal group structure' are apparent. This advice has been adopted. Secondly, the Dutch Central Bank was of the opinion that reference should not be made to the 'holder' of a declaration of no objection, but to 'the applicant', because, according to the Dutch Central Bank, there is not yet a declaration of no objection whilst the application for a licence is in progress. The main issue is that there must be a declaration of no objection at the time when the licence is granted. At that time, there is therefore a 'holder' of a declaration of no objection. In order to avoid dogmatically theoretical reflections, a practical solution has been chosen for this Decree in which reference is made to the 'applicant or holder'.

The Dutch Central Bank's third comment was linked to the previous comment and concerned the situation, referred to in Section 3:97 of the Act, in which the Minister decides on an application for a declaration of no objection. The draft Decree stipulated that, in the event that Section 3:97 of the Act was applicable, the party applying for the licence would have to submit a copy of the declaration issued by the Minister. The Dutch Central Bank observed that such a declaration is not yet available at the time of the licence application and recommended – in a subsequent meeting based on its comments – that the stipulation requiring the licence applicant to submit a copy of the declaration from the Minister should be dropped. This recommendation has been adopted. However, this does not alter the fact that a declaration of no objection must have been issued by the time when the licence is granted. The applicant cannot be required to submit a declaration that the Minister has not yet issued, nor to submit details based upon which an assessment can be made that the intended action will not result in an undesirable development of the financial class.

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The Association of Insurers (*Verbond van Verzekeraars*) observed that there was no statutory basis in the Act upon which to stipulate in this Decree which details must be submitted regarding a declaration of no objection in the event of a qualifying holding in an insurer. Following this observation, the statutory basis has now been incorporated into the Act.

The Netherlands Authority for the Financial Markets objected to the inclusion of specific details, stating that their inclusion would be contrary to the licence application system under the Wfd. The Netherlands Authority for the Financial Markets cited the conduct of business as an example. In the licence application system under the Wfd, the Netherlands Authority for the Financial Markets required the applicant to declare compliance with certain requirements on the licence application form. The Netherlands Authority for the Financial Markets based this request on Section 17 of the Wfd, under which the Netherlands Authority for the Financial Markets can stipulate rules regarding the licence application and which provides that the responsibility for complying with the rules therefore lies with the institution.

The Netherlands Authority for the Financial Markets indicated that, in view of the effectiveness and the supervisory burden, it had been decided to incorporate the supervision of the conduct of business into the ongoing supervision. The Netherlands Authority for the Financial Markets was further of the opinion that this Decree places the responsibility for assessing compliance with the requirements with the Netherlands Authority for the Financial Markets, which would result in a more rigid supervisory framework and would also limit the intended freedom of form under the Wfd. The Netherlands Authority for the Financial Markets argued in favour of maintaining the existing Wfd system for a licence application under the Wft.

Under the Wft, as in the Wfd, the financial undertaking is indeed responsible for compliance with the requirements (both at the licence application and granting stage and during the ongoing supervision stage). However, the Market Access part of the Act stipulates in relation to certain requirements that the supervisory authority grants a licence, if the applicant has demonstrated that it satisfies the requirements. These provisions not only oblige the applicant to demonstrate that the requirements are met, but also oblige the supervisory authority to check when processing the application whether it has been demonstrated that the requirements have been met. In this regard, the Wft does not differ, in principle, from the Wfd. However, it was made clear in the Explanatory Memorandum to the Wfd bill that the assessment of the conduct of business could only take place in a marginal manner as part of the licence granting process. This method of licence application assessment was chosen in particular because of the large number of licence applications that was expected when the Wfd was introduced.

In connection with the assessment of the licence application by the supervisory authority, the Act now stipulates that an Order in Council will stipulate which details have to be submitted in a licence application. The Netherlands Authority for the Financial Markets should have drawn up rules in this regard based on Section 17 in the context of the Wfd. In practice, the Netherlands Authority for the Financial Markets has only drawn up an application form. Within the framework of the Wft, it has been decided to stipulate in universally binding regulations, i.e. this Decree, which details must be provided – as stipulated by the legislator – and to stipulate that the supervisory authorities must draw up application forms (Section 2). These application forms, however, do not replace the universally binding regulations in which it is stipulated which details are required. The form is only a model

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for submitting the details. The basis for the details that are requested on this application form lies in this Decree.

The system that the Netherlands Authority for the Financial Markets applied within the framework of the Wft application procedure – having the applicant declare compliance with specific requirements – has not been adopted within the framework of the Wft for the following reasons. On the one hand, the applicant cannot satisfy its statutory obligation to demonstrate that it satisfies the licence requirements simply by one simple statement. On the other hand, such a statement also provides insufficient information to allow the supervisory authority to assess whether the licence requirements are satisfied.

Where the consequences of this preventative assessment are not considered acceptable, because the administrative burden or implementation problems would be too extensive for the applicant and/or the supervisory authority, consideration should be given to limiting the preventative assessment. It may be possible to cover this issue in the exemption regulation under the Wft,

e.g. by exempting 'customer personnel' from the preventative assessment of expertise insofar as the expertise requirements are met by the way in which business operations are arranged.

As regards the items that have to be assessed preventatively under the Act, it follows from the text of this Decree that a statement issued by the applicant is not sufficient. Where the Decree defines certain details as 'a description of ...', such as in the case of business operations, there is still a degree of freedom of form (contrary to the argument put forward by the Netherlands Authority for the Financial Markets). Such formulations were also used in the previous regulations (see, for example, Section 20 of the Decree on the Supervision of the Securities Trade 1995 (Bte 1995)). No problems have been reported as regards applying those formulations.

Incidentally, this freedom of form should not be confused with the freedom of form as regards, for example, the structuring of business operations, which refers to the freedom offered by the regulations as regards how to comply with a content-related requirement.

Finally, the Netherlands Authority for the Financial Markets (AFM) stated that it prefers a non-exhaustive list of the details in the Decree. If the list were to remain exhaustive, the AFM proposed stating explicitly in the explanatory memorandum that the Netherlands Authority for the Financial Markets can request additional information under Section 4:5 in conjunction with Section 4:2(2) of the General Administrative Law Act.

It was decided that the Decree should include an exhaustive list of the details to be provided because it follows from the Act that these are the details that are mandatory. The fact that the supervisory authority can request additional details (in addition to the mandatory details) under the General Administrative Law Act under certain conditions in individual cases had already been included in the explanatory memorandum for the draft Decree that had been submitted to the Netherlands Authority for the Financial Markets.

The Securities Class Council (*Raad voor de Effectenbranche*) and Euronext Amsterdam N.V. gave a joint reaction to the draft Decree. In their reaction, they made a number of general observations regarding market access for investment firms from other countries, so-called 'local firms' and investment firms that trade for their own account. However, these observations did not relate to this Decree, but to the Act itself, the transitional law and the exemption regulation. Therefore, these observations will not be reviewed in this explanatory memorandum.

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As indicated above, this Decree only specifies the details that must be submitted when applying for a licence, including the details for the properness assessment. The observations regarding the properness assessment pertain to the manner in which the assessment takes place and do not concern the details that are requested in connection with this assessment. These observations were also made in relation to the Decree on Prudential Rules pursuant to the Act on Financial Supervision (*Besluit prudentiële regels Wft*) and the Decree on the Supervision of the Conduct of Financial Undertakings (*Besluit gedragstoezicht financiële ondernemingen*) and are discussed in the explanatory memorandums for those Decrees.

In addition to a content-related observation that does not relate to this Decree, the Netherlands Bankers' Association (*Nederlandsche Vereniging van Banken*) also made an editorial observation, which has been adopted.

Notes on individual sections

Chapter 1. Introductory provisions

§ 1. Definitions

Section 1

This section does not require an explanation.

§ 2. Procedures

Section 2

This section is based on Section 1:102(1) of the Act. By virtue of this section, the supervisory authorities are obliged to draw up an application form for licence applications as referred to in the Market Access part of the Act and for certain other decisions as referred in the Market Access part of the Act. The applicant requesting such a decision is obliged to use this form. This application form must also be used for electronic applications.

Section 3

This section is based on Section 1:102(1) of the Act. The details must be submitted in a format that enables proper and efficient processing of the application by the supervisory authority. The applicant is responsible for the details being in such a format.

The application does not have to be made electronically and may be made in another form, as long as it is demonstrated to the supervisory authority that the activities to be performed comply with the regulations.

Chapter 2. Access to the Dutch financial markets

Section 4

This section regulates the application for a licence for conducting the business of a clearing institution by an undertaking with a registered office in the Netherlands. See also the explanatory notes to Section 8 because of the similarities with the application for the business of a credit institution.

Section 5

See the explanatory notes to Section 34.

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Section 6

This section regulates the licence application of a clearing institution with its registered office outside the Netherlands that conducts its business from a branch office located in the Netherlands. This application is processed in the same manner as that of a credit institution that has a registered office in a state that is not a Member State and wishes to conduct its business from a branch office located in the Netherlands. That situation is regulated in Section 10. Therefore, see the explanatory notes to that section.

Section 8

This section pertains to the application for a licence to conduct the business of credit institution by a party with a registered office in the Netherlands.

The provisions of Subsections (a) to (c) do not require any explanation.

Subsection (d): the requirement to submit the registration number in the Trade Register was not stipulated in the Wtk 1992.

Subsection (e): the requirement that a copy of the deed of incorporation and a copy of the articles of association must be submitted was stipulated in Section 26(1)(a) of the Wtv 1993 and Section 12(1) of the Wtn, not in the Wtk 1992. In general, it is not useful to stipulate the requirement that the deed of incorporation be submitted; see also the general part of this explanatory memorandum. The requirement that the articles of association must be submitted is useful, including for credit institutions. In view of the fact that credit institutions are not required to be legal persons, it is possible that they do not have articles of association. The words 'if available' have been included in order to allow for this situation. If the credit institution does have articles of association, this requirement entails a negligible administrative burden.

Subsection (f): unlike the situation for insurers, the Wtk 1992 did not stipulate any further requirements for the programmes of activities of clearing institutions and banks. This provided insufficient guidelines for the applicant, who did not know exactly what requirements the programme of activities had to satisfy. In order to provide applicants with a firmer basis, Section 8 therefore stipulates the submission of a statement of activities rather than a programme of activities.

Subsections (g) and (h): Subsections (g) and (h) include the words 'persons determining the day-to-day policy' and 'persons determining the policy', respectively, in accordance with the terminology of Sections 3:8 and 3:9 of the Act. Although persons determining the day-to-day policy or the policy of the group to which the applicant belongs are not mentioned separately, these persons will also be covered by this section insofar as they determine the day-to-day policy or the policy of the financial undertaking. See also the explanatory notes to Sections 10 and 12.

Subsection (i) refers to the proposed policy with regard to controlled and sound conduct of business, as referred to in Section 3:10 of the Act.

Subsection (j) has been taken over from Section 8(1)(j) of the Wtk 1992.

Subsection (k) is a combination of the concepts of 'the expected administrative organisation' and 'internal control' from Sections 16(2)(b) and 16b(2)(b) of the Wtk 1992 and the concept 'measures aimed at promoting and enforcing sound and controlled conduct of business' as referred to in Sections 16(2)(c) and 16b(2)(c) of the Wtk 1992. The new collective concept, in line with Section 3:17 of the Act, is 'the measures aimed at promoting and enforcing sound and controlled conduct of business'.

Subsection 1: by virtue of this provision, details regarding consolidated supervision must be submitted where applicable. These details were not mentioned as such in the Wtk 1992; however, it could be deduced from the Wtk 1992 that these details had to be submitted.

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Section 9(5) of the Wtk 1992 stipulated that the Dutch Central Bank could refuse to grant the licence if it were of the opinion that the supervisory authority in the state in which the registered office was located either did not exercise any consolidated supervision or exercised insufficient consolidated supervision.

Subsection (m) concerns the details that have to be submitted, as part of the licence application procedure, for the assessment of compliance with the financial requirements. The aim is to harmonise Section 8(1)(f) of the Wtk 1992 and Section 25(1) of the Wtv 1993 in conjunction with Section 3(c) of the Regulation on the Programme of Activities for the Insurance Industry 1994 (and other provisions with a similar content). The Wtk 1992 stipulated the submission of 'annual accounts or an opening balance sheet, which shall be accompanied by a signed auditor's opinion as referred to in Section 393(1) of Book 2 of the Dutch Civil Code'. This regulation refers to Directive No. 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 141) (banking directive). Article 5 of the directive does stipulate requirements regarding minimum amount of own funds in connection with market access; however, it is not stipulated how compliance with these requirements must be demonstrated. Nevertheless, Article 8 of the directive does stipulate that the licence application must be accompanied by a programme of activities. The directive also stipulates that the programme must state the nature of the proposed activities as well as the organisational structure of the undertaking; further requirements regarding the programme of activities are not stipulated in the banking directive. In particular, the directive does not require the submission of annual accounts or an opening balance sheet. The requirement in Section 8(1)(f) of the Wtk 1992 that the details to be submitted comprise annual accounts or an opening balance sheet therefore went further than the directive.

The regulations regarding the details to be submitted for an insurer are as follows. The directives for life insurers and non-life insurers require the submission of a programme of activities. The directives themselves stipulate further requirements for the programme of activities. Article 7 of the directive for life insurers and Article 9 of the first directive for non-life insurers stipulate that the programme of activities must contain the components that form the minimum guarantee fund, the expected organisational costs of the administrative services and of the production network and the financial resources to cover these costs, and – for the first three financial years – a detailed forecast of the expected income and expenditure, the expected cash position and an estimate of the financial resources to cover the obligations and the solvency margin. Section 3(c) of the Regulation on the Programme of Activities for the Insurance Industry 1994 stipulated submission of 'documentary evidence demonstrating that the insurer has the minimum amount of the guarantee fund (...) or the solvency margin that (...) is required based on the classes in which the insurer has already been active, if this solvency margin is higher than the aforementioned minimum amount of the guarantee fund'.

The conclusion is that the regulation for the insurers was more detailed on the one hand with regard to the items about which details had to be provided but, on the other hand, contained the less stringent requirement of 'documentary evidence' and not annual accounts or an opening balance sheet.

In this Decree, it was decided to opt for harmonisation, with the Wtv-variant as the point of departure. In other words, 'documentary evidence' ('documents') are requested and not annual accounts or an opening balance sheet. Of course, it is possible to submit annual accounts or an opening balance sheet if they are already available, because they also qualify as documentary evidence. However, if it can be demonstrated with documents other than annual accounts or an opening balance sheet that the financial requirements have been satisfied, then it is sufficient to submit these other documents.

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There are also subsequent provisions stating what the documents must pertain to: minimum amount of own funds, solvency and liquidity in the case of credit institutions.

Finally, it is stipulated that details must be submitted from which - for example - the minimum amount of own funds 'referred to in Section 3:53(1) of the Act' is apparent. It would have been possible to also refer to Section 3:53(3), which forms the basis for further definition of the concept of 'minimum amount of own funds' in an Order in Council. However, this was not considered necessary. Reference is made to the term 'minimum amount of own funds' as defined in more detail in the Order in Council. This is also the case for other concepts, such as solvency.

The purport of Subsection n, which covers the qualifying holding, has been taken over from Section 8(2)(e) of the Wtk 1992. The words 'where applicable' should be understood as meaning that this subsection only applies if there is a potential holder of a qualifying holding. The words 'applicant or holder' have been included for the following reason: before a licence is granted there is still no qualified holding that requires a declaration of no objection, which means that a declaration of no objection will not have been issued yet. This suggests that 'applicant' is the correct term and that 'holder' is less appropriate. However, at the time when the licence is granted, there will also have to be a declaration of no objection, so 'holder' would then be more appropriate than 'applicant'. Nevertheless, as the holder and the applicant are in fact one and the same person, it was decided to take a practical approach and use the wording 'applicant or holder'.

Documents have to be submitted from which the financial position and the legal group structure of the applicant or holder of the declaration of no objection are apparent. It is not stipulated that, if Section 3:97 of the Act applies, the applicant must submit a copy of the declaration issued by the Minister or that the applicant must submit details that can be used to assess whether the proposed action would lead to an undesirable development of the financial class. However, if Section 3:97 is applicable, it is still the case that the licence cannot be granted as long as the Minister has not issued a declaration as referred to in Section 3:97 of the Act.

Subsection (o) pertains to the situation in which the credit institution in the Netherlands is a subsidiary of another credit institution with its registered office in another state. In that case, the supervisory authority in the state in which the registered office of the parent company is located must have approved this parent company having a subsidiary that intends to conduct the business of a credit institution in the Netherlands. The provision has been taken over from Section 8(2)(k) of the Wtk 1992.

The details that have to be submitted in connection with the expertise assessment are specified in Subsection 2; the details for the properness assessment are stated in Subsection 3. The name comprises both the first and the last name. The term 'private address' comprises the home address of the person concerned, in addition to his e-mail address.

Section 9

By virtue of Section 2:13 of the Act, certain aspects that are important for the supervision of conduct are also assessed preventatively if the application is for a credit institution that intends to also provide investment services. For an explanation, see the explanatory notes to the original Section 2:8(2) accompanying the first memorandum of amendment of the Wft bill (Parliamentary Documents II 2004/05, 29 708 no. 10, p. 206 ff.).

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If the details listed in Section 2:13 are provided together with the licence application, the Netherlands Authority for the Financial Markets will be able to perform the aforementioned preventative assessment.

Section 10

In the situations regulated in Sections 2:17 and 2:21 of the Act the same details are requested. Section 2:17 pertains to the – rare – situation in which a financial undertaking with a registered office in another Member State does not satisfy the definition of 'credit institution' according to the laws of the Member State, but does satisfy the definition in the Act. Section 2:21 pertains to the situation in which a credit institution with a registered office in a state that is not a Member State applies for a licence to conduct its business from a branch office located in the Netherlands.

As regards credit institutions with a registered office in a state that is not a Member State, the purport of the section has been taken over from Section 8 of the Wtk 1992, which by virtue of Section 39 of the Wtk largely applied to credit institutions with their registered office in a state that was not a Member State and that intended to conduct their business from a branch office located in the Netherlands. A section such as Section 2:17 of the Act was not included in the Wtk 1992, and consequently there was also not a section such as Section 10. As regards the regulation concerning the details that have to be submitted, there is no reason not to opt for alignment with the regulation concerning the details for credit institutions with a registered office in a state that is not a Member State.

Subsections (a) to (e): see the explanatory notes to Section 8(a) to (d).

Subsection (f): see the explanatory notes to Section 8(e). Subsection (f) has been taken over from Section 8(2)(g) in conjunction with Section 39 of the Wtk 1992.

Subsection (g): see the explanatory notes to Section 8(f).

Subsections (h) and (i): see the explanatory notes to Section 8(g) and (h).

Subsection (j): see the explanatory notes to Section 8(i).

Subsection (k): see the explanatory notes to Section 8(k).

Subsection 1: see the explanatory notes to Section 8(l).

Subsection (m): the provision was taken over from Section 8(f) in conjunction with Section 39 of the Wtk 1992.

Section 11

See the explanatory notes to Section 9.

Section 12

This section pertains to the application for a licence to conduct the business of a life insurer or non-life insurer by a party with its registered office in the Netherlands.

Subsections (a) to (e) do not require any explanation. Subsection (e) has been taken over from Section 26(1)(a) of the Wtv 1993.

Subsection (f) was taken over from Section 25(1) of the Wtv 1993. In separate provisions, Sections 13 and 14, further requirements were stipulated regarding the programmes of activities to be submitted for life insurers and non-life insurers.

Subsections (g) and (h) include the words 'persons determining the day-to-day policy' and 'persons determining the policy', respectively, in accordance with the terminology of Sections 3:8 and 3:9 of the Act. The regulations in the Wtk 1992 and the Wtv 1993 regarding submitting details about persons who determine the day-to-day policy and who determine the policy have been harmonised. Section 26 of the Wtv 1993 did not contain a provision regarding the details concerning the persons who determine the day-to-day policy of the financial undertaking itself; however, it did contain provisions regarding the details concerning persons who determine or co-determine the day-to-day policy or the policy of the group.

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It is self-evident that details also have to be submitted concerning the directors of the financial undertaking itself or the persons who determine the day-to-day policy thereof.

Although persons determining the day-to-day policy or the policy of the group to which the applicant belongs are not mentioned separately, these persons will also fall under this section insofar as they consequently determine the day-to-day policy or the policy of the financial undertaking. With regard to the persons who determine the day-to-day policy of the group, Section 26 of the Wtv 1993 did not emphatically stipulate that details regarding the antecedents also have to be submitted, but that was deducted from the aforementioned Section 26.

Section 26 of the Wtv 1993 stipulated submission of the 'names and addresses' whereas Section 8 of the Wtk 1992 stipulated that details regarding the 'identity' had to be submitted. With a view to harmonisation, neither one of these options was chosen. A broader wording was chosen instead: details enabling the Dutch Central Bank to assess whether the requirements are met regarding expertise or properness.

Subsection (i) refers to the proposed policy with regard to the controlled and sound conduct of business, as referred to in Section 3:10 of the Act.

Subsection (j) has been taken over from Section 26(1)(e) of the Wtv 1993.

Subsection (k) has been taken over from Section 26(1)(f) of the Wtv 1993.

Subsection 1: by virtue of this provision, documents must be submitted from which the minimum amount of own funds and the expected solvency are apparent. See also the explanatory notes to Section 8(1)(m) and the explanatory notes to Section 2:5 of the Act in the fourth memorandum of amendment, where the numbering is still Section 1a:4 (Parliamentary Documents II 2004/05, 29 708, no. 19, p. 431/432). By virtue of Section 3(c) of the Regulation on the Programme of Activities for the Insurance Industry 1994, documents had to be submitted under the Wtv 1993 demonstrating that the insurer had the minimum amount of the guarantee fund or a specific solvency margin. This provision has been harmonised with the regulation on credit institutions in subsection (h) of this section.

Subsection (m) pertains to the qualifying holding.

Section 13

This section has been taken over from Section 6 of the Regulation on the Programme of Activities for the Insurance Industry 1994. However, this section does not include the provisions of subsection c of the aforementioned Section 6, namely that documentary evidence had to be submitted demonstrating that the insurer had the minimum amount of the guarantee fund or a specific solvency margin. Section 12(1) stipulates that the application for a licence to conduct the business of a life insurer must include the submission of documents from which the minimum amount of own funds and the expected solvency are apparent.

Section 14

This provision has been taken over from Section 3 of the Regulation on the Programme of Activities for the Insurance Industry 1994. See also the explanatory notes to Section 13.

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Section 15

This provision has been taken over from Section 26(2) of the Wtv 1993.

Section 16

This section pertains to the situation in which an application has been submitted for a licence to conduct the business of a non-life insurer in the Legal assistance insurance class. The Wtv 1993 stipulated the requirements regarding avoiding conflicts of interest during ongoing supervision; these requirements were not assessed preventatively as part of the licence application procedure. Consequently, there was also no section that stipulated which details had to be submitted on this point in the licence application procedure. Section 16 has been included now that a preventative assessment of compliance with the requirements for avoiding conflicts of interest is required under the Wft. The details specified in this section can be used to assess whether Section 4:65 of the Act has been satisfied, which section is referred to in Section 2:33(2) of the Act. By virtue of that section, the non-life insurer that conducts its business in the Legal assistance insurance class has the choice between three or two possibilities to avoid conflicts of interest, depending on whether the non-life insurer only conducts its business in the Legal assistance insurance class or conducts its business in another class in addition to the Legal assistance insurance class. Depending on the choice made by the non-life insurer, it must submit certain details as part of its application for a licence.

Section 17

This section pertains to the situation where an undertaking does qualify as an 'insurer' under the Act, but not according to the laws of the Member State in which it has its registered office, and this undertaking intends to provide services in the Netherlands.

Section 18

The same details are requested in the situations regulated under Sections 2:37 and 2:41 of the Act. Section 2:37 pertains to the – rare – situation in which a financial undertaking with a registered office in another Member State does not satisfy the definition of 'life insurer or non-life insurer' according to the laws of the Member State, but does satisfy the definition in the Act. Section 2:39 pertains to the situation in which a life insurer or non-life insurer with a registered office in a state that is not a Member State applies for a licence to conduct its business from a branch office located in the Netherlands. As regards the life insurers or non-life insurers with a registered office in a state that is not a Member State, the section has largely been taken over from the Sections 39 and 40 of the Wtv 1993. A section such as Section 2:37 of the Act was not included in the Wtv 1993, and consequently, there was also no section such as Section 18. As far as the regulations governing the details to be submitted are concerned, there is no reason not to be in line with the regulations governing the details for life insurers and non-life insurers with a registered office in a state that is not a Member State.

Subsections (a) to (e) do not require any explanation.

Subsection (f) has been taken over from Section 40(1)(a) of the Wtv 1993.

Subsection (g) has been taken over from Section 39(1) of the Wtv 1993. Section 22 provides further details regarding the programme of activities.

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Subsections (h) and (i): under the Wtv 1993, details regarding the representative did have to be submitted, but not details regarding the person determining the day-to-day policy of the branch office. The representative will often also be the person determining the day-to-day policy of the branch office, but that does not always have to be the case. The expertise of the persons determining the day-to-day policy of the branch office is assessed preventatively. This is why Subsections (c) and (d) have been included. The purport of Subsection (i) has been taken over from Section 40(1)(c) of the Wtv 1993.

The purport of Subsection (k) has been taken over from Section 40(1)(d) of the Wtv 1993.

By virtue of Subsection l, details have to be submitted from which the authority to conduct the business of a life insurer or non-life insurer is apparent. This followed from Section 42(1)(b) in the Wtv 1993.

Subsection (m) has been taken over from Section 40(1)(b) of the Wtv 1993.

Subsections (n) and (o) followed from Section 46(7) under the Wtv 1993.

Subsection (p) has been taken over from Sections 5(1)(c) and 8(1)(c) of the Regulation on the Programme of Activities for the Insurance Industry 1994.

Section 19

This provision has been taken over from Section 113 of the Wtv 1993.

Section 20

This provision has been taken over from Section 40(2) of the Wtv 1993.

Section 21

See the explanatory notes to Section 16.

Section 22

This provision provides further details regarding the programme of activities, as referred to in Section 18. The requirements have been taken over from Section 8 of the Regulation on the Programme of Activities for the Insurance Industry 1993.

Section 23

This provision provides further details regarding the programme of activities, as referred to in Section 18. The requirements have been taken over from Section 5 of the Regulation on the Programme of Activities for the Insurance Industry 1993.

Section 24

This provision corresponds to Section 118 of the Wtv 1993.

Section 25

This provision corresponds to Section 116 of the Wtv 1993.

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Section 26

This section pertains to the situation in which an application for a licence to conduct the business of a funeral expenses and benefits in kind insurer is submitted.

Subsections (a) to (d) are self evident.

Subsection (e) has been taken over from Section 12(c) of the Wtn.

Subsection (f) has been taken over from Section 12(a) of the Wtn. Section 27 provides further details of what the programme of activities must contain.

Subsections (g) and (h) are not currently included in the Wtn in this form, but it followed from Section 16(a) and (b) of the Wtn that these details were also requested previously.

Subsection (i) refers to the proposed policy with regard to the controlled and sound conduct of business, as referred to in Section 3:10 of the Act.

Subsection (j) corresponds to Section 16(d) of the Wtn.

Subsection (k) corresponds to Section 12(e) of the Wtn.

Subsection 1: by virtue of this provision, details must be submitted from which the minimum amount of own funds and the expected solvency are apparent. See also the explanatory notes to Section 2:5 in the fourth memorandum of amendment (still numbered as Section 1a:4 at the time) (Parliamentary Documents II 2004/05, 29 708, no. 19, p. 431/432). By virtue of Section 3(c) of the Regulation on the Programme of Activities for the Funeral Provisions Insurance Industry (*Regeling programma van werkzaamheden natuura-uitvaartverzekeringsbedrijf*), documentary evidence had to be submitted demonstrating that the insurer had the minimum amount of the guarantee fund or a specific solvency margin. This provision has been harmonised with the regulation regarding credit institutions in Subsection (l) of this section.

Section 27

This provision has been taken over from Section 3 of the Regulation on the Programme of Activities for the Funeral Provisions Insurance Industry.

Section 28

See the explanatory notes to Section 34.

Section 29

Subsections (a) to (d) do not require any explanation.

Subsection (e) has been taken over from Section 12(1)(c) of the Wtn.

Subsection (f) has been taken over from Section 12(1)(a) of the Wtn. Further details as regards the programme of activities are provided in Section 30.

As regards Subsections (g) and (h), please refer to the explanatory notes to Section 12(g) and (h), to which the same applies accordingly.

Subsection (i) refers to the proposed policy with regard to the controlled and sound conduct of business, as referred to in Section 3:10 of the Act.

Subsection (j) has been taken over from Section 12(1)(e) and Section 22(1)(h) of the Wtn.

Subsection (k) has been included because a preventative assessment is performed to determine whether the applicant is authorised to conduct the business of a funeral expenses and benefits in kind insurer in the state in which the registered office is located. The same preventative assessment was also performed under the Wtn, but Section 21 of the Wtn did not require the provision of details regarding the assessment. However, it is logical that the details in question are provided.

Subsection (l) has been taken over from Section 21 of the Wtn.

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Subsection (m) has been taken over from Section 4(1)(c) of the Regulation on the Programme of Activities for the Funeral Provisions Insurance Industry. This provision was included here, and not as part of the programme of activities, in order to harmonise with the regulation regarding life insurers and non-life insurers as well as with the regulation regarding credit institutions. This does not make any difference with regard to the content.

Section 30

This provision has been taken over from Section 4 of the Regulation on the Programme of Activities for the Funeral Provisions Insurance Industry.

Section 31

The content of this Section corresponds to the content of Section 118 of the Wtn.

Section 32

This section is based on Section 2:58(2) of the Act. In practice, these details were already requested in connection with the application for a Wfd licence and they were also derived from Section 5 of the Financial Services Decree (Bfd), which stipulates which details have to be included in the register. The more general details about the financial undertaking are included in Subsections (a) to (g). The other subsections are related to specific licence requirements that have been stipulated by virtue of the Act.

Subsection (h) stipulates the persons about whom details have to be submitted for the expertise assessment. Subsection (2) stipulates which details are involved.

Subsection (i) stipulates the persons about whom details have to be submitted for the properness assessment. Subsection (3) stipulates which details are involved. Subsection (4) follows from Section 4:10(2) of the Act. It is stipulated therein that the properness of a person as referred to in Subsection (1) of that section shall be beyond doubt once this has been established for the purpose of the Act by a supervisory authority, as long as a change in the relevant facts or circumstances has not given reasonable cause for a reassessment. Therefore, in principle, no details have to be submitted with the application regarding properness if the person has been assessed previously. The supervisory authority has to decide (and substantiate its decision) that there is sufficient cause for a new assessment.

Subsection (j) stipulates that details have to be provided regarding the integrity policy. Subsection (5) stipulates which details are involved.

Subsection (k) stipulates that a description of the control structure must be submitted. Based on these details, the supervisory authority can assess whether the provisions of Section 4:13 of the Act have been satisfied.

Subsection (l) stipulates that details have to be provided regarding the conduct of business. Subsection (6) stipulates which details are involved. The details included therein are derived from what was previously stipulated in Section 14(4) of the Bfd.

Section 33

This section is based on Section 2:63(2) of the Act. In practice, these details were already requested in connection with the application for a Wfd licence and they were also derived from Section 5 of the Financial Services Decree (Bfd), which stipulates which details have to be included in the register.

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The more general details about the financial undertaking are included in Subsections (a) to (g). The other subsections are related to specific licence requirements that have been stipulated by virtue of the Act.

Subsection (h) stipulates the persons about whom details have to be submitted for the expertise assessment. Subsection (2) stipulates which details are involved.

Subsection (i) stipulates the persons about whom details have to be submitted for the properness assessment. Subsection (3) stipulates which details are involved. Subsection (4) follows from Section 4:10(2) of the Act. It is stipulated therein that the properness of a person as referred to in Subsection (1) of that section shall be beyond doubt once this has been established for the purpose of the Act by a supervisory authority, as long as a change in the relevant facts or circumstances has not given reasonable cause for a reassessment. Therefore, in principle, no details have to be submitted with the application regarding properness if the person has been assessed previously. The supervisory authority has to decide (and substantiate its decision) that there is sufficient cause for a new assessment.

Subsection (j) stipulates that details have to be provided regarding the integrity policy. Subsection (5) stipulates which details are involved.

Subsection (k) stipulates that a description of the control structure must be submitted. Based on these details, the supervisory authority can assess whether the provisions of Section 4:13 of the Act have been satisfied.

Subsection (l) stipulates that details have to be provided regarding the conduct of business. Subsection (6) stipulates which details are involved. The details included therein have been derived from what was previously stipulated in Section 14(4) of the Bfd and is currently stipulated under the Wft in Section 32 of the Decree on the Supervision of the Conduct of Financial Undertakings pursuant to the Act on Financial Supervision (*Besluit Gedragstoezicht financiële ondernemingen Wft*).

Section 34

This section is based on Section 2:66(1) of the Act and replaces Section 81 of the Decree on the Supervision of Collective Investment Schemes 2005 (Btb 2005). The opportunity was also taken to amend the section. For instance, the wording of the section now takes into account the fact that the Minister of Finance can officially designate states. Furthermore, Subsections (2) to (7) have not been taken over from Section 81 of the Btb 2005. Subsections (2) to (6) have not been taken over as the provisions proved superfluous upon further examination. The matters regulated in those provisions, such as the application to the supervisory authorities for advice, do not need to be stipulated in the regulations. The revocation of the decision to designate, which was previously regulated in Subsection (7), is now regulated in Section 2:66(1) of the Act.

Section 35

This section is based on Sections 2:67(4), 2:68(3), and 2:69(2) of the Act and replaces Section 13 of the Btb 2005. In comparison to the latter provision, this Decree specifies the details concerned more precisely. Details regarding a number of subjects that are assessed in connection with the granting of a licence are included in the registration document and are therefore not stated specifically in this section. The details concerned relate to the requirements as referred to in Sections 3:53, 3:54, 4:42, 4:56 and 4:59 of the Act and a description of the investment policy referred to in Section 13(1)(b) of the Btb 2005. The details referred to in Section 13(1)(h) of the Btb 2005 (annual accounts, statements regarding the annual accounts and half-yearly figures) have not been included, because these details are not necessary for the assessment of a licence application.

Unofficial translation of *Besluit Markttoegang financiële ondernemingen Wft* dated 12 October 2006.

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Subsection (1)(a) replaces Section 13(1)(a) of the Btb 2005. Subsection (1)(b) replaces Section 13(1)(c) of the Btb 2005. Subsection (1)(c) and (d) replace Section 13(1)(i) of the Btb 2005. Subsection (1)(e) replaces Section 13(1)(f) of the Btb 2005. Subsection (1)(f) replaces Section 13(2)(a) and (g) of the Btb 2005. Subsection (1)(g) replaces Section 13(1)(d) of the Btb 2005. Subsection (1)(h) replaces Section 13(1)(i) of the Btb 2005. Subsection (1)(i) replaces Section 13(1)(e) of the Btb 2005. Subsection (1)(j) replaces Section 13(1)(e) and (2)(b) of the Btb 2005. Subsection (1)(k) is new. The details that have to be provided for the assessment of participation in a UCITS management company were previously not regulated in the Btb 2005.

Subsection (4) follows from Section 4:10(2) of the Act. It is stipulated therein that the properness of a person as referred to in Subsection (1) of that section shall be beyond doubt once this has been established for the purpose of the Act by a supervisory authority, as long as a change in the relevant facts or circumstances has not given reasonable cause for a reassessment. Therefore, in principle, no details have to be submitted with the application regarding properness if the person has been assessed previously. The supervisory authority has to decide (and substantiate its decision) that there is sufficient cause for a new assessment.

The list of details in Subsection (2) was previously not included in the Btb 2005; however, it does correspond to what the supervisory authority requests in practice for an expertise assessment.

Section 36

This section is based on Section 2:78(2) of the Act. In practice, these details were already requested in connection with the application for a Wfd licence and they were also derived from Section 5 of the Financial Services Decree (Bfd), which stipulates which details have to be included in the register. The more general details about the financial undertaking are included in Subsections (a) to (g). The other subsections are related to specific licence requirements that have been stipulated by virtue of the Act.

Subsection (h) stipulates the persons about whom details have to be submitted for the expertise assessment. Subsection (2) stipulates which details are involved.

Subsection (i) stipulates the persons about whom details have to be submitted for the properness assessment. Subsection (3) stipulates which details are involved. Subsection (4) follows from Section 4:10(2) of the Act. It is stipulated therein that the properness of a person as referred to in Subsection (1) of that section shall be beyond doubt once this has been established for the purpose of the Act by a supervisory authority, as long as a change in the relevant facts or circumstances has not given reasonable cause for a reassessment. Therefore, in principle, no details have to be submitted with the application regarding properness if the person has been assessed previously. The supervisory authority has to decide (and substantiate its decision) that there is sufficient cause for a new assessment.

Subsection (j) stipulates which details have to be provided regarding the integrity policy. Subsection (5) stipulates which details are involved.

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Subsection (k) stipulates that a description of the control structure must be submitted. Based on these details, the supervisory authority can assess whether the provisions of Section 4:13 of the Act have been satisfied.

Subsection (l) stipulates that details have to be provided regarding the conduct of business. Subsection (6) stipulates which details are involved. The details included therein have been derived from what was previously stipulated in Section 14(4) of the Bfd and is currently stipulated under the Wft in Section 32 of the Decree on the Supervision of the Conduct of Financial Undertakings pursuant to the Act on Financial Supervision.

Section 37

This section is based on Section 1a:78(4) of the Act. In practice, these details were already requested in connection with the application for a Wfd licence and they were also derived from Section 5 of the Financial Services Decree (Bfd), which stipulates which details have to be included in the register.

Section 38

This section is based on Section 1a:80(2) of the Act. In practice, these details were already requested in connection with the application for a Wfd licence and they were also derived from Section 5 of the Financial Services Decree (Bfd), which stipulates which details have to be included in the register. The more general details about the financial undertaking are included in Subsections (a) to (g). The other subsections are related to specific licence requirements that have been stipulated by virtue of the Act.

Subsection (h) stipulates the persons about whom details have to be submitted for the expertise assessment. Subsection (2) stipulates which details are involved.

Subsection (i) stipulates the persons about whom details have to be submitted for the properness assessment. Subsection (3) stipulates which details are involved. Subsection (4) follows from Section 4:10(2) of the Act. It is stipulated therein that the properness of a person as referred to in Subsection (1) of that section shall be beyond doubt once this has been established for the purpose of the Act by a supervisory authority, as long as a change in the relevant facts or circumstances has not given reasonable cause for a reassessment. Therefore, in principle, no details have to be submitted with the application regarding properness if the person has been assessed previously. The supervisory authority has to decide (and substantiate its decision) that there is sufficient cause for a new assessment.

Subsection (j) stipulates that details have to be provided regarding the integrity policy. Subsection (5) stipulates which details are involved.

Subsection (k) stipulates that a description of the control structure must be submitted. Based on these details, the supervisory authority can assess whether the provisions of Section 4:13 of the Act have been satisfied.

Subsection (l) stipulates that details have to be provided regarding the conduct of business. Subsection (6) stipulates which details are involved. The details included therein have been derived from what was previously stipulated in Section 14(4) of the Bfd and is currently stipulated under the Wft in Section 32 of the Decree on the Supervision of the Conduct of Financial Undertakings pursuant to the Act on Financial Supervision.

Subsection (m) stipulates that a copy of the policy and terms and conditions of the professional liability insurance or details regarding a comparable provision must be submitted in the case of insurance intermediary services. The Order in Council stating the rules regarding supervision of the conduct of financial undertakings stipulates, by way of implementation of Section 4:75 of the Act, what is meant by a provision that is comparable with the professional liability insurance.

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Section 39

This section is based on Section 2:89(2) of the Act. In practice, these details were already requested in connection with the application for a Wfd licence and they were also derived from Section 5 of the Financial Services Decree (Bfd), which stipulates which details have to be included in the register. The more general details about the financial undertaking are included in Subsections (a) to (g). The other subsections are related to specific licence requirements that have been stipulated by virtue of the Act.

Subsection (h) stipulates the persons about whom details have to be submitted for the expertise assessment. Subsection (2) stipulates which details are involved.

Subsection (i) stipulates the persons about whom details have to be submitted for the properness assessment. Subsection (3) stipulates which details are involved. Subsection (4) follows from Section 4:10(2) of the Act. It is stipulated therein that the properness of a person as referred to in Subsection (1) of that section shall be beyond doubt once this has been established for the purpose of the Act by a supervisory authority, as long as a change in the relevant facts or circumstances has not given reasonable cause for a reassessment. Therefore, in principle, no details have to be submitted with the application regarding properness if the person has been assessed previously. The supervisory authority has to decide (and substantiate its decision) that there is sufficient cause for a new assessment.

Subsection (j) stipulates that details have to be provided regarding the integrity policy. Subsection (5) stipulates which details are involved.

Subsection (k) stipulates that a description of the control structure must be submitted. Based on these details, the supervisory authority can assess whether the provisions of Section 4:13 of the Act have been satisfied.

Subsection (l) stipulates that details have to be provided regarding the conduct of business. Subsection (6) stipulates which details are involved. The details included therein are derived from what was previously stipulated in Section 14(4) of the Bfd.

Subsection (m) stipulates that a copy of the policy and terms and conditions of the professional liability insurance or details regarding a comparable provision must be submitted in the case of insurance intermediary services. The Order in Council stating the rules regarding supervision of the conduct of financial undertakings stipulates, by way of implementation of Section 4:76 of the Act, what is meant by a provision that is comparable with the professional liability insurance.

Section 40

This section is based on Section 2:94(2) of the Act. In practice, these details were already requested in connection with the application for a Wfd licence and they were also derived from Section 5 of the Financial Services Decree (Bfd), which stipulates which details have to be included in the register. The more general details about the financial undertaking are included in Subsections (a) to (g).

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The other subsections are related to specific licence requirements that have been stipulated by virtue of the Act.

Subsection (h) stipulates the persons about whom details have to be submitted for the expertise assessment. Subsection (2) stipulates which details are involved.

Subsection (i) stipulates the persons about whom details have to be submitted for the properness assessment. Subsection (3) stipulates which details are involved. Subsection (4) follows from Section 4:10(2) of the Act. It is stipulated therein that the properness of a person as referred to in Subsection (1) of that section shall be beyond doubt once this has been established for the purpose of the Act by a supervisory authority, as long as a change in the relevant facts or circumstances has not given reasonable cause for a reassessment. Therefore, in principle, no details have to be submitted with the application regarding properness if the person has been assessed previously. The supervisory authority has to decide (and substantiate its decision) that there is sufficient cause for a new assessment.

Subsection (j) stipulates that details have to be provided regarding the integrity policy. Subsection (5) stipulates which details are involved.

Subsection (k) stipulates that a description of the control structure must be submitted. Based on these details, the supervisory authority can assess whether the provisions of Section 4:13 of the Act have been satisfied.

Subsection (l) stipulates that details have to be provided regarding the conduct of business. Subsection (6) stipulates which details are involved. The details included therein have been derived from what was previously stipulated in Section 14(4) of the Bfd and is currently stipulated under the Wft in Section 32 of the Decree on the Supervision of the Conduct of Financial Undertakings pursuant to the Act on Financial Supervision.

Subsection (m) stipulates that a statement of the authorising insurer must be provided with the application.

Section 41

This section is based on Section 2:99(3) of the Act and replaces Section 20 of the Decree on the Supervision of the Securities Trade 1995 (Bte 1995). In comparison to the latter provision, this Decree specifies the details concerned more precisely.

The list of details in Subsection (2) was not included in the Bte 1995; however, it does correspond to what the supervisory authority requests in practice for an expertise assessment.

Subsection (4) follows from Section 4:10(2) of the Act. It is stipulated therein that the properness of a person as referred to in Subsection (1) of that section shall be beyond doubt once this has been established for the purpose of the Act by a supervisory authority, as long as a change in the relevant facts or circumstances has not given reasonable cause for a reassessment. Therefore, in principle, no details have to be submitted with the application regarding properness if the person has been assessed previously. The supervisory authority has to decide (and substantiate its decision) that there is sufficient cause for a new assessment.

Section 42

This section is based on Section 2:105(5) of the Act. In practice, these details were already requested in connection with the application for a Wfd licence and they were also derived from Section 5 of the Financial Services Decree (Bfd), which stipulates which details have to be included in the register.

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Chapter 3. Access to the foreign financial markets

Section 43

This section is based on Section 2:107(2) of the Act. In view of the fact that clearing institutions were not regulated in the previously applicable supervisory laws, there is no comparable provision in previously existing legislation. The regulation of access for credit institutions to foreign financial markets was therefore used as the basis, with the proviso that there has been no European harmonisation for clearing institutions and therefore no distinction is made between conducting the business of a clearing institution in another Member State and conducting that business in a state that is not a Member State.

Section 44

This section is based on Section 2:108(2) of the Act and replaces Section 16 of the Wtk 1992.

Section 45

This section is based on Section 2:111(2) of the Act and replaces Section 16b of the Wtk 1992.

Section 46

This section is based on Section 2:112 of the Act and replaces Section 48(2) of the Wtk 1992.

Section 47

This section is based on Section 2:115 of the Act and replaces Section 80 of the Wtv 1993. A provision has been added stating that the Dutch Central Bank may only require a translation if so required by the supervisory authority in the Member State where the insurer intends to conduct its business from a branch office. The fact that the supervisory authority may require a translation follows from Article 38 of the third non-life insurance directive¹ and Article 44 of the life insurance directive². If the supervisory authority in question does not make it known to the insurer but rather to the Dutch Central Bank that it requires a translation, the Dutch Central Bank can inform the insurer that a translation is required. Thus it is clear that the Dutch Central Bank does not have to provide for the translation.

Section 48

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¹ Council Directive 92/49/EEC of 18 June 1992 on the coordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance and amending Directives 73/239/EEC and 88/357/EEC (OJEC L 049).

² Directive 2002/83/EC of the European Parliament and of the Council of 5 November 2002 concerning life assurance (OJEC L 345).

This section provides more details regarding the programme of activities for a life insurer that intends to conduct its business from a branch office located in another Member State. This section replaces Section 7 of the Regulation on the Programme of Activities for the Insurance Industry 1994.

Section 49

This section provides more details regarding the programme of activities for a non-life insurer that intends to conduct its business from a branch office located in another Member State. This section replaces Section 4 of the Regulation on the Programme of Activities for the Insurance Industry 1994.

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Section 50

This section is based on Section 2:117 of the Act and replaces Section 77 of the Wtv 1993.

Section 51

This section is based on Section 2:118 of the Act and replaces Section 105 of the Wtv 1993.

Section 52

This section is based on Section 2:120 of the Act and replaces Section 83a of the Wtv 1993.

Section 53

This section provides more details regarding the programme of activities for a life insurer that intends to conduct its business from a branch office located in another state that is not a Member State. This section replaces Section 83a(2)(b) of the Wtv 1993.

Section 54

This section provides more details regarding the programme of activities for a non-life insurer that intends to conduct its business from a branch office located in another state that is not a Member State. This section replaces Section 83a(2)(b) of the Wtv 1993.

Section 55

This section is based on Section 2:121 of the Act and replaces Section 40a of the Wtn.

Section 56

This section provides more details regarding the programme of activities for a funeral expenses and benefits in kind insurer that intends to conduct its business from a branch office located in another state. This section replaces Section 3a of the Regulation on the Programme of Activities for the Funeral Provisions Insurance Industry.

Section 57

This section is based on Section 2:122(2) of the Act and replaces Section 13 of the Wtb and Section 13b of the Wtb.

Section 58

This section is based on Section 1a:127(2) of the Act and replaces Section 13(2) of the Wte 1995.

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Section 59

This section is based on Section 1a:2:130(2) of the Act and replaces Section 15a(2) of the Wte 1995.

The Minister of Finance,
G. Zalm

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