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### **Decree of 12 October 2006, containing provisions implementing Sections 1:10, 1:11, 3:5, 3:36 and 3:110 of the Act on Financial Supervision (Decree on the Scope of the Provisions of the Act on Financial Supervision)**

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 2006-01704 M;

Taking account of Sections 1:10, 1:11, 3:5, 3:36 and 3:110 of the Act on Financial Supervision;

Having consulted the Council of State (opinion of 17 August 2006, no. W06.06.0333/IV);

Having seen the more detailed report of Our Minister of Finance of 9 October 2006, FM 2006-02265 U;

Have approved and decreed the following:

#### **CHAPTER 1. DEFINITIONS**

##### **Section 1**

For the purpose of this Decree and the provisions based upon it, the following terms shall have the following meaning:

- a. the Act: the Financial Supervision Act (*Wet op het financieel toezicht*);
- b. Switzerland: the Swiss Confederation.

#### **CHAPTER 2. SCOPE**

Part 2.1. Provisions implementing Sections 1:10, opening words and (a), and 3:36(4) of the Act.

*2.1.1. Mutual insurance associations having their registered office in the Netherlands*

##### **Section 2**

1. Where not stipulated otherwise in this Decree, the provisions on the pursuit of the business of a non-life insurer arising from the General Provisions, the part on Market Access of Financial Undertakings, the part on Prudential Supervision of Financial Undertakings and Part 5.4.3 of the part on Financial Markets Conduct Supervision of the Act shall not apply to mutual insurance associations of limited size having their registered office in the Netherlands that conduct the business of a non-life insurer and possess a certificate issued by the Dutch Central Bank (*De Nederlandsche Bank*) pursuant to this division.

2. When applying for a certificate, the applicant shall provide the Dutch Central Bank with a certified copy of the articles of association, a list of the names and addresses of its directors and a programme of operations that contains:

a. a description of the nature of the risks that the mutual insurance association intends to cover;

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

c. an estimate of the costs of arranging the accounts and of the production network;

d. documentary evidence showing that the mutual insurance company has the financial resources to cover these costs;

and furthermore, with regard to the first three financial years:

e. an estimate of the management costs other than those referred to in Subsection (2)(c), in particular of the overhead costs and the commission;

f. an estimate of the premiums and claims;

g. an estimate of the liquidity position; and

h. an estimate of the financial resources required to cover the obligations and, where applicable, to cover the solvency margin referred to in Section 4(2).

3. If Section 4 applies, the applicant shall also submit documentary evidence showing that the mutual insurance association complies with Section 4(2), and the provisions arising from Section 3:57(1) to (3) of the Act shall apply.

### **Section 3**

1. The Dutch Central Bank shall issue a certificate as referred to in Section 2 to mutual insurance associations:

a. whose articles of association provide that the members are or may be obliged in the course of the business operations to make a full contribution towards shortfalls, or that the liability for compensation may be limited in accordance with the available resources, and that in the event of dissolution the members and those who ceased to be members within the period specified by the articles of association are liable for shortfalls, or that the liability for compensation may be limited in accordance with the available resources;

b. whose business operations are restricted to only one of the sectors referred to in Section 2:27(2) of the Act, with the exception of the following sectors: Accidents, Sickness, Motor Vehicle Liability, Road Carrier's Liability, Aircraft Liability, Liability for Ocean-Going and Inland Waterway Vessels, General Liability, Credit, Suretyship and Assistance;

c. where the risks insured with them have been reinsured in an adequate manner, unless the Dutch Central Bank decides that no reinsurance is required;

d. where at least half of the gross annual premium income comes from the members;

e. where the number of policyholders does not exceed 3,000; and

f. where the gross annual premium income does not exceed € 455,000.

2. Subsection (1)(c) shall not apply to mutual insurance associations with fewer than 200 policyholders whose gross annual premium income does not exceed € 91,000.

#### **Section 4**

1. The Dutch Central Bank shall issue a certificate as referred to in Section 2 to mutual insurance associations that do not comply with Section 3:

a. whose articles of association provide that the members are or may be obliged in the course of the business operations to make a full contribution towards shortfalls, or that the liability for compensation may be limited in accordance with the available resources, and that in the event of dissolution the members and those who ceased to be members within the period specified by the articles of association are liable for shortfalls, or that the liability for compensation may be limited in accordance with the available resources;

b. whose business operations do not extend to the following sectors: Accidents, Sickness, Motor Vehicle Liability, Road Carrier's Liability, Aircraft Liability, Liability for Ocean-Going and Inland Waterway Vessels, General Liability, Credit, Surety and Assistance;

c. whose gross annual premium income does not exceed € 5,000,000; and

d. where at least half of the gross annual premium income comes from the members.

2. The mutual insurance association shall have a minimum solvency margin of € 205,000. The provisions arising from Section 3:57(1) to (3) of the Act shall apply with regard to this solvency margin.

#### **Section 5**

1. A mutual insurance association that has been issued with a certificate pursuant to Section 3 shall submit the annual accounts, the annual report and the other information referred to in Sections 2:361(1), 2:391(1) and 2:392(1)(a) to (h) respectively of the Dutch Civil Code (*Burgerlijk Wetboek*) to the Dutch Central Bank within the periods specified in Section 2:58(1) of the Dutch Civil Code.

2. Subsection (1) shall not apply to mutual insurance associations with fewer than 200 policyholders whose gross annual premium income does not exceed € 91,000.

#### **Section 6**

1. A mutual insurance association that has been issued with a certificate pursuant to Section 4 shall provide the Dutch Central Bank within six months of the end of the financial year with an overview of the non-life insurance policies concluded by the offices in the Netherlands with regard to risks situated in other Member States.

2. The overview shall specify the premiums, claims and commission recorded for each Member State and sector group, without deduction of reinsurance. The Dutch Central Bank shall lay down rules with regard to the sector groups and the format of the overview.

#### **Section 7**

1. The provisions arising from Sections 1:1, 1:6(2), 1:10, opening words and (a), 1:24, 1:25, 1:36, 1:40 to 1:42, 1:51, 1:52, 1:59, 1:65, 1:68, 1:72 to 1:74, 1:75(1), opening words and (a) and (b), and (2), 1:76(1) to (7), 1:89 to 1:91, 1:92, 1:93, 1:110(1), 2:27(2), 2:28, 3:8 to 3:10, 3:17(1) and (2), opening words and (a) and (b), and (4), 3:29(3), 3:38 and 3:70 of the Act shall apply to a mutual insurance association that has been issued with a certificate pursuant to Section 3.

2. Where the insurance of ancillary risks is concerned, the provisions arising from Section 3:36(4) of the Act shall apply, on the understanding that the risks of the Legal Assistance sector may only be combined as ancillary risks with sectors in which risks are insured that are related to the use of ocean-going vessels. However, risks relating to liabilities to which the Act on Civil Liability Insurance (Motor Vehicles) (*Wet aansprakelijkheidsverzekering motorrijtuigen*) applies shall not be insured as ancillary risks. **Section 8**

1. The provisions arising from Sections 1:1, 1:6(2), 1:10, opening words and (a), 1:24, 1:25, 1:36, 1:40, 1:41, 1:42, 1:51, 1:52, 1:55, 1:59, 1:65, 1:68, 1:72 to 1:74, 1:75(1), opening words and (a) and (b), and (2), 1:76(2) to (7), 1:78, 1:89 to 1:91, 1:92, 1:93, 1:110, 2:27(2), 2:28, 2:117(1) and (3), 2:119, 3:8 to 3:10, 3:17(1), (2), opening words and (a) and (b), and (4), 3:29(3), 3:38, 3:67(1), (3) and (4)(a), 3:70, 3:71, 3:72(3) and (5) to (9), 3:73, 3:88, 3:89, 3:114, 3:115(1) and (4), 3:116, 3:117(2), 3:118, 3:120(1) to (3) and (5) to (9), 3:121, 3:128, 3:130, 3:132, 3:136(1), (4) and (5), 3:138, 3:139, 3:161, 3:162 to 3:167, 3:169, 3:170, 3:171(1) to (3), 3:172 to 3:176, 3:177(1), 3:178 to 3:193, 3:195(1) to (6), and 3:196 to 3:198(1), (2), (5) and (6) of the Act shall apply to a mutual insurance association that has been issued with a certificate pursuant to Section 4. Section 108 of the Act Implementing and Amending the Act on Financial Supervision (*Invoerings- en aanpassingswet Wet op het financieel toezicht*) shall apply accordingly.

2. The assets that serve to cover the technical facilities shall be such that they can be collected or converted into cash to a sufficient extent in the currency in which the obligations are denominated. These assets shall be held in the Netherlands, on the understanding that, where a Community co-insurance agreement is concerned, these assets may also be held in the other Member States from where the other co-insurers take part in the agreement, such at the discretion of the mutual insurance association. In response to an application accordingly, the Dutch Central Bank may grant dispensation, either wholly or in part, from the provisions of this subsection for a definite or an indefinite period, if the applicant demonstrates that these provisions cannot reasonably be complied with and that the objectives that this subsection is intended to protect are achieved in other ways.

3. Where the insurance of ancillary risks is concerned, the provisions laid down by or pursuant to Section 3:36(4) of the Act shall apply accordingly, on the understanding that the risks of the Legal Assistance sector may only be combined as ancillary risks with sectors in which risks are insured that are related to the use of ocean-going vessels. However, risks relating to liabilities to which the Act on Civil Liability Insurance Motor Vehicles (*Wet aansprakelijkheidsverzekering motorrijtuigen*) applies shall not be insured as ancillary risks.

## **Section 9**

For the purpose of the provisions arising from the part of the Act that relates to Conduct of business supervision of financial undertakings, mutual insurance associations that possess a certificate issued by the Dutch Central Bank pursuant to this division shall be regarded as non-life insurers that have been granted a licence to conduct the business of a non-life insurer pursuant to the part of the Act that relates to Market Access of Financial Undertakings.

## **Section 10**

If a mutual insurance association foresees or may reasonably foresee that it no longer complies or will comply with Section 3 or Section 4, it shall notify the Dutch Central Bank of this immediately.

## **Section 11**

1. Section 1:104(1) and (2) of the Act shall apply accordingly.
2. The Dutch Central Bank shall bring the withdrawal of a certificate, issued under Section 4, to the attention of the supervisory authorities of the Member States to which the mutual insurance association provides services from the Netherlands.

## **Section 12**

Without prejudice to the provisions of Section 1:104(1) and (2) of the Act, the Dutch Central Bank may refuse to issue or may withdraw a certificate if a mutual insurance association is or will be a member of a group and the membership of that group, in the opinion of the Dutch Central Bank, is intended exclusively or primarily to ensure that another mutual insurance association belonging to that group complies or will continue to comply with Section 3(1)(e) and (f) or Section 4(1)(c).

## **Section 13**

1. The withdrawal of a certificate shall oblige the mutual insurance association to finalise its operations, unless the withdrawal is accompanied by the issuing of another certificate pursuant to this Decree or by the granting of a licence as referred to in Section 2:27(1) of the Act.
2. The provisions of this Decree shall remain applicable to the mutual insurance association that is obliged to finalise its operations pursuant to Subsection (1) during the finalisation phase.
3. During the finalisation phase, no changes shall be made without the consent of the Dutch Central Bank to the obligation of the members to contribute towards the shortfalls or to the possibility of limiting the liability for compensation.

*2.1.2. Mutual enterprises or mutual institutions having their registered office outside the Netherlands*

## **Section 14**

1. Sections 2:34, 2:37 to 2:47, 3:24, 3:58(2), 3:78 and 3:83 of the Act shall not apply to a mutual enterprise of limited size having its registered office outside the Netherlands that conducts or wants to conduct the business of a non-life insurer from outside the Netherlands by providing services to the Netherlands, and that does not possess a licence that corresponds to the licence referred to in Section 2:27(1), if the enterprise demonstrates to the Dutch Central Bank that:
  - a. it satisfies conditions corresponding to Section 3 or Section 4;

b. if the place of business involved is situated in a Member State, this place of business is subject to supervision that corresponds to a sufficient extent to the supervision pursuant to this Decree, or, if the place of business involved is situated in a state that is not a Member State, it is authorised in the state of its registered office to conduct the business of a non-life insurer and does conduct this business from an place of business in that state.

2. Section 9 shall apply accordingly.

Part 2.2. Provisions implementing Section 1:10, opening words and (b) of the Act

### **Section 15**

The provisions arising from Sections 1:1, 1:45(1), opening words and (h) and (i), 1:51(2), 1:78, 1:104(1)(d), 3:38, 3:53(1) to (4), 3:57(1) to (5), 3:67, 3:72(3) and (5) to (9), 3:73, 3:88, 3:89, 3:132, 3:135 to 3:139, 3:161 to 3:193, 3:195 to 3:201, 3:203, 3:204, 3:207 to 3:219, 3:221, 3:238 to 3:251, 3:255 to 3:257, 3:268 to 3:273, 3:281 to 3:288, 4:27(1) and (3) to (6), and 5:68 of the Act shall not apply to a non-life insurer as referred to in Section 1:10, opening words and (b) of the Act that complies with the rules laid down by Our Minister pursuant to Section 3(3) of the Framework Act on Financial Grants from the Ministry of Finance (*Kaderwet financiële verstrekkingen Financiën*).

### **Section 16**

A non-life insurer as referred to in Section 15:

a. shall lay down in its articles of association that, in conducting the business of a non-life insurer, it will confine itself to the operations that may be carried out pursuant to Section 3 of the Framework Act on Financial Grants from the Ministry of Finance;

b. shall state in the annual accounts that it only insured risks at the expense of or under guarantee from the State of the Netherlands.

Part 2.3. Provisions implementing Section 1:10, opening words and (c) of the Act

### **Section 17**

With the exception of Chapters 5.1 and 5.3, Parts 5.4.1 and 5.4.2, and Chapter 5.5 of the Act, the rules arising from the Act shall not apply to associations and mutual insurance associations of limited size having their registered office in the Netherlands that conduct the business of a funeral expenses and benefits in kind insurer and:

- a. that were incorporated under Dutch law before 1 January 1995; and
- b. of which the number of insured adult individuals is fewer than 3,000.

Part 2.4. Provisions implementing Section 1:11 of the Act

### **Section 18**

Sections 19 to 26 shall apply to a non-life insurer having its registered office in Switzerland that wants to conduct the business of a non-life insurer in the Netherlands from a branch office situated in the Netherlands.

### **Section 19**

1. When making the notification referred to in Section 2:35 of the Act, a non-life insurer having its registered office in Switzerland shall provide the Dutch Central Bank with a certificate, issued by the competent supervisory authority of Switzerland, specifying the sectors in which the applicant may conduct the business of a non-life insurer and stating that the applicant has a solvency margin that corresponds to the solvency margin required pursuant to Section 3:57 of the Act. The certificate shall also specify:

- a. the amount of financial resources available to cover the expected costs of arranging the accounts and the production network in the Netherlands;
- b. the categories of risks covered by the non-life insurer from places of business in Switzerland.

2. The certificate shall be drawn up in a format to be specified by the Dutch Central Bank.

### **Section 20**

1. When making the notification, a non-life insurer having its registered office in Switzerland shall provide the Dutch Central Bank with a programme of operations as referred to in Section 21.

2. The Dutch Central Bank shall submit the programme of operations, where necessary accompanied by its comments, for advice to the supervisory authority referred to in Section 19(1) within two months of having received the required details, documentary evidence and information.

3. If the supervisory authority has not issued its advice to the Dutch Central Bank within three months of receiving the programme of operations, it shall be deemed to have no objections.

4. The Dutch Central Bank shall inform the non-life insurer of its decision within one month of receiving the advice referred to in Subsection (2), or within one month of the expiry of the period referred to in Subsection (3).

### **Section 21**

1. The programme of operations shall comprise:

- a. a specification 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 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 Legal Assistance sector, a specification 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 Subsection (1)(c), in particular of the overhead costs and the commission;
- e. an estimate for the first three financial years of the premiums and claims of the branch office; and
- f. an estimate for the first three financial years of the liquidity position of the branch office.

2. With the programme of operations, the non-life insurer shall enclose the annual accounts, the annual report and the other information referred to in Sections 361(1), 391(1) and 392(1)(a) to (h) respectively of Book 2 of the Dutch Civil Code for each of the last three financial years, unless fewer than three financial years have elapsed since the incorporation of the non-life insurer and:

a. the non-life insurer was incorporated as the result of a merger of existing non-life insurers; or

b. the non-life insurer was incorporated by one or more existing non-life insurers in order to carry out operations in a particular sector, in which one of the non-life insurers involved was previously active.

3. The programme of operations shall specify the solvency margin with regard to the entire insurance business conducted within and outside the Netherlands.

## **Section 22**

1. In derogation from Section 3:118(1)(c) of the Act, the Dutch Central Bank shall not grant its consent in respect of a transfer of rights and obligations under agreements to an insurer having its registered office in Switzerland before the competent supervisory authority of Switzerland has declared that the acquiring insurer possesses the minimum amount of solvency margin, especially in view of the proposed transfer.

2. In derogation from Section 3:118(3)(a) of the Act, the Dutch Central Bank may only grant its consent in respect of a transfer as referred to in Subsection (1) to an insurer having its registered office in Switzerland in the context of the latter's business operations from a branch office situated in another Member State if the competent supervisory authority of Switzerland has declared that the branch office involved possesses the minimum amount of solvency margin, especially in view of the proposed transfer.

### *2.4.2. Technical provisions*

## **Section 23**

Section 3:68 of the Act shall apply to a branch office in the Netherlands of a non-life insurer having its registered office in Switzerland.

## **Section 24**

1. If a branch office in the Netherlands of a non-life insurer having its registered office in Switzerland does not comply with the provisions laid down by or pursuant to Section 3:68 of the Act with regard to the technical provisions, the Dutch Central Bank may restrict the power of the branch office to dispose freely of the assets relating to its business as a non-life insurer conducted from the Netherlands, or prohibit the branch office from disposal of these assets otherwise than with the authorisation of the Dutch Central Bank.

2. Before imposing a restriction or prohibition as referred to in Subsection (1), the Dutch Central Bank shall inform the supervisory authority of Switzerland of its intention.

3. The Dutch Central Bank may also impose a restriction or prohibition as referred to in Subsection (1), if requested to do so by the supervisory authority of Switzerland or of a Member State other than the Netherlands where the non-life insurer with its registered office in Switzerland has a place of business, the request having been made on the grounds that the said supervisory authority believes the branch office to be in circumstances similar to those referred to in Subsection (1).

4. The branch office may invoke the invalidity of a legal act performed in breach of the restriction or prohibition, if the other party knew of the measure or could not have been unaware of it.

5. The Dutch Central Bank shall inform the non-life insurer of the restriction or the prohibition by means of a bailiff's notification.

6. The Dutch Central Bank shall lift the restriction or prohibition as soon as the branch office again fulfils the requirements referred to in Subsection (1), or, if the restriction or prohibition is based exclusively on Subsection (3), as soon as there is reason to do so in the opinion of the Dutch Central Bank, but in any event as soon as the supervisory authority referred to in that subsection has lifted the restriction or prohibition it imposed. The Dutch Central Bank shall inform the branch office that the restriction or prohibition has been lifted.

7. The Dutch Central Bank shall notify the supervisory authority referred to in Subsection (3), and the supervisory authorities of the Member States in which the branch office referred to in Subsection (1) performs services from the Netherlands, of the imposition and lifting of the restriction or prohibition.

## **Section 25**

1. The Dutch Central Bank shall impose a restriction or prohibition as referred to in Section 24 in respect of the assets held in the Netherlands, if the supervisory authority of Switzerland requests accordingly on the grounds that, in its opinion, the non-life insurer with its registered office in Switzerland is in circumstances similar to those referred to in Section 3:136(2) of the Act.

2. The non-life insurer may invoke the invalidity of a legal act performed in breach of the restriction or prohibition, if the other party knew of the measure or could not have been unaware of it.

3. The Dutch Central Bank shall lift the restriction or prohibition referred to in Subsection (1) as soon as the supervisory authority of Switzerland requests accordingly. It shall inform the non-life insurer that the restriction or prohibition has been lifted. In addition, the Dutch Central Bank shall communicate the decision to lift the restriction or prohibition to the supervisory authorities of the other Member States in which the non-life insurer performs services from an office in the Netherlands.

### *2.4.3. Emergency regulations*

## **Section 26**

Division 3.5.5.3 of the Act shall apply accordingly to a branch office in the Netherlands of a non-life insurer with its registered office in Switzerland.

## **CHAPTER 3. DISPENSATIONS**

### *Provisions implementing Section 3:5(4) of the Act*

## **Section 27**

1. A dispensation as referred to in Section 3:5(4) of the Act may be granted, without prejudice to Section 28, if:

a. the fulfilment of all the applicant's obligations is guaranteed, said obligations arising from the applicant inviting, receiving or having redeemable funds redeemable funds in the pursuit of a business from parties other than professional market parties, outside a restricted circle, the guarantee being provided by:

1°. an enterprise with positive consolidated own funds, of which the applicant is a subsidiary;

2°. a financial undertaking that may conduct the business of a bank in the Netherlands, or a bank having its registered office in a state to be designated by Our Minister where the pursuit of the business of a bank is subject to supervision that offers sufficient guarantees with regard to the interests that this Act seeks to protect; or

3°. the State of the Netherlands or a public body as referred to in Section 1(a) of the Act on Decentralised Public Authorities (Funding) (*Wet financiering decentrale overheden*); or

b. the applicant is granted an authorisation by the Netherlands Central Bank or the Netherlands Authority for the Financial Markets (*Autoriteit Financiële Markten*) pursuant to the Act.

2. The applicant for a dispensation as referred to in Section 3:5(4) of the Act shall demonstrate that Section 28(1) will be complied with, and shall submit the following details with regard to the persons referred to in that subsection:

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

b. a copy of a valid identity document;

c. details with regard to the antecedents referred to in Section 30; and

d. a list of referees.

3. Within six months of the end of the financial year, the dispensation holder shall provide the Netherlands Central Bank with the annual accounts, the annual report and the other information referred to in Sections 2:361(1), 2:391(1) and 2:392(1)(a) to (h) respectively of the Dutch Civil Code.

## **Section 28**

1. The policy of a dispensation holder as referred to in Section 3:5(4) of the Act shall be determined or co-determined by persons whose fit and proper qualities are integrity beyond doubt. If a body within the dispensation holder is responsible for supervising the policy and the general course of events of the dispensation holder, the integrity fit and proper qualities of the persons exercising this supervision shall be beyond doubt.

2. The integrity fit and proper qualities of a person as referred to in Subsection (1) shall be beyond doubt once this has been established for the purpose of the Act by a supervisor as long as a change in the relevant facts or circumstances has not given reasonable cause for a reassessment.

3. Sections 29 to 33 shall apply accordingly to the establishment of the fit and proper qualities integrity of the persons referred to in Subsection (1).

## **Section 29**

The Netherlands Central Bank shall establish whether the integrity fit and proper qualities of a person as referred to in Section 28(1) is beyond doubt on the basis of this person's intentions, actions and antecedents.

## **Section 30**

In establishing a person's integrity fit and proper qualities as referred to in Section 29, the Netherlands Central Bank shall consider in any event:

a. the criminal antecedents referred to in sections 1 and 2 of the annex;

b. the financial antecedents referred to in section 3 of the annex;

c. the supervisory antecedents referred to in section 4 of the annex;

- d. the tax administrative antecedents referred to in section 5 of the annex; and
- e. the other antecedents referred to in section 6 of the annex.

### **Section 31**

1. The Netherlands Central Bank shall obtain insight into the intentions, actions and antecedents referred to in Section 29 on the basis of:
  - a. details and information provided by the person concerned;
  - b. details from the police files obtained from the National Public Prosecutor;
  - c. details from the registration referred to in Section 1(b) of the Act on Companies (Documentation) (*Wet documentatie vennootschappen*);
  - d. details and information obtained from the Dutch Tax and Customs Administration (*Belastingdienst*);
  - e. details and information obtained from Dutch or foreign government bodies or from Dutch or foreign government-appointed bodies that are charged with the supervision of financial markets, or of persons operating in those markets;
  - f. official reports from the Public Prosecution Service;
  - g. information obtained from referees specified by the person concerned;
  - h. details from public sources;
  - i. information obtained from receivers or administrators with regard to liquidations, moratoriums, debt restructuring, the imposition of administration, or emergency regulations in which the persons referred to in Section 28 were involved;
  - j. information obtained from organisations of current or former professional colleagues of the person concerned; or
  - k. details and information obtained from other sources to be designated by ministerial regulation.
2. If the details or information obtained in accordance with Subsection (1) cause the Netherlands Central Bank to carry out a further investigation, the Netherlands Central Bank may also gather information and request details from persons or bodies other than those referred to in that subsection. In that event, the Netherlands Central Bank shall first inform the person concerned in writing of:
  - a. the reason for the further investigation;
  - b. the persons or bodies from whom further details or information will be requested; and
  - c. the nature of the further details or information.

### **Section 32**

The integrity fit and proper qualities of a person as referred to in Section 28 shall not be beyond doubt if this person has been convicted of a crime as referred to in section 1 of the annex, unless eight or more years have elapsed since the judgment became final.

### **Section 33**

- In establishing a person's integrity fit and proper qualities as referred to in Section 29, the Netherlands Central Bank shall consider:
- a. the interrelationship between the action or actions underlying an antecedent and the other circumstances of the case;
  - b. the interests that the Act seeks to protect; and
  - c. the other interests of the applicant and the person or persons concerned.

## **Section 34**

1. The holder of a dispensation as referred to in Section 3:5(4) of the Act:
  - a. before entering into an agreement on inviting, receiving or having redeemable funds in the pursuit of a redeemable funds from parties that are not professional market parties and are outside a restricted circle, shall inform the other party clearly and completely about the other party's rights and obligations under the agreement;
  - b. shall inform the Netherlands Central Bank in writing, and immediately after it has taken note of such in the normal course of its business, of a change in the details that this holder or a financial undertaking provided earlier to a supervisor for the purpose of the assessment of the requirements set pursuant to the Act as regards the qualities of the persons referred to in Section 28(1); and
  - c. shall notify the Netherlands Central Bank in writing of the intention to change the persons referred to in Section 28(1).
2. The holder of a dispensation shall not carry out the intention referred to in Subsection (1)(c) before the Netherlands Central Bank has established that the integrity fit and proper qualities of the person concerned is beyond doubt. The Netherlands Central Bank shall decide on the fit and proper qualities integrity:
  - a. within six weeks of having received the notification; or
  - b. if the Netherlands Central Bank requested further details within two weeks of having received the notification, within four weeks of having received those details, but in any event within 13 weeks of having received the notification.
3. If the Netherlands Central Bank requests a third party to provide further details as referred to in Subsection (2)(b), it shall inform the holder accordingly.
4. Together with the notification referred to in Subsection (1)(c), the holder shall submit the following details with regard to the person concerned:
  - a. a statement of the name, date of birth, place of birth, nationality, private address, telephone and fax number and position;
  - b. a copy of a valid identity document;
  - c. details with regard to the antecedents referred to in Section 30; and
  - d. a list of referees.
5. Subsections (2) and (4)(b), (c) and (d) shall not apply if the change concerns a person whose fit and proper qualities for the purpose of the Act has already been established by a supervisory authority.

## **CHAPTER 4. SUPERVISORY STATUS OF FINANCIAL INSTITUTIONS**

*Provisions implementing Section 3:110(2) of the Act*

### **Section 35**

1. An application as referred to in Section 3:110(2) of the Act shall be made using the form specified for this purpose by the Netherlands Central Bank, which shall be made available to the applicant on 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 36**

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

### **Section 37**

1. The details referred to in Section 3:110(2) of the Act shall be:
  - a. a statement of the name, address, telephone and fax number of the bank or banks of which the financial institution is a subsidiary;
  - b. a statement of the applicant's name, address, telephone and fax number;
  - c. a statement of the legal form of the financial institution;
  - d. if the applicant is a legal person, a statement of the registered office, the name according to the articles of association and the trade name or names;
  - e. if the applicant is listed in the Trade Register, a statement of the registration number;
  - f. if available, a certified copy of the articles of association of the financial institution;
  - g. a statement of the activities that the applicant intends to perform;
  - h. details enabling the Netherlands 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 financial institution;
  - i. details enabling the Netherlands Central Bank to assess whether the provisions arising from Section 3:9 of the Act are met with regard to the integrity fit and proper qualities 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 of the applicant;
  - j. a description of the proposed policy with regard to the conduct of business in a sound manner as referred to in Section 3:10(1) of the Act;
  - k. a description of the control structure, enabling the Netherlands Central Bank to assess whether Section 3:16 of the Act is complied with;
  - l. 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;
  - m. a description of the consolidated supervision referred to in Section 3:31 of the Act; and
  - n. documents showing the 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.
2. For an applicant proposing to provide investment services, the details referred to in Section 3:110(2) of the Act, without prejudice to Subsection (1), shall be a description of:
  - 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.
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;
  - 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)(i) shall be:
- a. a statement of the name, date of birth, nationality, private address, telephone and fax number and position;
  - 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)(i) shall not apply if the fit and proper qualities integrity of the person concerned has already been established for the purpose of the Act by a supervisor[y authority].

## **CHAPTER 5. FINAL PROVISIONS**

### **Section 38**

1. A certificate that was issued pursuant to Sections 2 or 3 of the Decree on Exempt Mutual Insurance Associations (*Besluit vrijgestelde onderlinge waarborgmaatschappijen*) or pursuant to Sections 2 or 3 of the Decree on Exempt Mutual Insurance Associations 1994 (*Besluit vrijgestelde onderlinge waarborgmaatschappijen 1994*), and which has not been withdrawn at the time when this Decree enters into force, shall be regarded as having been issued pursuant to Sections 3 and 4 respectively of this Decree.

2. A mutual enterprise as referred to in Section 14 that, at the time when this Decree enters into force, is authorised under Section 9a of the Decree on Exempt Mutual Insurance Associations or under Section 13 of the Decree on Exempt Mutual Insurance Associations 1994 to provide services in the Netherlands from an office outside the Netherlands, and which furthermore does provide such services, shall be regarded as authorised pursuant to Section 14 of this Decree.

### **Section 39**

1. In derogation from Section 38, the requirements declared applicable pursuant to Section 3(2) of the Decree on Exempt Mutual Insurance Associations 1994 as they read on 2 December 2003 shall remain applicable until 20 March 2007 to mutual insurance associations that on 20 March 2002 possessed a certificate as referred to in Section 3(1) of the Decree on Exempt Mutual Insurance Associations 1994.

2. If by 20 March 2007 the mutual insurance association does not yet fully satisfy the requirements declared applicable pursuant to Section 3(2) of the Decree on Exempt Mutual Insurance Associations 1994, the Dutch Central Bank may allow an additional period of no more than two years, provided that the mutual insurance association, before that date, has submitted the measures that it proposes to take in order to attain the required solvency margin in accordance with Section 3:136(1), (4) and (5) of the Act for approval to the Dutch Central Bank, and the Dutch Central Bank has granted this approval.

### **Section 40**

This Decree shall enter into force at a time to be determined by Royal Decree.

The opinion of the Council of State shall not be published pursuant to Section 25a(5) in conjunction with (4)(b) of the Council of State Act (*Wet op de Raad van State*), because its comments are exclusively of an editorial nature.

#### Section 41

This Decree shall be cited as: Decree on the Scope of the Provisions of the Act on Financial Supervision (*Besluit reikwijdtebepalingen Wft*). We hereby order and command that this Decree and the accompanying Explanatory Memorandum be published in the Bulletin of Acts, Orders and Decrees (*Staatsblad*).

The Hague, 12 October 2006

Beatrix

The Minister of Finance,  
G. Zalm

Published on the *thirty-first* of October 2006

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

## **Pertaining to Section 30**

### **1 Criminal antecedents as referred to in Section 30(a)**

#### **1.1 Convictions**

The person concerned has been convicted in a final judgment in the Netherlands or abroad of an attempt to commit, preparation of, commissioning of, incitement to, co-perpetration of, 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 that has been made punishable as a crime in Section 2 in conjunction with Section 6 of the Economic Offences Act (*Wet op de economische delicten*) and for which the person concerned was given a non-suspended prison sentence or a fine of at least the fourth category; or
- infringement of one or more penal provisions applicable abroad that are comparable with the foregoing.

### **2 Other criminal antecedents as referred to in Section 30(a)**

#### **2.1 Convictions**

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

*Criminal Code:*

- breach of public order and discrimination (Sections 131 to 151a);
- crimes endangering general safety (Sections 157 to 175);
- crimes against the 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);
- 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);
- failure to stop after an accident (Section 7);
- drunk driving (Section 8);
- driving a motor vehicle while disqualified from driving (Section 9);
- joyriding (Section 11); or
- refusal to cooperate in an investigation (Section 163).

*Penal provisions in other countries*

– Convictions 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 Compromises with the Public Prosecutor**

The person concerned has reached a compromise as referred to in Section 74 of the Criminal Code in respect of one or more of the criminal offences referred to in section 2.1 above. Compromises 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 dismissal 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 Dutch Central Bank (*De Nederlandsche Bank*, DNB) in assessing the fit and proper qualities 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.

## **Financial antecedents as referred to in Section 30(b)**

### **3.1 Personal**

– the person concerned experienced major personal financial problems, which resulted in legal proceedings, collection measures or the involvement of a debt-collection agency;

- a petition was filed in respect of the person concerned for a moratorium, bankruptcy, debt restructuring or a creditors' agreement, or such a petition was granted;
- the person concerned is currently involved, either in the Netherlands or elsewhere, in one or more legal proceedings resulting from personal financial problems, or expects to be involved in such proceedings; or
- the personal financial obligations of the person concerned, measured by general standards, are disproportionate to this person's income or assets.

### **3.2 Business**

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

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

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

## **4 Supervision antecedents as referred to in Section 30(c)**

### **4.1 Supervision antecedents**

- incorrect or incomplete provision of information to a supervisor or supervisory authority as referred to in Section 1:1 of the Act;
- the person concerned, or a company or legal person in which the person concerned holds or held a position as a person determining or co-determining the policy, exercises or exercised actual control over the management, or is or was (jointly) responsible for the policy in another way, has been denied admission, a licence or dispensation by a supervisor or supervisory authority as referred to in Section 1:1 of the Act;
- admission, a licence or 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 (jointly) responsible for the policy in another way, has been withdrawn by a supervisor or supervisory authority as referred to in Section 1:1 of the Act;
- the person concerned, or his current or one of his former employers, or a company or legal person in which the person concerned holds or held a position as a person determining or co-determining the policy, exercises or exercised actual control over the management, or is or was (jointly) responsible for the policy in another way, has been in conflict with a supervisor or supervisory authority as referred to in Section 1:1 of the Act, and this conflict resulted in any measure in respect of the person concerned or in respect of the company or legal person in which the person concerned holds or held a position as a person determining or co-determining the policy, exercises or exercised actual control over the policy, or is or was (jointly) responsible for the policy in another way; or

– the person concerned, or a company or legal person in which the person concerned holds or held a position as a person determining or co-determining the policy, exercises or exercised actual control over the management, or is or was (jointly) responsible for the policy in another way, has been denied a certificate by the Minister of Justice with regard to the incorporation or amendment of the articles of association of a company on grounds referred to in Sections 2:68(2), 2:125(2), 2:179(2) and 2:235(2) respectively 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 DNB in assessing this person's fit and proper qualities.

### **5 Fiscal antecedents under administrative law as referred to in Section 30(d)**

#### **5.1 Personal**

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

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

#### **5.2 Business**

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

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

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

Other facts or circumstances that suggest that the person concerned may be involved in one or more tax-related actions that may reasonably be relevant to DNB in assessing this person's fit and proper qualities.

### **6 Other antecedents as referred to in Section 30(e)**

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

## EXPLANATORY MEMORANDUM

### General notes

This Decree serves to implement provisions of the Act on Financial Supervision (the Act) with regard to the scope of the Act in relation to small mutual insurance associations, non-life insurers that arrange export credit insurance policies at the expense of or with a guarantee from the State, small funeral expenses and benefits in kind insurers and non-life insurers with their registered office in Switzerland. The Decree also contains provisions in respect of dispensations (with regard to attracting redeemable funds) and in respect of the supervisory status of financial institutions.

### Chapter 2

Parts 2.1 to 2.4 limit the scope of the Act for certain categories of insurers. The categories concerned are small mutual insurance associations, non-life insurers that arrange export credit insurance policies at the expense of or with a guarantee from the State, small funeral expenses and benefits in kind insurers and non-life insurers with their registered office in Switzerland. This limitation of the scope of the Act, which is based on Sections 1:10 and 1:11 of the Act, was detailed – under the Act on the Supervision of the Insurance Industry 1993 (*Wet toezicht verzekeringsbedrijf 1993*) – in the Decree on Exempt Mutual Insurance Associations 1994, the Decree on Exempt Export Credit Insurers (*Besluit vrijgestelde exportkredietverzekeraars*) and the Decree implementing the EEC/Switzerland Agreement on Insurance Supervision 1994 (*Besluit uitvoering overeenkomst EEG/Zwitserland inzake verzekeringstoezicht 1994*), while for small funeral expenses and benefits in kind insurers the limitation was regulated by the Act on the Supervision of the Funeral Provisions Industry (*Wet toezicht natu-uitvaartverzekeraars*).

#### *Part 2.1 Provisions implementing Sections 1:10, opening words and (a), and 3:36(4) of the Act*

This part incorporates the provisions from the Decree on Exempt Mutual Insurance Associations 1994. Subject to certain conditions, the Act only partly applies to small mutual insurance associations. This is based on Article 3 of the First Non-Life Insurance Directive.<sup>1</sup> Under this article, the Directive does not apply to mutual insurance associations whose premium income does not exceed €5 million. However, this is subject to the condition that the mutual insurance association, under its articles of association, can call up additional contributions or limit the liability for compensation in accordance with the available resources, that it does not cover liability risks (unless these risks are covered as ancillary risks) and credit or suretyship risks, and that at least half the premium income comes from the members. The associations concerned are therefore mutual insurance associations of limited size that guarantee that they can meet their obligations at all times because of the manner in which they conduct the business of an insurer. The Decree divides the mutual insurance associations to which it applies into two categories, depending on their premium income. Each category has its own supervisory rules. In order to fall under the regime set out in this chapter of the Decree, the enterprise must possess a certificate issued for this purpose by DNB. This certificate is distinct from the licence issued pursuant to the Act.

No material changes were made to the provisions as expressed in the Decree on Exempt Mutual Insurance Associations 1994. The changes are of an editorial nature only.

<sup>1</sup> First Council Directive No. 73/239/EEC of 24 July 1973 on the coordination of laws, regulations and administrative provisions relating to the taking-up and pursuit of the business of direct insurance other than life assurance (OJEC L 228).

*Part 2.2 Provisions implementing Section 1:10, opening words and (b) of the Act*

Pursuant to Section 3 of the Framework Act on Financial Grants from the Ministry of Finance (*Kaderwet financiële verstrekkingen Financiën*), the State may reinsure non-life insurance policies that a non-life insurer arranged with entrepreneurs to cover the risks entailed by business and service transactions in other countries.<sup>2</sup> An analogous scheme applies to non-life insurance policies that a non-life insurer arranged to cover non-commercial risks entailed by investments in other countries. In the Netherlands, the performance of such export credit insurance policies that are reinsured by the State of the Netherlands is traditionally left to the market parties. Although the Order on the Admission of Credit Insurance Companies (*Beschikking toelating kredietverzekeringsmaatschappijen*) of 14 June 1983 (Government Gazette 132) makes it possible to admit various credit insurers to the State's reinsurance facility, until now only one export credit insurer has been admitted as such in practice, i.e. Atradius Dutch State Business N.V. Pursuant to Article 2(2)(d) of the First Non-Life Insurance Directive, the supervision regulated in that Directive does not apply to a non-life insurer that only implements a state facility such as the one in question. The idea behind this exemption is that the State is deemed always to be solvent. Section 1:10(b) of the Act makes it possible to exempt export credit insurers within the meaning of Article 2(2)(d) of the aforesaid Directive by order in council from supervision by virtue of the Act, either wholly or in part.

Under Section 20, opening words and (b) of the Act on the Supervision of the Insurance Industry 1993, export credit insurers with their registered office in the Netherlands that confine themselves to arranging and settling export credit insurance policies at the expense of or with a guarantee from the State of the Netherlands were partly exempt from the Act on the Supervision of the Insurance Industry 1993. In particular, the provisions from which the said export credit insurers were exempt under the Decree on Exempt Export Credit Insurers concerned the financial requirements imposed on insurers by the Act on the Supervision of the Insurance Industry 1993, and the emergency regulations and debt-rescheduling measures established in Member States other than the Netherlands did not apply to them either.

The provisions in this part replace the aforesaid Decree on Exempt Export Credit Insurers. There has been a change in content compared to the formulation in Section 2 of that Decree. This change will be discussed in the notes on Section 16.

*Part 2.3 Provisions implementing Section 1:10, opening words and (c) of the Act*

This part creates a basis for exemption from the Act of funeral associations and mutual insurance associations with fewer than 3,000 adult insured persons, which were also exempt for the purpose of the Act on the Supervision of the Funeral Provisions Insurance Industry. This exemption was created because the founding objective of these institutions is to provide mutual assistance in respect of burials and cremations, so as to prevent the funeral business from becoming too commercial. The association form offers members opportunities to comment (the mutual insurance association is a special form of association, intended specifically for the conduct of the insurance business). The restriction to associations and mutual insurance associations with fewer than 3,000 adult insured persons will limit (any) commercial ambitions. Section 17 of the Decree also stipulates, in accordance with Section 9 of the Act on the Supervision of the Funeral Provisions Industry, that the said associations and mutual insurance associations must have been incorporated before 1 January 1995.

This condition was included in order to prevent new insurers from being incorporated exclusively for the purpose of evading supervision.

No material changes have been made to the formulation from the Act on the Supervision of the Funeral Provisions Industry.

#### *Part 2.4 Provisions implementing Section 1:11 of the Act*

Section 1:11 of the Act provides that – for the purpose of the provisions laid down by and pursuant to the Act with regard to the business of a non-life insurer – Switzerland is classified as a Member State, which means that a non-life insurer with its registered office in Switzerland that wants to conduct the business of a non-life insurer in the Netherlands from a branch office situated in the Netherlands now falls under the notification procedure and is no longer obliged to possess a licence.

The Agreement between the European Economic Community and Switzerland concerning direct insurance other than life assurance (OJEC L 205<sup>3</sup>; hereinafter: the EEC/Switzerland Agreement) applies between the European Union and Switzerland. However, the EEC/Switzerland Agreement, which was approved in 1991, has not been amended according to the Third Non-Life Insurance Directive<sup>4</sup>, and therefore deviates on a number of significant points from the Member State regime applicable since 1 July 1994. A particular case in point is the 'single licence' principle and the resulting changes. Now that Switzerland does not apply the single-licence principle in respect of non-life insurers with their registered office in the Netherlands there is no reason to deviate from the EEC/Switzerland Agreement on this point. Because the EEC/Switzerland Agreement differs from the Member State regime on points such as the conditions for admission to the Dutch market, the technical facilities and the emergency regulations, this Decree (in Sections 18 to 26) contains provisions with regard to the aforesaid aspects where the notification procedure is concerned. The provisions included in this respect are provisions regarding non-life insurers with their registered office in a state that is not a Member State. Where possible, the provisions of the present Decree are in line with the (cancelled) Decree implementing the EEC/Switzerland Agreement on insurance supervision 1994 (EEC/Switzerland Decree).

#### *Chapter 3*

Pursuant to Section 3:5(4) of the Act, Sections 27 to 34 provide rules for granting dispensation from the prohibition of Section 3:5(1) of the Act and rules with which a dispensation holder must comply. These rules are aimed at delineating DNB's assessment framework for granting dispensation and at harmonising the requirements that dispensation holders must meet. However, these are minimum requirements; pursuant to Sections 1:102(2) and 1:105(1)(d) of the Act, DNB is authorised to attach additional conditions to a dispensation, if such conditions are required with a view to protecting the interests that the part of the Act on Prudential Supervision is intended to protect.

The fit and proper qualities of persons determining or co-determining the policy of the dispensation holder, or supervising the policy and the general affairs of the dispensation holder, must be beyond doubt. It is within that framework that DNB assesses the fit and proper qualities of these persons before they are allowed to perform their duties.

<sup>3</sup> Council Decision 91/370/EEC of 20 June 1991 on the conclusion of the Agreement between the European Economic Community and the Swiss Confederation concerning direct insurance other than life assurance (OJEC L 205).

<sup>4</sup> Council Directive No. 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 228 of 11 August 1992).

The purpose of the assessment of the fit and proper qualities of these persons is to guarantee the integrity of and public confidence in the financial markets. There must be no doubt about the reliability of financial Undertakings and persons operating in these markets. Therefore there must be no doubt about the fit and proper qualities of the senior management of an enterprise, i.e. the directors, representatives, and members of the supervisory board or of another body responsible for supervising the policy and general affairs of the financial enterprise. Section 28 of this Decree has deliberately been worded in such a way that it also covers persons who can effectively exert substantial influence on the policy or the decision-making process of the financial enterprise. The management and control of an organisation may be arranged in such a way that a person who is not a formal director still effectively determines the policy of the enterprise. In such cases, it will be possible for DNB to assess the fit and proper qualities of this person. The broad wording in the Act is not aimed at requiring DNB to assess anyone falling outside the usual circle of policymakers, just to be on the safe side.

Sections 29 to 33 of this chapter concern the facts and circumstances that are taken into consideration in the fit and proper qualities assessment, and the manner in which DNB obtains insight into this information. The fit and proper qualities assessment focuses on facts and circumstances that show that the conduct displayed by the person concerned is not consistent with a fair and honest performance of the duties of a person as referred to in Section 28 of this Decree. Examples of such facts and circumstances include: failure to tell the truth, failure to provide openness in respect of subjects relevant to supervision, failure to handle confidential information with discretion, failure to adhere to arrangements, acting irresponsibly in the course of one's profession.

If DNB takes the view that the fit and proper qualities of a prospective (joint) policymaker is not beyond doubt, the next question is what consequences must follow from that negative assessment of fit and proper qualities. In answering this question, DNB must in principle consider all the interests involved, unless the seriousness of the antecedents is such that no consideration of interests is required. On this occasion, DNB must consider both the interests that the Act is intended to protect (such as the stability and integrity of the financial system) and the other interests of the financial enterprise (such as the continuity of the business) and of the candidate concerned (such as obtaining income and other personal interests). As regards the question of what consequences must be attached to a negative opinion on fit and proper qualities, the actions underlying an antecedent and the other circumstances of the case may also be relevant. As a result, the consequences of an action that is not directly related to the financial sector will, in general, be less serious than those of a financially relevant action, such as insider trading.

In implementing Section 3:5(4) of the Act, this chapter has followed the Decree on Dispensation from the Act on the Supervision of the Credit System 1992 (*Ontheffingsbesluit Wtk 1992*)<sup>5</sup> and the Policy Rule on Fit and proper qualities Assessments (*Beleidsregel betrouwbaarheidstoetsing*)<sup>6</sup>.

In contrast to the previous provisions in the Policy Rule on Fit and proper qualities Assessments, this Decree lists the antecedents that result in the assessment that the fit and proper qualities of a person is not beyond doubt without any further consideration being required in the first section of the annex. On account of its serious nature, furthermore, participation in a criminal or terrorist organisation (Sections 140 to 140a of the Criminal Code) is now also listed as an antecedent.

<sup>5</sup> Decree of 13 August 2004, defining the term liquid resources as referred to in Section 23(6) of the Act on the Supervision of the Credit System 1992, and containing rules on granting dispensation as referred to in Section 82(4) of the Act on the Supervision of the Credit System 1992, as well as amending Section 5 of the Decree on the Solvency Margin of Insurance Companies 1994 (Bulletin of Acts, Orders and Decrees 2004, 442).

<sup>6</sup> Policy rule on the fit and proper qualities of (prospective) (joint) policymakers of and holders of qualified shareholdings in supervised institutions (Government Gazette 2005, 20).

## Chapter 4

In the Act, Section 3:110 provides the basis on which the details to be submitted with the application for the supervisory status certificate can be specified pursuant to an order in council. This chapter elaborates on that provision by specifying these details with regard to the certificate of supervisory status that is regulated in the part on Prudential Supervision. Under Section 4:5 in conjunction with Section 4:2(2) of the General Administrative Law Act (*Algemene wet bestuursrecht*), DNB has 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.

The details were largely taken over from the existing regulations. The origin of each section will be indicated in the notes on individual sections.

### *Administrative burden*

This Decree does not create any new or supplementary obligations for financial Undertakings that might increase the administrative burden compared to the situation before the entry into force of this Decree. A draft version of this Decree was submitted to the Advisory Board on Administrative Burden (*Adviescollege toetsing administratieve lasten*, Actal). Actal saw no cause for issuing advice.

Because of the introduction of the Decree on Exempt Export Credit Insurers on 5 November 2004, the operating costs for insurers that arrange export credit insurance policies that are then reinsured by the State, including the administrative burden, have fallen by € 456,860 a year, based on the 'zero measurement' drawn up by Cap Gemini Ernst & Young. Furthermore, the introduction of the said decree resulted in a reduction of the cost of capital for the insurer (and indirectly also for the State), because no unnecessary solvency requirement is imposed. This has also yielded a saving of € 3.6 million on the compulsory solvency margin that must be maintained in the case of Atradius Dutch State Business N.V., which to date has been the only credit insurer that has been admitted to the State's reinsurance facility pursuant to the Order on the Admission of Credit Insurance Companies of 14 June 1983 (Government Gazette 132). Retaining the exemption for export credit insurers is therefore in line with the Government target of reducing the administrative burden by 25% compared to the level as of 31 December 2002.

The requirements laid down in Sections 27 to 34 of the Decree entail obligations for applicants and dispensation holders as referred to in Section 3:5(4) of the Act. However, these obligations also exist in the current situation, by virtue of the Decree on Dispensation from the Act on the Supervision of the Credit System 1992 (*Ontheffingsbesluit Wtk 1992*) and the Policy Rule on Fit and proper qualities Assessments (*Beleidsregel betrouwbaarheidstoetsing*). Therefore this Decree will not change the administrative burden for the applicants and dispensation holders compared to the current situation. Existing dispensation holders are not required to make a new application for a dispensation. This is regulated in Section 54(2) of the Act Implementing and Amending the Act on Financial Supervision (*Invoerings- en aanpassingswet Wet op het financieel toezicht*).

Under Section 37 of this Decree, an applicant for a supervisory status certificate must submit certain details. However, this obligation already existed pursuant to Section 45(2) of the Act on the Supervision of the Credit System 1992. Nevertheless, the applicant for a supervisory status certificate will have to submit some additional details compared to that former situation. This only causes a negligible change in the administrative burden, partly because there are no financial institutions yet with a supervisory status certificate, and chances are that no applications for a supervisory status certificate will be made in the coming years either.

#### *Advice received*

The draft Decree was submitted for consultation to the supervisory authorities and to representatives of market parties. Responses were received from the Dutch Central Bank, the Netherlands Authority for the Financial Markets, the Netherlands Bankers' Association (*Nederlandse Vereniging van Banken*, NVB), the Association of Insurers (*Verbond van Verzekeraars*, which endorses the NVB's response), Euronext Amsterdam N.V. and the Securities Industry Council (*Raad van de Effectenbranche*) (joint response), the Netherlands Association of Insurance Advisers and Financial Services Providers (*Nederlandse Vereniging van Assurantieadviseurs en Financiële dienstverleners*), the Netherlands Association of Authorised Insurance Companies (*Nederlandse Vereniging van Gevolmachtigde Assuratiebedrijven*) and the Pension Sector Umbrella Organisations (*Pensioenkoepels*), i.e. the Association of Industry-Wide Pension Funds (*Vereniging van Bedrijfstakpensioenfondsen*), the Association of Company Pension Funds (*Stichting voor Ondernemingspensioenfondsen*) and the Association of Occupational Pension Funds (*Unie van Beroepspensioenfondsen*).

The responses contained technical and editorial comments, which have been taken into account where possible.

### **Notes on individual sections**

#### *Chapter 2, Part 2.1*

##### *Section 2*

If certain conditions are fulfilled, the General Provisions, the part on Market Access of Financial Undertakings and the part on Prudential Supervision of Financial Undertakings in the Act only partly apply to small mutual insurance associations. The part on Supervision of Financial Markets, which is largely directed at all Undertakings, does apply to mutual insurance associations, with the exception of Part 5.4.3. Part 5.4.3 regulates 'securities-related market conduct supervision', from which small mutual insurance associations were already exempt under the Act on the Supervision of the Securities Trade 1995 (*Wet toezicht effectenverkeer 1995*). The part on Conduct of business Supervision of Financial Undertakings applies, because mutual insurance associations offer (non-life) insurance policies and thereby also classify as financial services providers within the meaning of the Act (see also Section 9 and the notes on that section). Under Section 2, some parts of the Act – subject to the provisions laid down elsewhere in this Decree (see Sections 7 and 8) – do not apply to mutual insurance associations with their registered office in the Netherlands that conduct the business of a non-life insurer and possess a certificate issued by DNB. A mutual insurance association may obtain a certificate if it meets the conditions for a certificate as set out in this Decree (in Section 3 with regard to the smallest mutual insurance associations and in Section 4 with regard to the 'larger small ones'). The same applies to a mutual insurance association that possesses a licence and meets these conditions. For the record, it should be noted that in these instances it does not follow that DNB will use its authority, as regulated in Section 1:104(3) of the Act, to oblige the mutual insurance company to wind up its operations.



Pursuant to Section 1(3) of the Decree on Exempt Mutual Insurance Associations 1994, rules were laid down by ministerial regulation with regard to the programme of activities that had to be submitted with the application for the certificate referred to in that decree. The requirements laid down at the time in the Regulations on the Programme of Activities of Exempt Mutual Insurance Associations (*Regeling programma van werkzaamheden vrijgestelde onderlinge waarborgmaatschappijen*) have been incorporated in Section 2 of this Decree.

Subsections (4), (6) and (7) of Section 1 of the Decree on Exempt Mutual Insurance Associations 1994 have not been taken over, because the General Administrative Law Act provides for the relevant regulations. Section 1(5) of the Decree on Exempt Mutual Insurance Associations 1994 has been incorporated in Subsection (2). Section 1(8) of the Decree on Exempt Mutual Insurance Associations 1994 has been deleted, because this is no longer customary under the Act. Finally, Section 1(9) of the Decree on Exempt Mutual Insurance Associations 1994 has not been taken over because Section 1:107 of the Act provides for the inclusion of the relevant mutual insurance associations in the registers kept by DNB.

### *Section 3*

This section concerns the first category of mutual insurance associations that may obtain a certificate as referred to in Section 2, i.e. mutual insurance associations with a gross annual premium income not exceeding € 455,000 and no more than 3,000 policyholders. In addition to the exemption conditions laid down in the Directive as cited in the general section of the explanatory notes, these mutual insurance associations are required to limit their operations to only one sector and, if they operate in the Liability sector, they are not allowed to operate in any other sectors (see Subsection (1)(b)). Furthermore, they must demonstrate to DNB that the insured risks have been adequately reinsured, and Section 5(3) provides that they must also submit annual accounts. However, the last two requirements do not apply to mutual insurance associations with no more than 200 policyholders whose gross annual premium income does not exceed € 91,000 (see Section 3(2) and Section 5(3)). Nevertheless, a number of sections of the Act apply to the first category of mutual insurance associations (see Section 7).

### *Section 4*

This section concerns the second category of mutual insurance associations that may obtain a certificate as referred to in Section 2. The mutual associations in this category are larger in size than those to which Section 3 applies. There is no limit to the number of policyholders for these associations, but the gross annual premium income must not exceed € 5 million. Furthermore, a larger number of sections of the Act apply to the category of mutual insurance associations covered by this section (see Section 8).

### *Section 5*

This section contains a supplementary provision with which a mutual insurance association that is exempt under Section 3 of this Decree has to comply.

Subsection (1)(a) of this section stipulates that a mutual insurance association that has been issued with a certificate pursuant to Section 3 must provide DNB with the annual accounts, the annual report and the other information within the periods specified in Section 2:58(1) of the Dutch Civil Code. This is in line with Section 3:71 of the Act, which provision harmonises the various reporting requirements from the current supervisory laws. A detailed explanation can be found in the notes on Section 3:71 of the Act.

A specific exemption applies here to mutual insurance associations with no more than 200 policyholders whose gross annual premium income does not exceed €91,000. These associations are not obliged to submit annual accounts and an annual report to DNB each year.

Section 4(1)(b), (c) and (d) and Section 4(2) of the Decree on Exempt Mutual Insurance Associations 1994 have not been taken over because the General Administrative Law Act provides for the relevant regulations.

### Section 6

By analogy with the First Non-Life Insurance Directive, this section stipulates that the mutual insurance association must provide DNB with information so as to enable DNB to pass on this information to the supervisory authority of another Member State. For reasons of consistency with the Act, the section has been rephrased compared to Section 5(1) of the Decree on Exempt Mutual Insurance Associations 1994. This amendment was not intended to change the content.

### Sections 7 and 8

These sections provide that the relevant mutual associations, which are referred to in practice as 'exempt' mutual insurance associations, must comply with a number of sections of the Act. A greater number of sections of the Act apply to the (larger) exempt mutual insurance associations referred to in Section 4 than to the mutual insurance associations referred to in Section 3.

The provisions of the Act referred to in Section 7 correspond as follows to the sections of the Act on the Supervision of the Insurance Industry 1993 that are referred to in Section 6 of the Decree on Exempt Mutual Insurance Associations 1994:

Act on the Supervision of the Insurance Industry 1993	Act
1	1:1, 1:6(2)
2	1:24, 1:25, 1:41
8	1:36
10(1)	1:51
11	not applicable
13(1)(g)	3:36(3)
15	2:27(2), Act annex on sectors
18	not applicable
20, opening words and (a)	1:10, opening words and (a)
24(1)	3:36(1) and (2)
27(2) to (4)	3:36(4)
29	3:8, 3:9
54	1:75(1), opening words and (a) and (b), (2), 1:76(1) to (7)
55, 56	1:72, 1:73, 1:74
55a, 70, 70a	3:10, 3:17(1), (2), opening words and (a) and (b), (4)
64	2:28
71	3:70
75(1) to (3)	3:29(3)
141(1)	1:59

Act on the Supervision of the  
Insurance Industry 1993

Act

182-186  
188(1)  
188a

1:40 1:51, 1:52, 1:65, 1:68 1:89-1:91, 1:92, 1:93  
1:110(1)  
1:42

The provisions of the Act referred to in Section 8 correspond as follows to the sections of the Act on the Supervision of the Insurance Industry 1993 referred to in Section 7 of the Decree on Exempt Mutual Insurance Associations 1994:

Act on the Supervision of the Insurance Industry 1993	Act
1	1:1, 1:6(2)
2	1:24, 1:25, 1:41
8	1:36
10(1)	1:51
11	not applicable
13(1)(g)	3:36(3)
15	2:27(2), Act annex on sectors
18	not applicable
20, opening words and (a)	1:10, opening words and (a)
24(1)	3:36(1) and (2)
27(2) to (4)	3:36(4)
29	3:8, 3:9
54	1:75(1), opening words and (a) and (b), (2), 1:76(2) to (7)
55, 56	1:72, 1:73, 1:74
55a, 70, 70a	3:10, 3:17(1), (2), opening words and (a) and (b), (4)
57(1), (3) and (4) (see also Section 55 of the Act on the Supervision of the Insurance Industry 1993)	1:55
64	2:28, 3:38
66(1), (4), (5), (6), first sentence, (7), (8)	3:67(1), (3) and (4)(a)
71	3:70
72, 72c	1:78, 3:72(3), (5) to (9), 3:73, 3:89
72a, 72b	3:88
73	3:71
75(1) to (3)	3:29(3)
76	not applicable
77(1) and (3)	2:117(1) and (3), 2:119
121(1) and (5)	3:114, 3:115(1) and (4)
122	3:116, 3:117(2), 3:118, 3:128
123	3:120(1) to (3), (5) to (9)
127	3:121, 3:130
137a	3:132
138(1), (4) and (5)	3:136(1), (4) and (5)
140	3:138
140a	3:139
141(1)	1:59
156(1) to (3), (5) to (13)	3:161, 3:162(1), (3) to (5), 3:163, 3:164, 3:165 to 3:167, 3:169(1) and (2)
156(15) to (17)	3:174
156a	3:170
156b	3:171
156c	3:172
157	3:189, 3:190
158	3:173, 3:162(4)
161-164	3:175, 3:176, 3:177(1), 3:178 to 3:184, 3:185
165(1), (3) to (7)	3:195(1) to (6)
165a	3:193
165b	3:196
166	3:197
168	3:187
169(1), (3), (4), (5)(a) to (d), (f) (amended by Bulletin of Acts, Orders and Decrees 2004, 86)	3:188
169a (repealed by Bulletin of Acts, Orders and Decrees 2004, 86)	not applicable
170	3:186
171	3:198
182-186	1:40, 1:51, 1:52, 1:65, 1:68, 1:89-1:91, 1:92, 1:93
188	1:110
188a	1:42

Section 196 of the Act on the Supervision of the Insurance Industry 1993 has its counterpart in Section 108 of the Act Implementing and Amending the Act on Financial Supervision, which section has been declared accordingly applicable. Section 155 of the Act on the Supervision of the Insurance Industry has its counterpart in Sections 213d, 214 and 284 of the Bankruptcy Act (*Faillissementswet*). These sections apply pursuant to the Bankruptcy Act.

For reasons of clarity, Section 8(2) contains the 'congruence and localisation rules'. The first sentence comprises the congruence rule, which is intended to prevent exchange rate risk. The second sentence comprises the localisation rule, which makes it possible to implement measures taken by the supervisory authority (cf. the applicability of, for example, Section 3:138 of the Act). Under Section 3:67(4), opening words and (b) of the Act, these rules, which were laid down in Section 66(6) of the Act on the Supervision of the Insurance Industry 1993, are now no longer laid down in law but by or pursuant to an order in council (see the notes on Section 3:67 of the Act<sup>7</sup>), which is why it was decided to set out the rules of Section 66(6) of the Act on the Supervision of the Insurance Industry in more detail here. As in Section 3:67(5) of the Act, this provision also contains a possibility for DNB to grant a dispensation.

Section 8(3), which is identical to Section 7(2), is more detailed than the Decree on Exempt Mutual Insurance Associations 1994. This amendment was not intended to change the content.

#### *Section 9*

This section was included in order to make it clear that the part of the Act that concerns Conduct of business Supervision of Financial Undertakings applies to mutual insurance associations that have been issued with a certificate within the meaning of that part (insofar as they perform the activities as defined therein). Pursuant to this section, they are classified for the purpose of that part as non-life insurers that hold a licence (see Section 4:1 of the Act).

#### *Section 10*

This provision ensures that DNB is aware of whether the mutual insurance association still complies with Section 3 or Section 4, so that it may withdraw the certificate if this is not the case (see Section 11).

#### *Section 11*

In this section, a reference to Section 1:104(1) and (2) of the Act suffices (cf. the Decree on Exempt Mutual Insurance Associations 1994), with the exception of the provisions of Subsection (2). An explanation can be found in the notes on that section.

## Section 12

This section provides DNB with an instrument to counteract improper use of the certificates issued or to be issued pursuant to the Decree. It has happened in practice that mutual insurance associations that were about to exceed the limits laid down in Section 2(1)(e) and (f) or Section 3(1)(c) of the Decree on Exempt Mutual Insurance Associations 1994 incorporated a new mutual insurance association exclusively or primarily with the aim of evading the obligation to apply for a licence. Such improper use is considered undesirable. Section 12 of the Decree offers DNB the possibility of acting against such developments. The phrase 'another mutual insurance association belonging to that group' also refers to a situation that is intended to ensure that other mutual insurance associations belonging to the group concerned fulfil or will continue to fulfil the conditions referred to. In this context, the term 'group' is used to refer to an economic unit in which legal persons and companies are associated in organisational terms, in accordance with the description in Section 2:24b of the Dutch Civil Code.

## Section 13

This section concerns the situation in which a certificate is withdrawn. This regulation is similar to the regulation in the Act with regard to the withdrawal of a licence.

## Section 14

A mutual enterprise with its registered office outside the Netherlands that does not possess a licence corresponding to the licence referred to in Section 2:27(1) of the Act, but that nevertheless fulfils requirements similar to those laid down in Sections 3 or 4 of this Decree, would be prevented from providing services in the Netherlands as a result of the requirements laid down by the Act in respect of the provision of services by non-life insurers (such as the required solvency margin). Subsection (1) stipulates that such Undertakings, if they want to provide services in the Netherlands, must fulfil requirements similar to those applicable to exempt mutual insurance associations with their registered office in the Netherlands. Subsection (2) provides that Section 9 applies accordingly to an enterprise as referred to in Subsection (1).

## Chapter 2, Part 2.2

## Section 15

The provisions of the Act referred to in this section correspond as follows to the provisions of the Act on the Supervision of the Insurance Industry 1993 referred to in Section 1 of the Decree on Exempt Export Credit Insurers:

Act on the Supervision of the Insurance Industry	Act on Financial Supervision
32, 68	2:31, opening words and (1)(h) and (i), 3:53(1) to (4), 3:57(1) to (5)
64(2)	3:38
66, 67	3:67
69a to 69k	1:1, 1:51(2), 3:268 to 3:273, 3:281 to 3:288
72, 72c	1:78, 3:72(3), (5) to (9), 3:73, 3:89
72a, 72b	1:78, 3:88, 4:27(1), (3) to (6)

Act on the Supervision of the Insurance Industry	Act on Financial Supervision
137	3:135
137a	3:132
138	3:136
139	3:137
140	3:138
140a	3:139
148(1), opening words and (c)	1:104(1)(d)
156-171, 172	3:161-3:193, 3:195-3:201, 3:204-204, 3:207-219, 3:221
171a to 171p	3:238-251, 3:255-257

An explanation of the content can be found in the general section of these notes in relation to Chapter 2, Part 2.2.

### *Section 16*

The content of this section has been substantially amended compared to Section 2 of the Decree on Exempt Export Credit Insurers. The said section provided that an auditor had to submit a statement 'showing that all the risks insured by this insurer have been reinsured by the State'. This could be interpreted as a requirement to submit a 'completeness statement'. However, for reasons of liability, auditors are usually not prepared to issue a 'completeness statement'.

Section 16 has therefore been worded in such a way that the export credit insurer (i) must lay down in its articles of association that, in conducting the business of a non-life insurer, it will confine itself to the activities that it is allowed to perform pursuant to Section 3 of the Framework Act on Financial Grants from the Ministry of Finance (whereby 'pursuant to' refers to the further regulations under Section 3(3) of the Framework Act on Financial Grants from the Ministry of Finance), and (ii) must state in the annual accounts that it only insured risks at the expense of or with a guarantee from the State of the Netherlands. It was decided to use the term 'annual accounts' in Subsection (b) because this term also comprises the explanatory notes, which may then incorporate the aforementioned confirmation from the export credit insurer.

In addition to these obligations, the export credit insurer concerned has to fulfil the general obligation pursuant to Section 3:71 of the Act, which section stipulates that an insurer must provide DNB within six months of the end of the financial year with the annual accounts, the annual report and the other information referred to in Sections 2:361(1), 2:391(1) and 2:392(1)(a) to (h) of the Dutch Civil Code. Under (Section 73 of) the Act on the Supervision of the Insurance Industry 1993, the documents to be submitted by export credit insurers included the annual report. However, the document in which the annual accounts, the annual report and the other information are presented, which is submitted to the supervisory authority, constitutes a single unit. Section 3:71(1) of the Act has put an end, without any substantive consequences, to the unintended difference in formulation with regard to credit institutions (under the Act on the Supervision of the Credit System 1992, which referred to the annual accounts accompanied by an opinion on the truth and fairness of these accounts) and insurers (under the Act on the Supervision of the Insurance Industry 1993, which referred to the annual report).<sup>8</sup>

The reliability of the annual report and accounts is guaranteed by the requirement that the annual accounts must be accompanied by an opinion on their truth and fairness. This opinion is part of the other information (Section 2:392(1)(a) of the Dutch Civil Code).

<sup>8</sup> See the notes on Section 2:96 of the Act, Parliamentary Documents II 2004/05, 29 708, no. 10.

The stipulation in this section that the export credit insurer must state in the annual accounts that it only insured risks at the expense of or with a guarantee from the State of the Netherlands guarantees that the auditor will also examine the correctness of this confirmation.

#### *Chapter 2, Part 2.3*

##### *Section 17*

Section 17 was taken over from Section 9(1)(a) and (b) of the Act on the Supervision of the Funeral Provisions Insurance Industry. Section 17 does not intend any amendment compared to this section in the Act on the Supervision of the Funeral Provisions Insurance Industry. The provisions of Section 9(1)(c) and (2) of the Act on the Supervision of the Funeral Provisions Insurance Industry, being transitional provisions, did not require conversion. However, the chapters and parts of the part on the Supervision of Financial Markets – as referred to in the opening words of this section – are applicable, because they are directed at all Undertakings.

#### *Chapter 2, Part 2.4*

##### *Section 18*

Section 18 provides for an exception to the main rule of Section 1:11 of the Act. A more detailed explanation can be found in the general section of the explanatory notes.

##### *Sections 19 to 22*

Section 19 implements Article 10(1)(b) of the EEC/Switzerland Agreement and corresponds to Section 3 of the EEC/Switzerland Decree.

Section 20(1) corresponds to Section 39(1) of the Act on the Supervision of the Insurance Industry 1993. Subsections (2) and (3) of this section implement Article 10(1)(c) and Article 13(2) of the EEC/Switzerland Agreement and correspond to Section 4 of the EEC/Switzerland Decree. Subsection (4) implements Article 13(3) of the EEC/Switzerland Agreement and corresponds to Section 5 of the EEC/Switzerland Decree.

Section 21 implements Protocol 2 of the EEC/Switzerland Agreement and corresponds to Section 5 of the Regulations on the Programme of Activities of Insurance Companies 1994 (*Regeling programma van werkzaamheden verzekeringsbedrijf 1994*) and Section 6 of the EEC/Switzerland Decree.

Section 22 corresponds to Section 7 of the EEC/Switzerland Decree, and is necessary because the supervisory authority of Switzerland supervises the solvency margin of a non-life insurer with its registered office in Switzerland.

##### *Section 23*

Section 23 provides for an exception to the main rule of Section 1:11 of the Act. Further substantiation of this exception can be found in the general section of the explanatory notes.

##### *Sections 24 and 25*

Sections 24 and 25 correspond to Sections 8 and 9 of the EEC/Switzerland Decree.

These sections take account of the cooperation procedure under the EEC/Switzerland Agreement.

There is sufficient cause to apply the third-country regime in respect of the technical facilities of non-life insurers with their registered office in Switzerland, since the existence of adequate technical facilities in the Netherlands provides additional protection to Dutch policyholders in the event that the Swiss non-life insurer finds itself in financial difficulty.

Section 25 implements Article 23 of the EEC/Switzerland Agreement.

The provisions of Chapter 5 of the EEC/Switzerland Decree, which implemented Part IV of the EEC/Switzerland Agreement, have not been taken over in this Decree. These are provisions on the withdrawal of a licence and the suspension of operations. The reason is that insurers with their registered office in Switzerland that want to conduct the business of a non-life insurer in the Netherlands from a branch office in the Netherlands now fall under the notification procedure and are longer obliged to possess a licence.

#### *Section 26*

In derogation from the main rule of Section 1:11 of the Act, this section declares that the third-country regime is applicable to the emergency regulations with regard to branch offices in the Netherlands of non-life insurers with their registered office in Switzerland. A more detailed explanation can be found in the general section of the notes.

#### *Chapter 3*

#### *Section 27*

Creditors outside a restricted circle, not being professional market parties, are not deemed to be sufficiently capable of assessing the financial soundness of the Undertakings to which they entrust their funds. Accordingly, the purpose of this section is to ensure that the holder of a dispensation as referred to in Section 3:5(4) of the Act will be able at all times to fulfil its obligations with regard to the funds it attracts from such creditors. This kind of security may be provided if all the applicant's obligations are guaranteed. This guarantee obligation was formerly laid down in Section 2 of the Decree on Dispensation from the Act on the Supervision of the Credit System 1992<sup>9</sup>. Pursuant to Subsection (1)(a), the guarantee must cover all obligations arising from attracting, obtaining disposal of or having available redeemable funds, outside a restricted circle and in the conduct of a business, from parties other than professional market parties. No further conditions are laid down as regards the form of the required guarantee. For example, a guarantee might take the form of a keep-well agreement between the party applying for the dispensation and its parent company. It is up to DNB to assess whether a guarantee provided in an individual case will sufficiently protect the interests that the Act is intended to protect, given the rules laid down by or pursuant to Section 3:5 of the Act. Furthermore, Subsection (1)(a) specifies which Undertakings may provide a guarantee. Subsection (1)(a) has been taken over without any material changes from Section 2(1) of the Decree on Dispensation from the Act on the Supervision of the Credit System 1992. All the changes made are of an editorial nature.

Pursuant to Subsection (1)(b), DNB may grant dispensation from the prohibition to an applicant in possession of a licence granted by DNB or the AFM by virtue of the Act.

<sup>9</sup> See note 5.

In Subsection (1)(b), a change has been made compared to Section 2(4) of the Decree on Dispensation from the Act on the Supervision of the Credit System 1992. The change comprises the omission of Section 2(4)(b) of the Decree on Dispensation from the Act on the Supervision of the Credit System 1992. This subsection has been omitted because the 'mediation prohibition' is now laid down in Section 4:3, rather than Section 3:5, of the Act.

Subsection (2) clarifies the details that the applicant must submit when applying for a dispensation.

Subsection (3) stipulates that a dispensation holder must provide DNB within six months of the end of the financial year with the annual accounts, the annual report and the other information. Subsection (3) is in line with Section 3:71 of the Act, which provision harmonises the various reporting requirements from the current supervisory laws. A detailed explanation can be found in the notes on Section 3:71 of the Act.

The reliability of the annual report and accounts and thereby their usefulness for the purpose of prudential supervision is guaranteed by the requirement that the annual accounts must be accompanied by an opinion on their truth and fairness. This opinion is part of the other information (Section 2:392(1)(a) of the Dutch Civil Code). A separate provision to the effect that the annual accounts must be accompanied by an opinion on their truth and fairness is therefore not required. The submission of the annual report and accounts to DNB will enable DNB to check whether the guarantee referred to in Subsection (1) covers the total value of the financial obligations. The requirement to submit annual accounts is normally imposed on dispensation holders in combination with the requirement to keep proper accounts showing all the obligations entered into. This latter requirement already ensues from Section 2:10 of the Dutch Civil Code where Dutch legal persons are concerned. If a dispensation holder does not fall under that section, DNB may still attach such a requirement to a dispensation. Subsection (3) has been taken over from Section 2(3) of the Decree on Dispensation from the Act on the Supervision of the Credit System 1992.

#### *Section 28*

This section is based on Section 3:5(4) of the Act and replaces Section 3 of the Decree on Dispensation from the Act on the Supervision of the Credit System 1992. Like Sections 3:9(1) and 4:10(1) of the Act, Subsection (1) expressly refers to the members of supervisory bodies.<sup>10</sup> The content has not been changed. Section 3 of the Decree on Dispensation from the Act on the Supervision of the Credit System 1992 includes these persons among those who co-determine the policy. Subsection (2) was included in order to prevent a double assessment by a supervisory authority of the fit and proper qualities of persons whose fit and proper qualities has already been established as being beyond doubt under the Act. In principle, therefore, a person's fit and proper qualities is assessed only once. This point of departure is also laid down in Sections 3:9(2) and 4:10(2) of the Act. In addition, it follows from Section 18 of the Act Implementing and Amending the Act on Financial Supervision that the persons whose fit and proper qualities was already established for the purpose of the Act on the Supervision of the Credit System 1992 (and thereby for the purpose of the Decree on Dispensation from the Act on the Supervision of the Credit System 1992) need not be reassessed. The principle that a person's fit and proper qualities is assessed once will only be abandoned if DNB has reason to suppose that there have been changes in the antecedents since the assessment, or following a notification from the dispensation holder as referred to in Section 34(1)(b).

<sup>10</sup> See Parliamentary Documents II 2005/06, 29 708, no. 19, p. 500.

Under Subsection (3), the fit and proper qualities is established in accordance with Sections 29 to 33. Thus, Subsection (3) replaces Sections 2 and 3 of the Policy Rule on Fit and proper qualities Assessments<sup>11</sup>.

*Section 29* This section includes the content of Section 2(1) of the Policy Rule on Fit and proper qualities Assessments. The action underlying an act or antecedent is decisive as regards the opinion on the fit and proper qualities of the person concerned. An action may be either an act or an omission. Proposed actions may also provide insight into the fit and proper qualities of the person concerned. For example, a proposed action can provide such insight in a situation where an investigation reveals that a proposed share transaction by the candidate to be assessed did not go ahead in the past because of possible insider trading or an (apparent) conflict of interest. Obviously, DNB must establish relevant intentions in an objectively verifiable manner.

#### *Section 30*

This section incorporates Section 2(2) of the Policy Rule on Fit and proper qualities Assessments. The annex sets out the antecedents that are relevant for the fit and proper qualities assessment. Section 1 of the annex contains an exhaustive list of antecedents; the list in the other sections is not exhaustive.

In addition to the expressly defined antecedents, DNB may also take other facts and circumstances into consideration that may reasonably be relevant. These may be facts and circumstances that are comparable in nature to the antecedents referred to in the annex.

#### *Section 31*

This section ensues from Section 2(3) of the Policy Rule on Fit and proper qualities Assessments. DNB may request information from various persons and institutions in order to obtain insight into the intentions, acts and antecedents that may be relevant for the assessment of the fit and proper qualities of the person concerned. Unlike the Policy Rule on Fit and proper qualities Assessments, this section contains an exhaustive list of sources that DNB may consult.

Firstly, the information is information that the financial enterprise obtains from the person concerned and that it provides to DNB. This is the situation referred to in Subsection (1)(a). Secondly, there is information obtained from third parties. For example, Subsection (1)(c) allows DNB to consult the registration referred to in the Act on Companies (Documentation). This is the computer database *Vennoot '98* ('Partner '98') of the Ministry of Justice. *Vennoot '98* contains details based on which the Minister of Justice can check whether companies' deeds of incorporation are in breach of public order or the law, and whether, in view of the intentions or antecedents of the persons determining or co-determining the company's policy, there is any risk of the company being used for illegal purposes or of prejudice to its creditors. Pursuant to the Decree on Companies (Documentation) (*Besluit documentatie vennootschappen*) of 21 October 2004, information from this system may be provided to DNB in the context of its supervisory duties.

See note 6.

Pursuant to Subsection (1)(d), DNB may request information from the Tax and Customs Administration. The Tax and Customs Administration will be relieved from its obligation to observe secrecy as referred to in Section 67 of the State Taxes Act<sup>12</sup>. Based on the removal of this obligation, DNB, the AFM and the Tax and Customs Administration agreed a covenant on the provision of information for the purpose of fit and proper qualities assessments of prospective (joint) policymakers in the financial sector. Furthermore, DNB may learn, based on official reports from the Public Prosecution Service, that a prospective (joint) policymaker is regarded as a suspect, or – if a closed criminal case is involved – DNB may obtain information about the underlying body of facts. Because of the exhaustive nature of the list, sources have also been included that were not made explicit in the Policy Rule on Fit and proper qualities Assessments (details and information obtained from public sources, from receivers or administrators, or from organisations of professional colleagues). Details from public sources may be details from the Trade Register or the Land Register, for example. The details and information obtained from organisations of current or former professional colleagues (such as the Dutch Securities Institute (DSI)) may be relevant because of possible disciplinary measures against the person concerned. Under this section, other sources that DNB may consult for the purpose of the fit and proper qualities assessment may also be designated by ministerial regulation.

Subsection (2) provides that if details or information from the sources referred to in Subsection (1) give DNB cause for a further investigation, DNB may involve additional sources in the fit and proper qualities assessment. The person concerned will be notified accordingly before the start of the further investigation, whereby the reasons will be stated.

#### *Section 32*

This section incorporates the content of Section 3(3) of the Policy Rule on Fit and proper qualities Assessments and provides that a final judgment by a court of law in respect of an antecedent referred to in section 1 of the annex leads to the conclusion that the fit and proper qualities of the person concerned is not or is no longer beyond doubt. In view of the nature and seriousness of the crimes referred to in this section, the actions underlying the crime are automatically considered to be incompatible with the interests that the Act is intended to protect.

The mandatory consequence for the fit and proper qualities opinion ensuing from the final judgment in respect of criminal antecedents as referred to in section 1 of the annex is limited to a term of eight years from the date when the court's decision became final. This limitation does not apply to other antecedents. However, DNB may attach less weight to antecedents that occurred prior to the eight-year period than to antecedents that occurred within that period.

#### *Section 33*

This section incorporates Section 3(2) of the Policy Rule on Fit and proper qualities Assessments. Where the antecedents listed in the annex are concerned, the existence of one single antecedent – with the exception of the antecedents referred to in section 1 of the annex – is not yet representative in itself for DNB's opinion on the fit and proper qualities of the person concerned. DNB will have to form its own opinion on an antecedent. Furthermore, account must be taken of the interrelationship between intentions, acts and the action of the person concerned that underlies the antecedent.

<sup>12</sup> This obligation was revoked on 13 September 2004, reference DGB 2004-04559U, in accordance with the provisions of Division 2.2 of the Regulations on the Provision of Information 1993 (*Voorschrift informatieverstrekking 1993*) (Government Gazette 1998, 243).

This means, for example, that an acquittal by a criminal court or the absence otherwise of a penal response does not automatically mean that there could be no doubt as to the fit and proper qualities of the person concerned. Conversely, it is possible in principle that DNB will draw the conclusion that the existence of an antecedent – with the exception of the antecedents referred to in section 1 of the annex – does not cast doubt on the fit and proper qualities of the person concerned.

#### *Section 34*

This section is based on Section 3:5(4) of the Act. Subsections (1) and (2) replace Section 4 of the Decree on Dispensation from the Act on the Supervision of the Credit System 1992. Subsection (1)(a) includes the obligation to provide the other party with whom an agreement is concluded with clear and complete information in advance about the said other party's rights and obligations. There is no required format in respect of this obligation; it is therefore up to the dispensation holder to decide how best to fulfil this obligation.

Subsection (1)(b) concerns changes in details that were provided to a supervisory authority in the context of the assessment of the fit and proper qualities of the persons who determine or co-determine the policy of the dispensation holder, or belong to a body responsible for supervising the policy and the general affairs of the dispensation holder. This duty to disclose is not restricted to changes in the details that the dispensation holder itself provided earlier to DNB. The reason why this restriction does not apply is that the AFM may have assessed the fit and proper qualities of a person who determines or co-determines the policy of the holder or belongs to a body responsible for supervising the policy and the general affairs of the dispensation holder in the context of a position held previously by that person at another financial enterprise, and that the AFM established in that assessment that the person's fit and proper qualities is beyond doubt. In view of Section 28(2), the fit and proper qualities of that person need not in principle be reassessed, which means that the dispensation holder will not provide any details for the purpose of the assessment. However, if a change occurs at a later stage in the details provided earlier to the AFM, the dispensation holder must notify DNB accordingly pursuant to this provision. Please note that the dispensation holder is not obliged to carry out an investigation, which is why the second sentence of Subsection (1)(b) contains the words 'in the normal course of its business'. Based on this notification, DNB will have to assess whether the fit and proper qualities of the person concerned is (still) beyond doubt.

Pursuant to Subsection (1)(c), the dispensation holder must notify DNB regarding changes in the persons who determine or co-determine the policy of the dispensation holder or belong to a body responsible for supervising the policy and the general affairs of the dispensation holder. Subsection (2) regulates the fit and proper qualities assessment of these persons by DNB. Pursuant to Subsection (2), DNB, having been notified of the proposed appointment, must decide on the fit and proper qualities of the person concerned within six weeks or, if further details were requested, within four weeks of receiving those details. After receiving the notification, DNB will have two weeks in which to request further details. DNB may request further details from a party other than the dispensation holder, for example from the National Public Prosecutor. It is conceivable that this third party will only provide these details after a long period of time has elapsed. As the dispensation holder cannot exert any influence on the moment when this third party provides the further details, or therefore on the moment when the decision period for DNB commences, in the absence of further provisions a situation might arise in which the dispensation holder has to wait a very long time for a decision from DNB without having any influence on that situation.

This is undesirable, which is why Subsection 2(b) provides that DNB must take a decision in any event within 13 weeks of receiving the notification. Subsection (4) lists the details that must be submitted with the notification for the purpose of the fit and proper qualities assessment.

Subsection (5) is related to Section 28(2), which provides that the fit and proper qualities of a person will be beyond doubt if a supervisory authority has established this for the purpose of the Act. The proposed appointment of such a person need only be reported to DNB. DNB will not be required to reassess the person's fit and proper qualities. Obviously, DNB may carry out a new assessment pursuant to Section 28(2) if it has reasonable cause to do so.

#### *Chapter 4*

##### *Section 35*

This section is based on Section 1:102(1) in conjunction with Section 1:105 of the Act. Pursuant to this section, DNB has to specify and make available an application form for a supervisory status certificate as referred to in Section 3:110 of the Act. Parties applying for a supervisory status certificate are obliged to use this form. Even if the application is made on line, the applicant must use the application form specified and made available by DNB.

##### *Section 36*

The details to be provided pursuant to this chapter must be provided in such a format as to enable a proper assessment of the application by DNB. The applicant is responsible for the details being in such a format.

##### *Section 37*

This section applies to applications for a supervisory status certificate made by financial institutions with their registered office in the Netherlands. Subsection (1) applies both to applicants for a supervisory status certificate that do not intend to provide investment services and to applicants that intend to do so. Subsection (2) applies only to applicants that intend to provide investment services.

The provisions of Subsection (1)(a) to (d) are self-evident and do not require any explanation. The requirement that the number of the registration in the Trade Register be submitted (Subsection (1)(e)) was not included in the Act on the Supervision of the Credit System 1992.

The requirement laid down in Subsection (1)(f), i.e. that a copy of the articles of association be submitted, was laid down in Section 26(1)(a) of the Act on the Supervision of the Insurance Industry 1993 and Section 12(1) of the Act on the Supervision of the Funeral Provisions Industry, but not in the Act on the Supervision of the Credit System 1992. It is advisable to set this requirement for credit institutions and financial institutions as well. However, credit institutions and financial institutions are not required to be a legal person, which means that there may not be a copy of the articles of association to provide. The words 'if available' have been included in order to allow for this situation.

Unlike the provisions applicable to insurers, the Act on the Supervision of the Credit System 1992 did not impose any further requirements as regards the programmes of activities of banks and financial institutions (see Section 8(1)(g) and Section 45(2)(b) of the Act on the Supervision of the Credit System 1992).

This gave applicants little to go by; they did not know exactly how to shape the programme of activities. In order to provide applicants with a firmer basis, Subsection (1)(g) stipulates that, instead of a programme of activities, a statement of activities must be submitted.

Subsections (1)(h) and (i) use 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 fall under this section insofar as they determine the day-to-day policy or the policy of the financial enterprise.

Subsection (1)(j) 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 (1)(k) refers to the policy with regard to the control structure, as referred to in Section 3:16 of the Act.

Subsection (1)(l) combines the terms 'the proposed administrative organisation' and 'internal control' from Section 45(2)(c) of the Act on the Supervision of the Credit System 1992. The new overall term is in line with Section 3:17 of the Act.

Pursuant to Subsection (1)(m), details must be submitted in respect of consolidated supervision. Although these details were not mentioned as such in the Act on the Supervision of the Credit System 1992, the fact that they must be submitted can be inferred from Article 19 of the Banking Consolidation Directive<sup>13</sup>. Article 19 of the Directive provides that the supervisory authority must verify that the financial institution that is the subsidiary of one or more banks is actually included in the consolidated supervision to which the parent undertaking or each of the parent undertakings is subject.

Subsection (1)(n) concerns the details that must be submitted in order to assess, in the context of the licence application, whether the financial requirements in respect of equity and solvency will be fulfilled.

#### *Subsection (2)*

Pursuant to Section 3:110(4) of the Act, not only the prudential elements from Subsection (1) but also certain conduct elements are subjected to a preventative assessment in the event that a financial institution applying for a supervisory status certificate intends to provide investment services as well. If the details referred to in Subsection (2) are submitted with the application for the supervisory status certificate, this will enable DNB – in cooperation with the AFM – to carry out the said preventative assessment.

Subsection (3) sets out the details relating to the expertise assessment, while Subsection (4) provides the details relating to the fit and proper qualities assessment. These subsections are self-evident and do not require any explanation. Subsection (5) provides that the fit and proper qualities of a person whose fit and proper qualities have already been established for the purpose of the Act will not be reassessed in relation to the issuing of a supervisory status certificate. This requires no further explanation.

<sup>13</sup> Directive No. 2000/12/EC of the European Parliament and of the Council of 20 March 2000 relating to the taking up and the pursuit of the business of credit institutions (OJEC L 126).

## Chapter 5

### Section 39

This section is in line with Section IV of the Decree Amending the Decree on the Solvency Margin of Insurance Companies 1994 (*Wijzigingsbesluit Besluit solvabiliteitsmarge verzekeringsbedrijf 1994*).<sup>14</sup> This transitional provision ensures that the transitional period of five years, if necessary plus a further two years, which applied under the Act on the Supervision of the Insurance Industry 1993 to licensed insurers<sup>15</sup>, also applies to exempt mutual insurance associations that have to maintain a solvency margin pursuant to this Decree. The reference in Subsection (1) to 2 December 2003 pertains to the date on which the said amending decree entered into force.

The Minister of Finance,  
G. Zalm

<sup>14</sup> Decree of 11 November 2003, amending the Decree on the Solvency Margin of Insurance Companies 1994 (*Besluit solvabiliteitsmarge verzekeringsbedrijf 1994*), the Decree on the Financial Statements of Insurance Companies 1994 (*Besluit staten verzekeringsbedrijf 1994*) and the Decree on Exempt Mutual Insurance Associations 1994 in connection with the implementation of Directive No. 2002/13/EC of the European Parliament and of the Council of 5 March 2002 amending Council Directive No. 73/239/EEC as regards the solvency margin requirements for non-life insurance undertakings (OJEC L 77), and Directive No. 2002/83/EC of the European Parliament and of the Council of 5 November 2002 concerning life assurance (OJEC L 345), Bulletin of Acts, Orders and Decrees 2003, 483.

<sup>15</sup> See Section II of the Act amending the Act on the Supervision of the Insurance Industry 1993 in order to update the solvency requirements for insurance companies (Parliamentary Documents II 2002/2003, 28 838, no. 2).

## Annex I

## Table of concordance

Order in Council 4a	
1	Not applicable
	Decree on Exempt Mutual Insurance Associations
2	1
3	2
4	3
5	4
6	5
7	6
8	7
9	Not applicable
10	8
11	9
12	10
13	12
14	13
	Decree on Exempt Export Credit Insurers
15	1
16	2
17	Section 9 of the Act on the Supervision of the Funeral Provisions Insurance Industry
18	Decree implementing the EEC/Switzerland Agreement on insurance supervision 1994 (EEC/Switzerland Decree)
19	Section 3 of the EEC/Switzerland Decree
20(1)	Section 39(1) of the Act on the Supervision of the Insurance Industry 1993
20(2) and (3)	Section 4 of the EEC/Switzerland Decree
20(4)	Section 5 of the EEC/Switzerland Decree
21	Section 6 of the EEC/Switzerland Decree, Protocol 2 to the EEC/Switzerland Agreement and Section 5 of the Decree on the Programme of Activities of Insurance Companies 1994
22	Not applicable
23	EEC/Switzerland Decree
24 and 25	Sections 8 to 12 of the EEC/Switzerland Decree
25	Article 23 of the EEC/Switzerland Agreement
26	EEC/Switzerland Decree Decree of 13 August 2004, defining the term liquid resources as referred to in Section 23(6) of the Act on the Supervision of the Credit System 1992, and containing rules on granting a dispensation as referred to in Section 82(4) of the Act on the Supervision of the Credit System 1992, and amending Section 5 of the Decree on the Solvency Margin of Insurance Companies 1994
27	2
28	3 Policy rule on the fit and proper qualities of (prospective) (joint) policymakers of and holders of qualified shareholdings in supervised institutions (Government Gazette 2005, 20)
29	2(1)
30	2(2)
31	2(3)
32	3(3)
33	3(2) Decree of 13 August 2004, defining the term liquid resources as referred to in Section 23(6) of the Act on the Supervision of the Credit System 1992, and containing rules on granting a dispensation as referred to in Section 82(4) of the Act on the Supervision of the Credit System 1992, and amending Section 5 of the Decree on the Solvency Margin of Insurance Companies 1994
34	4

35	1:102(1) in conjunction with Section 1:105 of the Act
36	Not applicable
	Act on the Supervision of the Credit System 1992
37	45(2)
38	Section 14 of the Decree on Exempt Mutual Insurance Associations
39	Section IV of the Decree Amending the Decree on the Solvency Margin of Insurance Companies 1994
40	Not applicable
41	Not applicable