

Unofficial translation of *Uitvoeringsregeling Wft*.

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(Text valid as of: 08-11-2007)

Regulation to establish implementation rules for the Financial Supervision Act, the Act Implementing and Amending the Financial Supervision Act and to amend some other regulations (Financial Supervision Act Implementing Regulation)

The Minister of Finance,

Having regard to Directive No. 87/102/EEC issued by the Council of the European Communities of 22 December 1986 for the approximation of the laws, regulations and administrative provisions of the Member States concerning consumer credit (OJEC 1987 L 42), Directive No. 2002/92/EC issued by the European Parliament and the Council of the European Union of 9 December 2002 on insurance mediation (OJEC L 9), sections 1:1, 1:32, 1:105, paragraph 2, 3:150, paragraphs 2 and 3, 4:75, paragraph 3, 4:76, paragraph 3, 4:79, paragraph 1, and 5:26, paragraph 4, of the Financial Supervision Act (*Wet op het financieel toezicht*, Wft), section 31, paragraph 2, of the Act Implementing and Amending the Financial Supervision Act (Invoerings- en aanpassingswet op het financieel toezicht) and section 6c of the Act on the Supervision of the Securities Trade 1995 (*Wet toezicht effectenverkeer 1995*);

Determines:

Chapter 1. Introductory provisions

Section 1

1. The following definitions will apply in this Regulation:

- a. consumer credit: credit as defined in Article 1, part e, of the Decree on Supervision of the Conduct of Financial Enterprises (Besluit Gedragstoezicht financiële ondernemingen) under the Wft;
- b. continuous credit: credit as defined in Article 1, part h, of the Decree on Supervision of the Conduct of Financial Enterprises under the Wft;
- c. economic term: the period by the end of which a mortgage loan shall have been fully repaid in accordance with the instalment amounts and length and number of the payment periods determined when the loan agreement was entered into;
- d. operating balance: difference between the supervisory body's income and expenditure achieved at the end of a year;
- e. mortgage credit: credit as defined in Article 1, part n, of the Decree on Supervision of the Conduct of Financial Enterprises under the Wft;
- f. loan fee percentage per payment period: loan fee that is charged over a payment term in terms of a credit agreement, expressed as a percentage of the outstanding balance at the start of that payment term;
- g. Act: the Wft.

2. In this regulation the following definitions shall apply with regard to continuous credit agreements:

- a. credit sum: credit limit;
- b. term: theoretical term.

Chapter 2. Effective lending rate. Provision implementing Section 1:1 of the Act

§ 2.1. General provisions

Article 2

1. The calculations provided for in paragraphs 2.2 and 2.3 shall be based on the following:

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- a. the credit agreement shall be implemented in accordance with the instalment amounts and length and number of the payment periods determined when it was entered into; and
 - b. the lending rate shall remain unchanged during the term of the agreement, unless the timing and extent of any change to the lending rate are determined when the agreement is entered into.
2. The calculations provided for in paragraph 2.2, where continuous credit agreements are concerned, shall be based on the following:
- a. when the lender makes the loan amount available, or the enjoyment of the thing or the provision of the service begins, the outstanding balance shall be equal to the credit limit; and
 - b. the outstanding balance shall not increase other than by virtue of the charging of the lending rate.

Article 3

The effective lending rate shall be rounded off to one decimal place. If the figure in the second decimal place is five or more, the amount shall be rounded up. In all other cases the amount shall be rounded down.

§ 2.2. Calculation of effective lending rate for consumer credit

Article 4

1. In the case of consumer credit agreements where the payment term and the instalment amount remain the same during the term, the effective lending rate shall be calculated as follows:

$$p = [(1 + i_m)^m - 1] \cdot 100,$$

where the value of i_m shall be calculated according to the following formula:

$$K = \frac{T \cdot (1 + i_m)^n - T}{i_m \cdot (1 + i_m)^n}$$

In these formulas the following shall apply:

p: the effective lending rate annually;

i_m : one one hundredth of the lending rate per payment term;

m: the number of payment terms per year;

K: the credit sum;

T: the instalment amount; and

n: the term, expressed as the number of payment terms.

2. In the case of consumer credit agreements, not being for continuous credit, the provisions in subsection (1) shall be applied to calculate the effective lending fee. For that calculation it shall be assumed that the first payment term, or the first or last instalment amount, respectively, is equal to the other payment terms, or instalment amounts, respectively, if:
 - a. the first payment term deviates from the other payment terms, in so far as this deviation results in the first or last instalment amount deviating from the other instalment amounts, whilst the other payment terms and instalment amounts remain the same throughout the term; or
 - b. only the first or the last instalment amount deviates from the other instalment amounts, if this deviation is a consequence of rounding off a figure.

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Article 5

In the case of consumer credit agreements where the payment term does remain the same but the payment amount does not during the term, and to which Section 4(2) does not apply, the effective lending rate shall be calculated as follows:

$$p = [(1 + i_m)^m - 1] \cdot 100,$$

where the value of i_m shall be calculated according to the following formula:

$$K = \sum_{t=1}^n \frac{T_t}{(1 + i_m)^t}$$

In these formulas the following shall apply:

p : the effective lending rate;

i_m : one one hundredth of the lending rate per payment term;

m : the number of payment terms per year;

K : the credit sum;

t : the serial number of the respective instalment amounts and of the respective payment terms;

n : the term, expressed as the number of payment terms; and

T_t : the instalment amount with serial number t .

Article 6

In the case of consumer credit agreements where the payment period does not remain the same during the term, and to which Section 4(2) does not apply, the effective lending rate shall be calculated as follows:

$$p = i \cdot 100,$$

where the value of i shall be calculated according to the following formula:

$$K = \sum_{k=i}^n \frac{T_k}{(1 + i)^{t_k}}$$

In these formulas the following shall apply:

p : the effective lending rate;

i : one one hundredth of the effective lending rate;

K : the credit sum;

k : the serial number of an instalment amount;

n : the total number of instalment amounts;

T_k : the instalment amount with serial number k ; and

t_k : the period, expressed in years, between the moment when the credit sum is made available and the moment when the instalment amount with serial number k shall be paid.

Article 7

Notwithstanding the provisions of Sections 4 to 6, the effective lending rate shall be calculated as follows in the case of consumer credit agreements where the credit sum is made available in tranches determined when the agreement is entered into and at moments agreed when the agreement is entered into:

$$p = i \cdot 100,$$

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where the value of i shall be calculated according to the following formula:

$$S_1 = \sum_{u=2}^v \frac{S_u}{(1+i)^{X_u}} = \sum_{k=1}^n \frac{T_k}{(1+i)^{t_k}}$$

In these formulas the following shall apply:

p : the effective lending rate;

i : one one hundredth of the effective lending rate;

S_1 : the amount of the first tranche of the credit sum;

u : the serial number of a tranche;

v : the total number of tranches;

S_u : the amount of the tranche with serial number u ;

X_u : the period, expressed in years, between the moment when the credit agreement is entered into and the moment when the tranche with serial number u is made available;

k : the serial number of an instalment amount;

n : the total number of instalment amounts;

T_k : the instalment amount with serial number k ; and

t_k : the period, expressed in years, between the moment when the credit sum is made available and the moment when the instalment amount with serial number k shall be paid.

§ 2.3. Calculation of effective loan fee percentage for mortgage credit

Article 8

1. In the case of mortgage loan agreements the effective lending rate shall be calculated as follows:

$$p = [(1 + i_m)^m - 1] \cdot 100,$$

where the value of i_m shall be calculated according to the following formula:

$$K - A = \sum_{t=1}^n \frac{T_t}{(1 + i_m)^t} + \frac{R_n}{(1 + i_m)^n}$$

In these formulas the following shall apply:

p : the effective lending rate;

i_m : one one hundredth of the lending rate per payment term;

m : the number of payment terms per year;

K : the credit sum;

A : the costs charged by the provider of mortgage credit when the mortgage credit agreement is entered into;

t : the serial number of the respective instalment amounts and of the respective payment terms;

n : the economic term, calculated over a maximum of 30 years, expressed as the number of payment terms;

T_t : the instalment amount with serial number t ; and

R_n : the (possible) (residual) debt at the end of the economic term or, if the term exceeds 30 years,

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after 30 years.

2. If the instalment amounts are paid at the start of each payment term, K in the formula in subsection (1) shall be $(K - T(1))$, and n in the formula in subsection (1) shall be $(n - 1)$.

Chapter 3. Supervisory body's budget arrangement. Provision implementing Section 1:32 of the Act

Article 9

The entries classifying the budget specified in Section 1:30 of the Act will be classified according to respective supervisory duties, with a distinction being drawn between direct and indirect supervisory activities, and also according to cost type, and will be accompanied by an explanation. The section dealing with the contribution to be made by the State government will be classified according to supervisory duty and accompanied by an explanation.

Chapter 4. Minor exemptions Provisions pursuant to Section 1:105(2) second sentence of the Act

Article 10

1. The supervisory body will only impose such conditions on an exemption, as defined in sections 2:5(3), 2:7(3), 2:12(6), 2:13(3), 2:17(3), 2:21(3), 2:22(3), 2:31(5), 2:32(3), 2:37(3), 2:41(3), 2:42(3), 2:49(3), 2:51(3), 2:58(3), 2:63(3), 2:67(5), 2:68(4), 2:78(3), 2:83(3), 2:89(3), 2:94(3), or 2:99(4) of the Act, as are necessary with a view to achieving the intended objectives of the sections referred to in the first paragraph of the sections mentioned above.
2. The supervisory body will only impose such conditions on an exemption, as defined in sections 3:2(3), 3:7(4), 3:10(4), 3:15(3), 3:17(4), 3:19(3), 3:47(4), 3:53(6), 3:57(6), 3:63(4), 3:67(5), 3:70(2), 3:71(3), 3:72(8), 3:106(3), 4:9(4), 4:11(5), 4:14(4), 4:15(4), 4:20(6), 4:22(2), 4:23(4), 4:25(2), 4:44(3), 4:49(5), 4:51(5), 4:52(4), 4:72(6), 4:73(6), 4:75(5), 4:76(5), 4:75(5), 4:85(6), 4:88(5), 4:93(3), 4:99(3), 5:68(3) of the Act, as are necessary with a view to achieving the intended objectives of the relevant section.
3. The Dutch Central Bank (*De Nederlandsche Bank*, DNB) will only impose such conditions on an exemption as defined in section 3:60(1) of the Act as are necessary with a view to the objective of that section.
4. The Netherlands Authority for the Financial Markets (*De Autoriteit Financiële Markten*, AFM) will only impose such conditions on an exemption as defined in section 2:65(3) as are necessary with a view to protecting the intended objectives of the part entitled Market Access for Financial Enterprises and the part entitled Supervision of the Conduct of Financial Enterprises.
5. The DNB will only impose such conditions on an exemption as defined in section 3:156(8) of the Act as are necessary with a view to the solvency margins of the relevant life insurers.
6. The DNB will only impose such conditions on an exemption as defined in section 3:278(1) or (2) of the Act as are necessary with a view to protecting the interests of the creditors.
7. The AFM will only impose such conditions on an exemption as defined in section 4:70(8) or 4:71(6) of the Act as are necessary with a view to the satisfactory implementation of the provisions in those sections.
8. The AFM will only impose such conditions on an exemption as defined in section 4:83(2) of the Act as are necessary with a view to protecting the interests of the clients.
9. The AFM will only impose such conditions on an exemption as defined in section 5:18(3) of the Act as are necessary with a view to the satisfactory implementation of Chapter 5.1 of the Act or the Prospectus Regulation.

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10. The AFM will only impose such conditions on an exemption as defined in section 5:71(7) of the Act as are necessary with a view to achieving the intended objectives of sections 5:71 or 5:72.
11. The conditions to be attached to an exemption will not result in any unreasonable charges to the applicant.

Chapter 5. Confidential advisory committee for life insurer assistance (*Vertrouwenscommissie opvangregeling leven*)

Provisions pursuant to Section 3:150(2) and (3) of the Act

Article 11

1. The members of the confidential advisory committee specified in section 3:150(1) of the Act will be appointed for a maximum of five years on the joint nomination by the DNB and the representative organisations for the life insurers. The DNB and the representative organisations will propose at least two candidates for every vacancy on the confidential advisory committee. A member may be reappointed on one occasion only.
2. The Minister of Finance will appoint one of the members as chair on the joint proposal of the DNB and the representative organisations of the life insurers.
3. If agreement is not reached on a joint proposal, the board of the DNB will inform the Minister of Finance accordingly. In such cases, he or she will take a decision on the appointments without a proposal.

Article 12

1. Within three months after the commencement of a suspension as defined in section 3:150(2) of the Act, the Minister of Finance will decide whether to rescind or extend the suspension or proceed with dismissal.
2. The suspension may be extended one time only for a maximum of three months.
3. The suspension will lapse if:
 - a. no decision has been made within three months after commencement of the suspension, either to rescind or extend the suspension or to proceed with dismissal;
 - b. no decision has been made to rescind the suspension or to proceed with dismissal within three months following a decision to extend the suspension.

Article 13

1. The Minister of Finance may discharge a member of the confidential advisory committee:
 - a. ex proprio motu; or
 - b. at the request of the member in question.
2. The Minister of Finance will in any event discharge a member of the confidential advisory committee ex proprio motu if the member in question is declared bankrupt, has a trustee or administrator appointed or otherwise loses full control of his or her estate.

Article 14

1. The confidential advisory committee may allocate its duties by mutual consultation.
2. The confidential advisory committee will meet when asked to do so by the DNB or if it considers this necessary for the exercise of its duties.
3. The confidential advisory committee will take decisions by majority vote at a meeting where at least half of the active members and the chair are present. The confidential advisory committee will only

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take decisions outside the context of meetings if a proposal for the decision has been placed before all active members and none of the members has objected to the decision being taken.

4. The confidential advisory committee will take an immediate decision, and in any event within one month, in response to a request by the DNB for an opinion or assistance as defined in section 3:150(1) parts a to c inclusive, of the Act.
5. If the confidentiality committee does not take a decision within one month after being asked to do so by the DNB, then the DNB may continue with its decision-making process without an opinion or assistance from the confidential advisory committee.

Chapter 6. Coverage for professional liability insurance and comparable provision Provisions implementing Section 4:75(3) and 4:76(3) of the Act

Article 15

The coverage for professional liability insurance or comparable provisions, specified in Sections 4:75(1) and 4:76 (1) of the Act, will amount to no less than €1,000,000 per incident of loss and at least €1,500,000 per annum for all incidents of loss in aggregate.

Chapter 7. Model authorisation and sub-authorisation Provisions pursuant to Section 4:79(3) of the Act

Article 16

The model of the authorisation, specified in section 4:79(1) of the Act, will be established in accordance with Appendix A.

Article 17

The model of the sub-authorisation, specified in section 4:79(1) of the Act, will be established in accordance with Appendix B.

Article 18

1. An authorisation or sub-authorisation prepared before 1 January 2006 in accordance with the model prescribed prior to that date under the Insurance Brokerage Businesses Act (*Wet assurantiebemiddelingsbedrijf*) will be deemed to have been prepared in accordance with the model specified in Article 16 or Article 17, respectively.
2. An authorisation or sub-authorisation prepared between 1 January 2006 and 1 January 2007 in accordance with the model prescribed prior to the latter date under the Financial Services Decree (*Besluit financiële dienstverlening*) will be deemed to have been prepared in accordance with the model specified in Article 16 or Article 17, respectively.

Chapter 8. Operators of a regulated market Provisions pursuant to Section 5:26(4) of the Act

Article 19

1. The operator of a regulated market as specified in section 5:26(4) of the Act, who intends to operate a market in financial instruments in the Netherlands, will inform the Minister of Finance of that proposal. Such intimation will include a note of the following information, so far as applicable:
 - a. the name and address of the registered office of the operator of the regulated market, and also the address of its head office if that is different from the registered office address;
 - b. a schedule of work confirming the intended work and the organisational structure of the regulated market;
 - c. the rules to be applied to the regulated market.

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2. The operator of a regulated market to whom the exemption specified in section 5:26(4) of the Act applies will inform the Minister of Finance of any changes to the information specified in paragraph 1 within five working days.

Chapter 9. Extension of the period for award of a licence

Article 20

The period of twelve months, specified in the first sentence of section 31(2) of the Act Implementing and Amending the Financial Supervision Act shall be extended by six months.

Chapter 10. Amendment to Temporary Exemption Regulations for Public Bids

Article 21

[Amends the Dutch Temporary Exemption Regulations for Takeover Bids.]

Chapter 11. Amendment of Regulations on the appointment of competent authorities under the Act on the Supervision of the Securities Trade 1995

Article 22

[Amends the Regulations on the appointment of competent authorities under the Act on the Supervision of the Securities Trade 1995].

Chapter 12. Final provisions

Article 23

These regulations shall enter into force on 1 January 2007.

Article 24

These regulations may be cited as the Wft Implementing Regulation.

This regulation and the explanatory notes shall be published in the Government Gazette (*Staatscourant*).

The Minister of Finance,
G. Zalm

ANNEX A, pertaining to Section 16

Authorisation

as specified in Section 4:79(1) of the Financial Supervision Act
The signatoryⁱ⁾ ... hereby confirms that he/she/it grants an authorisation to

Paragraph I

Powers

In order to accept insurance in the Netherlands in the name of the signatory - within the limits of its Articles of Association - for risks both within the Netherlands and elsewhere, and generally to do everything concomitant with the exercise of the insurance business in the Netherlands as a representative of an insurer established in the Netherlands or elsewhere, and in that context to exercise all of the signatory's rights and fulfil all of the signatory's obligations, the effect of this proxy includes,

i) After 'The signatory', the name and if appropriate the trading name of the insurer should be completed.

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amongst other things:

- independently signing policies and all other documents relating to the transactions specified in this authorisation;
- receiving and offsetting - as well as granting receipts for - premiums and all other money representing claims by the signatory arising from or connected with concluded insurance policies;
- cooperating in amendments to, extensions of or rescissions of concluded insurance policies;
- promising or giving reductions, restitution or remission of premiums and of money relating to all other claims by the signatory;
- receiving intimations from or on behalf of insured parties;
- cooperating towards establishing losses and the scale thereof, dealing with, acknowledging and paying for losses, and also amicably reaching settlements (by means of compromise or otherwise) in connection with losses and all other claims against the signatory;
- disputing all claims against the signatory in court;
- raising legal claims in the exercise of any right due to the signatory as insurer, taking all steps considered necessary by the holder of the authorisation for the proper progress of proceedings, and cooperating in or granting permission for the undertaking of procedures where the signatory's interest is involved;
- subjecting all disputes to the decision of an arbitrator and also lending his/her cooperation to the arbitration procedure; whereby all of the relevant actions and obligations of the said holder of the authorisation will bind the signatory entirely as if they had been undertaken or entered into by the signatory.

Where this authorisation refers to insurance policies, insured parties or the insurer, these references are also understood to include reinsurance, reinsured parties or the reinsurer.

Paragraph II

Sub-proxy

Unless this is done via a sub-authorisation prepared in accordance with Appendix B of the Wft Implementing Regulations, this authorisation does not include power on the part of the holder of the authorisation to grant sub-authorisations to third parties.

Paragraph III

Applicable law

The law of the Netherlands applies to this authorisation.

.....ⁱⁱ⁾

ANNEX B, pertaining to Section 17

Sub-authorisation

as specified in Section 4:79(1) of the Financial Supervision Act.

The holder of the authorisationⁱⁱⁱ⁾

who is authorised accordingly by the insurer^{iv)}

hereby confirms that he/she/it is granting a sub-authorisation to ...

Paragraph I

Powers

ii) Signature of the signatory, with a note of the date of signing.

iii) The name should be inserted after 'The proxy-holder' and, if applicable, the trading name of the authorised agent who is hereby authorised by the insurer to grant the sub-proxy.

iv) The name should be inserted after 'insurer' and, if applicable, the trading name of the insurer who is hereby authorising its authorised agent (see under 3) to grant the sub-proxy..

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In order to accept insurance in the Netherlands in the name of the above-mentioned insurer - within the limits of its Articles of Association - for risks both within the Netherlands and elsewhere, and generally to do everything concomitant with the exercise of the insurance business in the Netherlands as a representative of an insurer established in the Netherlands or elsewhere, and in that context to exercise all of the above-mentioned insurer's rights and fulfil all obligations, the effect of this sub-proxy includes, amongst other things:

- independently signing policies and all other documents relating to the transactions specified in this authorisation;
- receiving and offsetting - as well as granting receipts for - premiums and all other money representing claims by the above-mentioned insurer arising from or connected with concluded insurance policies;
- cooperating in amendments to, extensions of or rescissions of concluded insurance policies;
- promising or giving reductions, restitution or remission of premiums and of money relating to all other claims by the above-mentioned insurer;
- receiving intimations from or on behalf of insured parties;
- cooperating towards establishing losses and the scale thereof, dealing with, acknowledging and paying for losses, and also amicably reaching settlements (by means of compromise or otherwise) in connection with losses and all other claims against the above-mentioned insurer;
- disputing all claims against the above-mentioned insurer in court;
- raising legal claims in the exercise of any right due to the above-mentioned insurer as insurer, taking all steps considered necessary by the proxy for the proper progress of proceedings, and cooperating in or acceding to the undertaking of procedures where
- the above-mentioned insurer's interest is involved;
- subjecting all disputes to the decision of arbitrators and lending his/her cooperation to the arbitration procedure;

whereby all of the relevant actions and obligations of the said sub-authorisation holder will bind the above-mentioned insurer entirely as if they had been undertaken or entered into by the signatory. Where this sub-authorisation refers to insurances, insured parties or the insurer, these references are also understood to include re-insurance, re-insured parties or the re-insurer.

Paragraph II

Grant of sub-proxies by sub-authorisation holders

Unless this is done via a sub-authorisation prepared in accordance with Appendix B of the Wft Implementing Regulations, this authorisation does not include power on the part of the sub-authorisation holder to grant sub-authorisations to third parties.

Paragraph III

End of the sub-authorisation

This sub-authorisation may be withdrawn at any time by the insurer or the holder of the authorisation. The fact that the authorisation of the holder of that authorisation may not be valid does not affect the validity of the sub-authorisation.

Paragraph IV

Applicable law

The law of the Netherlands applies to this sub-authorisation.

.....^{v)}