

Notes

to the application form for a declaration of
no-objection (DNO) – Section 3:95 of the Wft

DeNederlandscheBank

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Notes

to the application form for a declaration of no-objection (DNO) for a qualifying holding in a financial enterprise having its registered office in the Netherlands.

These notes describe what DNB wants to see when considering your application for a declaration of no-objection. In addition to providing you with these notes, we have listed all relevant sections of the law for your convenience. They are included in the PDF file 'Relevant sections of the law for the application of a DNO', which you can find on the 'application for a DNO' page of our Open Book on Supervision website.

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1 Introduction

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If you wish to acquire a qualifying holding in a financial enterprise, you must obtain a declaration of no-objection (DNO) issued by De Nederlandsche Bank N.V. (DNB). In specific cases, you must also apply for a DNO if you wish to increase an existing qualifying holding in a financial enterprise.

1.1 Qualifying holding in a financial enterprise

A qualifying holding is a direct or indirect holding of 10% or more of the issued capital of an enterprise or the power to exercise, directly or indirectly, 10% or more of the voting rights in an institution, or the power to exercise, directly or indirectly, an equivalent degree of control in an enterprise. Such control may comprise special rights in respect of appointment, dismissal or suspension of management or supervisory board members of the financial enterprise. In determining the number of voting rights of holders of participating interests in an enterprise, we also take into account the votes that the holder has or is deemed to have.

You must apply for a DNO if you intend to acquire or increase a qualifying holding in the following types of financial enterprise (the target enterprise):

- Settlement agent
- Bank
- Manager of an undertaking for collective investment in transferable securities (UCITS)
- Investment firm
- Payment Institution
- Electronic money institution
- Special purpose reinsurance vehicle
- Financial institution with a certificate of supervised status
- Premium pension institution
- Insurance or re-insurance company

1.2 A qualifying holding in a bank

If you want to apply for a DNO for the acquisition and holding of a qualifying holding in a bank, please use the following (English-language) form: '*Application for a Declaration of No-Objection – 3:95 bank*'. This is because the European Central Bank (ECB) decides on applications related to qualifying holdings in banks. DNB will assess these applications to the extent that they relate to Dutch banks and will submit its opinion to the ECB. With a view to the ECB's prompt decision-making, we would ask you to use the English-language form.

2 General information

2.1 Applicant

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Under “applicant”, you fill in the details of the prospective acquirer, i.e. the party acquiring or increasing the qualifying holding. Legal entities as well as natural persons can apply for a DNO.

You must fill in the applicant’s address details. If the applicant is a legal entity having its registered office in the Netherlands, you must provide its Dutch Chamber of Commerce registration number and an extract from the Trade Register. If the legal entity has its registered office outside the Netherlands, you must provide a comparable unique identification number from the trade register of the relevant country, and an extract from the trade register of the country where the legal entity has its registered office.

You can also submit your application through an external consultant. We recommend that you engage the services of a consultant to assist you in the application process. Practice has shown that applications are often more complete and of a substantially higher quality if the applicant sought advice, for example from a legal consultant. We can assess a complete and well-substantiated DNO application more quickly and more thoroughly. If you decide to use the services of an external consultant please also provide us with this consultant’s details.

If the applicant is a payment institution with its registered office outside the EU or the EEA, you must indicate whether it is subject to anti-money laundering and counter-terrorist financing (AML/CFT) regulations and describe the extent to which these correspond to the recommendations of the Financial Action Task Force (FATF). These recommendations are recognised as the international standard for combating money laundering, terrorist financing and proliferation. We advise you to check whether the country where the applicant has its registered office is affiliated with the FATF.

3 Control structure and legal group structure of the applicant

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3.1 Bandwidth

Your application must specify a bandwidth. With a bandwidth DNO, the size of the qualifying holding may vary within the specified bandwidth without the need to apply for a new or amended DNO. Bandwidths have a lower limit of 10% (the DNO threshold) and can have upper limits of 20%, 33%, 50% or 100%.

Your application must include the bandwidth that corresponds to the actual intended size of the intended qualifying holding, which means this question does not concern any further intended increases of your holding in the future. Please note that in situations of acting in concert you must indicate the bandwidth that corresponds with the total holding (see below).

You must notify us of certain specific changes in the size of holdings, for example a reduction in size to below 20% for holdings with a bandwidth of 10%-33%, or if the size of the holding falls below 10%. In the latter case, the issued DNO will lapse by operation of law

3.2 Acting in concert

“Acting in concert” generally means cooperation among shareholders, for example based on a shareholder agreement. A party is deemed to control the voting rights of a third party if it has made agreements with this party providing for a long-term common policy on exercising these voting rights. Such agreements can be made orally and in writing. A situation of this kind can be regarded as acting in concert.

If this is the case, the aggregate of voting rights that can be exercised by the parties that entered into the agreement must be taken into account when determining the bandwidth.

You must provide the following information as an annex to your application form:

- the identity of the other parties involved;
- the manner of their involvement;
- plans or agreements made with these other parties regarding the financial enterprise;
- the percentage of the voting rights.

Please contact us before submitting your application if you are in doubt as to whether a situation qualifies as acting in concert.

3.3 Organisation chart

You must submit an organisation chart with your application showing the full legal group structure and control structure. The organisation chart must show the group structure before and after the acquisition/increase of the proposed qualifying holding.

It must also specify the persons or legal entities that hold or will hold a direct or indirect qualifying holding in the financial enterprise, stating the percentages of their interests and their voting rights.

Please also indicate which entities in the organisation chart are under supervision, listing the names of the relevant supervisory authorities and their contact persons.

3.4 Financial and non-financial relationships

If your organisation has financial or non-financial relationships with the target enterprise, you must describe the nature of these relationships. The same applies if your organisation has financial or non-financial relationships with other shareholders or parties entitled to exercise voting rights, management or supervisory board members, or policymakers or co-policymakers of the financial enterprise.

You may provide information on the extent of control that shareholders jointly hold in the enterprise (see also “acting in concert”), the voting right ratios and the persons that co-determine the enterprise’s policy in addition to the shareholders. You must also state if there are any intra-group financial loans or claims within the group of shareholders.

Conflicting interests

If your financial and non-financial relationships or any other interests or activities may create a conflict of interests with respect to the financial institution, you must describe any measures taken to mitigate such conflicts of interests.

3.5 Trusts

Please indicate whether the proposed qualifying holding relates to a trust, and if this is the case, provide the names and details of the trustees and beneficial owners of the trust. The “trustees” are the individuals managing the trust’s assets. The “beneficial owners” are the ultimate rightful claimants to the trust’s assets.

Please provide a list of trustees and a description of their respective shares in the distribution of income. You must also provide a list of beneficial owners with a qualifying holding, and a description of their respective shares in the distribution of income.

4 Fitness and propriety

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4.1 Propriety assessment

The propriety of the applicant of a DNO must of course be beyond doubt. If the applicant is a natural person, we will assess this individual's propriety. If the applicant is a legal entity, we will assess the propriety of the entity's policymakers and co-policymakers. The application for a propriety assessment by DNB must be submitted separately. The entity or person that must submit this application depends on whether the candidate is a day-to-day policy maker at the financial enterprise or the holding company of which the enterprise is a part (see below).

DNB verifies whether the propriety of the candidate is beyond doubt. Candidates' intentions, actions and antecedents must not stand in the way of performing their jobs. In particular, we review criminal, financial, tax compliance, supervisory, tax administrative law antecedents and other relevant information.

In principle, propriety assessments are a one-time procedure. Persons who were screened by DNB or the AFM before have to fill in part of the propriety assessment form only. They must indicate here whether any relevant facts or circumstances have occurred since the previous assessment.

Policymakers and co-policymakers

The **policymakers** of the enterprise are the members of its Management Board and – if applicable – the members of its Supervisory Board. **Co-policymakers** are the persons co-determining the enterprise's policies. They include in any event the persons holding a direct or indirect qualifying holding in the enterprise, i.e. all natural persons and legal entities with a direct or indirect holding or degree of control in the enterprise of 10% or more. Persons who are able to exercise actual influence on the day-to-day management of the enterprise will also be designated as co-policymakers.

If the applicant is a legal entity

Please provide a list of all day-to-day policymakers of the legal entity submitting the application. As the applicant, you are also responsible for submitting the fitness and propriety assessment applications for all day-to-day policymakers and co-policymakers.

On the digital form "Application for an initial assessment or assessment in the context of an authorisation or a DNO" (digital form), you must indicate for each person if they will also be a day-to-day policymaker of the enterprise in which the qualifying holding is to be acquired.

Please note If a person is a day-to-day policymaker at the financial enterprise and the DNO application is combined with an application for authorisation for this financial enterprise, the financial enterprise must submit the assessment application for this person.

If the applicant is a natural person

On the digital form you must indicate whether the natural person is a day-to-day policymaker of the enterprise in which the qualifying holding is to be acquired. If this is not the case, the application for assessment must be submitted by or on behalf of the natural person.

Please note If a person is a day-to-day policymaker at the financial enterprise and the DNO application is combined with an application for authorisation for this financial enterprise, the financial enterprise must submit the application for assessment of this person.

Additional questions for payment institutions

If the applicant is a payment institution, you must answer two additional questions. The policymakers of the applicant institution or the applicant (as a natural person) must provide an overview of their involvement in other enterprises as a shareholder or board member. The policymaker must also indicate if and how they are related to politically exposed persons (PEPs). The link provided in the question gives the definition of PEPs: individuals who are or have been entrusted with prominent public functions, as well as the immediate family members or close associates of these individuals. If the policymaker is married to a PEP or is otherwise related to PEPs as a blood relative or in a financial sense, they may be at a higher risk of blackmail or other forms of pressure.

Other documents to be submitted

Copy of passport or ID card

The ID document must be legible and valid.

Curriculum vitae of the person to be assessed

We have provided a template for CVs, which can be downloaded via the application form for initial assessment.

CVs must be up to date and at least include the following information.

- Education and relevant training courses, stating the name and location of the education institute, years of attendance and diplomas/certificates obtained.
- Professional experience, including the statutory name and place of the company, the period of employment, the position held, an elaboration the duties and responsibilities and the number of staff for whom the candidate was responsible.
- All secondary positions, stating
 - the statutory name and place of the company;
 - the field of expertise or committee;
 - average weekly or monthly time spent on each secondary position
 - Competences

4.2 Fitness assessment

Persons who on the grounds of the proposed qualifying holding will determine the day-to-day policies of the financial enterprise or the Dutch holding company of which this financial enterprise is a part, must be assessed on fitness by DNB.

The fitness assessment usually takes place at the time these persons are appointed as day-to-day policymakers at the financial enterprise. So the financial enterprise submitted the fitness assessment applications at the time these persons were appointed. If they were appointed earlier DNB will not perform a new fitness assessment as part of the DNO application.

Please note If a person is a day-to-day policymaker at the financial enterprise and the DNO application is combined with an application for authorisation for this financial enterprise, the enterprise must ensure that this person is subjected to a fitness assessment by DNB.

Dutch holding company

In this context, a Dutch holding company taken to include a financial holding company, a mixed financial holding company or an insurance holding company having its registered office in the Netherlands.

Financial holding company

A financial institution is considered to be a financial holding company if it meets the following two conditions.

- It has as its subsidiaries exclusively or mainly banks, investment firms within the meaning of the Capital Requirements Regulation (CRR, Regulation (EU) No. 575/2013) or financial institutions of which at least one subsidiary is either a bank or an institution within the meaning of the CRR
- it is not a mixed financial holding company.

Mixed financial holding company

A mixed financial holding company is a parent company that is not a regulated entity and that together with its subsidiaries, of which at least one is a regulated entity with its head office in the European Union, and forms a financial conglomerate with other entities.

Insurance holding company

An insurance holding company is a parent company that is not a mixed financial holding company and that has as its subsidiary a re-insurance company, a life insurance company, or a non-life insurance company having its registered office in a member state and that exclusively or mainly has holdings in subsidiaries that are reinsurers, life insurers or non-life insurers.

Certificate of good conduct/criminal record check

As part of the propriety assessment, a statement issued by a competent authority on the absence of criminal-law antecedents must be submitted. In principle, such a statement is not required if the person involved holds the Dutch nationality, or is a director of a supervised financial enterprise in the European Economic Area (the European Union and Liechtenstein, Norway and Iceland). Chapter 3, Sections 10.11 and 10.13 (pp. 23-24) of the *Joint Guidelines on the prudential assessment of acquisitions and increases of qualifying holdings in the financial sector* lists the antecedents that are relevant for such a statement. If you are unable to submit this statement for whichever reason, we recommend that you contact us before submitting your application.

5 Applicant's financial soundness

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5.1 Business case

We assess the applicant's financial soundness to check whether it is able to finance the proposed qualifying holding and whether it is able to maintain a healthy financial situation for itself and for the financial enterprise in the medium term. We therefore focus on the aim of the proposed qualifying holding or increase thereof.

You must explain these aspects in a business case, in which you describe the period for which the proposed holding is to be held and your intentions with respect to the qualifying holding. You should also indicate whether you intend to act as an active or passive shareholder.

Finally, you must include a track record of investments in the financial sector over the past five years, unless of course this is your first investment. If you do not submit a track record, we will assume this to be your first investment in the financial sector.

5.2 Applicant's financial soundness

In order to assess the applicant's financial soundness, it must submit its most recent financial figures. The information to be provided depends on whether the application is submitted by a natural person or a legal entity.

Legal entity

A legal entity must submit the following documents:

- a credit rating;
- annual financial statements/balance sheets over the last three financial years, together with an independent auditor's report.

If the applicant is part of a group in which several entities are applying for a DNO, it can indicate in the form under "General information" which entity will be submitting the credit rating.

If the financial statements and independent auditor's reports are not available for all years, the most recent annual accounts must in any event have been audited by an independent auditor. The most recent financial statements may not be older than twelve months. If the period between the DNO application and the most recent financial statements is more than twelve months, you must provide a more recent balance sheet or statement of assets together with an independent auditor's report, security interests and guarantees. If the legal entity is in formation, you must submit a formation balance sheet together with an external auditor's report or a pro forma balance sheet.

The financial statements and independent auditor's report must comprise:

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- a balance sheet;
- a profit and loss account;
- notes to the financial statements and any other relevant financial information;
- off-balance sheet liabilities (where applicable).

Natural person

A natural person must submit the following documents.

- A recent list of assets including security interests and guarantees, not older than twelve months and submitted together with an independent auditor's report of factual findings.
- If applicable, a list of holdings (whether or not in the financial sector) in which the applicant holds more than 50% of the voting rights or is able to exercise an equivalent degree of control.

The independent auditor's report on agreed-upon procedures must include a detailed description of the procedures performed in accordance with the International Standard on Related Services (ISRS) 4400, "Engagements to Perform Agreed-Upon Procedures Regarding Financial Information".

6 Impact on the financial enterprise/qualifying holding

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Please describe the impact that you as the applicant expect to have on the financial enterprise. The information to be provided depends on your or your enterprise's degree of control in the financial enterprise, also taking into account the bandwidth. Again, you must take situations of acting in concert into account (see section 3.3 of these explanatory notes).

6.1 Bandwidth of 10-20%

Additional information

Please provide a description of the bandwidth of control and how control is exercised with respect to:

- The financial position of the financial enterprise (e.g. dividend policy).
- The strategic policy of the financial enterprise.
- The allocation of funds and resources of the financial enterprise.

6.2 Bandwidth of 20-50%

Additional information

Please provide a description of the bandwidth of control and how control is exercised with respect to:

- The financial position of the financial enterprise (e.g. dividend policy).
- The strategic policy of the financial enterprise.
- The allocation of funds and resources of the financial enterprise.

Policy plan

In addition to this additional information, you must submit a policy plan setting out your intentions and expectations regarding the qualifying holding in the medium term, addressing in at least the following points:

- financial targets for the medium term (e.g. return on equity, cost-benefits ratio, earnings per share, etc.);
- possible redirection of activities/products/targeted customers and possible reallocation of funds and resources of the financial enterprise;
- integration of the financial enterprise into the applicant's group structure, describing the expected synergies/cost benefits, and a description of the group policy regarding intra-group transactions and intra-group relationships.

If it involves an insurance or re-insurance company, we would ask you to also include the following information in the policy plan:

- possible changes with respect to governance (management board, supervisory board, key functions), investment policy, reinsurance policy, capital policy and dividend policy.

6.3 Bandwidth of 50-100%

Change of control

If the applicant obtains majority control in the financial enterprise, implying a change in control, the following information must be submitted to substantiate the proposed holding.

- The intended strategy with respect to the holding.
- A detailed description of the significant changes the applicant envisages for the financial enterprise.
- A description of the applicant's intentions and expectations regarding the financial enterprise for the medium term, addressing the following points:
 - financial targets for the medium term (e.g. return on equity, cost-benefits ratio, earnings per share, etc.);
 - possible redirection of activities/products/targeted customers and possible reallocation of funds and resources of the financial enterprise.
 - integration of the financial enterprise into the applicant's group, including a description of the envisaged synergies and cost benefits at the financial enterprise. a description of the group policies governing intra-group transactions and relationships.

If the qualifying holding concerns an insurance company or re-insurance company, the description must also address

- the impact on the capital policy including leverage, premium structure and acceptance policy, reinsurance policy, target groups, changes to the group structure, claims settlement relating to unit-linked insurance products and intra-group policy (if applicable).

Outlook for of financial position

We also require you to submit information about the outlook for the financial position of the financial enterprise at the consolidated and iso levels for the next three years, including:

- a balance sheet and profit and loss account;
- relevant prudential capital requirements and solvency ratios;
- information on the level of risk exposures (credit risk, market risk, operational risk, etc.) for the financial enterprise.
- Estimated intra-group claims and liabilities.

Corporate governance and organisational structure

Last but not least, your application must include a description of the impact of the proposed qualifying holding on the corporate governance and the organisational structure of the financial enterprise. You must at least address the following subjects.

- The composition (including proposed appointments) and duties of the management board and the main committees and bodies (e.g. senior management team, risk committee, audit committee, remuneration committee, etc.) and key function holders.
- Changes in procedures and systems related to administration, accounting, audit, internal control, and compliance (including anti-money laundering policy), including intended appointments in key positions in these areas (e.g. auditor, controller, compliance officer and a portfolio manager appointed by the applicant with respect to the proposed holding).
- IT systems and IT architecture. This involves changes in e.g. the following areas:
 - outsourcing policy;
 - data flowchart;
 - in-house and external software;
 - essential data;
 - system security procedures and tools (e.g. back-up systems, continuity plans, audit trails, etc.)
- The outsourcing policy (e.g. type of operational processes, selection of external service providers, etc.), and the rights and obligations of the parties involved in the outsourcing agreements (e.g. audit arrangements, service level agreements, etc.).

Please contact us if you have any questions about the information to be submitted.

7 Financing

Please provide information on how the the proposed holding is to be financed, including information on the source of funds and the transfer of payments. Based on the information you submit – and in order to issue a DNO to you – we must be able to exclude that the financing of the qualifying holding is used for purpose of money laundering or terrorist financing.

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You must include the following information with your application.

- Details on the origin of the resources used to finance the proposed holding and the proportion of borrowed capital in the total amount.
- Information on the means and the network used to transfer payments for the proposed holding (availability of resources, financial arrangements)
- Information on the means used to access capital sources and capital markets.
- Information on the financial instruments to be issued for the funding of the proposed holding, at least specifying the underwriting of such instruments and their maturities, terms and conditions, security interests and guarantees.
- Information on whether the applicant, for the funding of the proposed holding has entered into any kind of financial relationship with other shareholders (or future shareholders) of the target financial enterprise, at least specifying maturities, terms, pledges and guarantees.
- Information on the extent to which the applicant's assets or those of the financial enterprise are to be sold in the short term, at least specifying conditions of sale, price and valuation, and details on their characteristics.

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