

*Act of 23 December 1992, providing for regulations regarding the supervision of the credit system and the implementation of the Second Council Directive of 15 December 1989 on the coordination of laws, regulations and administrative provisions relating to the taking up and pursuit of the business of credit institutions and amending Directive 77/780/EEC (89/646/EEC), and the implementation of the Council Directive of 6 April 1992 on the supervision of credit institutions on a consolidated basis (92/30/EEC) (Act on the Supervision of the Credit System 1992), Staatsblad<sup>[1]</sup> 722*

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

To all to whom these presents shall come, greetings! be it known:

Whereas We have considered that it is necessary that the Second Council Directive of 15 December 1989 on the coordination of laws, regulations and administrative provisions relating to the taking up and pursuit of the business of credit institutions and amending Directive 77/780/EEC (89/646/EEC) as well as the Council Directive of 6 April 1992 on the supervision of credit institutions on a consolidated basis (92/30/EEC) be implemented and that, in consequence thereof as well as of some other adjustments to the Act on the Supervision of the Credit System (Staatsblad<sup>[1]</sup> 1978, 255), it is desirable that the provisions regarding the supervision of the credit system be laid down anew;

Now therefore, by and with the advice of the Council of State, and in joint consultation with Parliament, We have found good to enact, as We hereby enact:

## CHAPTER I

### *Introductory provisions*

#### **§ 1 Definitions**

##### **Section 1<sup>[2]</sup>**

1 For the purposes of this Act and the provisions stipulated by virtue of this Act, the following terms shall be defined as stated below:

a) credit institution:

an enterprise or institution whose business is to receive funds repayable on demand or subject to notice being given, and to grant credits or investments for its own account;

b) central credit institution:

a credit institution which co-determines the policy of a group of credit institutions;

<sup>1</sup> Bulletin of Acts, Orders and Decrees.

<sup>2</sup> Amended by Act of 10 July 1995 (Staatsblad 355) and by Act of 25 September 1996 (Staatsblad 537).

- c) financial institution:  
an enterprise or institution other than a credit institution the principal activity of which is to carry on one or more of the activities listed under 2 to 12 in the Annex to the Second Directive or to acquire or hold participations;
- d) representative organization:  
an organization which, in respect of the implementation of this Act, has been designated by Our Minister, having consulted the Bank, as representative organization for a group of enterprises and institutions;
- e) Our Minister:  
Our Minister of Finance;
- f) Bank:  
De Nederlandsche Bank N.V.;
- g) supervisory authority:  
the agency charged in any State with the supervision of the credit system in pursuance of a statutory arrangement;
- h) the Union:  
the European Union;
- i) Member State:  
a State which is a member of the Union as well as a State, not being a Member State, which is a party to the agreement on the European Economic Area (Tractatenblad<sup>1</sup> 1992, No. 132);
- j) Second Directive:  
the Second Council Directive of 15 December 1989 on the coordination of laws, regulations and administrative provisions relating to the taking up and pursuit of the business of credit institutions and amending Directive 77/780/EEC (89/646/EEC, OJ L 386);
- k) branch:  
one or more legally dependent parts of a credit institution or of a financial institution established in a State other than that in which the credit institution or the financial institution is established;
- l) provision of services:  
the carrying on or offering in a State, other than through a branch, of activities listed in the Annex to the Second Directive by a credit institution or a financial institution established in another State;
- m) qualifying holding:  
a direct or indirect holding of more than 5 per cent of the issued share capital of an enterprise or institution or the ability to exercise directly or indirectly more than 5 per cent of the voting rights in an enterprise or institution, or the ability to exercise directly or indirectly a comparable degree of control in an enterprise or institution;
- n) subsidiary:  
an enterprise or institution as defined in section 24a of Volume 2 of the Civil Code;
- o) group: a group as referred to in section 24b of Volume 2 of the Civil Code, with the proviso that, if a natural person, legal entity or partnership:  
(1) is able to exercise influence over one or more other natural persons, legal entities or partnerships through a formal or actual control structure; or  
(2) has a participating interest, as referred to in section 24c of Volume 2 of the Civil Code, in one or more other legal entities or partnerships, or, where natural persons are concerned, has a position corresponding with a participating interest,  
that natural person, legal entity or partnership, together with that other natural person, legal entity or partnership or natural persons, legal entities or partnerships, is considered a group.
- 2 The Bank is not regarded as a credit institution within the meaning of this Act.
- 3 Our Minister may order that enterprises or institutions which form part of a particular group of enterprises or institutions shall not be regarded as credit institutions within the meaning of this Act, if this is justified by the nature of the business of these enterprises or

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<sup>1</sup> Bulletin of Treaties.

institutions, provided that, in his opinion, this is not contrary to the interests which this Act seeks to protect. Our Minister may attach stipulations to his order.

4 The Bank may order that an enterprise or institution shall not be regarded as a credit institution within the meaning of this Act, if this is justified by the nature of the business of the enterprise or institution, provided that, in its opinion, this is not contrary to the interests which this Act seeks to protect. The Bank may attach stipulations to its order.

## **§ 2 Exercise of supervision by the Bank**

### **Section 2<sup>[1]</sup>**

1 The Bank exercises supervision:

- a) <sup>[2]</sup>
- b) in the interests of their solvency on the credit institutions established in the Netherlands and on the branches in the Netherlands of credit institutions established in a State not being a Member State;
- c) in the interests of their liquidity on the credit institutions established in the Netherlands and on the branches in the Netherlands of credit institutions not established in the Netherlands, and
- d) in the interests of their solvency on the financial institutions established in the Netherlands which have obtained a certificate of supervised status as referred to in section 45.

2 In the exercise of the supervision of the credit institutions established in one of the Member States, the Bank shall cooperate with the relevant supervisory authorities of the other Member States. To that end, the Bank shall, where appropriate, consult with these relevant supervisory authorities of the other Member States.

3 To the extent necessary for the exercise of the supervision of a branch in the Netherlands of a credit institution established in a State not being a Member State, the Bank may consult with the supervisory authority concerned.

### **Section 3<sup>[1]</sup>**

1 Our Minister or the Bank shall use the powers under section 81 and sections 11, 20 and 25, respectively, to implement the Council Directives on the supervision of credit institutions as referred to in these sections.

2 Our Minister may give the Bank directions in implementation of directives on the supervision of credit institutions issued by the Council of the European Union or by the European Parliament and the Council of the European Union jointly.

### **Section 4<sup>[3]</sup>**

1 It may be provided by Royal Decree, on the Bank's advice and after having taken the advice in this respect of the agency involved, that a group of credit institutions associated with a central credit institution is exempt from supervision by the Bank, to the extent that such supervision serves the interests of the solvency, liquidity and administrative organization of these institutions, insofar as this central credit institution adequately exercises such supervision on these institutions by virtue of its articles of association and those of the credit institutions associated with it or by virtue of an agreement with the credit institutions associated with it.

2 In respect of supervision, the central credit institution shall follow the Bank's instructions.

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<sup>1</sup> Amended by Act of 12 March 1998 (Staatsblad 215).

<sup>2</sup> Revoked, effective 1 January 1999, pursuant to section 21 of the Bank Act 1998 (Act of 26 March 1998, Staatsblad 200).

<sup>3</sup> Amended by Act of 6 February 1997 (Staatsblad 63) and by Act of 12 March 1998 (Staatsblad 215).

### **§ 3 Special provisions regarding branches**

#### **Section 5**

1 With respect to an enterprise or institution established outside the Netherlands which pursues the business of a credit institution in the Netherlands through a branch, the provisions of this Act shall only apply to the business conducted by it in or from the Netherlands.

2 With regard to an enterprise or institution established in a State not being a Member State which pursues the business of a credit institution in the Netherlands through a branch, the Bank may stipulate that its business of a credit institution conducted in or from the Netherlands shall also be deemed to include all or certain direct or indirect legal relationships between that credit institution and natural persons who and legal entities which are domiciled or established, respectively, in the Netherlands or conduct their business there.

3 For the purposes of sections 16 and 17 and 31 to 37, the Bank may regard a credit institution as a branch if, in the opinion of the Bank, the conditions as defined in section 12, under a to e, are met in regard of that credit institution.

## **CHAPTER II**

### *Credit institutions established in the Netherlands*

#### **Division 1 Taking up the business of a credit institution**

##### **§ 1 General**

###### **Section 6<sup>[1]</sup>**

No enterprise or institution established in the Netherlands shall pursue the business of a credit institution, except to the extent that it has obtained authorization to that end from the Bank.

###### **Section 7**

In connection with the supervision exercised in pursuance of this Act, a credit institution which has obtained authorization as referred to in section 6 is allowed to carry on at least the activities listed in the Annex to the Second Directive, unless the authorization expressly states otherwise and without prejudice to the applicability of other statutory regulations relating to these activities.

##### **§ 2 Applying for authorization**

###### **Section 8<sup>[2]</sup>**

1 An enterprise or institution established in the Netherlands and wishing to take up the business of a credit institution shall apply to the Bank for authorization.

2 To permit the decision as to whether authorization as referred to in section 9 will be granted or not, the application shall contain information about:

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<sup>1</sup> Amended by Act of 12 March 1998 (Staatsblad 215).

<sup>2</sup> Amended by Act of 6 April 1994 (Staatsblad 278), by Act of 12 March 1998 (Staatsblad 215) and by Act of 28 January 1999 (Staatsblad 30).

- a) the number, the names and the past history of the persons who determine the day-to-day policy of the enterprise or institution;
  - b) the number, the names and the past history of the members of the supervisory board of the enterprise or institution or of the body of the enterprise or institution having a task comparable with that of a supervisory board;
  - c) the names and the past history of the persons who determine the day-to-day policy of the group of which the enterprise or institution forms part and who in that capacity also co-determine the day-to-day policy of the enterprise or institution;
  - d) the names and the past history of the persons who determine or co-determine the policy of the group of which the enterprise or institution forms part and who in that capacity also co-determine the policy of the enterprise or institution;
  - e) the names of those who have a qualifying holding in the enterprise or institution, as well as the size of any such qualifying holding;
  - f) annual accounts or an opening balance sheet, which shall be provided with an auditor's report, signed by an accountant as referred to in section 393(1) of Volume 2 of the Civil Code;
  - g) a programme of operations which the enterprise or institution intends to carry on;
  - h) the envisaged administrative organization – including the financial accounting system and internal control;
  - i) the formal and actual control structure of the group of which the enterprise or institution forms part, and
  - j) if the enterprise or institution is a subsidiary or a branch of a credit institution not established in the Netherlands: a declaration from the supervisory authority of the State of establishment of that credit institution showing that this authority has approved the establishment of a subsidiary or a branch in the Netherlands.
- 3 The Bank shall decide on the application within thirteen weeks of the date of receipt of the application.

### **§ 3 Authorization requirements**

#### **Section 9<sup>[1]</sup>**

1 The Bank shall grant the authorization, unless:

- a) the enterprise or institution does not fulfil the requirements provided for in or under sections 10 and 11;
- b) the Bank is of the opinion that the expertise of one or more persons who determine the day-to-day policy of the enterprise or institution is insufficient in connection with the pursuit of the business of a credit institution;
- c) on the grounds of the intentions or the past history, the Bank is of the opinion that, in view of the interests of the creditors or future creditors of the enterprise or institution, the trustworthiness of one or more persons who determine or co-determine the policy of the enterprise or institution, is not beyond doubt;
- d) the Bank is of the opinion that the expertise of one or more persons who determine the day-to-day policy of the group of which the enterprise or institution forms part, to the extent that in that capacity they also co-determine the day-to-day policy of the enterprise or institution, is insufficient in connection with the pursuit of the business of a credit institution;
- e) on the grounds of the intentions or the past history, the Bank is of the opinion that, in view of the interests of the creditors or future creditors of the enterprise or institution, the trustworthiness of one or more persons who determine or co-determine the policy of the group of which the enterprise or institution forms part and who in that capacity also co-determine the policy of the enterprise or institution, is not beyond doubt;

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<sup>1</sup> Amended by Act of 6 April 1994 (Staatsblad 278), by Act of 25 September 1996 (Staatsblad 537) and by Act of 12 March 1998 (Staatsblad 215).

- f) without prejudice to the provisions of section 24, the Bank is of the opinion that, as a result of a qualifying holding in the enterprise or institution, the enterprise or institution is or could be subject to an influence contrary to sound banking policy;
- g) the report referred to in section 8(2), under f, is a report to the effect other than that the annual accounts or opening balance sheet give a true and fair view of the financial position of the enterprise or institution, or
- h) on the grounds of information as referred to in section 8(2), under f, g or h, the Bank is of the opinion that the enterprise or institution will not be capable of implementing its intentions or of meeting the requirements to be imposed on it on account of the supervision.
- 2 The Bank may refuse authorization if it has reason to assume that the enterprise or institution has applied for authorization in order to evade the statutory rules or regulations pertaining to the supervision of the credit system in another Member State.
- 3 The Bank may refuse authorization if it is of the opinion that the formal or actual control structure of the group of which the enterprise or institution forms part is so lacking in transparency as to constitute an impediment to the adequate exercise of supervision on the enterprise or institution.
- 4 The Bank may also refuse authorization if the enterprise or institution forms part of a group and, in the opinion of the Bank, the adequate exercise of supervision on that enterprise or institution is impeded by the legislation of a State not being a Member State that is applicable to a group company or natural person forming part of the group.
- 5 If the enterprise or institution is a subsidiary or a branch of a credit institution not established in the Netherlands, the Bank may refuse authorization if it is of the opinion that the supervisory authority of the State of establishment of the foreign credit institution does not, or not adequately, exercise supervision on a consolidated basis<sup>[1]</sup>.

#### **Section 10<sup>[2]</sup>**

- 1 The day-to-day policy of a credit institution shall be determined by at least two persons.
- 2 The persons who determine the day-to-day policy of a credit institution shall carry on their activities in this respect from within the Netherlands.
- 3 A credit institution which is a 'naamloze vennootschap' or a 'besloten vennootschap met beperkte aansprakelijkheid' shall have a supervisory board as referred to in section 140 or section 250, respectively, of Volume 2 of the Civil Code, consisting of at least three members.
- 4 A credit institution which is not a 'naamloze vennootschap' or a 'besloten vennootschap met beperkte aansprakelijkheid' shall have a body, consisting of at least three persons, having a task comparable with that of a supervisory board.
- 5 The Bank may grant to a credit institution which is not a 'naamloze vennootschap' or a 'besloten vennootschap met beperkte aansprakelijkheid' and to which section 158 or section 268 of Volume 2 of the Civil Code is applicable, full or partial dispensation from the provisions contained in subsection (3) or (4) and attach stipulations to such dispensation.

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<sup>1</sup> Section III of the Act of 12 March 1998 (Staatsblad 215) reads as follows: With regard to a credit institution which is a subsidiary or a branch of a credit institution not established in the Netherlands and to which, on the date of entry into force of this Act, authorization has been granted pursuant to section 6 or 38(1) of the Act on the Supervision of the Credit System 1992, the Bank may not, if it is of the opinion that the supervisory authority of the State of establishment of the foreign credit institution does not, or not adequately, exercise supervision on a consolidated basis, withdraw this authorization, based upon this opinion, prior to one year after the date of entry into force of this Act. The Act of 12 March 1998 (Staatsblad 215) entered into force on 15 May 1998 (Staatsblad 1998, 282).

<sup>2</sup> Amended by Act of 25 September 1996 (Staatsblad 537).

## **Section 11**

- 1 A credit institution shall have a minimum amount of own funds.
- 2 The amount referred to in subsection (1) shall be fixed by the Bank, also in implementation of the provisions of the Second Directive.
- 3 The amount referred to in subsection (1) may be fixed at different levels for different groups of credit institutions.
- 4 When the amount referred to in subsection (1) is fixed, the concept of own funds shall be defined for the different legal forms distinguished.
- 5 In special cases or under special circumstances, the Bank may grant a credit institution, for a period to be determined by the Bank, full or partial dispensation from the provisions fixed by the Bank under subsections (2) and (3). The Bank may impose limitations on, and attach stipulations to, such dispensation.

## **Section 12<sup>[1]</sup>**

- 1 In respect of a credit institution, the Bank may decide that sections 8(2), except under e, 9(1), except under f, or 9(3), 10, 11, 13, 14, 15(1), under c, under d – except to the extent that this provision relates to section 9(1), under f – or under g, or 30 shall not be applicable in full or in part, provided that:
  - a) the credit institution is affiliated with a central credit institution;
  - b) the central credit institution supervises compliance by the affiliated credit institution with the directives and general directions as referred to in sections 20, 21 and 22;
  - c) the central credit institution and its affiliated credit institutions are jointly and severally liable for each other's commitments or, alternatively, the commitments of the affiliated credit institution are guaranteed by the central credit institution;
  - d) in the opinion of the Bank, the central credit institution is adequately empowered to give instructions to the affiliated credit institution, and
  - e) the supervision of the central credit institution and the affiliated credit institution pursuant to section 20 is exercised on a consolidated basis.
- 2 The Bank may attach stipulations to its decision as referred to in subsection (1).

## **§ 4 Special measures**

### **Section 13<sup>[2]</sup>**

- 1 A change in the information as referred to in section 8(2), under a, b, c or d, is notified to the Bank in advance, insofar as it concerns the number or identity of the persons mentioned there.
- 2 A change as referred to in subsection (1) will not be made, if the Bank disclaims the intention to that end within 6 weeks of receipt of the notification as referred to in subsection (1), or, if the Bank has requested further data or information, within 6 weeks of receipt of these data or this information.
- 3 In the event of a change of the past history as referred to in section 8(2), under a, b, c or d, the credit institution shall inform the Bank in writing of such a change forthwith.

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<sup>1</sup> Amended by Act of 6 April 1994 (Staatsblad 278).

<sup>2</sup> Amended by Act of 12 March 1998 (Staatsblad 215).

## **Section 14<sup>[1]</sup>**

1 If:

- a) the credit institution does not meet the provisions of or under section 10, 11 or 30;
- b) a circumstance as referred to in section 9(1), under b, c, d or e, occurs at a credit institution, or
- c) the report as referred to in section 30(2) is a report to the effect other than that the annual accounts as referred to in section 30(1) give a true and fair view of the financial position of the credit institution and of the results for the relevant financial year, the Bank may give the competent bodies of the credit institution a direction to the effect that, in respect of a number of points to be specified, a certain course of action shall be pursued in order to achieve that, within a period to be specified by the Bank, the provisions of or under section 10, 11 or 30 shall be met, the circumstance as referred to in section 9(1), under b, c, d or e, shall no longer occur at the credit institution, or the report as referred to in section 30(2) concerning the annual accounts for a financial year to be specified by the Bank shall be to the effect that the annual accounts give a true and fair view of the financial position of the credit institution and of the results for that financial year, respectively.

2 If a circumstance as referred to in section 9(1), under d or e, occurs at a credit institution, the Bank may give the persons who determine, through a formal or actual control structure, the policy of the group of which this credit institution forms part a direction to the effect that one or more persons who determine the policy or the day-to-day policy of this group do not in that capacity also co-determine the policy or the day-to-day policy of the credit institution, in order to achieve that, within a period to be specified by the Bank, a circumstance as referred to in section 9(1), under d or e, shall no longer occur at a credit institution.

## **Section 14a<sup>[2]</sup>**

If, in the opinion of the Bank, an auditor does not, or no longer, offer the necessary safeguards that he will properly perform the duty assigned to him in respect of the credit institution, the Bank may decide that he is not qualified to deliver the auditor's reports, as referred to in this Act, in respect of the credit institution.

## **§ 5 Withdrawal of authorization**

### **Section 15<sup>[3]</sup>**

1 The Bank may withdraw authorization if:

- a) the credit institution so requests;
- b) the enterprise or institution to which authorization has been granted has ceased to be a credit institution;
- c) the credit institution does not meet the provisions of or under section 10, 11 or 30;
- d) a circumstance as referred to in section 9(1), under b, c, d, e or f, 9(3), (4) or (5) occurs at the credit institution;
- e) the report as referred to in section 30(2) is a report to the effect other than that the annual accounts as referred to in section 30(1) give a true and fair view of the financial position of the credit institution and of the results for the relevant financial year;
- f) the information or documents submitted to obtain the authorization or obtained pursuant to section 2(2) prove to be incorrect or incomplete to such an extent that the decision made in respect of the application for authorization would have been different if, at the time of that decision, the correct circumstances would have been known in full; or

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<sup>1</sup> Amended by Act of 6 April 1994 (Staatsblad 278) and by Act of 12 March 1998 (Staatsblad 215).

<sup>2</sup> Added by Act of 6 October 1999 (Staatsblad 470).

<sup>3</sup> Amended by Act of 6 April 1994 (Staatsblad 278), by Act of 14 December 1995 (Staatsblad 644), by Act of 25 September 1996 (Staatsblad 537) and by Act of 12 March 1998 (Staatsblad 215).



g) the credit institution does not meet the provisions of the scheme as referred to in section 84(2) to (4).

2 The Bank shall decide on a request for withdrawal of authorization as referred to in subsection (1), under a, within thirteen weeks of the date of receipt of the request.

3 A decision to withdraw authorization on the grounds as referred to in subsection (1) shall not become effective until it has become irrevocable. The decision shall be published in the Staatscourant<sup>3</sup> as soon as it has become irrevocable.

4 As from the date on which a decision as referred to in subsection (1) has become irrevocable, the prohibition as referred to in section 82(1) becomes applicable to the enterprise or institution.

5 As from the date as referred to in subsection (4), the enterprise or institution shall as soon as possible give notice of termination of all agreements regarding funds repayable on demand or subject to notice being given, obtained from the public in the course of its business and wind up such agreements within a period to be specified by the Bank. The Bank has power to extend this period.

6 Without prejudice to the provisions of subsections (4) and (5), the enterprise or institution shall, for the purposes of this Act, be equated, during the period of winding-up, with a credit institution which has obtained authorization as referred to in section 6.

## **Division 2 The carrying on by a credit institution of one or more of the activities listed in the Annex to the Second Directive outside the Netherlands**

### **§ 1 Branch in another Member State**

#### **Section 16<sup>4</sup>**

1 A credit institution which has obtained authorization as referred to in section 6 and which intends to carry on one or more of the activities listed in the Annex to the Second Directive through a branch in another Member State shall, before doing so, notify the Bank in writing of its intention. The credit institution is prohibited from giving effect to its intention for as long as the communication as referred to in subsection (3) has not been made.

2 The notification as referred to in subsection (1) shall state:

- a) the Member State where the credit institution plans to set up the branch;
- b) a programme of operations setting out the planned operations of the branch and the administrative organization – including the financial accounting system and internal control – envisaged for the branch;
- c) the address of the branch, and
- d) the names of the persons who will determine the day-to-day policy of the branch.

3 Within thirteen weeks of the date of receipt of the notification as referred to in subsection (1) and of the information as referred to in subsection (2), the Bank shall communicate this information, the amount of own funds and the solvency ratio of the credit institution as well as information about the applicability of any deposit guarantee scheme, established pursuant to section 84, regarding the commitments of the branch of the credit institution to the supervisory authority of the Member State as referred to in subsection (2), under a. The Bank shall inform the credit institution in writing that it has made this communication.

4 If the Bank is of the opinion that, in view of the operations which it intends to carry on through the branch as referred to in subsection (1), the credit institution will not in reason be able to comply with the directives and directions as referred to in sections 20, 21 and 22, it shall, notwithstanding the provisions of subsection (3), not make the communication to the supervisory authority of the Member State as referred to in subsection (2), under a. The Bank shall inform the credit institution accordingly within thirteen weeks of the date of receipt of the notification as referred to in subsection (1) and of the information as referred to in subsection (2).

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<sup>3</sup> Government Gazette.

<sup>4</sup> Amended by Act of 12 March 1998 (Staatsblad 215).

5 In the event of a change in the information as referred to in subsection (2), under b to d, or in the applicability of any deposit guarantee scheme, established pursuant to section 84, regarding the commitments of the branch of the credit institution or in the event of an intention to terminate the operations through the branch as referred to in subsection (1), the credit institution shall inform the Bank and the supervisory authority of the other Member State accordingly in writing at least four weeks before making the change or giving effect to the intention.

6 If, on the grounds of the information imparted to it pursuant to subsection (5), the Bank is of the opinion that, in view of the operations which it performs through the branch as referred to in subsection (1), the credit institution will not in reason be able to continue to comply with the directives as referred to in sections 20, 21 and 22, it may give the credit institution a direction on the course of action to be pursued, within a period to be determined by it, in respect of a number of points to be specified.

7 If, within the period specified by it in the direction, the Bank has not received an answer from the credit institution which it regards as satisfactory or if, in its opinion, its direction has not or has insufficiently been complied with, it shall withdraw the communication as referred to in subsection (3). The Bank shall inform the supervisory authority of the other Member State and the credit institution in writing of the withdrawal of the communication.

8 As soon as the communication as referred to in subsection (3) has been withdrawn, the credit institution shall no longer carry on operations through the branch as referred to in subsection (1).

## **§ 2 Branch in a State not being a Member State**

### **Section 16a<sup>[1]</sup>**

1 A credit institution which has obtained authorization as referred to in section 6 and which intends to carry on one or more of the activities listed in the Annex to the Second Directive through a branch in a State not being a Member State shall, before doing so, notify the Bank in writing of its intention. The credit institution is prohibited from giving effect to its intention for as long as the Bank has not shown its consent.

2 The notification as referred to in subsection (1) shall state:

- a) the State where the credit institution plans to set up the branch;
- b) a programme of operations setting out the planned operations of the branch and the administrative organization – including the financial accounting system and internal control – envisaged for the branch;
- c) the address of the branch, and
- d) the names of the persons who will determine the day-to-day policy of the branch.

3 The Bank takes a decision on the request for consent within 6 weeks of receipt of the notification as referred to in subsection (1).

## **§ 3 Provision of services**

### **Section 17<sup>[2]</sup>**

1 A credit institution which has obtained authorization as referred to in section 6 and which intends to carry on one or more of the activities listed in the Annex to the Second Directive through the provision of services in another Member State for the first time in that Member State shall always, before doing so, notify the Bank in writing of its intention.

2 The notification as referred to in subsection (1) shall state:

- a) the Member State where the credit institution plans to carry on the operations;
- b) the operations which the credit institution intends to carry on.

3 Within four weeks of the date of receipt of the notification as referred to in subsection (1) and of the information as referred to in subsection (2), the Bank shall communicate the

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<sup>1</sup> Added by Act of 12 March 1998 (Staatsblad 215).

<sup>2</sup> Amended by Act of 12 March 1998 (Staatsblad 215).

information as referred to in subsection (2), under b, to the supervisory authority of the Member State as referred to in subsection (2), under a. The Bank shall inform the credit institution in writing that it has made this communication.

### **Division 3 Supervision of the pursuit of the business of credit institutions**

#### **§ 1 General provisions**

##### **Section 18<sup>[1]</sup>**

Sections 19 to 30, except 25 and 25a, apply to each credit institution which has obtained authorization as referred to in section 6.

#### **§ 2 Monetary supervision**

##### **Section 19<sup>[2]</sup>**

#### **§ 3 Solvency supervision**

##### **Section 20**

1 Also in implementation of the Council Directives on the solvency and the supervision on a consolidated basis of credit institutions, the Bank may, whether or not also on a consolidated basis, give the credit institutions directives for the conduct of their business in the interests of their solvency.

2 The directives shall only be given or amended after consultation with the representative organizations involved. The consultations about amendment of the directives can be initiated by the Bank or by the representative organization involved. The directives may differ for different groups of credit institutions. A central credit institution may also be given directives which apply to the entirety of the credit institutions affiliated with the central credit institution concerned, including or excluding the central credit institution itself.

3 The directives may only contain:

a) provisions concerning the minimum amount of own funds which must be held in proportion to:

- (1) the risk-weighted loans, investments and other assets;
- (2) the risk-weighted off-balance-sheet engagements;
- (3) the interest rate risk, foreign exchange risk and other market risks;
- (4) the holdings in other enterprises or institutions;
- (5) the individual items included in (1), (2), (3) or (4) to the extent that they exceed a certain percentage of own funds;

b) provisions prohibiting, restricting or imposing stipulations on:

- (1) the loans, investments and other assets;
- (2) the off-balance-sheet engagements;
- (3) the interest rate risk, foreign exchange risk and other market risks;
- (4) the holdings in other enterprises or institutions;

c) provisions concerning the amount, whether or not in proportion to own funds, of:

- (1) the loans, investments and other assets;
- (2) the off-balance-sheet engagements;
- (3) the interest rate risk, foreign exchange risk and other market risks;
- (4) the holdings in other enterprises or institutions;

d) provisions concerning the scope of consolidation.

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<sup>1</sup> Amended by Act of 12 March 1998 (Staatsblad 215).

<sup>2</sup> Revoked, effective 1 January 1999, pursuant to section 21 of the Bank Act 1998 (Act of 26 March 1998, Staatsblad 200).

- 4 The Bank may grant to a credit institution full or partial dispensation from the directives, provided that, in the opinion of the Bank, the solvency of that credit institution is adequately safeguarded by other means. The Bank may attach restrictions and stipulations to such dispensation.
- 5 The directives shall define the concepts in respect of which they are given.

## **§ 4 Liquidity supervision**

### **Section 21**

- 1 The Bank may give the credit institutions directives for the conduct of their business in the interests of their liquidity.
- 2 The directives shall only be given or amended after consultation with the representative organizations involved. The consultations about amendment of the directives can be initiated by the Bank or by the representative organization involved. The directives may differ for different groups of credit institutions. A central credit institution may also be given directives which apply to the entirety of the credit institutions affiliated with the central credit institution concerned, including or excluding the central credit institution itself.
- 3 The directives may only contain provisions concerning the minimum amount of liquid assets or parts thereof in proportion to:
  - (1) the funds received or certain parts thereof;
  - (2) the funds received from each individual creditor to the extent that these funds exceed a certain percentage of the total funds received;
- 4 The Bank may grant to a credit institution full or partial dispensation from the directives, provided that, in the opinion of the Bank, the liquidity of that credit institution is adequately safeguarded by other means. The Bank may attach restrictions and stipulations to such dispensation.
- 5 The directives shall define the concepts in respect of which they are given.

## **§ 5 Supervision of the administrative organization**

### **Section 22**

- 1 The Bank may give the credit institutions recommendations or general directives for the conduct of their business in regard to the administrative organization, including the financial accounting system and internal control, as well as with a view to preventing conflicts of interests.
- 2 The recommendations and general directives shall only be given or amended after consultation with the representative organizations involved. The consultations about amendment of the recommendations and general directives can be initiated by the Bank or by the representative organization involved. The recommendations and general directives may differ for different groups of credit institutions. A central credit institution may also be given recommendations and general directives which apply to the entirety of the credit institutions affiliated with the central credit institution concerned, including or excluding the central credit institution itself.
- 3 In special cases or under special circumstances, the Bank may grant to a credit institution full or partial dispensation from the general directives. The Bank may attach restrictions and stipulations to such dispensation.
- 4 The recommendations and general directives shall define the concepts in respect of which they are given.
- 5 The recommendations shall be announced by publication in the Staatscourant<sup>[1]</sup>.

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<sup>1</sup> Government Gazette.

## § 6 Structural supervision

### Section 23<sup>[1]</sup>

1 Unless it has obtained a declaration of no-objection, a credit institution shall not:

- a) reduce its own funds by repayment of capital or distribution of reserves, or make disbursements from the item comprising the cover for general banking risks as referred to in section 424 of Volume 2 of the Civil Code;
- b) hold, acquire or increase a qualifying holding in another enterprise or institution, if such a holding is 10 per cent or more;
- c) take over all, or a considerable part of, the assets and liabilities of another enterprise or institution;
- d) merge with another enterprise or institution;
- e) proceed to financial or corporate reorganization;
- f) allow a managing partner to join the credit institution.

2 A declaration of no-objection for an act as referred to in subsection (1) shall be granted, unless:

- a) the Bank is of the opinion that the act would or could conflict with the directives as referred to in section 20(3), under a(4) and (5), under b(4), and under c(4), applicable to the credit institution, or
- b) the Bank is of the opinion that the act would or could conflict with sound banking policy in any other way, or
- c) the Bank is of the opinion that the act would or could lead to an undesirable development of the credit system, or
- d) Our Minister is of the opinion that the act would or could lead to an undesirable development of the credit system.

3 On the grounds of the considerations as referred to in subsection (2), under a, b and c, or in subsection (2), under d, restrictions and stipulations may be attached to a declaration of no-objection for an act as referred to in subsection (1).

4 If an act as referred to in subsection (1) has been performed without a declaration of no-objection having been obtained for that act or without the restrictions attaching to the declaration of no-objection having been duly observed, the offending credit institution shall rescind the act or yet duly observe the restrictions, respectively, within a period to be specified by Our Minister or by the Bank acting on behalf of Our Minister. This obligation shall cease to exist at the time when and to the extent that a declaration of no-objection is subsequently granted for the act concerned or the unobserved restrictions are withdrawn, respectively.

5 If stipulations attaching to the declaration of no-objection as referred to in subsection (1) are not complied with, Our Minister or the Bank, acting on behalf of Our Minister, may specify a period within which the offending credit institution shall yet comply with the unfulfilled stipulations.

### Section 24<sup>[2]</sup>

1 Save after having obtained a declaration of no-objection, any natural person or legal entity is prohibited from holding, acquiring or increasing a qualifying holding in a credit institution or from exercising any control attaching to a qualifying holding in a credit institution.

2 A declaration of no-objection for an act as referred to in subsection (1) shall be granted, unless:

- a) the Bank is of the opinion that the act would or could lead to an influence on the credit institution concerned which would conflict with sound banking policy;

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<sup>1</sup> Amended by Act of 12 March 1998 (Staatsblad 215).

<sup>2</sup> Amended by Act of 6 April 1994 (Staatsblad 278).

b) the Bank is of the opinion that the act would or could lead to the credit institution concerned forming or becoming part of a group within which the formal or actual control structure is so lacking in transparency as to constitute an impediment to the adequate exercise of supervision on the credit institution;

c) the Bank is of the opinion that the act would or could lead to an undesirable development of the credit system, or

d) Our Minister is of the opinion that the act would or could lead to an undesirable development of the credit system.

3 On the grounds of the considerations as referred to in subsection (2), under a to c, or in subsection (2), under d, restrictions and stipulations may be attached to a declaration of no-objection for an act as referred to in subsection (1).

4 If the holding, acquiring or increasing of a qualifying holding in a credit institution as referred to in subsection (1) has been effected without a declaration of no-objection having been obtained for that act or without the restrictions attaching to the declaration of no-objection having been observed, the offending natural person or legal entity shall rescind the act or shall yet observe the restrictions, respectively, within a period to be specified by Our Minister or by the Bank acting on behalf of Our Minister. This obligation shall cease to exist at the time when and to the extent that a declaration of no-objection is subsequently granted for the act concerned or the unobserved restrictions are withdrawn, respectively.

5 If any control attaching to a qualifying holding in a credit institution as referred to in subsection (1) has been exercised without a declaration of no-objection having been obtained for the holding, acquiring or increasing of the qualifying holding or for the exercise of any control attaching to a qualifying holding in a credit institution as referred to in subsection (1) or without the restrictions attaching to the declaration of no-objection having been observed, a resolution adopted owing in part to the control exercised shall be liable to nullification. The resolution can be declared null and void on the petition of Our Minister or of the Bank acting on behalf of Our Minister. In that event, the resolution shall be declared null and void by the District Court within whose jurisdiction the credit institution is established, if, but for the exercise of the control concerned, the resolution would have been different or would not have been adopted, unless, before the time judgment is given, a declaration of no-objection is yet granted or the unobserved restrictions are withdrawn, respectively. The District Court shall, to the extent necessary, make arrangements for the consequences of the nullification.

6 If the stipulations attaching to the declaration of no-objection as referred to in subsection (1) are not complied with, Our Minister or the Bank, acting on behalf of Our Minister, may specify a period within which the offending natural person or legal entity must yet comply with the unfulfilled stipulations.

## **Section 25**

1 In implementation of provisions of the Council Directives on the supervision of credit institutions on a consolidated basis, the Bank may give to holders of a declaration of no-objection as referred to in section 24(1) which are financial institutions and of which the subsidiaries are exclusively or mainly credit institutions as referred to in section 1(1), under a, or are financial institutions and of which at least one subsidiary is a credit institution which has obtained authorization as referred to in section 6, general directives in order to prevent the act for which the declaration of no-objection was granted from leading or possibly leading to an influence on the latter credit institution which is contrary to sound banking policy.

2 The general directives may only contain provisions regarding:

a) the amount of the own funds of the holder as referred to in subsection (1) in proportion to the financial risks of that holder and, on a consolidated basis, of the group headed by that holder;

b) the magnitude, whether or not in proportion to the own funds, of the financial risks as referred to under a;

- c) the scope of consolidation, and
  - d) the information to be furnished by the holder as referred to in subsection (1) as well as the form in which this information shall be furnished.
- 3 The general directives shall define the concepts in respect of which they are given.
- 4 The Bank may grant for a holder as referred to in subsection (1) dispensation from the general directives, provided that, in conformity with the Council Directive on the supervision of credit institutions on a consolidated basis, that holder is involved by a supervisory authority of another Member State in the supervision of credit institutions.
- 5 With regard to the general directives, sections 24(6) and 26(6), opening lines and under d, shall apply with the necessary modifications, with the proviso that the period as referred to in section 24(6) shall be determined by the Bank.

#### **Section 25a<sup>[1]</sup>**

- 1 In respect of a holder of a declaration of no-objection as referred to in section 24(1) heading a group of which one or more credit institutions as referred to in section 1(1), under a, and one or more insurance companies as referred to in section 1(1), under h, of the Insurance Business Supervision Act 1993 or section 1, under c, of the Funeral Services Insurance Act form part and of which at least one credit institution forms part which has obtained authorization as referred to in section 6, the Bank, acting in agreement with the authority charged, pursuant to the Insurance Business Supervision Act 1993 and the Funeral Services Insurance Act, with the supervision of insurance companies, may, on the grounds of the considerations as referred to in section 24(2), under a and b, formulate stipulations.
- 2 In conformity with section 24(3), the stipulations shall be attached by Our Minister to a declaration of no-objection as referred to in subsection (1).
- 3 If the stipulations are changed, Our Minister, having heard the Bank, or, in cases to be specified by Our Minister, the Bank acting on behalf of Our Minister may attach the changed stipulations to the declaration of no-objection granted to a holder as referred to in subsection (1).
- 4 The stipulations shall be published in the Staatscourant<sup>[2]</sup>.

#### **Section 26<sup>[3]</sup>**

- 1 An application for a declaration of no-objection as referred to in section 23(1) or section 24(1) shall be decided upon by Our Minister, having consulted the Bank, or, in cases to be specified by Our Minister, by the Bank acting on behalf of Our Minister.
- 2 The application shall be submitted to the Bank. The Bank shall forward the application, together with its recommendation, to Our Minister except in those cases in which it decides itself on behalf of Our Minister.
- 3 The application shall be decided on within thirteen weeks.
- 4 The granting of the declaration of no-objection as referred to in section 24(1) shall be communicated by the Bank to the credit institution concerned.
- 5 The granting of a declaration of no-objection shall be announced in the Staatscourant<sup>[2]</sup> by Our Minister or by the Bank, acting on behalf of Our Minister, except if and to the extent that Our Minister or the Bank is of the opinion that publication would or could lead to a disproportionate advantage or disadvantage for the party interested in the decision or for third parties.

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<sup>1</sup> Added by Act of 6 April 1994 (Staatsblad 278) and amended by Act of 10 July 1995 (Staatsblad 368).

<sup>2</sup> Government Gazette.

<sup>3</sup> Amended by Act of 23 December 1993 (Staatsblad 690) and by Act of 6 April 1994 (Staatsblad 278).

6 A declaration of no-objection may be changed or withdrawn by Our Minister, having consulted the Bank, or, in cases to be specified by Our Minister, by the Bank acting on behalf of Our Minister:

- a) at the request of the holder;
- b) if the holder is granted a declaration of no-objection relating to acts for which the declaration of no-objection to be withdrawn had been granted;
- c) if the information or documents furnished to obtain the declaration of no-objection prove to be incorrect or incomplete to such an extent that the decision on the application would have been different if, at the time of the decision, the correct circumstances would have been fully known;
- d) in case of failure to comply with all the stipulations attaching to the declaration of no-objection within the period as referred to in section 23(5) or section 24(6).

7 If, in respect of a declaration of no-objection granted, circumstances arise or facts become known which:

- a) in the opinion of the Bank, conflict or could conflict with sound banking policy or lead or could lead to an influence on the credit institution which is contrary to sound banking policy;
  - b) in the opinion of the Bank, cause or could cause the credit institution concerned to become part of a group within which the formal or actual control structure is so lacking in transparency as to constitute an impediment to the adequate exercise of supervision on the credit institution;
  - c) in the opinion of the Bank or Our Minister, lead or could lead to an undesirable development of the credit system;
- and which, consequently, had they arisen or become known before the date on which the declaration of no-objection was granted, would have led to the declaration of no-objection being refused or being granted subject to restrictions or stipulations, Our Minister, having consulted the Bank, or, in cases to be specified by Our Minister, the Bank, acting on behalf of Our Minister, may yet attach restrictions and stipulations to the declaration of no-objection or withdraw the declaration of no-objection.

8 The change in or the withdrawal of a declaration of no-objection as referred to in section 24(t) shall be communicated by the Bank to the credit institution concerned.

9 The change in or withdrawal of a declaration of no-objection shall be announced in the Staatscourant<sup>[1]</sup> by Our Minister or by the Bank, acting on behalf of Our Minister, except if and to the extent that Our Minister or the Bank is of the opinion that publication would or could lead to a disproportionate advantage or disadvantage for the party interested in the decision or for third parties.

## **Section 27**

1 Any natural person or legal entity whose qualifying holding in a credit institution changes to such an extent that the size of the holding falls below 5, 10, 20, 33 or 50 per cent or that the credit institution ceases to be a subsidiary shall inform the Bank accordingly.

2 In July of each year, a credit institution shall inform the Bank, to the extent that it knows the relevant data, of the names of any natural person who or legal entity which has a qualifying holding in the credit institution. Moreover, as soon as the relevant data become known to it, a credit institution shall inform the Bank of any acquisition of, disposal of or change in a qualifying holding in the credit institution causing the size of the holding to exceed or fall below 5, 20, 33 or 50 per cent or causing the credit institution to become or cease to be a subsidiary.

3 The Bank shall inform Our Minister once a year of the data known to it pursuant to subsections (1) and (2).

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<sup>1</sup> Government Gazette.



## § 7 Special measures

### Section 28<sup>[1]</sup>

- 1 If the Bank ascertains that a credit institution does not comply with the directives as referred to in section 20, 21 or 22 or perceives other signs of a development which, in its opinion, endangers or could endanger the solvency or the liquidity of the credit institution, it shall notify that credit institution.
- 2 If necessary, the Bank shall, in addition to the notification referred to in subsection (1), give a direction on the course of action to be pursued in respect of a number of points to be specified.
- 3 If, within two weeks of the date of notification of its direction, the Bank has not received an answer from the credit institution which it regards as satisfactory or if, in its opinion, its direction has not or has insufficiently been complied with, the Bank may:
  - a) give the credit institution notification that, as from a certain date, all or certain bodies of the credit institution may only exercise their powers after approval has been obtained from one or more persons appointed by the Bank and with due observance of the instructions given by these persons, which notification shall take immediate effect;
  - b) give the credit institution notification that the Bank will publish the direction as referred to in subsection (2), which publication shall, if so requested by the credit institution, also comprise the correspondence between the Bank and the credit institution concerning the direction;
  - c) enter into consultation on this matter with the chairman of the representative organization of the group of credit institutions of which the credit institution forms part, if the Bank considers this in the interests of creditors. At these consultations, the chairman may be assisted by at most two officials from his organization, unless the Bank considers this undesirable. The Bank shall notify the credit institution of the consultations.
- 4 If the Bank perceives signs at a credit institution of a development which, in its opinion, endangers the solvency or the liquidity of the credit institution and which necessitates immediate action, it may, without applying the subsections (1) and (2), implement elements a and c of subsection (3) forthwith. Section 4.11 of the General Administrative Law Act does not apply.
- 5 With regard to a notification as referred to in subsection (3), under a, the following shall apply:
  - a) the bodies of the credit institution shall cooperate in every respect with the persons appointed by the Bank;
  - b) the Bank may allow the relevant bodies of the credit institution to perform certain acts without approval;
  - c) the persons appointed by the Bank shall exercise their powers for a period of at most two years after the date of the notification referred to in subsection (3), under a, without prejudice to the Bank's power to extend this period by at most one year on each occasion; any such extension shall take immediate effect;
  - d) the Bank may at any time replace the persons appointed by it with others;
  - e) for losses resulting from acts performed in contravention of a notification as referred to in subsection (3), under a, those who form part of the body of the credit institution which performed these acts shall be personally liable towards the credit institution; the credit institution may plead nullity of these acts if the counterparty knew, or could not have been unaware, that the necessary approval was lacking;
  - f) as soon as the Bank is of the opinion that the solvency and the liquidity of the credit institution are no longer endangered, it shall decide that the relevant bodies of the credit institution may again exercise their powers in full.
- 6 The decision to publish a direction as referred to in subsection (3), under b, shall take effect only when it has become irrevocable. If the credit institution complies with the direction after its publication or if the Bank withdraws the direction, the Bank shall publish this in the same manner as used for the earlier publication.

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<sup>1</sup> Amended by Act of 23 December 1993 (Staatsblad 690).

## Section 29

1 If the Bank has been notified by the supervisory authority of another Member State that a branch in that Member State of a credit institution established in the Netherlands does not or does not fully comply with the supervisory rules for that credit institution as they are applicable to the branch in the other Member State, the Bank shall notify that credit institution.

2 If necessary, the Bank shall, in addition to the notification referred to in subsection (1), give a direction, prepared where necessary after consultation with the supervisory authority as referred to in subsection (1), stipulating that, within a period to be specified by the Bank, a certain course of action shall be pursued in respect of a number of points to be specified.

3 If, within the period specified by it in the direction, the Bank has not received an answer from the credit institution which it regards as satisfactory or if, in its opinion, its direction has not or has insufficiently been complied with, the Bank shall withdraw the communication as referred to in section 16(3). The Bank shall inform the supervisory authority of the other Member State and the credit institution in writing of the withdrawal of the communication.

## § 8 Annual accounts

### Section 30<sup>[1]</sup>

1 Each credit institution shall submit to the Bank every year, within six months of the end of the financial year, at least its annual accounts as referred to in section 361(1) of Volume 2 of the Civil Code. The annual accounts shall be submitted in the form in which they have been approved in conformity with the articles of association or the memorandum of association or, if they have not been approved, in the form in which they have been adopted or, if they have not been adopted, in the form in which they have been prepared. The annual accounts shall state whether or not they have been adopted and approved.

2 The annual accounts shall be provided with an auditor's report, signed by an accountant as referred to in section 393(1) of Volume 2 of the Civil Code<sup>[2]</sup>. When charging the auditor with the audit, the credit institution shall authorize the auditor to furnish to the Bank, on request or under an agreement concluded to that end between the credit institution, the auditor and the Bank, any and all information which may in reason be deemed necessary for the proper performance of the task imposed upon the Bank by this Act. The Bank shall give the credit institution the opportunity to be present when the auditor furnishes information.

3 The Bank may grant to a credit institution full or partial dispensation from the provisions contained in subsection (1) or (2) and attach stipulations to such dispensation, without prejudice to the provisions of Title 9 of Volume 2 of the Civil Code.

4 The auditor as referred to in subsection (2) shall inform the Bank as soon as possible of any and all circumstances which have come to his knowledge in the pursuit of his activities as referred to in subsection (2) and which:

- a) are contrary to the requirements for obtaining an authorization as referred to in section 6;
- b) are contrary to the obligations imposed by and under this Act;
- c) threaten the continuity of the credit institution; or
- d) lead to the refusal of the auditor to deliver his report or lead him to make qualifications.

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<sup>1</sup> Amended by Act of 25 September 1996 (Staatsblad 537).

<sup>2</sup> See section 121.

5 The obligation of the auditor who, apart from his activities for the credit institution, also carries on activities for another enterprise or institution, to furnish the information as referred to in subsection (4) shall apply with the necessary modifications, if the credit institution is a subsidiary of the other enterprise or institution, or if the other enterprise or institution is a subsidiary of the credit institution. For the purposes of the first sentence a subsidiary is understood to be a subsidiary as referred to in section 24a of Volume 2 of the Civil Code, with the proviso that a credit institution can also be a subsidiary of a natural person or partnership.

6 The auditor who has informed the Bank pursuant to subsection (4) or (5) is not liable for consequent third party losses, unless it is made plausible that, considering all facts and circumstances, he should not in reason have furnished the information.

## **CHAPTER III**

### *Credit institutions established in another Member State*

#### **Division 1 Taking up the business of a credit institution in the Netherlands**

##### **§ 1 Branch**

###### **Section 31**

1 An enterprise or institution established in another Member State shall be prohibited from pursuing the business of a credit institution through a branch in the Netherlands, unless:

- a) it has obtained authorization from the supervisory authority of the other Member State to pursue the business of a credit institution;
- b) the Bank has received a notification from the supervisory authority of the other Member State, comprising:
  - (1) a programme of operations setting out the activities envisaged by and the organizational structure of the branch;
  - (2) the address of the branch;
  - (3) the names of the persons who will determine the day-to-day policy of the branch;
  - (4) the amount of the own funds and the solvency ratio of the credit institution, and
  - (5) information about the applicability of a deposit guarantee scheme in the other Member State to the commitments of the branch, and
- c) the Bank has informed the enterprise or institution of the receipt of the notification as referred to under b, or eight weeks have passed as from the date on which the Bank received the notification as referred to under b.

2 However, the credit institution established in another Member State which, by virtue of subsection (1), is permitted to pursue the business of a credit institution through a branch in the Netherlands shall not be allowed to carry on activities listed in the Annex to the Second Directive, if the authorization referred to in subsection (1), under a, rules out the carrying on of these activities or if the notification as referred to in subsection (1), under b, does not mention the carrying on of these activities.

3 The credit institution established in the other Member State as referred to in subsection (1) shall notify the Bank and the supervisory authority of that other Member State at least four weeks in advance of any change in the information as referred to in subsection (1), under b(1), (2), (3) or (5) or, as the case may be, of the intention to terminate the carrying on of activities by the branch as referred to in subsection (1).

## § 2 Provision of services

### Section 32<sup>[1]</sup>

1 An enterprise or institution established in another Member State which pursues the business of a credit institution shall be prohibited from receiving funds from the general public, repayable on demand or subject to notice being given, through the provision of services in the Netherlands, unless:

- a) it has obtained authorization from the supervisory authority of the other Member State to pursue the business of a credit institution, and
- b) it has sent to the supervisory authority of the other Member State a notification setting out the envisaged operations.

2 However, the credit institution established in another Member State which, by virtue of subsection (1), is permitted to receive repayable funds from the general public through the provision of services in the Netherlands shall not be allowed to carry on activities listed in the Annex to the Second Directive, if the authorization referred to in subsection (1), under a, rules out the carrying on of these activities or if the notification as referred to in subsection (1), under b, does not mention the carrying on of these activities.

## § 3 Special provisions

### Section 33<sup>[1]</sup>

1 If a Member State has not or has insufficiently implemented the First Council Directive of 12 December 1977 on the coordination of laws, regulations and administrative provisions relating to the taking up and pursuit of the business of credit institutions (77/780/EEC; OJ L 322), the Second Directive, the Council Directive of 17 April 1989 on the own funds of credit institutions (89/299/EEC; OJ L 124) or the Council Directive of 18 December 1989 on a solvency ratio for credit institutions (89/647/EEC; OJ L 386), Our Minister, having consulted the Bank, may stipulate that subsections (2) and (3) shall apply to enterprises and institutions established in that Member State.

2 With regard to the pursuit of the business of a credit institution through a branch in the Netherlands by an enterprise or institution as referred to in subsection (1), sections 38 to 44 shall apply instead of section 31.

3 With regard to the receipt of funds, repayable on demand or subject to notice being given, through the provision of services in the Netherlands by an enterprise or institution as referred to in subsection (1), section 82 shall apply instead of section 32.

4 As from the time at which the measure as referred to in subsection (1) in respect of a Member State is revoked, the enterprise or institution established in that Member State which, at that point in time, pursues the business of a credit institution through a branch in the Netherlands and which has to that end obtained authorization as referred to in section 38(1) shall be deemed to have met the provisions of section 31(1), under b and c; at that point in time, the authorization as referred to in section 38(1) granted to that enterprise or institution shall become void *ipso jure*.

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<sup>1</sup> Amended by Act of 12 March 1998 (Staatsblad 215).

## **Division 2 Supervision of the business of credit institutions in the Netherlands**

### **§ 1 Supervision**

#### **Section 34**

Sections 19 and 21 shall apply with the necessary modifications to a branch in the Netherlands of a credit institution established in another Member State which pursues the business of a credit institution pursuant to section 31.

### **§ 2 Special measures**

#### **Section 35**

1 If the Bank ascertains that a branch in the Netherlands of a credit institution established in another Member State which, pursuant to section 31, pursues the business of a credit institution does not comply with the directives as referred to in section 21 or perceives other signs of a development which, in its opinion, endangers or could endanger the liquidity of the branch, section 28(1) and (2), shall apply with the necessary modifications to the liquidity of the branch.

2 If, within two weeks of the date of the direction as referred to in section 28(2), the Bank has not received an answer which it regards as satisfactory or if, in its opinion, its direction has not or has insufficiently been complied with, the Bank may notify this to the supervisory authority of the Member State where the credit institution is established and request that supervisory authority to take measures to ensure that the direction will yet be complied with within a period to be specified by the Bank.

3 If, within the latter period specified by it, the Bank has not received an answer which it regards as satisfactory or if, in its opinion, its direction has not or has insufficiently been complied with, section 28(3), (5) and (6) shall, after the Bank has notified this to the supervisory authority of that other Member State, be applicable, with the necessary modifications, to the liquidity of the branch.

4 If the Bank perceives signs at a branch in the Netherlands of a credit institution established in another Member State which, pursuant to section 31, pursues the business of a credit institution of a development which, in its opinion, endangers the liquidity of the branch and which necessitates immediate action, the Bank may, notwithstanding the provisions of subsections (1) to (3), take, applying section 28(3) to (6) with the necessary modifications, the measures with regard to the branch which it considers indispensable for the protection of the interests of the creditors of the branch.

5 Applying section 28(3) to (6) with the necessary modifications, the Bank may also take measures in respect of the branch, if it has been so requested by the supervisory authority of the Member State where the credit institution is established.

6 The Bank shall inform the supervisory authority of the other Member State and the Commission of the European Union<sup>[1]</sup> forthwith of any measures as referred to in subsections (4) and (5).

### **§ 3 Accounting and disclosure**

#### **Section 36**

A branch in the Netherlands of a credit institution established in another Member State which, pursuant to section 31, pursues the business of a credit institution shall, in respect of its business in the Netherlands, keep at least such accounts as will enable the Bank to perform the task imposed upon it by this Act.

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<sup>1</sup> Amended by Act of 25 September 1996 (Staatsblad 537).

## **Section 37<sup>[1]</sup>**

A branch in the Netherlands of a credit institution established in another Member State which, pursuant to section 31, pursues the business of a credit institution shall, each year within six months of the end of the financial year of the credit institution of which it forms part, submit to the Bank the accounting documents as designated under the Trade Register Act 1996.

## **CHAPTER IV**

*Credit institutions established in a State not being a Member State*

### **Division 1 Taking up the business of a credit institution in the Netherlands**

#### **§ 1 General**

##### **Section 38<sup>[2]</sup>**

1 No enterprise or institution established in a State not being a Member State shall pursue the business of a credit institution through a branch in the Netherlands, except to the extent that it has obtained authorization from the Bank to do so.

2 In connection with the supervision exercised in pursuance of this Act, a credit institution which has obtained authorization as referred to in subsection (1) is allowed to carry on at least the activities listed in the Annex to the Second Directive, unless the authorization expressly states otherwise and without prejudice to the applicability of other statutory regulations relating to these activities.

#### **§ 2 Authorization**

##### **Section 39<sup>[3]</sup>**

Sections 8(1), 8(2), under a, b, e, f, g and h, 8(3), 9(1), under a, b, c, f, g and h, 9(2), 10(1), 11, 13, 14 and 15 shall apply with the necessary modifications to the branch in the Netherlands of a credit institution established in a State not being a Member State as referred to in section 38(1).

##### **Section 40<sup>[3]</sup>**

Notwithstanding the provisions of section 9 and without prejudice to the provisions of section 15, the Bank shall refuse authorization as referred to in section 38(1) requested by an enterprise or institution or shall withdraw an authorization as referred to in section 38(1), if, in the State where it is established, the enterprise or institution does not possess the authorization necessary for the pursuit of the business of a credit institution, or if it becomes evident from the information submitted that this enterprise or institution will, in view of its solvency, liquidity or its organization and structure, in reason not be able to pursue or control the business of a credit institution.

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<sup>1</sup> Amended by Act of 8 February 1996 (Staatsblad 181).

<sup>2</sup> Amended by Act of 12 March 1998 (Staatsblad 215).

<sup>3</sup> Amended by Act of 6 April 1994 (Staatsblad 278) and by Act of 12 March 1998 (Staatsblad 215).

## **Division 2 Supervision of the pursuit of the business of credit institutions in the Netherlands**

### **§ 1 Supervision**

#### **Section 41<sup>[1]</sup>**

Sections 19, 20, 21, 22, 23 and 26 shall apply with the necessary modifications to a branch in the Netherlands of a credit institution established in a State not being a Member State which has obtained authorization as referred to in section 38(1).

### **§ 2 Special measures**

#### **Section 42<sup>[1]</sup>**

Section 28 shall apply with the necessary modifications to a branch in the Netherlands of a credit institution established in a State not being a Member State which has obtained authorization as referred to in section 38(1).

### **§ 3 Accounting and disclosure**

#### **Section 43<sup>[1]</sup>**

A branch in the Netherlands of a credit institution established in a State not being a Member State which has obtained authorization as referred to in section 38(1) shall, in respect of its business in the Netherlands, keep separate accounts, in such a way as to enable the Bank to perform the task imposed upon it by this Act.

#### **Section 44<sup>[2]</sup>**

A branch in the Netherlands of a credit institution established in a State not being a Member State which has obtained authorization as referred to in section 38(1) shall, each year within six months of the end of the financial year of the credit institution of which it forms part, submit to the Bank the accounting documents designated under the Trade Register Act 1996.

## **CHAPTER V**

*Pursuit of the business of a financial institution in another Member State by financial institutions established in the Netherlands*

### **§ 1 Supervised status**

#### **Section 45<sup>[1]</sup>**

1 On the application of a financial institution which is a subsidiary of one or more credit institutions which has or have obtained authorization as referred to in section 6 and which pursues or intends to pursue its business through a branch or the provision of services in another Member State, the Bank may grant to that financial institution a certificate of supervised status and, when doing so, declare the provisions of or under sections 11, 20, 22, 24, 26 and 27 applicable with the necessary modifications to that financial institution.

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<sup>1</sup> Amended by Act of 12 March 1998 (Staatsblad 215).

<sup>2</sup> Amended by Act of 8 February 1996 (Staatsblad 181) and by Act of 12 March 1998 (Staatsblad 215).

- 2 To permit the decision as to whether a certificate of supervised status as referred to in section 46 will be granted or not, the application shall contain information about:
- a) the name of the credit institution or credit institutions of which the financial institution is a subsidiary;
  - b) a programme of operations which the financial institution carries on or intends to carry on, and
  - c) the envisaged administrative organization – including the financial accounting system and internal control.
- 3 The Bank shall decide on the application within thirteen weeks of the date of receipt of the application.

### **Section 46**

- 1 The Bank shall only grant the certificate of supervised status as referred to in section 45(1) if:
- a) the financial institution shows, to the extent that other statutory provisions apply to its operations, that it is permitted to carry on these operations;
  - b) the credit institution or credit institutions as referred to in section 45(1) holds or hold at least 90 per cent of the voting rights in the financial institution;
  - c) the credit institution or credit institutions as referred to in section 45(1) guarantees or guarantee, with the consent of the Bank, the commitments of the financial institution, and
  - d) the credit institution or credit institutions as referred to in section 45(1) has or have satisfied the Bank regarding the prudent management of the financial institution.

### **Section 47**

The Bank may withdraw a certificate of supervised status if:

- a) the financial institution so requests;
- b) the enterprise or institution to which the certificate of supervised status has been granted has ceased to be a financial institution;
- c) the financial institution no longer meets the provisions of section 46, under a;
- d) with regard to the financial institution, the provisions of section 46, under b, c or d, are no longer met or the provisions of sections 24, 26 or 27(1) are not complied with;
- e) the financial institution does not comply with the provisions of or under sections 11, 20, 22 or 27(2), or
- f) the information or documents submitted to obtain the certificate of supervised status prove to be incorrect or incomplete to such an extent that the decision made in respect of the application would have been different if, at the time of that decision, the correct circumstances would have been known in full.

## **§ 2 Branch**

### **Section 48**

- 1 A financial institution which has obtained a certificate of supervised status as referred to in section 45(1) and which pursues or intends to pursue the business which it pursues in the Netherlands through a branch in another Member State shall notify this to the Bank in writing.
- 2 The notification as referred to in subsection (1) shall state:
- a) the Member State where the financial institution has set up or intends to set up the branch;
  - b) a programme of operations setting out the planned operations of the branch and the administrative organization – including the financial accounting system and internal control – envisaged for the branch;



- c) the address of the branch, and
  - d) the names of the persons who will determine the day-to-day policy of the branch.
- 3 Within thirteen weeks of the date of receipt of the notification as referred to in subsection (1) and of the information as referred to in subsection (2), the Bank shall communicate this information as well as information about the amount of own funds of the financial institution and the solvency ratio on a consolidated basis of the credit institution or credit institutions as referred to in section 45(1) to the supervisory authority of the Member State as referred to in subsection (2), under a. The Bank shall inform the financial institution in writing that it has made this communication.
- 4 If the Bank is of the opinion that, in view of the operations which it carries on or intends to carry on through the branch as referred to in subsection (1), the financial institution will not in reason be able to comply with the directives as referred to in sections 20 and 22, it shall, notwithstanding the provisions of subsection (3), not make the communication to the supervisory authority of the Member State as referred to in subsection (2), under a.  
The Bank shall inform the financial institution accordingly within thirteen weeks of the date of receipt of the notification as referred to in subsection (1) and of the information as referred to in subsection (2).
- 5 In the event of a change in the information as referred to in subsection (2), under b, c or d, or in the event of an intention to terminate the operations through the branch as referred to in subsection (1), the financial institution shall inform the Bank and the supervisory authority of the other Member State accordingly in writing at least four weeks before making the change or giving effect to the intention.
- 6 If, on the grounds of the information imparted to it pursuant to subsection (5), the Bank is of the opinion that, in view of the operations which it carries on through the branch as referred to in subsection (1), the financial institution will not in reason be able to continue to comply with the directives as referred to in sections 20 and 22, it shall withdraw the communication as referred to in subsection (3). The Bank shall inform the supervisory authority of the other Member State and the financial institution in writing of the withdrawal of the communication.

### **§ 3 Provision of services**

#### **Section 49**

- 1 A financial institution which has obtained a certificate of supervised status as referred to in section 45(1) and which pursues or intends to pursue for the first time after obtainment of the certificate of supervised status as referred to in section 45(1) the business which it pursues in the Netherlands through the provision of services in another Member State shall notify this to the Bank in writing.
- 2 The notification as referred to in subsection (1) shall state:
- a) the Member State where the financial institution intends to carry on the operations;
  - b) the operations which the financial institution intends to carry on.
- 3 Within four weeks of the date of receipt of the notification as referred to in subsection (1) and of the information as referred to in subsection (2), the Bank shall communicate the information as referred to in subsection (2), under b, to the supervisory authority of the Member State as referred to in subsection (2), under a. The Bank shall inform the financial institution in writing that it has made this communication.

## CHAPTER VI

*Pursuit of the business of a financial institution in the Netherlands by financial institutions established in another Member State*

### § 1 Branch

#### Section 50<sup>[1]</sup>

1 A financial institution which is established in another Member State not being a Member State in respect of which Our Minister has taken a measure as referred to in section 33(1) and which in that Member State has obtained a certificate comparable with a certificate of supervised status as referred to in section 45(1) shall, without prejudice to the applicability of other statutory provisions relating to its operations, only be allowed, insofar as the activities listed in the Annex to the Second Directive are concerned, to carry on the operations mentioned in the programme of operations as referred to under a, (1), through a branch in the Netherlands, if:

a) the Bank has received a notification from the supervisory authority of the other Member State, containing:

- (1) a programme of operations setting out the planned operations of the branch and its organizational structure;
- (2) the address of the branch;
- (3) the names of the persons who will determine the day-to-day policy of the branch;
- (4) the amount of the own funds of the financial institution, and
- (5) the solvency ratio on a consolidated basis of the credit institution or credit institutions of which the financial institution is a subsidiary, and

b) the Bank has informed the financial institution of the receipt of the notification as referred to under a or eight weeks have passed from the date on which the Bank received the notification as referred to under a.

2 The financial institution established in another Member State as referred to in subsection (1) shall inform the Bank and the supervisory authority of that other Member State at least four weeks in advance of any change in the information as referred to in subsection (1), under a, (1), (2) or (3), or, as the case may be, of the intention to terminate the operations through the branch as referred to in subsection (1).

### § 2 Provision of services

#### Section 51

A financial institution which is established in another Member State not being a Member State in respect of which Our Minister has taken a measure as referred to in section 33(1) and which in that Member State has obtained a certificate comparable with a certificate of supervised status as referred to in section 45(1) shall, without prejudice to the applicability of other statutory provisions relating to its operations, only be allowed, insofar as the activities listed in the Annex to the Second Directive are concerned, to carry on, through the provision of services in the Netherlands, the operations mentioned in the notification, if the financial institution has sent a notification to the supervisory authority of that other Member State containing a list of the envisaged operations.

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<sup>1</sup> Amended by Act of 12 March 1998 (Staatsblad 215).

## CHAPTER VII

### *Register*

#### **Section 52<sup>[1]</sup>**

- 1 There shall be a register kept by the Bank.
- 2 The Bank shall ensure the entry in the register of each credit institution:
  - a) which has obtained authorization as referred to in section 6;
  - b) which has obtained authorization as referred to in section 38(1);
  - c) which is allowed to pursue the business of a credit institution in the Netherlands pursuant to section 31;
  - d) which is allowed to carry on its operations in the Netherlands through the provision of services;  
and of each financial institution:
    - e) which has obtained a certificate of supervised status as referred to in section 45(1);
    - f) which is allowed to carry on operations in the Netherlands pursuant to section 50, and
    - g) which is allowed to carry on operations in the Netherlands pursuant to section 51.
- 3 The Bank shall ensure the cancellation of the entry in the register of each credit institution:
  - a) whose authorization as referred to in section 6 has been withdrawn;
  - b) whose authorization as referred to in section 38(1) has been withdrawn;
  - c) which is no longer allowed to pursue the business of a credit institution in the Netherlands pursuant to section 31;
  - d) which is no longer allowed to carry on its operations in the Netherlands through the provision of services;  
and of each financial institution:
    - e) whose certificate of supervised status as referred to in section 45(1) has been withdrawn;
    - f) which is no longer allowed to carry on operations in the Netherlands pursuant to section 50, and
    - g) which is no longer allowed to carry on operations in the Netherlands pursuant to section 51.
- 4 The entry or the cancellation of the entry in the register of a credit institution or financial institution shall be published by the Bank in the Staatscourant<sup>[2]</sup> within two weeks of the date on which the entry or cancellation, respectively, is made.
- 5 In January of each year, the Bank shall publish a copy of the register, showing the position as at 31 December of the preceding year, in the Staatscourant<sup>[2]</sup>.
- 6 A copy of the register shall be available for free inspection by anyone at the offices of the Bank.

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<sup>1</sup> Amended by Act of 12 March 1998 (Staatsblad 215).

<sup>2</sup> Government Gazette.

## CHAPTER VIII

*Collection of information, secrecy, exchange of information and cooperation*

### Division I Collection of information

#### § 1 Collection of information by the Bank from non-registered enterprises and institutions

##### Section 53<sup>[1]</sup>

The Bank has power to seek or have sought on its behalf from any enterprise or institution which it suspects to be a credit institution within the meaning of section 1 or to act in conflict with the rules set under this Act any and all information which may in reason be deemed necessary to judge whether or not this is the case.

#### § 2 Collection of information by the Bank in the interests of its supervision of credit institutions

##### Section 54

The Bank has power to seek or have sought on its behalf from any credit institution which has been registered pursuant to section 52(2), under a, b or c, any and all information which it considers necessary for the proper performance of the task imposed upon it by this Act.

##### Section 55<sup>[2]</sup>

1 A credit institution which has been registered pursuant to section 52(2), under a or b, must submit to the Bank periodically, within the periods fixed for that purpose, statements, whether or not also on a consolidated basis, regarding its business which the Bank needs for the proper performance of the task imposed upon it by section 2 of this Act. At the Bank's request, a credit institution which has been registered pursuant to section 52(2), under c, must submit these statements to the Bank, whether or not periodically, within the periods fixed for that purpose.

2 The form in which the statements referred to in subsection (1) shall be drawn up, the names and the descriptions of the items which they shall contain, the successive dates to which they shall relate, the periods within which they shall be submitted and the bases to be used for the valuation of the items shall be fixed by the Bank and may differ for different groups of credit institutions.

3 If the Bank considers this necessary in the interests of effective supervision, it may order a credit institution to submit to it statements as referred to in subsection (1) relating to dates at shorter intervals, or to submit said statements within shorter periods, than those fixed pursuant to subsection (2).

4 The obligations as referred to in subsection (1) shall not apply to the extent that a credit institution has been granted dispensation as referred to in section 20(4) or 21(4).

5 The statements as referred to in subsection (1) shall be accompanied periodically by an auditor's report, signed by an accountant as referred to in section 393(1) of Volume 2 of the Civil Code<sup>[3]</sup>. When giving the audit instruction, the credit institution shall authorize the auditor in writing to furnish, on request or under an agreement to that effect concluded between the credit institution, the auditor and the Bank, to the Bank any and all

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<sup>1</sup> Amended by Act of 12 March 1998 (Staatsblad 215).

<sup>2</sup> Amended by Act of 25 September 1996 (Staatsblad 537) and by Act of 12 March 1998 (Staatsblad 215)..

<sup>3</sup> See section 121.

information which may in reason be deemed necessary for the proper performance of the task imposed upon the Bank by this Act. The Bank shall give the credit institution the opportunity to be present when the auditor furnishes information.

6 The auditor as referred to in subsection (5) shall inform the Bank as soon as possible of any and all circumstances which have come to his knowledge in the pursuit of his activities as referred to in subsection (5) and which:

- a) are contrary to the requirements for obtaining an authorization as referred to in section 6 or 38;
- b) are contrary to the obligations imposed by and under this Act;
- c) threaten the continuity of the credit institution; or
- d) lead to the refusal of the auditor to deliver his report or lead him to make qualifications.

7 The obligation of the auditor who, apart from his activities for the credit institution, also carries on activities for another enterprise or institution, to furnish the information as referred to in subsection (6) shall apply with the necessary modifications, if the credit institution is a subsidiary of the other enterprise or institution, or if the other enterprise or institution is a subsidiary of the credit institution. For the purposes of the first sentence a subsidiary is understood to be a subsidiary as referred to in section 24a of Volume 2 of the Civil Code, with the proviso that a credit institution can also be a subsidiary of a natural person or partnership.

8 The auditor who has informed the Bank pursuant to subsection (6) or (7) is not liable for consequent third party losses, unless it is made plausible that, considering all facts and circumstances, he should not in reason have furnished the information.

9 The Bank may grant full or partial dispensation from the obligation as described in subsection (1) and attach stipulations to this dispensation.

## **Section 56**

1 A credit institution which has been registered pursuant to section 52(2), under a or b, shall inform the Bank forthwith of any full or partial non-compliance with the directives as referred to in sections 20, 21 or 22.

2 A credit institution which has been registered pursuant to section 52(2), under c, shall inform the Bank forthwith of any full or partial non-compliance with the directives as referred to in section 21.

## **Section 56a<sup>[1]</sup>**

The Bank has power to summon the persons as referred to in section 9(1), under b, c, d and e. The persons thus summoned shall appear. The summons shall be made in a manner to be determined by the Bank. The persons shall furnish any and all information requested.

## **Section 57**

The Bank has power to seek or have sought on its behalf from

- a) any enterprise or institution which, pursuant to the provisions under section 20(3), under d, falls within the scope of consolidation;
- b) any subsidiary of a credit institution which has been registered pursuant to section 52(2), under a or b;

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<sup>1</sup> Added by Act of 6 April 1994 (Staatsblad 278).

- c) any holder of a declaration of no-objection as referred to in section 24(1) of which the credit institution concerned is a subsidiary;
  - d) any enterprise or institution which, pursuant to the provisions under section 25(2), under c, falls within the scope of consolidation, and
  - e) any subsidiary of a holder of a declaration of no-objection as referred to in section 24(1) of which the credit institution concerned is also a subsidiary,
- any and all information which the Bank considers necessary for the proper exercise of its supervision of the credit institution concerned.

### **Section 58**

- 1 An enterprise or institution as referred to in section 57, under a or d, shall keep such accounts that it is able to furnish the information as referred to in section 57 to the Bank.
- 2 If the Bank is of the opinion that an enterprise or institution does not comply with the provisions of subsection (1), it may give that enterprise or institution a directive regarding the keeping of its accounts.

### **Section 59**

Sections 54, 55 and 57 shall apply with the necessary modifications to a financial institution which has obtained a certificate of supervised status as referred to in section 45(1).

## **§ 3 Cross-border on-the-spot verification**

### **Section 60**

- 1 If an enterprise or institution as referred to in section 57 is established in another Member State, the Bank may, in the interests of the supervision:
  - a) request the competent authority in the other Member State to ascertain, by means of on-the-spot verification, the correctness of the information furnished to the Bank, or
  - b) after having obtained the approval to do so from the competent authority in the other Member State, ascertain or have ascertained on its behalf, by means of on-the-spot verification, the correctness of the information furnished to the Bank.
- 2 In the case of a branch as referred to in section 16(1) or section 48(1), the Bank may, in the interests of the supervision:
  - a) request the supervisory authority of the other Member State to ascertain, by means of on-the-spot verification, the correctness of the information furnished to the Bank, or
  - b) after having informed the supervisory authority of the other Member State of its intention, ascertain or have ascertained on its behalf, by means of on-the-spot verification, the correctness of the information furnished to the Bank.

### **Section 61**

- 1 If, in conformity with the Council Directive on the supervision of credit institutions on a consolidated basis, information for the purposes of the supervision of credit institutions in another Member State has been furnished by or about an enterprise or institution established in the Netherlands to the supervisory authorities of that Member State, the Bank shall, after having been requested to do so by the supervisory authority of the Member State concerned:
  - a) ascertain, by means of on-the-spot verification, the correctness of the information furnished to the supervisory authority of the other Member State, or

b) allow the supervisory authority of the other Member State to ascertain or have ascertained on its behalf, by means of on-the-spot verification, the correctness of the information furnished to it.

2 In the case of a branch as referred to in section 31(1) or section 50(1), the following shall be effected in the interests of the supervision in the other Member State:

a) the Bank shall, at the request of the supervisory authority of the other Member State, ascertain, by means of on-the-spot verification, the correctness of the information furnished to that supervisory authority, or

b) the supervisory authority of the other Member State shall, after having informed the Bank of its intention, ascertain or have ascertained on its behalf, by means of on-the-spot verification, the correctness of the information furnished to it.

## **§ 4 Special provisions**

### **Section 62<sup>[1]</sup>**

1 Any enterprise or institution shall furnish, within a period to be specified by or on behalf of the Bank, the information sought from it pursuant to section 53, 54, 55, 57, 59 or 61.

2 Any enterprise or institution shall, if so requested, give the Bank or the natural person who or legal entity which seeks from it by order of the Bank information as referred to in subsection (1) the opportunity to ascertain, from business data and documents, the correctness of the information furnished and shall provide all possible assistance in that regard.

3 Any third party which holds the business data and documents as referred to in subsection (2) shall, if so requested, submit them or make them accessible for said purpose.

4 The provisions of subsections (1) to (3) shall apply with the necessary modifications in the event that, pursuant to section 61, a supervisory authority of another Member State ascertains the correctness of the information furnished to it.

### **Section 63**

The information and statements to be furnished under this Act shall be furnished on time and shall be truthful and not misleading.

## **Division 2 Secrecy**

### **Section 64<sup>[2]</sup>**

1 Data and information about individual enterprises or institutions furnished or obtained pursuant to the provisions of or under this Act and data and information received from an agency as referred to in section 65(1) or 65a(1) shall not be published and shall be secret.

2 Any natural person who and legal entity which, by virtue of the application of this Act or of Decrees, Orders or decisions under this Act, performs any duty shall be prohibited from using or divulging data or information furnished pursuant to this Act or received from an agency as referred to in section 65(1) or 65a(1) or data or information obtained during the examination of business data and documents in any way beyond or other than that required for the performance of his duty or its duty, respectively, or required by this Act.

3 The provisions of subsections (1) and (2) shall, in respect of the natural person to whom or legal entity to which subsection (2) applies, be without prejudice to the applicability of those provisions of the Code of Criminal Procedure which relate to the giving of testimony as a witness or an expert in criminal proceedings regarding data or information obtained during the performance of his duty or its duty, respectively, pursuant to this Act.

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<sup>1</sup> Amended by Act of 6 November 1997 (Staatsblad 510).

<sup>2</sup> Amended by Act of 17 March 1994 (Staatsblad 235), by Act of 25 September 1996 (Staatsblad 537) and by Act of 6 November 1997 (Staatsblad 510).

4 The provisions of subsections (1) and (2) shall, in respect of the natural person to whom or legal entity to which subsection (2) applies, also be without prejudice to the applicability of those provisions of the Code of Civil Procedure and of section 66 of the Bankruptcy Act which relate to the giving of testimony as a witness or as a party in an appearance of parties or as an expert in civil proceedings regarding data or information obtained during the performance of his duty or its duty, respectively, pursuant to this Act, to the extent that data or information are concerned relating to a credit institution which has been adjudicated bankrupt or has been wound up in pursuance of a Court order. The provisions of the preceding sentence shall not apply to data or information relating to enterprises or institutions which are or have been involved in an attempt to enable the credit institution concerned to continue its business.

5 Notwithstanding the provisions of subsections (1) and (2), the Bank has power to use data or information obtained during the performance of the task imposed upon it pursuant to this Act to make communications provided that the individual enterprises or institutions to which the data or information relates cannot be identified.

### **Division 3 Exchange of information**

#### **Section 65<sup>[1]</sup>**

1 Notwithstanding the provisions of section 64(1) and (2), Our Minister or, in appropriate cases, the Bank has power to furnish data or information obtained during the performance of the task imposed upon him or it, respectively, pursuant to this Act to Netherlands or foreign government agencies or to Netherlands or foreign agencies which have been charged by the public authorities with the supervision of financial markets or of natural persons who and legal entities which are active in these markets, unless:

- a) the purpose for which the data or information will be used is insufficiently specific;
- b) the envisaged use of the data or information does not fit within the framework of the supervision of financial markets or of natural persons and legal entities active in these markets;
- c) the furnishing of the data or information would be incompatible with Netherlands law or public order;
- d) the secrecy of the data or information is not sufficiently safeguarded;
- e) the furnishing of the data or information is or could in reason be counter to the interests which this Act seeks to serve; or
- f) insufficient safeguards are in place to ensure that the data or information will not be used for a purpose other than that for which they have been furnished.

2 If a foreign agency as referred to in subsection (1) asks the furnisher of the data or information supplied pursuant to that subsection for permission to use the data or information for a purpose other than that for which they have been furnished, such a request shall be granted only:

- a) to the extent that the envisaged use will not conflict with the provisions of subsection (1); or
- b) to the extent that this foreign agency would be able to obtain, with due observance of the relevant procedures, for that other purpose the data or information from the Netherlands in a manner other than that provided for in this Act; and
- c) after consultation with Our Minister of Justice if the request relates to a criminal investigation.

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<sup>1</sup> Amended by Act of 17 March 1994 (Staatsblad 235).



### **Section 65a<sup>[1]</sup>**

1 Notwithstanding the provisions of section 64(1) and (2), Our Minister or, in appropriate cases, the Bank has power to furnish data or information obtained during the performance of the task imposed upon him or it, respectively, pursuant to this Act to an Examining Magistrate to the extent that he is charged with the supervision, pursuant to section 64 of the Bankruptcy Act, on the liquidator who is involved in the trusteeship and the winding-up of the insolvent estate of a credit institution.

2 Our Minister or, in appropriate cases, the Bank shall not furnish data or information as referred to in subsection (1):

- a) if the furnishing of the data or information is or could in reason be counter to the interests which this Act seeks to serve;
- b) if the data or information are obtained from Netherlands or foreign government agencies or from Netherlands or foreign agencies which have been charged by the public authorities with the supervision of financial markets or of natural persons who and legal entities which are active in these markets, and these agencies do not agree to the furnishing of the data or information.

3 Section 64(1) to (4) shall apply with the necessary modifications to the data furnished pursuant to subsection (1).

### **Section 66<sup>[2]</sup>**

1 In implementation of treaties for the exchange of data and information or in implementation of binding decisions of organizations under international law relating to the supervision of financial markets or of natural persons who and legal entities which are active in these markets, Our Minister or, in appropriate cases, the Bank has power, at the request of an agency which is active in a State which, together with the Netherlands, is a party to a treaty or which, together with the Netherlands, is subject to one and the same binding decision of an organization under international law, and which in that State has been charged with the implementation of statutory arrangements regarding the supervision contained in the Second Directive, Our Minister may decide that:

a) notwithstanding the provisions of sections 8 and 9, respectively, any natural person who or legal entity which, pursuant to this Act, is covered by his supervision or its supervision, respectively, or any natural person who or legal entity which may in reason be considered to have data or information which could be of importance for the implementation of the statutory arrangements as referred to above.

2 The natural person from whom or the legal entity from which data or information as referred to in subsection (1) are requested shall furnish such data or information within a period to be specified by Our Minister or the Bank, as the case may be.

3 The natural person who or the legal entity which is the object of an investigation as referred to in subsection (1) shall give the person making the investigation all possible assistance required for the proper performance of that investigation, with the proviso that the natural person who or the legal entity which is the object of the investigation can only be required to give access to business data and documents to the extent that they relate to the pursuit of his or its occupation or business.

### **Section 66a<sup>[3]</sup>**

1 Our Minister or, in appropriate cases, the Bank may permit an officer of a foreign agency as referred to in section 66(1) to take part in the activities undertaken to comply with a request as referred to in that subsection.

2 The obligation defined in section 66(3) shall also apply towards the officer referred to in subsection (1).

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<sup>1</sup> Added by Act of 25 September 1996 (Staatsblad 537).

<sup>2</sup> Amended by Act of 17 March 1994 (Staatsblad 235) and by Act of 6 November 1997 (Staatsblad 510).

<sup>3</sup> Added by Act of 17 March 1994 (Staatsblad 235).

3 The officer referred to in subsection (1) shall observe the instructions of the person charged with the activities undertaken to comply with the request.

### Section 67<sup>[1]</sup>

1 Each time an authorization as referred to in section 6 is granted or withdrawn, the Bank shall inform the supervisory authorities of the other Member States and the Commission of the European Union forthwith.

2 Each time a certificate of supervised status as referred to in section 45(1) is granted or withdrawn, the Bank shall inform the supervisory authorities of the other Member States and the Commission of the European Union forthwith.

### **Division 4 Cooperation with the authorities charged, under the Insurance Business Supervision Act 1993, the Funeral Services Insurance Act, the Act on the Supervision of Investment Institutions and the Act on the Supervision of Securities Transactions 1995, with the supervision of insurance companies, investment institutions and securities firms, respectively**

### Section 68<sup>[2]</sup>

1 To the extent necessary for the exercise of the supervision of credit institutions which form part of a group, the Bank shall cooperate with the authorities charged, under the Insurance Business Supervision Act 1993, the Funeral Services Insurance Act, the Act on the Supervision of Investment Institutions (Staatsblad<sup>[3]</sup> 1990, 380) and the Act on the Supervision of Securities Transactions 1995, with the supervision of insurance companies, investment institutions, and securities firms and portfolio managers, respectively, which form part of the same group.

2 In the cases referred to in subsection (1), the Bank shall, where necessary, consult with an authority as referred to in subsection (1).

3 In the cases referred to in subsection (1), the Bank shall cooperate, where necessary, on the basis of one or more arrangements to be agreed to that end with an authority as referred to in subsection (1). These arrangements shall in any case concern agreements about the imposition of common standards, the coordination of activities ensuing from the exercise of the supervision by each of the authorities involved and the exchange of data and information.

4 The Bank shall furnish to an authority as referred to in subsection (1) or the authority referred to in subsection (1) data or information concerning the performance of the task charged to it under this Act and which relate to the expertise of the persons as referred to in section 9(1), under b and d, or to the intentions or the past history of persons as referred to in section 9(1), under c and e, to the extent that the Bank is of the opinion that such data or information are or could be of importance for the supervision exercised by that other authority.

5 The obligation as referred to in subsection (4) shall not apply to data or information obtained from a foreign agency as referred to in section 65(1).

<sup>1</sup> Amended by Act of 25 September 1996 (Staatsblad 537).

<sup>2</sup> Amended by Act of 9 March 1994 (Staatsblad 252), by Act of 17 March 1994 (Staatsblad 235), by Act of 15 December 1994 (Staatsblad 903), by Act of 10 July 1995 (Staatsblad 368) and by Act of 16 November 1995 (Staatsblad 574).

<sup>3</sup> Bulletin of Acts, Orders and Decrees.

## CHAPTER IX

### *Liquidation*

#### **Section 69<sup>[1]</sup>**

A credit institution established in the Netherlands or a branch in the Netherlands of a credit institution established in a State not being a Member State which decides to liquidate its business in full or in part or to dissolve shall inform the Bank of the manner in which the liquidation or dissolution will take place and shall do so at least thirteen weeks before the decision is implemented; the Bank has power to shorten this period. The Bank shall be regarded as an interested party within the meaning of section 23(2) of Volume 2 of the Civil Code. In the event that a credit institution as referred to in the first sentence decides to dissolve and has no legal personality, the provisions of sections 19(4), 23(1) and (2), 23a(1) and 23c of Volume 2 of the Civil Code shall apply with the necessary modifications. For the purposes of sections 23(1) and 23a(1), the managing partners shall be regarded as directors and the partnership agreement shall be regarded as articles of association.

## CHAPTER X

### *Emergency regulations*

#### **Section 70<sup>[2]</sup>**

1 No decision shall be made on a petition or action for bankruptcy of a credit institution established in the Netherlands or a branch in the Netherlands of a credit institution established outside the Netherlands – including its own petition – until the District Court has given the Bank the opportunity to express its views on the matter. If the petition or action relates to the branch of a credit institution established in another Member State, the Bank shall, before expressing its views, consult with the supervisory authority of that other Member State.

2 The statutory provisions regarding ‘surséance van betaling’ (suspension of payment) shall not apply to a credit institution or a branch as referred to in subsection (1), first sentence. The debt restructuring regulation for natural persons cannot be declared applicable.

#### **Section 71<sup>[3]</sup>**

1 In the event that the solvency or the liquidity of a credit institution which has obtained authorization as referred to in section 6 or of a branch in the Netherlands of a credit institution established in another Member State which is allowed to pursue the business of a credit institution in the Netherlands pursuant to section 31 or of a branch in the Netherlands of a credit institution established in a State not being a Member State which has obtained authorization as referred to in section 38(1) shows signs of a dangerous development and no improvement in that development may in reason be expected, the District Court within whose area of jurisdiction the credit institution or the branch is established may, on the petition of the Bank, declare the credit institution or the branch to be in a position requiring special measures in the interests of the combined creditors.

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<sup>1</sup> Amended by Act of 12 March 1998 (Staatsblad 215) and by Act of 28 January 1999 (Staatsblad 30).

<sup>2</sup> Amended by Act of 25 June 1998 (Staatsblad 446).

<sup>3</sup> Amended by Act of 12 March 1998 (Staatsblad 215) and by Act of 17 December 1998 (Staatsblad 714).

- 2 In the event that, in the opinion of the Bank, the solvency or the liquidity of a credit institution to which the prohibition contained in section 6 applies or of a branch in the Netherlands of a credit institution established outside the Netherlands to which the prohibition contained in section 31 or section 38(1) applies is such that it is to be expected that the credit institution or the branch will be unable to honour all or part of its obligations in respect of the funds received by it, the District Court within whose area of jurisdiction the credit institution or the branch is established may, on the petition of the Bank, declare the credit institution or the branch to be in a position requiring special measures in the interests of the combined creditors.
- 3 The Bank shall send a copy of its petition to the credit institution or the branch.
- 4 The District Court shall hear the petition with the utmost despatch.
- 5 The District Court has power to inspect, or have inspected on its behalf by experts appointed by it to that end, books, documents or other data carriers of the credit institution or the branch. In this respect, sections 53 and 62(1) to (3) shall apply with the necessary modifications.
- 6 The District Court shall not give a decision until the credit institution or the branch and the Bank have been heard or at least properly summoned.
- 7 If the petition is granted, the decision of the District Court shall include the appointment of one or more receivers; the Bank may put forward nominations for the appointment.
- 8 If the petition is granted, the decision shall be pronounced in open court and an abstract thereof shall be published forthwith by the receivers in the *Staatscourant*<sup>[1]</sup> and in one or more newspapers to be named by the District Court. The abstract shall state the name and domicile of the credit institution or the branch, the domicile or the office of the receivers as well as the date of the decision. The decision shall be immediately enforceable, retroactive to the beginning of the day on which it is pronounced, without regard to any form of appeal.
- 9 Notwithstanding the last sentence of subsection (8), the decision as referred to in subsection (1) or (2) shall not have retroactive force in respect of a transfer or settlement instruction issued by a credit institution before the point in time at which the District Court has given the decision nor in respect of any payment, delivery, settlement or other legal act which ensues from such an instruction and which is required for the full execution of the instruction in a system as referred to in section 212a, under b, of the Bankruptcy Act.
- 10 The last sentence of subsection (8) and section 72(1) cannot be invoked towards third parties in respect of a transfer or settlement instruction issued by a credit institution after the point in time at which the District Court has given the decision as referred to in subsection (1) or (2) nor in respect of any payment, delivery, settlement or other legal act which ensues from such an instruction and which is required for the full execution of the instruction, if the instruction is executed in a system as referred to in section 212a, under b, of the Bankruptcy Act on the day on which the District Court has given the decision and the if central counterparty, the settlement agent or the settlement institution as referred to in section 212a of the Bankruptcy Act is able to prove that, at the time of execution of the instruction, it was not aware or did not need to be aware of the decision given by the District Court.
- 11 Subsections (9) and (10) shall apply with the necessary modifications to a security right established under the law of property by a credit institution in connection with participation in a system as referred to in section 212a, under b, of the Bankruptcy Act for the benefit of a central bank as referred to in section 212a, under h, of the Bankruptcy Act or for the benefit of an institution participating in the system.
- 12 In the decision, the District Court shall record, to the nearest minute, the time at which the decision is given.
- 13 The Clerk of the District Court shall communicate the decision forthwith to the Bank. Subsequently, the Bank shall communicate the decision forthwith to the systems designated by Our Minister pursuant to section 212d of the Bankruptcy Act, as well as to the competent authorities of the other Member States of the European Union and of the other states which are parties to the Agreement on the European Economic Area.

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<sup>1</sup> Government Gazette.

14 If the petition is pending before the District Court simultaneously with a petition or action for bankruptcy – including the credit institution’s or branch’s own petition – the hearing of the petition or action for bankruptcy shall be adjourned until a decision has been given on the former petition. If a declaration as referred to in subsection (1) or (2) is made, the petition or action for bankruptcy shall become void *ipso jure*.

15 When giving a decision as referred to in subsection (1) or (2), the District Court shall fix the period of validity at eighteen months at most. Before expiration of the period fixed, the Bank may present a petition for extension, once or more than once, of the period of validity by eighteen months at most. The petition shall be heard in the same manner as a petition for pronouncing the declaration. For as long as, upon expiration of the period of validity of the declaration, no decision has been given on a petition for extension, the declaration shall remain in full force and effect. If the petition for extension is granted, subsection (7) shall apply.

## **Section 72**

1 The receivers alone shall exercise all powers of the bodies of the credit institution or the branch.

2 The receivers shall safeguard the interest of the combined creditors.

3 The bodies of the credit institution or the branch shall provide all assistance requested by the receivers.

4 If more than one receiver has been appointed, their acts, to be valid, shall require the consent of the majority or, in the event of a tie, a decision of the President of the District Court. The receiver who has, in the decision of the District Court as referred to in section 71(7), been assigned a particular range of duties shall have power to act independently within the limits of said range.

5 The District Court may at any time, after having heard or at any rate properly summoned him and the Bank, remove a receiver or appoint another receiver in his place or appoint one or more associate receivers, all this at his own request, at the request of the other receivers, of the Bank or of one or more creditors or *ex officio*.

6 During the exercise of their powers, the receivers shall, at the end of every three months and after cessation of their activities, present as soon as possible a report on their activities to the District Court.

7 The fees of the experts appointed pursuant to section 71(5) as well as the fees and the outlays of the receivers shall be determined by the District Court and shall constitute a debt of the estate.

## **Section 73**

1 When or after making a declaration as referred to in section 71(1) or (2), the District Court has power to make, at the request of the Bank or at the request of the receivers or of one or more creditors or *ex officio*, having consulted the Bank, any such arrangements as it deems necessary to safeguard the interests of the creditors of the credit institution or the branch.

2 At the request of the receivers, the District Court shall appoint one of its judges to act as Examining Magistrate supervising the winding-up pursuant to section 76. In regard to the decisions of the Examining Magistrate taken for the implementation of the provisions of the first sentence, sections 66 and 67(1) of the Bankruptcy Act shall apply with the necessary modifications. Subsection (2) of section 67 of that Act shall apply with the necessary modifications to the extent that the sections listed in that subsection have been declared applicable with the necessary modifications in section 76. The provisions contained in said sections with respect to the liquidator and the bankrupt shall apply to the receivers and the credit institution or branch, respectively.

## **Section 74<sup>[1]</sup>**

1 A declaration as referred to in section 71(1) or (2) shall have as a consequence that the credit institution or the branch cannot be forced to fulfil its obligations; measures of enforcement which have been initiated shall be suspended; attachments which have been made shall become void. Section 36 of the Bankruptcy Act shall apply with the necessary modifications to the obligations referred to in the first sentence.

2 Without prejudice to the provisions of section 76, the provisions of subsection (1) shall not apply in respect of claims resulting from acts performed with the credit institution or the branch after the declaration has been made, nor shall they apply to claims as referred to in section 232 of the Bankruptcy Act, to the extent that this is the case.

3 For the rest, sections 234 to 241a of the Bankruptcy Act shall apply with the necessary modifications.

## **Section 75**

1 The District Court may empower the receivers to transfer all or part of the obligations of the credit institution or the branch which it has contracted in the pursuit of its business as a credit institution for the purpose of receiving repayable funds, or to liquidate the business of the credit institution in full or in part.

2 If, in the transfer of obligations as referred to in subsection (1), the conditions in the agreements underlying these obligations are changed, the receivers shall require special authorization from the District Court to that end, with the proviso that the conditions in the agreements underlying claims as referred to in section 74(2) cannot be thus changed. Any change in the conditions shall be without prejudice to the payments made pursuant to section 76 before the day of submission of the request for authorization as referred to in subsection (1).

3 In respect of the decisions referred to in subsections (1) and (2), the provisions of section 71(6) and (8), first and second sentences, shall apply with the necessary modifications.

4 As soon as transfer of obligations has been effected, the receivers shall make the transfer and, if the conditions in the agreements have been changed, the changes therein known by publication in the Staatscourant<sup>[2]</sup> and in at least three newspapers to be named by the District Court.

5 The transfer and the changes in the conditions in the agreements shall take effect for all interested parties as from the day following the date of the Staatscourant<sup>[2]</sup> containing the publication.

6 During liquidation as referred to in subsection (1), the District Court shall, as and when necessary, make arrangements for the details and consequences of the liquidation, including the shortening of the period of validity of current agreements, after having consulted the receivers and the Bank on this subject.

7 As soon as liquidation has been completed, the receivers shall make this known by publication in the Staatscourant<sup>[2]</sup> and in one or more newspapers to be named by the District Court.

## **Section 76<sup>[1]</sup>**

1 The receivers may make payments in respect of the claims to which section 74(1) is applicable, to the extent that this is to be deemed justified considering the liquidity position of the credit institution or the branch, and provided that the provisions of the following subsections are observed.

2 The receivers shall draw up a list showing the nature and the amount of the assets and liabilities of the credit institution or the branch, the names and domiciles of the creditors and the amount of the claims of each creditor. A copy of this list, certified by the receivers, shall be deposited at the office of the clerk of the District Court for free inspection by anyone.

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<sup>1</sup> Amended by Act of 12 March 1998 (Staatsblad 215).

<sup>2</sup> Government Gazette.

3 At the request of the receivers, the Examining Magistrate shall fix the day on which the claims shall be presented at the latest and, furthermore, the day, hour and place of the meeting for verification of the claims. The receivers shall forthwith give all known creditors written notification of these decisions and shall announce these decisions in one or more newspapers to be named by the Examining Magistrate. As from the date of this announcement, the claims involving preferential rights either to specific property of the credit institution or the branch or to all its property shall be subject to section 74(t). Sections 110 to 113 of the Bankruptcy Act shall apply with the necessary modifications, with the proviso that the provisions relating to the liquidator and the bankrupt shall apply to the receivers and the credit institution or branch, respectively.

4 A copy of the list of provisionally recognized claims and of the list of disputed claims shall be deposited by the receivers at the office of the Clerk of the District Court and shall be available there for free inspection by anyone for a period of fourteen days prior to the meeting for verification of the claims. Before the commencement of this period, the receivers shall give all known creditors written notification of this depositing, adding an invitation to the meeting for verification of the claims. Furthermore, the receivers shall announce this depositing in one or more newspapers to be named by the Examining Magistrate.

5 With respect to the verification of claims, sections 59, 119 to 122, 123 to 127, 129, 132 to 137, 260(t), 261 and 262(t) and (3) of the Bankruptcy Act shall apply with the necessary modifications. In this respect, the provisions relating to the liquidator and the bankrupt shall apply to the receivers and the credit institution or branch, respectively. Notwithstanding the period mentioned in section 127(t) of the Bankruptcy Act, the period for presenting claims as fixed pursuant to subsection (3) of the present section shall apply. The claims which become due and demandable on or after the date of the decision as referred to in section 71(t) or (2) shall be verified at the amount which they represent at the time when these claims become due and demandable, with the proviso that, in respect of claims which are subject to section 75(t), this shall be applicable only to the extent that said provision has not already been applied to these claims.

6 The directors of the credit institution or the branch shall attend the meeting for verification of the claims in order to furnish there any and all information about the causes of the position referred to in section 71(t) or (2) and the position of the estate which the Examining Magistrate asks them to give. The creditors may request the Examining Magistrate to ask the directors for information in respect of certain points to be specified by them. The questions asked of the directors and the answers given by them shall be recorded in the minutes.

Notwithstanding the provisions of section 121(4) of the Bankruptcy Act, the minutes of the meeting for verification of the claims shall, in respect of the obligations of the credit institution or the branch which are transferred pursuant to section 75, only be final and conclusive to the extent that the relevant conditions are not changed.

7 After the verification of the claims, the receivers shall draw up a list of dividends. They shall present this list to the Examining Magistrate for his approval. The list shall contain a statement of receipts and expenditure, including the fees of the receivers, the names of the creditors, and furthermore the verified amount of each creditor's claim and the dividend to be received in respect of that claim. Sections 180(2), 181 and 182(t) of the Bankruptcy Act shall apply with the necessary modifications. Without prejudice to the provisions of subsection (10), section 233 of that Act shall also apply with the necessary modifications.

8 When the list of dividends is drawn up, an amount of liquid assets shall be segregated in respect of the claims which are disputed or the preferential nature of which is disputed or which have been verified conditionally, which amount shall be at least equal to the total of the amounts which, upon application of this section, may be paid in respect of these claims or, alternatively, these dividends shall be secured in another manner.

9 The list of dividends approved by the Examining Magistrate shall be deposited by the receivers at the office of the Clerk of the District Court and shall be available there for free inspection by the creditors for a period of fourteen days. The receivers shall announce this depositing in one or more newspapers to be named by the Examining Magistrate. Furthermore, the receivers shall notify the depositing in writing to each of the recognized and conditionally admitted creditors, stating the amount reserved for him. Sections 184 to 186, 187(1), (2) and (3), 189 and 191 of the Bankruptcy Act shall apply with the necessary modifications, with the proviso that the provisions relating to the liquidator shall apply to the receivers and that, notwithstanding the period referred to in section 184, the period mentioned in the first sentence of this subsection shall apply. If, consequent on objections raised pursuant to section 184 or section 186 of the Bankruptcy Act, a verification dispute arises, subsection (8) of this section shall be applied with the necessary modifications in respect of the claims to which such objections relate, and subsequently, after the amounts of the other dividends contained in the list deposited for inspection have also been changed accordingly to the extent necessary, the dividends may be paid with due observance of the other provisions of this section. If the objections raised do not lead to a verification dispute, the dividends may be paid, with due observance of the provisions of the decision made in respect of the objections, as soon as that decision has become final.

10 Notwithstanding the last sentence of subsection (7), dividends may only be paid in respect of verified claims which become due and demandable on or after the date of the decision as referred to in section 71(1) or (2) when these claims have become due and demandable, to the extent that section 75(1) has not already been applied to these claims. Until that time, an amount of liquid assets shall be segregated which shall be at least equal to the total of the amounts which, upon application of this section, may be paid in respect of these claims or, alternatively, these dividends shall be secured in another manner.

### **Section 77**

Notwithstanding the provisions of section 1 of the Bankruptcy Act, the District Court, after having made, or extended the period of validity of, a declaration as referred to in section 71(1) or (2), may only adjudicate a credit institution or a branch bankrupt if, in a balance sheet of the credit institution or the branch drawn up in accordance with normal prudent practices, the amount of the liabilities exceeds that of the assets, regardless of whether the credit institution or the branch has actually ceased paying its due debts. The adjudication in bankruptcy is made, after the Bank has been consulted, on the petition of the receivers, at the instance of the Public Prosecutor or *ex officio* with the aforesaid declaration being revoked. In that case, and if the adjudication in bankruptcy is made within one month of the revocation of the declaration, the following provisions shall apply:

- a) the commencement of the periods mentioned in sections 43 and 45 of the Bankruptcy Act shall be calculated as from the date on which the declaration referred to in section 71(1) or (2) is made;
- b) debts of the estate arising after the declaration has been made shall also be deemed debts of the estate in bankruptcy;
- c) the revocation of the declaration and the adjudication in bankruptcy shall be published by the receivers in the Staatscourant<sup>[1]</sup> and in one or more newspapers to be named by the District Court, and
- d) for the rest, to the extent that they have not already been implemented in full pursuant to section 76, the provisions of Title I of the Bankruptcy Act shall apply.

### **Section 77a<sup>[2]</sup>**

If an adjudication in bankruptcy is made in implementation of section 77 or within four weeks after the termination of the special measures, the commencement of the periods mentioned in sections 138(6) and 248(6) of Volume 2 of the Civil Code shall be calculated as from the date of commencement of the special measures.

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<sup>1</sup> Government Gazette.

<sup>2</sup> Added by Act of 6 October 1999 (Staatsblad 470).



## Section 78

The District Court may, on the petition of the receivers or *ex officio*, revoke the declaration referred to in section 71(1) or (2). In that case, section 71(6) and (8) shall apply with the necessary modifications.

## Section 79

By virtue of the publication referred to in section 75(4) or (7), section 77, under c, or section 78, the powers conferred upon the receivers pursuant to the declaration referred to in section 71(1) or (2) shall cease to exist *ipso jure*.

## Section 80

From decisions of the District Court pursuant to sections 71(1) or (2) and 75(1) and (2), no appeal shall lie. Any appeal to the Supreme Court for annulment shall be brought within fourteen days of the date of the decision. The appeal for annulment shall be heard in chambers with the utmost despatch. The judgment shall be pronounced in open court and the substance thereof shall be published by the receivers in the *Staatscourant*<sup>[1]</sup> and in one or more newspapers to be named in the judgment.

## CHAPTER XI

### *Relations with third countries*

## Section 81<sup>[2]</sup>

1 Also in implementation of decisions taken pursuant to the provisions regarding relations with third countries contained in the Second Directive, Our Minister may decide that:

- a) notwithstanding the provisions of sections 8 and 9, decisions in respect of applications for authorizations as referred to in section 6 submitted by subsidiaries of enterprises or institutions established in a certain State not being a Member State shall be suspended by the Bank for a certain period, with corresponding suspension of the period as referred to in section 8(3), or that the Bank shall not grant more than a number, to be specified by Our Minister, of authorizations as referred to in section 6 applied for by subsidiaries of enterprises or institutions established in a certain State not being a Member State, and
- b) notwithstanding the provisions of sections 24 and 26, decisions in respect of applications for declarations of no-objection as referred to in section 24(1) submitted by enterprises or institutions established in a certain State not being a Member State shall be suspended for a certain period, with corresponding suspension of the period as referred to in section 26(3), or that not more than a number, to be specified by Our Minister, of declarations of no-objection as referred to in section 24(1) applied for by enterprises or institutions established in a certain State not being a Member State shall be granted, and
- c) notwithstanding the provisions of section 31 and section 32, the provisions of sections 38 to 44 and 82, respectively, shall apply to enterprises or institutions established in a State, not being a Union Member State, which is a party to the agreement on the European Economic Area and which enterprises or institutions obtain authorization required for the pursuit of the business of credit institutions and are subsidiaries of enterprises or institutions established in a certain State not being a Member State.

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<sup>1</sup> Government Gazette.

<sup>2</sup> Amended by Act of 25 September 1996 (*Staatsblad* 537) and by Act of 12 March 1998 (*Staatsblad* 215).

2 Subsection (1) shall not apply if the relevant subsidiaries or qualifying holdings, respectively, are also subsidiaries or qualifying holdings of enterprises or institutions established in one of the Member States which have obtained authorization for pursuing the business of a credit institution.

3 The Bank shall inform Our Minister forthwith of any application for authorization as referred to in subsection (1), under a, and of any application for a declaration of no-objection as referred to in subsection (1), under b.

4 Our Minister may decide that, notwithstanding the provisions of section 9, the Bank shall refuse authorizations as referred to in section 38(1) applied for in respect of branches in the Netherlands of credit institutions established in a State not being a Member State or shall grant such authorizations subject to limitations and stipulations with due observance of the guidelines to be given by Our Minister.

5 If a branch in the Netherlands of a credit institution established in a State not being a Member State as referred to in subsection (2) which has obtained authorization as referred to in section 38(1) subject to limitations or stipulations performs an act without observing all the limitations or complying with all the stipulations to which the authorization is subject, that credit institution shall, within a period to be specified by the Bank, undo the act or observe the unobserved limitations or comply with the unfulfilled stipulations.

6 An authorization as referred to in section 38(1) may be withdrawn by the Bank if the provisions of subsection (5) are not met within the period specified by the Bank. In that case, section 15(2) to (6) shall apply with the necessary modifications.

## CHAPTER XII

### *Special provisions*

#### **§ 1 Prohibition against receiving repayable funds from the public**

##### **Section 82<sup>[1]</sup>**

1 Any natural person or legal entity is prohibited from inviting, receiving or having, in the course of his or its occupation or business, funds, repayable on demand or subject to notice being given, from the public or from acting as intermediary in any way for the purpose of so inviting or receiving funds, repayable on demand or subject to notice being given, from the public.

2 The prohibitions contained in subsection (1) shall not apply to:

- a) enterprises and institutions which have been registered pursuant to section 52(2), under a to d;
- b) the Bank;
- c) the Member States, as well as the regional or local authorities of the Member States, and
- d) institutions under international public law in which one or more Member States participate.

3 Our Minister may grant exemption or, on request and having consulted the Bank, dispensation from the prohibitions contained in subsection (1) if, in his opinion, the interests which this Act seeks to protect have been adequately protected in another manner. A dispensation may be refused, if, in the opinion of Our Minister, the trustworthiness of one or more persons who determine or co-determine the policy of the enterprise or institution involved, or who determine or co-determine the policy of the group of which the enterprise or institution forms part and who in that capacity also co-determine the policy of the enterprise or institution, is not beyond doubt.

4 An exemption or dispensation may be made subject to limitations and stipulations.

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<sup>1</sup> Amended by Act of 10 July 1995 (Staatsblad 355) and by Act of 12 March 1998 (Staatsblad 215).

## **§ 2 Protection of the word 'bank'**

### **Section 83<sup>[1]</sup>**

1 Enterprises and institutions which have not been registered pursuant to section 52(2) shall not use the word 'bank' or translations or forms thereof in their name or in the pursuit of their business, unless this is done in a context which clearly shows that the enterprise or institution concerned is not active in financial markets.

2 The prohibition contained in subsection (1) shall not apply to:

- a) the Bank;
- b) the representative organizations, and
- c) any enterprise or institution established in another Member State which has obtained from the supervisory authority of that other Member State authorization for the pursuit of the business of a credit institution.

3 Our Minister may grant exemption or, on request and having consulted the Bank, dispensation from the prohibition contained in subsection (1).

4 An exemption or dispensation may be made subject to limitations and stipulations.

## **§ 3 Deposit guarantee scheme**

### **Section 84<sup>[2]</sup>**

1 The Bank shall consult with the representative organizations concerned about the introduction of or change in a scheme relating to a guarantee for claims, to be specified, of natural persons, legal entities and partnerships up to a maximum sum to be specified, on credit institutions which have been registered pursuant to section 52(2), under a, against the risk that such an enterprise or institution will not fulfil its obligations in respect of these claims.

2 If the consultations as referred to in subsection (1) lead to agreement between the Bank and all representative organizations concerned, it may be provided by Royal Decree that the credit institutions as referred to in subsection (1), as well as the institutions which make use of the exemption as referred to in Article 12 of Directive 94/19/EC of the European Parliament and the Council of the European Union of 30 May 1994 on deposit guarantee schemes (OJ L 135) , shall cooperate in the implementation of that scheme.

3 Our Minister may decide that a credit institution which has been registered pursuant to section 52(2), under b, shall cooperate in the implementation of the scheme as referred to in subsection (1), if the Bank is of the opinion that the claims on that credit institution are not covered by a guarantee scheme which provides cover equivalent to that as referred to in Article 6(1) of Directive 94/19/EC of the European Parliament and the Council of the European Union of 30 May 1994 on deposit guarantee schemes (OJ L 135).

4 If the consultations as referred to in subsection (1) do not lead to agreement within a period to be specified by Our Minister or if the scheme on which agreement has been reached does not have the approval of Our Minister, a scheme as referred to in subsection (1) may be introduced by Royal Decree, after the Bank, the Bank Council and the representative organizations concerned have been given the opportunity to express their views on the contents of the scheme to be introduced.

5 Within two months of the date of introduction of a scheme pursuant to subsection (4), We shall present a Bill to Parliament with a view to giving statutory force to that scheme. If the Bill is rejected by one of the two Chambers of Parliament, this scheme shall be withdrawn forthwith. Notice of this withdrawal shall be given in the Staatscourant<sup>[3]</sup> .

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<sup>1</sup> Amended by Act of 10 July 1995 (Staatsblad 355).

<sup>2</sup> Amended by Act of 14 December 1995 (Staatsblad 644).

<sup>3</sup> Government Gazette.

6 The provisions of subsections (1), (2) and (3) or of (4) and (5) shall also apply to amendments to and withdrawal of a deposit guarantee scheme established in accordance with these provisions.

#### **§ 4 Minimum conditions arrangement**

##### **Section 85**

After the advice of the Bank has been obtained, regulations may be imposed by Royal Decree on the credit institutions which have been registered pursuant to section 52(2), under a or b, in respect of the interest rates and the other conditions which they shall observe in regard of the demand deposits of natural persons, associations and foundations.

#### **§ 5 Supply of information to the public**

##### **Section 85a<sup>[1]</sup>**

By general administrative order, rules in respect of information to be supplied to the public may be imposed on the credit institutions which have been registered pursuant to section 52(2), under a, b or c.

#### **§ 6 Costs of supervisory duties**

##### **Section 86**

Costs incurred in the implementation of this Act and the Decrees, Orders and decisions under this Act may be recovered from the enterprises and institutions concerned in accordance with rules to be approved by Our Minister.

#### **§ 7 Publications and reports**

##### **Section 87**

1 The Bank shall publish periodically in the Staatscourant<sup>[2]</sup> the principal data contained in the documents and statements referred to in sections 30, 37, 44 and 55.

2 Save with the written consent of those involved, data relating to individual enterprises and institutions shall not be published.

##### **Section 88<sup>[3]</sup>**

Each year the Bank shall present a report to Our Minister on the implementation of this Act and of the Decrees, Orders and decisions under this Act. The Bank shall ensure that this report is published, with the exception of that part of the report which deals with the implementation of sections 10(5), 11(5), 14, 28, 29, 30(3), 35 and 42, with the proviso that data relating to individual enterprises and institutions shall not be published, save with the written consent of those to whom that part of the report which will be published relates.

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<sup>1</sup> Added by Act of 3 April 1999 (Staatsblad 201), paragraphs 5 to 8 being renumbered to paragraphs 6 to 9.

<sup>2</sup> Government Gazette.

<sup>3</sup> Amended by Act of 25 September 1996 (Staatsblad 537).

## **§ 8 Right of the Minister of Finance to give directions**

### **Section 89<sup>[1]</sup>**

## **§9 Advice by the Bank**

### **Section 89a<sup>[2]</sup>**

1 If Our Minister asks the Bank for advice on an envisaged order as referred to in section 1(3), or on an exemption as referred to in section 82(3) or section 83(3), the Bank is obliged to give the advice.

2 The Bank shall furnish to Our Minister, at his request, the information necessary for the assessment of the feasibility of envisaged legal provisions and general policy intentions, to the extent that these concern the credit system.

## **CHAPTER XIII**

### *Appeals*

### **Section 90<sup>[3][4]</sup>**

1 In derogation of section 8:7 of the General Administrative Law Act, the court at Rotterdam shall be authorized for appeal against decisions under this Act.

2 If an appeal is lodged against decisions taken in implementation of sections 14, 26(1), 28, 29, 35 or 90a(1), the appeal shall be heard *in camera*. In that case, the judgment shall be announced to the appellant and the Bank or Our Minister.

## **CHAPTER XIII A<sup>[5]</sup>**

### *Examination by our minister*

### **Section 90a**

1 Our Minister may request the Bank for data or information that, in his opinion, is necessary for an examination into the adequacy of this Act, or how it is or has been implemented by the Bank, if such an examination appears necessary for the purpose of prudential supervision.

2 The Bank shall be obliged to provide Our Minister with the data or information referred to in subsection (1). If Our Minister requests the Bank to provide certain data or information that comes under section 64(1) and (2), the Bank shall not be obliged to provide such data or information, unless:

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<sup>1</sup> Revoked, effective 1 January 1999, pursuant to section 21 of the Bank Act 1998 (Act of 26 March 1998, Staatsblad 200).

<sup>2</sup> Added by Act of 10 July 1995 (Staatsblad 355) and amended by Act of 6 February 1997 (Staatsblad 63).

<sup>3</sup> See section 119.

<sup>4</sup> Amended by Act of 2 July 1999 (Staatsblad 342) and of 28 October 1999 (Staatsblad 509).

<sup>5</sup> Added by Act of 2 July 1999 (Staatsblad 342).

- a) these pertain to or can be traced back to a separate legal entity, enterprise or natural person, with the exception of data or information that pertains to or can be traced back to a separate credit institution that has been granted an authorization as referred to in section 6 or section 38, or a financial institution that has been granted a certificate of supervised status as referred to in section 45(1), or whose authorization or certificate has been withdrawn or has expired, respectively, and with regard to which a Court order has been given providing for application of the emergency regulations in conformity with section 71, or which has been declared bankrupt or has been wound up on the basis of a Court order;
- b) these relate to enterprises or institutions that are or have been involved in an attempt to enable a credit institution or financial institution to continue its business; or
- c) these were received from an agency as referred to in section 65(1), or were obtained as a result of a verification of claims at a branch of a Dutch-based institution located in another Member State, unless explicit approval has been obtained from this agency or the supervisory authority of the Member State where the verification of claims was conducted.
- 3 Our Minister may commission a third party to examine the data or information provided to him pursuant to subsection (2) and to report to him. Our Minister may also authorise this third party to gather data or information on his behalf, in which case subsections (1) and (2) shall apply accordingly.
- 4 Our Minister shall only use the data or information obtained pursuant to subsections (2) or (3) to form an opinion about the adequacy of this Act or how it is or has been implemented by the Bank.
- 5 Our Minister and those commissioned by him shall have an obligation of secrecy with respect to data or information received pursuant to subsection (2), second sentence. Section 64 shall apply.
- 6 Notwithstanding subsections (4) and (5), Our Minister may inform Parliament of the findings derived from the data or information and the conclusions drawn from them, and disclose the general conclusions of the examination.
- 7 The Freedom of Information Act and the Ombudsman Act shall not be applicable with respect to the aforementioned data or information in possession of Our Minister or the third party commissioned by him.

## CHAPTER XIII<sup>[1]</sup>

### *Cease and desist order under penalty and administrative fine*

#### **Section 90b**

- 1 Our Minister or the Bank is authorized to impose a cease and desist order under penalty relating to violation of any of the provisions set out under or pursuant to the sections 4(1), 6, 7, 10(1), (2), (3), (4) and (5), 11(1), (2), (3), (4) and (5), 12(2), 15(5), 16(6) and (8), 19(1) and (3), second sentence, (5), second sentence, 23(1), (3), (4) and (5), 24(1), (3), (4), (6), 25(1), 25a(2) and (3), 26(7), 28(2) and (5), under a, 29(2), 30(1) and (2), first sentence, 31(1), under a, and (2), 32(1), under a, and (2), 36, 37, 38, 43, 44, 50(1), 55(1), (2), (3), and (5), 56a, 58(1) and (2), 62(1), (2), and (3), 63, 66(2) and (3), 66a(2), 72(3), 81(5), 82(1) and (4), 83(1) and (4), 84(2), (3), and (4), 85 and 85a<sup>[2]</sup>, insofar as they are charged with exercising the supervision regarding these sections.
- 2 The sections 5:32(2), (3), (4) and (5) and 5:33-5:35 of the General Administrative Law Act shall apply.
- 3 Our Minister is authorized to lay down rules regarding the exercise of the power referred to in the first subsection.

<sup>1</sup> Added by Act of 28 October 1999 (Staatsblad 509).

<sup>2</sup> Already amended (added) by Act of 3 April 1999 (Staatsblad 201).

### **Section 9oc**

1 Our Minister or the Bank is authorized to impose an administrative fine relating to violation of any of the provisions set out under or pursuant to the sections 4(1), 6, 7, 10(1), (2), (3), (4) and (5), 11(1), (2), (3), (4) and (5), 12(2), 13, 14, 15(5), 16(1), (2), (5), (6) and (8), 16a(1), 17(1) and (2), 19(1), (3) second sentence and (5), second sentence, 23(1), (3), (4), (5), 24(1), (3), (4), (6), 24(1), (3), (4), (6), 25(1), 25a(2) and (3), 26(7), 27(1) and (2), 28(2) and (5), under a, 29(2), 30(1), (2), first sentence, (4) and (5), 31(1), under a, (2) and (3), 32(1), under a and b, (2), 36, 37, 38, 43, 44, 48(1), (2) and (5), 49(1) and (2), 50(1) and (2), 51, 55(1), (2), (3), (5), (6) and (7), 56(1) and (2), 56a, 58(1) and (2), 62(1), (2) and (3), 63, 66(2) and (3), 66a(2), 69, 72(3), 81(5), 82(1), (2), (3) and (4), 83(1) and (4), 84(2), (3) and (4), 85 and 85a<sup>[1]</sup>, insofar as they are charged with exercising the supervision regarding these sections.

2 The administrative fine shall fall to the central government if imposed by the Minister of Finance, or to the Bank, if imposed by the Bank.

3 Our Minister, in consultation with Our Minister of Justice, is authorized to lay down rules regarding the exercise of the power referred to in the first subsection.

### **Section 9od<sup>[2]</sup>**

1 The amount of the penalty shall be fixed in the manner as set forth in the Annex, on the understanding that the penalty for an individual violation shall amount to no more than two million Dutch guilders.

2 For each of the violations defined in the Annex the corresponding amount of the penalty to be imposed is specified.

3 The Annex may be altered by Order in council.

4 Our Minister, or the Bank, insofar as it is authorized to impose a penalty, is authorized to fix a lower amount than the sum specified in the Annex, if on account of special circumstances obtaining in a given case the amount of the penalty is disproportionately high.

5<sup>[1]</sup> Notwithstanding the provisions of subsection (1), the amounts of the fines for infringement of the individual rules set by the General Administrative Order as referred to in section 85a, shall be determined in the manner as provided for in said General Administrative Order. Subsections (1) to (4) shall apply correspondingly.

### **Section 9oe**

The party in respect of whom our Minister, or the Bank, insofar as it is authorized to impose a penalty, performs an act from which he may reasonably conclude that a penalty will be imposed on him on account of a violation, shall not be obliged to make a statement relating thereto. He shall be notified thereof before being orally requested to provide information.

### **Section 9of**

1 If Our Minister, or the Bank, insofar as it is authorized to impose a penalty, intends to impose a penalty, he, or the Bank, shall notify the party concerned accordingly, stating the grounds on which his or its intention is founded.

2 In derogation of subsection 4.1.2 of the General Administrative Law Act, Our Minister, or the Bank, insofar as it is authorized to impose a penalty, shall enable the party concerned to set out his views in writing or orally, as he chooses, prior to the imposition of the penalty, unless the violation concerned is specified in the Annex referred to in section 9od.

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<sup>1</sup> Already amended (added) by Act of 3 April 1999 (Staatsblad 201).

<sup>2</sup> The Annex referred to in this section has been included as section 3002br.

### **Section 9og**

- 1 Our Minister, or the Bank, insofar as it is authorized to impose a penalty, shall impose the penalty by decision.
- 2 The decision shall in any case state:
  - a) the fact in respect of which the penalty is imposed, as well as the provision violated;
  - b) the amount of the penalty and the data on the basis of which this amount is fixed; and
  - c) the term, referred to in section 9oi(1), within which the penalty shall be paid.

### **Section 9oh**

- 1 The effect of the decision to impose a penalty shall be suspended until the period of appeal has expired or, if an appeal has been lodged, until a decision has been rendered on the appeal.
- 2 In derogation of the first subsection, the effect of the decision to impose a penalty in respect of a violation under section 9of(2) shall be suspended until the term for objection has expired or, if an objection has been raised, until a decision has been rendered on the objection.

### **Section 9oi**

- 1 The penalty shall be paid within six weeks upon the date on which the decision by which it was imposed took effect.
- 2 The penalty shall be increased with the statutory interest, counting from the date on which six weeks have passed upon the announcement of the decision, unless the offence concerned is a violation as defined under section 9of(2).
- 3 If the penalty has not been paid in time, Our Minister, or the Bank, if it has imposed the penalty, shall send a written warning that the penalty shall as yet be paid within two weeks, increased by the costs of the written warning. The written warning shall contain the notice that the penalty, insofar as it has not been paid within the term set, shall be collected in accordance with the third subsection.
- 4 In default of timely payment, Our Minister, or the Bank, if it has imposed the penalty, shall collect the penalty, increased with the costs of the written warning and of the collection, by writ of execution.
- 5 The writ of execution shall be issued at the expense of the violator by way of a bailiff's notification, yielding entitlement to enforcement in the sense of the Second Book of the Netherlands Code of Civil Procedure.
- 6 Within six weeks upon the date of service, an objection may be raised against the writ of execution through a writ of summons served on the State, or on the Bank if it has imposed the penalty.
- 7 The objection shall not suspend the enforcement, unless the president of the court should be required to rule otherwise in an interim injunction proceedings.
- 8 The objection shall not be founded on the argument that the penalty was wrongly imposed, or that the amount fixed is too high.

### **Section 9oj**

- 1 The power to impose a penalty shall cease to have effect if criminal proceedings have been instituted against the violation and the hearing has commenced or if, pursuant to section 74 of the Netherlands Penal Code, the right to institute criminal proceedings has lapsed.
- 2 The right to institute criminal proceedings against a violation as referred to in section 9oc shall lapse if Our Minister, or the Bank, insofar as it is authorized to impose a penalty, has already imposed a penalty in respect of that violation.



### **Section 90k**

- 1 The power to impose a penalty shall lapse after three years upon the date on which the offence was committed.
- 2 The term referred to in the first subsection shall be interrupted by the notification of the decision under which a penalty is imposed.

### **Section 90l**

The activities related to the imposition of a cease and desist order under penalty or an administrative fine shall be executed by persons who were not involved in establishing the violation and the inquiry previous thereto.

### **Section 90m**

- 1 With a view to the interests of creditors and without prejudice to section 64(1, 2), Our Minister and the Bank is authorized to publicise the fact on account of which the cease and desist order under penalty or the administrative fine was imposed, the provision violated, as well as the name, the address, and the residence of the one on whom the cease and desist order under penalty or the administrative fine has been imposed.
- 2 Our Minister is authorized to lay down rules with respect to the exercise of the power referred to in the first subsection.

## **CHAPTER XIV**

### *Amendment of other Acts*

### **Sections 91-III**

[These sections provide for changes in other legislation and regulation.]

## **CHAPTER XV**

### *Transitional and final provisions*

### **Section 112<sup>[1]</sup>**

- 1 The authorization which, at the time of entry into force of this Act, has been granted pursuant to section 2 of the Act on the Supervision of the Credit System (Staatsblad<sup>[2]</sup> 1978, 255) or is deemed to have been granted pursuant to section 62 of that Act or section 7 of the Postbank Act (Staatsblad<sup>[2]</sup> 1985, 510) to a credit institution established in the Netherlands shall be deemed to have been granted to that credit institution pursuant to section 6.
- 2 The authorization which, at the time of entry into force of this Act, has been granted pursuant to section 2 of the Act on the Supervision of the Credit System or is deemed to have been granted pursuant to section 62 of that Act to an enterprise or institution which is established outside the Union or in a Member State in respect of which Our Minister has

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<sup>1</sup> Amended by Act of 25 September 1996 (Staatsblad 537) and by Act of 12 March 1998 (Staatsblad 215).

<sup>2</sup> Bulletin of Acts, Orders and Decrees.

taken a measure as referred to in section 33(1) and which pursues the business of a credit institution through a branch in the Netherlands shall be deemed to have been granted to that credit institution pursuant to section 38(1).

3 The enterprise or institution which is established in another Member State not being a Member State in respect of which Our Minister has taken a measure as referred to in section 33(1) and which, at the time of entry into force of this Act, pursues the business of a credit institution through a branch in the Netherlands and which has to that end obtained authorization as referred to in section 2 of the Act on the Supervision of the Credit System or is deemed to have obtained authorization pursuant to section 62 of that Act shall be deemed to have met the provisions of section 31(1), under b and c.

### **Section 113**

A dispensation which has been granted pursuant to section 8 of the Act on the Supervision of the Credit System shall, within the limits of that dispensation, be deemed to a dispensation as referred to in section 12 until one year after entry into force of this Act.

### **Section 114**

1 A declaration of no-objection which has been granted pursuant to section 25 of the Act on the Supervision of the Credit System and which has not lapsed or been withdrawn at the time of entry into force of this Act shall be deemed to have been granted pursuant to section 26 for the acts referred to in sections 23 and 24 which correspond to the acts for which the declaration of no-objection had been granted, with the proviso that, to the extent that this declaration of no-objection relates to the acquisition of or increase in a holding or the exercise of control, it shall also be deemed to have been granted for the holding of a qualifying holding.

2 In respect of acts to which subsection (1) does not apply and for which, pursuant to section 23 or 24, a declaration of no-objection is required and to which section 25 of the Act on the Supervision of the Credit System did not apply, the prohibitions as referred to in sections 23 and 24 shall not apply until the first day of the ninth calendar month following the time of entry into force of sections 23 and 24.

3 In respect of a qualifying holding which was already held on 1 January 1979 and for which, pursuant to section 23 or 24, a declaration of no-objection is required, the credit institution as referred to in section 23(1) or the natural person or legal entity referred to in section 24(1), respectively, shall be deemed to have obtained a declaration of no-objection as referred to in section 23(1) or section 24(1), respectively.

### **Section 115**

1 A dispensation which has been granted pursuant to section 42 of the Act on the Supervision of the Credit System shall be deemed to have been granted pursuant to section 82.

2 Notwithstanding the provisions of subsection (1), the enterprise or institution established in another Member State which, at the time of entry into force of this Act, pursues the business of a credit institution and receives funds, repayable on demand or subject to notice being given, through the provisions of services in the Netherlands and which has to that end obtained a dispensation as referred to in section 42 of the Act on the Supervision of the Credit System and which has obtained from the supervisory authority of the other Member State authorization for the pursuit of the business of a credit institution shall be deemed to have met the provisions of section 32(1), under b.

## Section 116

A dispensation which has been granted pursuant to section 43 of the Act on the Supervision of the Credit System to an enterprise or institution which has not been registered pursuant to section 52(2) shall be deemed to have been granted pursuant to section 83.

## Section 117

The Royal Decree of 10 April 1986 (Staatsblad<sup>[1]</sup> 189) to declare the revised collective guarantee scheme under section 44 of the Act on the Supervision of the Credit System applicable to all registered institutions shall be deemed to be the Royal Decree as referred to in section 84(2). The references in the revised collective guarantee scheme to provisions of the Act on the Supervision of the Credit System shall be read as references to the corresponding provisions of this Act.

## Section 118<sup>[2]</sup>

1 Chapters 1 to 4 of the General Administrative Law Act (Staatsblad<sup>[3]</sup> 1992, 315) shall be applicable to the implementation of this Act.

2 This section shall cease to have effect as from the date on which the General Administrative Law Act enters into force.

## Section 119<sup>[3]</sup>

If the Bill providing for amendment of the Judicial Organization Act, the General Administrative Law Act, the Council of State Act, the Appeals Act, the Public Servants Act 1929 and other Acts, as well as for repeal of the Administrative Jurisdiction (Government Decisions) Act (completion first stage revision judicial organization) (22 495), which was presented to Parliament by Royal Message of 23 January 1992, after having been enacted, enters into force, section 90 shall read as follows:

### Section 90

1 Any interested party may appeal against a decision taken by virtue of this Act to the Appeals Board for Trade and Industry

2 If an appeal is lodged against decisions taken in implementation of sections 14, 26(1), 28, 29 or 35, the appeal shall be heard *in camera*. In that case, the judgment shall be announced to the appellant and the Bank or Our Minister.

## Section 120<sup>[4]</sup>

If the Bill containing provisions for the annual accounts of banks, presented to Parliament by Royal Message of 27 June 1991, after having been enacted, enters into force, and if section VI(1) of that Act is applied, the total amount of the undervaluation as well as that of the relevant deductions from undervaluations shall be reported to the Bank.

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<sup>1</sup> Bulletin of Acts, Orders and Decrees.

<sup>2</sup> The General Administrative Law Act entered into force on 1 January 1994 (Staatsblad 1993, 693).

<sup>3</sup> The relevant Act of 16 December 1993 (Staatsblad 650) *juncto* 23 December 1993 (Staatsblad 690) entered into force on 1 January 1994 (Staatsblad 1993, 693).

<sup>4</sup> The relevant Act of 17 March 1993 (Staatsblad 258) entered into force on 28 May 1993.

### **Section 121<sup>[1]</sup>**

If the Bill providing for amendment of the Registered Accountants Act and the Accountants-Accounting Consultants Act (amendment in connection with the introduction of the Eighth Council Directive on company law) (22 313), after having been enacted, enters into force:

- a) the words ‘a registered accountant or an auditor who has obtained a licence as referred to in section 70b(1), under b, of the Registered Accountants Act (Staatsblad<sup>[2]</sup> 1962, 258)’ in section 30(2) shall be replaced by: an accountant as referred to in section 393(1) of Volume 2 of the Civil Code; and
- b) the words ‘a registered accountant or by an auditor who has obtained a licence as referred to in section 70b(1), under b, of the Registered Accountants Act (Staatsblad<sup>[2]</sup> 1962, 258)’ in section 55(5) shall be replaced by: an accountant as referred to in section 393(1) of Volume 2 of the Civil Code.

### **Section 122**

The Act of 13 April 1978, Staatsblad<sup>[2]</sup> 1978, 255, is repealed.

### **Section 123**

This Act shall enter into force on a date to be determined by Royal Decree; this date may differ for the different sections or parts thereof<sup>[3]</sup>.

### **Section 124**

This Act may be cited as the Act on the Supervision of the Credit System 1992.

Direct and ordain that these presents shall be published in the Staatsblad<sup>[2]</sup> and that all ministerial departments, authorities, boards and public servants whom this concerns shall enforce strict implementation.

Given at The Hague, 23 December 1992  
Beatrix

The Minister of Finance,  
W. Kok

Issued the *thirtieth* of December 1992

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

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<sup>1</sup> The relevant Act of 6 August 1993 (Staatsblad 465) entered into force on 10 September 1993.

<sup>2</sup> Bulletin of Acts, Orders and Decrees.

<sup>3</sup> The Act on the Supervision of the Credit System 1992, with the exception of section 92 and section 100, parts A and B, entered into force on 1 January 1993 (Staatsblad 1992, 723).