

Regulations governing the financial markets in the Bonaire, Sint Eustatius and Saba public bodies and the supervision of those markets ('Financial Markets (BES Islands) Act', *Wet financiële markten BES*)

LEGISLATIVE PROPOSAL

(Senate version, including amendments pursuant to other legislative proposals; 17.11.2011)

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

Greetings to all who shall see or hear these presents! Be it known:

Whereas We have considered that it is necessary that, in part for the purposes of the functional organisation of the supervision, it is desirable that the constitutional reform should include the replacement of the acts adopting the national ordinances of the Bonaire, Sint Eustatius and Saba public bodies on the supervision of financial enterprises with a general act relating to the supervision of the financial markets tailored to the public bodies, with particular attention to the position of the consumer;

We, therefore, having heard the Advisory Division of the Council of State and after joint consultations with the States-General, have approved and decreed as We hereby approve and decree:

CHAPTER 1. GENERAL PROVISIONS

§ 1. Introductory provisions

Section 1:1 (definitions)

This Act and the provisions based on the Act understand, unless specified otherwise, the following terms as:

to offer: in the pursuit of a profession or business make a sufficiently specific proposal, either directly or indirectly:

a. to submit a sufficiently specific proposal to a consumer or customer to act as the other party in a contract regarding a financial product or to enter into, manage or perform such a contract;

b. to submit a sufficiently specific proposal to more than one party to act as the other party in a contract relating to the purchase or other form of acquisition of securities or an invitation to submit an offer for securities;

to advise: to recommend, in the pursuit of a profession or business, one or more specific financial products or securities to a specific consumer or customer;

advisor: a person who advises;

Netherlands Authority for the Financial Markets: Stichting Autoriteit Financiële Markten;

management company: the party managing a collective investment scheme;

investment fund: capital not held by a legal person that includes funds or other goods requested or acquired for collective investment to enable the unit-holders to

share in the return on the investments;

collective investment scheme: an investment fund or investment company;

investment company: a legal person which requests or has acquired funds or other goods for collective investment so that the unit-holders can share in the return on investment;

broker: a person who provides brokerage services;

to provide brokerage services: all activities carried out in the pursuit of a profession or business as a broker focused on:

- a. the conclusion of a contract for a financial product between the provider of that product and a consumer or customer;
- b. the conclusion of transactions in securities for the account of a customer;
- c. the provision of assistance in the management or performance of contracts or transactions of the above nature;

branch: a permanent part of a financial enterprise without a legal personality in a state other than the state in which the financial enterprise has its registered offices;

abroad: another country in the Kingdom or another state, as well as the European territory of the Netherlands;

customer: a person other than a professional market party to whom a financial enterprise:

- a. offers or is of the intention to offer an insurance policy or units in a collective investment scheme, or
- b. offers or is of the intention to offer a financial service relating to an insurance policy, units in a collective investment scheme or securities;

consumer: a natural person not pursuing a profession or business to whom a financial enterprise:

- a. offers or is of the intention to offer a financial product other than insurance policies or units in a collective investment scheme;
- b. offers or is of the intention to offer a financial service other than a service relating to insurance policies, units in a collective investment scheme or securities;

securities:

- a. depositary receipts of shares, debt instruments, profit-sharing and founder's certificates, certificates of options, warrants and similar securities;
- b. co-partnership certificates, options, commodities futures, share or debt register entries and similar rights, either conditional or unconditional;
- c. rights arising from currency exchange or price hedging agreements and similar negotiable rights and instruments;
- d. certificates and scrips representing securities as referred to above, with the exception of securities that possess solely the character of means of payment or apartment rights;

securities exchange: market governed by regulations and bringing together the forces of supply of and demand for securities;

electronic money: a monetary value stored on an electronic carrier or remotely in central account records;

electronic money institution: a party other than a credit institution engaged in the business of obtaining funds in exchange for which electronic money is issued for the purposes of payments to parties others than the party issuing the electronic money;

external specialist: specialist as referred to in Section 121 of Book 2 of the Civil Code (BES Islands) (*Burgerlijk Wetboek BES*);

financial product:

- a. a current or savings account, including the associated payment or savings

facilities;

- b. electronic money;
- c. credit;
- d. units in a collective investment scheme;
- e. life insurance, benefit-in-kind funeral insurance or non-life insurance;
- f. other products to be designated by an Order in Council;
- g. a combination of two or more products referred to under a to f inclusive;
- h. a combination of securities and one or more products referred to under a to f

inclusive;

financial service:

- a. providing advice or brokerage services;
- b. acting as a portfolio manager;
- c. providing other services to be designated by an Order in Council.

financial enterprise: an advisor, collective investment scheme, broker, electronic money institution, money transaction office, authorised agent, operator of a securities exchange, credit institution, credit provider, sub-authorised agent, trust office, portfolio manager or insurer;

money transaction:

- a. the exchange of coins or banknotes;
- b. the payment of coins or banknotes on the presentation of a credit card or on the submission of cheques or other negotiable instruments;
- c. taking delivery of funds or monetary values as part of a money transfer, in order to make such funds or monetary values payable or have them made payable in the same form or in another form elsewhere, or paying or making payable funds or monetary values as part of a money transfer after such funds or monetary values have been made available in the same form or in another form elsewhere, such to the extent that the money transfer is an autonomous service;
- d. the performance of other activities to be designated by an Order in Council;

money transaction office: a party engaged in the performance of money transactions for the benefit or on the request of third parties or the performance of activities for the purpose of the performance of transactions of this nature;

Court: Court of first instance of Bonaire, Sint Eustatius and Saba;

authorised agent: the authorised agent of an insurer who, pursuant to the authorisation, concludes insurance contracts with customers for the insurer's account;

group: an economic entity of legal persons, companies or natural persons affiliated in an organisation;

Kingdom: the Kingdom of the Netherlands;

credit: making a sum of money or the use of a movable property available to a consumer or making a sum of money available to a third party on behalf of a consumer subject to the consumer's obligation to make one or more payments;

credit provider: a party providing credit;

credit institution: a party engaged in the business of obtaining callable funds from outside a restricted circle and from parties other than professional market parties and of the extension of loans at the party's expense;

life insurer: a party engaged in the business of concluding life insurance contracts for the party's account and the settlement of those life insurance contracts;

life insurance: an insurance contract for the purpose of the payment of benefits relating to the life or death of persons other than contracts for accident insurance;

benefit-in-kind funeral insurer: a party engaged in the business of concluding benefit-in-kind funeral insurance contracts for the party's account and the settlement of those insurance contracts;

benefit-in-kind funeral insurance: an insurance contract for the purpose of the payment of benefits in kind on the death of persons;

De Nederlandsche Bank: De Nederlandsche Bank N.V.;

sub-authorised agent: the sub-authorised representative of an insurer who, pursuant to the sub-authorisation granted by an authorised agent, concludes insurance contracts with customers for the insurer's account;

Our Minister: Our Minister of Finance;

public bodies: the Bonaire, Sint Eustatius and Saba public bodies;

callable funds: funds to be repaid at some time in the future for any reason whatsoever and whereby the sum to be repaid is specified in advance;

person: a natural person or legal person;

premium: the performance to be provided by the policyholder pursuant to an insurance contract as expressed in monetary terms;

professional market party: a collective investment scheme, credit institution, pension fund, portfolio manager, insurer or other party to be designated by an Order in Council;

non-life insurer: a party engaged in the business of concluding non-life insurance contracts for the party's account and the settlement of those non-life insurance contracts;

non-life insurance: an insurance contract other than a life insurance or benefit-in-kind funeral insurance contract, including accident insurance contracts;

state in which the registered offices are located: the state in which an enterprise has its registered offices or:

a. when the enterprise has its registered offices in the Caribbean or European territory of the Netherlands: the relevant territory of the Netherlands, or

b. when the enterprise has its registered offices in another state of the Kingdom: the relevant state;

supervisory authority: De Nederlandsche Bank or the Netherlands Authority for the Financial Markets, each to the extent to which the authority is entrusted, in accordance with sections 1:5 and 1:6, with the implementation or enforcement of the provisions prescribed by or pursuant to this Act;

supervisory body: a government body or body designated by the government other than De Nederlandsche Bank or the Netherlands Authority for the Financial Markets that is entrusted with the supervision of the financial markets or persons operating in these markets;

trust services:

a. the provision of the following services on the request of a third party other than a third party that is a member of the same group as the party providing the trust services:

1^o. acting as the managing director or a partner of a legal person or company;

2^o. making an address or correspondence address available as referred to in sections 12, first paragraph, under b, and 13, under a, of the Trade Register (BES Islands) Decree (*Handelsregisterbesluit BES*) to a legal person or company in combination with the provision of administrative and advisory services;

3^o. incorporating or liquidating or arranging for the incorporation or liquidation of legal persons;

4^o. acting as a trustee within the meaning of the Convention on the Law Applicable to Trusts and their Recognition concluded at The Hague on 1 July 1985 (Treaty Series 1985, 141);

b. selling or mediating in the sale of legal persons;

c. making use of the services of a company that is a member of the same group as the party providing the trust services in the provision of trust services to the customer;

d. providing other services to be designated by an Order in Council;
trust office: the party engaged in the business or profession of providing trust services;
issuing institution: all parties that have issued or intend to issue securities;
portfolio manager: a party other than the management company of a collective investment scheme that, in the pursuit of a business or profession and pursuant to a contract, manages the securities belonging to a person of the funds belonging to a person for investment in securities, including the performance or arrangement for the performance of transactions in securities for the account of the person with whom the contract has been concluded;
insurer: a life insurer, benefit-in-kind funeral insurer or non-life insurer;
establishment: registered offices or branch;
registered offices: the address at which a company is located pursuant to its articles of association or regulations or, when the company is not a legal person, the company's principle place of business.

Section 1:2 (scope)

This Act is applicable to Bonaire, Sint Eustatius and Saba.

Section 1:3 (exceptions)

1. This Act is not applicable to the implementation of social security schemes and care insurance under the responsibility of Our Minister of Social Affairs and Employment or Our Minister of Health, Welfare and Sport.
2. De Nederlandsche Bank is not a financial enterprise in the meaning of this Act.
3. A pension fund as referred to in Section 1, first paragraph, of the Pension (BES Islands) Act (*Pensioenwet BES*) is not an insurer in the meaning of this Act.
4. Categories of financial enterprises can be designated by an Order in Council which are not governed or governed on full by this Act in circumstances prescribed by or pursuant to the Order in Council.

Section 1:4 (legal validity of private-law legal acts)

The legal validity of private-law legal acts carried out in conflict with the provisions prescribed by or pursuant to this Act is not impaired by reason of that conflict other than to the extent prescribed by this Act.

§ 2. The supervisory authorities

Section 1:5 (duties assigned to De Nederlandsche Bank)

1. Prudent supervision is focused on the solidity of financial enterprises and on making a contribution to the stability of the financial sector.
2. De Nederlandsche Bank is entrusted with the duty of conducting prudential supervision of financial enterprises on the basis of this Act, in particular sections 3:9, first and second paragraphs, under a and b, 3:16 to 3:21 inclusive, 3:27 to 3:29 inclusive, 3:44 to 3:48 inclusive, 4:5 and Chapter 8.
3. De Nederlandsche Bank is also entrusted with the duty of decision-making on the admission of financial enterprises as referred to in Section 2:1, first paragraph, to the financial markets and, with the exception of the supervision of conduct entrusted with the Netherlands Authority for the Financial Markets

pursuant to the provisions of Section 1:6, second paragraph, of the supervision of compliance with the provisions prescribed by or pursuant to this Act. De Nederlandsche Bank's duties also encompass the supervision of the regulations prescribed by or pursuant to sections 2:21 to 2:23 inclusive.

Section 1:6 (duties assigned to the Netherlands Authority for the Financial Markets)

1. The supervision of conduct is focused on orderly and transparent financial market processes, integrity in the relationships between market parties and due care in the provision of services to consumers and customers.

2. The Netherlands Authority for the Financial Markets is entrusted with the duty of supervising the conduct of the financial markets on the basis of this Act, in particular sections 3:9, first and second paragraph, under c, 3:11, 3:12 and Chapter 5.

3. The Netherlands Authority for the Financial Markets is also entrusted with the duty of taking decisions on the admission of financial enterprises as referred to in Section 2:3, first and second paragraphs, to the financial markets and, with the exception of prudent supervision entrusted with De Nederlandsche Bank pursuant to the provisions of Section 1:5, second paragraph, of conducting the supervision of compliance with the provisions prescribed by or pursuant to this Act.

Section 1:7 (authorisation to demand information)

1. The supervisory authority is authorised to demand information from all persons to the extent that this information is reasonably necessary for:

a. the performance of a duty assigned to the supervisory authority pursuant to this Act;

b. the implementation of treaties, binding decisions of international institutions or agreements on the exchange of data and information concluded with foreign supervisory bodies.

2. All persons are under the obligation to cooperate fully with the supervisory authority in providing the assistance the supervisory authority can reasonably request in exercising its powers.

3. Persons with a privilege pursuant to their office, profession or the statutory regulations can refuse to cooperate to the extent that this arises from their obligation to maintain confidentiality.

Section 1:8 (budget, accounting and annual report)

[Lapsed]

Section 1:9 (due care in the performance of the duties)

1. In performing the duties entrusted to the supervisory authority pursuant to this Act the authority provides for:

a. timely preparations and implementation;

b. the quality of the associated procedures;

c. due care in dealing with all persons that come into contact with the supervisory authority;

d. due care in dealing with notices of objection and complaints received by the supervisory authority.

2. The supervisory authority takes measures to offer all persons who come into

contact with the authority an opportunity to submit proposals for the improvement of the authority's methods and procedures.

Section 1:10 (charging supervisory costs)

1. Applicants for a decision pursuant to this Act are required to pay the supervisory authority a fee to cover the costs incurred in dealing with the application.

2. An Order in Council may prescribe that the supervisory authority may, in accordance with the regulations prescribed by or pursuant to the Order in Council, also charge the financial enterprises under the authority's supervision all or part of the other costs incurred in performing the duties assigned to the supervisory authority pursuant to this Act.

3. The fees for the costs referred to in the first and second paragraph are specified in a ministerial regulation issued by Our Minister. This ministerial regulation can stipulate that the fees referred to in the first paragraph are due in advance.

Section 1:11 (the Minister's right to information in connection with policy proposals)

When so requested the supervisory authority submits the information Our Minister requires to assess the feasibility of general policy proposals and plans for statutory regulations to the extent that these relate to a duty assigned to the supervisory authority by this Act.

Section 1:12 (review of the adequacy or implementation of the Act)

1. When so requested the supervisory authority submits the data and information Our Minister requires for a review of the adequacy of this Act or the manner in which the supervisory authority implements this Act other than the confidential information as referred to in Section 1:20, first paragraph, that:

- a. relate to or can be traced back to individual persons;
- b. have been received from the other supervisory authority or from a foreign supervisory body, unless the authority or body has concurred with the provision of the information.

2. The exception referred to in the first paragraph under a is not applicable to the extent that the data relate to or can be traced back to a financial enterprise whose licence has been withdrawn pursuant to this Act or a financial enterprise that has been granted a moratorium, for which an emergency regulation as referred to in Section 8:9 has been declared applicable, or which has been declared bankrupt or has been dissolved in a court decision.

3. Article 1:42, third to sixth paragraph, of the Financial Supervision Act is applicable *mutatis mutandis* to the provision of information as referred to in the second paragraph.

4. The Government Information (Public Access) (BES Islands) Act (*Wet openbaarheid van bestuur BES*), National Ombudsman Act and Title 9.2 of the General Administrative Law Act are not applicable to the information in the possession of Our Minister or a third party active working for Our Minister pursuant to this Section.

Section 1:13 (supervisory authority's negligence of its duties)

Our Minister can take the necessary measures in the event that Our Minister is of the opinion that the supervisory authority is guilty of the serious neglect of its duties. Section 1:43, second to fourth paragraph, of the Financial Supervision Act is applicable *mutatis mutandis*.

Section 1:13a (limitation of the liability of the supervisory authorities)

1. De Nederlandsche Bank and the members of the its Management Board, Supervisory Board and employees are not liable for loss incurred as a result of acts or omissions during the performance of the duties assigned to De Nederlandsche Bank pursuant to this Act or an authorisation granted to it pursuant to this Act unless the loss is primarily due to the wilful improper performance of the duties or the wilful improper exercising of the authorisation or is primarily due to gross negligence.

2. The Netherlands Authority for the Financial Markets and the members of its Management Board, Supervisory Board and employees are not liable for loss incurred as a result of acts or omissions during the performance of the duties assigned to the Netherlands Authority for the Financial Markets pursuant to this Act or an authorisation granted to it pursuant to this Act unless the loss is primarily due to the wilful improper performance of the duties or the wilful improper exercising of the authorisation or is primarily due to gross negligence.

§ 3. Cooperation between supervisory bodies

Section 1:14 (advice on the issue of licences)

1. When De Nederlandsche Bank receives an application for a licence and needs to assess whether the applicant will comply with the regulations prescribed by or pursuant to sections 3:9, first paragraph, under c, 3:11 or 3:12 then before reaching a decision on the application the Bank requests advice from the Netherlands Authority for the Financial Markets.

2. When the Netherlands Authority for the Financial Markets receives an application for a licence and needs to assess whether the applicant will comply with the regulations prescribed by or pursuant to sections 3:9, first paragraph, under b, 3:16, 3:17, 3:18, 3:22 or 4:5, first or second paragraph, then before reaching a decision on the application the Bank requests advice from the De Nederlandsche Bank.

3. The supervisory authority that is requested to provide advice issues its advice in writing within four weeks of the request. The advice is an integral element of the decision on the application for a licence.

4. Should the supervisory authority that is authorised to reach a decision on the application give consideration to diverge from the advice referred to in the third paragraph then the authority offers the supervisory authority that issued its advice an opportunity to give a verbal explanation of its advice.

Section 1:15 (advice on declarations of no objection)

De Nederlandsche Bank offers the Netherlands Authority for the Financial Markets an opportunity to issue advice before issuing a declaration of no objection as referred to in Section 3:28 relating to a qualifying holding in a collective investment scheme or a portfolio manager. Section 1:14, third and fourth paragraphs, is applicable *mutatis mutandis*.

Section 1:16 (advice on administrative measures)

1. The supervisory does not proceed to the implementation of a measure referred to below until it has offered the other supervisory authority an opportunity to express its opinion on the issue within a reasonable period of time:
 - a. the withdrawal of a licence granted pursuant to this Act;
 - b. the issue of an instruction for the dismissal of a person who determines or jointly determines the policy of a financial enterprise or of a person who is a member of a body entrusted with the supervision of the policy and the general course of the operations of a financial enterprise;
 - c. the appointment of a custodian pursuant to sections 7:14 or 7:15;
 - d. the imposition of a prohibition as referred to in Section 7:20, first or second paragraphs.
2. The opinion shall be issued in writing unless the requisite urgency dictates otherwise.
3. The first and second paragraphs are *applicable mutatis* to petitions for bankruptcy submitted pursuant to the Bankruptcy (BES Islands) Act (*Faillissementswet BES*) and to applications for the emergency regulation pursuant to Section 8:9.

Section 1:17 (binding recommendation following a negative director review)

1. Should the supervisory authority establish that a person who determines or jointly determines or will determine or jointly determine the policy of a financial enterprise that has been granted a licence by the other supervisory authority does not or no longer complies with the regulations prescribed by or pursuant to sections 3:4 or 3:5 then the supervisory authority can issue the other supervisory authority a binding recommendation for a measure to be implemented by the other supervisory authority or for an assessment or decision to be made or taken by the other supervisory authority.
2. A recommendation as referred to in the first paragraph is accompanied by the reasons and issued in writing unless the requisite urgency dictates otherwise. Any recommendation issued verbally for reasons of urgency is confirmed in writing as soon as possible.
3. The supervisory authority receiving the recommendation adopts the recommendation as soon as possible. The recommendation or, when the recommendation is issued verbally, the written confirmation, is an integral element of the decision implementing the recommendation. Section 1:16, first paragraph, is not applicable.
4. The first to third paragraphs inclusive are applicable *mutatis mutandis* to persons who are or will become members of a body entrusted with the supervision of the policy and general course of the operations of the financial enterprise.

Section 1:18 (cooperation with other supervisory bodies)

1. The supervisory authority cooperates with supervisory bodies in other states of the Kingdom when this is required for the performance of the duties of the supervisory authorities assigned by this Act or for the performance of the duties of the supervisory bodies.
2. The supervisory authority, on the request of a supervisory body in another state of the Kingdom and with due regard for the provisions of Section 1:21, issues all the data and information required for the performance of that

supervisory body's duties.

3. The supervisory authority can, with due regard for the provisions of Section 1:21, issue data or information to a supervisory body outside the Kingdom to the extent that the exchange is carried out for the purposes of the supervision by the relevant supervisory body.

4. A supervisory authority that concludes an information-sharing agreement with a supervisory body outside the Kingdom submits a copy of the agreement promptly to Our Minister.

Section 1:19 (further regulations governing cooperation)

Further regulations governing the cooperation between the supervisory authorities and foreign supervisory bodies may be prescribed by or pursuant to an Order in Council.

§ 4. Obligation of confidentiality and confidential information

Section 1:20 (obligation of confidentiality)

1. All those who perform or have performed any duty by virtue of the application of this Act or of decrees or orders pursuant to this Act are prohibited from making further or other use of or disclosing the data or information issued or received pursuant to this Act or received from a body or person as referred to in sections 1:21 or 1:23 beyond the extent required for the performance of their duties or required pursuant to this Act.

2. The supervisory authority is, in derogation from the provisions of the first paragraph, authorised to issue notifications using confidential data or information received for the performance of the duties assigned to the supervisory authority pursuant to this Act provided that the data or information cannot be traced back to individual persons.

Section 1:21 (exchanges of information with other bodies)

1. The supervisory authority is, in derogation from the provisions of Section 1:20, first paragraph, authorised to issue confidential data or information received for the performance of the duties assigned to the supervisory authority pursuant to this Act to the other supervisory authority or to a foreign supervisory body unless:

- a. the purpose for which the data or information will be used has not been specified with sufficient clarity;
- b. the intended use of the data or information is not compatible with the supervision of the financial markets or persons operating in those markets;
- c. the issue of the data or information is not compatible with public order or the law of the public bodies;
- d. the confidentiality of the data or information has not been assured to an adequate extent;
- e. the issue of the data or information is, in reasonableness, in conflict with or could come into conflict with the interests that this Act intends to protect;
- f. insufficient assurances are in place to prevent the use of the data or information for purposes other than the purpose for which the data or information were issued.

2. The supervisory authority does not issue the data or information as referred to in the first paragraph received from a foreign supervisory body to the other

supervisory authority or another foreign supervisory body unless the body from which the data or information were received concurs with the issue of the data or information and, as the occasion arises, has concurred with the use of the data or information for a purpose other than the purpose for which the data or information were issued.

3. Should a foreign supervisory body request the supervisory authority that issued the confidential data or information pursuant to the first or second paragraph permission to make use of the confidential data or information for a purpose other than the purpose for which the data or information were issued then the supervisory authority shall grant the request solely:

a. when the intended use is not in conflict with the provisions of the first or second paragraph, or

b. to the extent that the supervisory body could have obtained the data or information for that other purpose from the public bodies in a manner other than provided for by this Act and with due regard for the applicable statutory procedures; and

c. after consulting Our Minister of Security and Justice when the request relates to a criminal investigation.

4. The first to third paragraphs are applicable *mutatis mutandis* to exchanges of confidential data or information between the divisions of the supervisory authority's organisation that are entrusted with different duties.

Section 1:22 (exchanges of information with investigation authorities)

The supervisory authority is, in derogation from the provisions of Section 1:20, first paragraph, authorised to issue confidential data or information received for the performance of the duties assigned to the supervisory authority pursuant to this Act to the authorities entrusted exercising criminal investigative powers.

Section 1:23 (administrator, official receiver and delegated judge)

1. The supervisory authority is, in derogation from the provisions of Section 1:20, first paragraph, authorised to issue confidential data or information received for the performance of the duties assigned to the supervisory authority pursuant to this Act to a delegated judge, administrator or official receiver appointed or designated pursuant to the Bankruptcy (BES Islands) Act (*Faillissementswet BES*) or pursuant to Chapter 8 to the extent that the data or information will be of use in the performance of the officer's duties.

2. The supervisory authority does not issue data or information as referred to in the first paragraph when the issue of the data or information could, in reasonableness, be in conflict with or could come into conflict with the interests that this Act intends to protect. The supervisory authority does not issue confidential data or information obtained from the other supervisory authority or a foreign supervisory body when the other supervisory authority or supervisory body does not concur with the issue of the data or information.

3. An official receiver appointed on the bankruptcy of a financial enterprise is, in derogation from the provisions of Section 1:20, first paragraph, authorised to issue confidential data or information as referred to in the first paragraph to the Court to the extent that this issue is necessary for the liquidation and settlement of the liabilities of the financial enterprise.

4. The first to third paragraphs are applicable *mutatis mutandis* to a delegated judge, administrator or official receiver appointed or designated under the law of

the European territory of the Netherlands or the law of Aruba, Curacao or Sint Maarten.

Section 1:24 (monetary authorities, external specialists, etc.)

1. The supervisory authority is, in derogation from the provisions of Section 1:20, first paragraph, authorised to issue confidential data or information received for the performance of the duties assigned to the supervisory authority pursuant to this Act to:

a. De Nederlandsche Bank acting in its capacity as a monetary authority or to foreign monetary authorities to the extent that the data or information will be of use in the performance of the monetary authority's duties;

b. an external specialist or actuaries entrusted with the statutory audit of the annual accounts or statements of a financial enterprise to the extent that the data or information relate to the enterprise and are required for the audit;

c. the operator of a securities exchange, to the extent that the data or information are required for the supervision of compliance with the regulations governing the securities exchange.

2. Section 1:21, first to third paragraphs inclusive, is applicable *mutatis mutandis*.

Section 1:25 (statements in civil cases)

Section 1:20, first paragraph, is without prejudice to the applicability of the provisions of the Code of Civil Procedure (BES Islands) (*Wetboek van Burgerlijke Rechtsvordering BES*) relating to making a statement as a witness or as a party in an appearance of parties before court or as an expert concerning data or information obtained in the performance of a duty assigned by this Act to the extent that this relates to confidential data or information about a financial enterprise that has been declared bankrupt or dissolved pursuant to a court judgment.

§ 5. Exemption and dispensation

Section 1:26 (exemption)

Our Minister may issue a ministerial regulation granting exemption, if necessary subject to supplementary regulations, from the regulations prescribed by or pursuant to sections 2:1, first paragraph, 2:3, first and second paragraphs, 2:21 to 2:23 inclusive, 3:1 to 6:17 inclusive and 8:1 to 8:7 inclusive when the interests that this Act is designed to protect do not dictate otherwise.

Article 1:27 (dispensation)

1. The supervisory authority may, on request, grant full or partial dispensation for a definite or indefinite period of time from:

a. sections 2:3, first paragraph, preamble and under a, 2:21, 2:22, 3:16 to 3:18 inclusive, 3:24, 3:33, 3:35, 3:36, 3:45, 3:46, 4:1, second paragraph, 4:4, second and third paragraphs, 4:5, 4:10, 4:11, 4:14, second paragraph, 4:31, 4:39, 5:4, 5:5, 5:6, 5:14, 5:19 and 5:22;

b. in cases prescribed by or pursuant to Orders in Council: the regulations pursuant to this Act.

2. Dispensation is granted solely when the applicant demonstrates that the

interests this Act is intended to protect will not suffer from the dispensation or that the intended objectives cannot be achieved other than with the dispensation from the regulations that is being requested.

3. Further regulations governing the conditions attached to granting dispensation may be prescribed by or pursuant to an Order in Council.

4. Sections 2:5 to 2:9 inclusive, 2:12, 2:14, preamble and under a, b, c, i and j, and 2:16 are applicable *mutatis mutandis*.

CHAPTER 2. MARKET ACCESS

§ 1. Licences

Section 2:1 (licences granted by De Nederlandsche Bank)

1. The following activities are prohibited without a licence granted by De Nederlandsche Bank:

a. in or from the public bodies:

1°. conducting the business of credit institution, electronic money institution or money transaction office;

2°. carrying out the activities of a trust office;

b. conducting the business of a life insurer, benefits-in-kind funeral insurer or non-life insurer from a branch established in the public bodies.

2. A licence to conduct the business of a credit institution also extends, unless specified otherwise in the licence, to a licence to conduct the business of an electronic money institution or money transaction office.

Section 2:2 (trust office group licence)

1. A licence for conducting the business of a trust office can also be granted to a group of trust offices.

2. A licence granted to a group pursuant to the first paragraph is equally applicable, unless otherwise specified in the licence, to all the trust offices belonging to the group.

3. Further regulations governing the first and second paragraph may be prescribed by or pursuant to an Order in Council.

Section 2:3 (licences granted by the Netherlands Authority for the Financial Markets)

1. The following activities are prohibited in the public bodies without a licence granted by the Netherlands Authority for the Financial Markets:

a. acting as an advisor, broker, authorised agent or sub-authorised agent;

b. acting as a portfolio manager;

c. offering credit;

d. operating a securities exchange.

2. It is prohibited to request or acquire funds or other goods in the public bodies for participation in collective investment schemes or to offer units in a collective investment scheme of such a nature without a licence granted by the Netherlands Authority for the Financial Markets.

3. A licence granted to act as a broker also extends, unless otherwise specified in the licence, to a licence to act as an advisor.

4. When the collective investment scheme is an investment fund then the

licence referred to in the second paragraph is granted to the fund's management company.

Section 2:4 (prevention of the obligation to obtain a licence from both De Nederlandsche Bank and the Netherlands Authority for the Financial Markets)

1. Section 2:3, first paragraph, under a, is not applicable to enterprises that have been granted a licence to conduct the business of a credit institution or insurer to the extent that the activities referred to in that section relate to a financial product that is offered by the relevant enterprise or a financial enterprise that belongs to the same group.

2. Section 2:3, first paragraph, under b, is not applicable to enterprises that have been granted a licence to conduct the business of a credit institution unless otherwise specified in the licence.

3. Section 2:3, first paragraph, under c, is not applicable to enterprises that have been granted a licence to conduct the business of a credit institution or insurer unless otherwise specified in the licence.

Section 2:5 (transferability)

Licences granted pursuant to this Act are personal and are non-transferable.

§ 2. Application for a licence

Section 2:6 (submission of applications)

1. Applications for licences pursuant to this Act are submitted to the competent supervisory authority for the issue of the licence.

2. The applicant submits the information and documents required for the decision on the licence that are, in reasonableness, at the disposal of the applicant.

3. Further regulations governing the information and documents to be submitted with the application may be prescribed by or pursuant to an Order in Council.

4. The supervisory authority may adopt a form for the submission of applications and provision of information to the extent not provided for pursuant to the third paragraph.

Section 2:7 (non-processing of applications)

1. The supervisory authority may decide not to process an application for a licence in the event that:

a. the applicant has not complied with the regulations prescribed by Section 2:6, third paragraph, or the information and documents submitted with the application are insufficient for the assessment of the application or for the preparations for the decision;

b. the applicant has not paid the fee owed in advance pursuant to Section 1:10, first paragraph.

2. Before applying the provisions of the first paragraph, preamble and under a, the supervisory authority offers the applicant to supplement the application within a period specified by the supervisory authority.

3. The applicant is notified, in writing, of the decision not to process an application within four weeks after the supplementation of the application or once

the period specified for the supplementation has expired without the supplementation.

Section 2:8 (decision period)

1. The supervisory authority reaches a decision on an application for a licence within 13 weeks after the submission of the application.
2. When a decision cannot be made within the period specified in the first period then the supervisory authority notifies the applicant accordingly and states the shortest possible period within which a decision will be made.

Section 2:9 (suspension of decision period)

1. The period referred to in Section 2:8 is suspended on the day after the day on which the supervisory authority:
 - a. invites the applicant to supplement the application, pursuant to Section 2:7, second paragraph, until the day on which the application has been supplemented or on which the period specified for the supplementation has expired without the supplementation, or
 - b. notifies the applicant that the information required, in reasonableness, for the decision has been requested from a foreign body until the day on which the information is received or a further suspension is no longer reasonable.
2. The decision period is also suspended:
 - a. during the period in which the applicant has concurred in writing with the suspension;
 - b. for the period in which the delay can be imputed to the applicant, or
 - c. for the period in which the supervisory authority is not in a position to issue the decision due to *force majeure*.
3. In the event of *force majeure* the supervisory authority notifies the applicant as soon as possible that the decision period has been suspended and states the period within which a decision will be made.
4. When the suspension ends then the supervisory authority notifies the applicant as soon as possible in the instances referred to in the first paragraph, under b, or the second paragraph, under b and c, and states the period within which a decision will be made.

Section 2:10 (deferral of the decision in connection with a declaration of no objection)

1. In derogation from the provisions of Section 2:8, first paragraph, when an application for a declaration of no objection as referred to in Section 3:28 has been submitted the supervisory authority defers the decision on an application for a licence until no later than six weeks after the time at which the decision on the application for a declaration of no objection has been announced.
2. When a petition as referred to in Section 85, first paragraph, of the Administrative Decisions (Appeals) (BES Islands) Act (*Wet administratieve rechtspraak BES*) has been filed against the decision on the application for a declaration of no objection then the supervisory authority defers the decision on the application for a licence until no later than two weeks after the decision is reached on the petition.

§ 3. Issue, refusal and withdrawal of licences

Section 2:11 (issue of licences)

The supervisory authority issues the licence in the event that the applicant demonstrates that the applicant shall comply with the regulations prescribed by or pursuant to sections 3:1 to 3:6 inclusive, 3:8 to 3:24 inclusive, 3:33, 3:34 and 3:44 to 3:46 inclusive, as well as:

- a. for collective investment schemes: the regulations prescribed by or pursuant to sections 4:1 to 4:5 inclusive and 4:10;
- b. for operators of securities exchanges: the regulations prescribed by or pursuant to sections 4:15 and 4:16;
- c. for credit institutions, electronic money institutions and money transaction offices: the regulations prescribed by or pursuant to sections 4:18 and 04:21;
- d. for insurers: the regulations prescribed by or pursuant to sections 4:25 to 4:34 inclusive.

Section 2:12 (regulations and restrictions)

Regulations and restrictions can be attached to licences with a view to the protection of the interests that this Act is designed to protect.

Section 2:13 (refusal of licences)

In derogation from the provisions of Section 2:11, the supervisory authority can refuse the licence either in whole or in part in the event that:

- a. the supervisory authority has reasons to hold that that the application for the licence was submitted for the purposes of the evasion of the financial enterprise's supervision by another state or another part of the Kingdom;
- b. the relevant enterprise has its registered offices abroad and the supervisory authority is of the opinion that the supervisory body in the state in which the enterprise has its registered offices is not in a position to supervise the enterprise in an adequate and effective manner;
- c. the interests this Act is designed to protect oppose the issue of the licence.

Section 2:14 (amendment or withdrawal of licences)

The supervisory authority that has issued a licence can amend or withdraw the licence, either in whole or in part, on the request of the licence holder and when:

- a. the information and documents that were submitted at the time of the application prove to be incorrect or incomplete, and knowledge of the correct or complete information would have resulted in a different decision on the application;
- b. circumstances arise or facts become known that would have resulted in the refusal of the licence had they arisen or been known at the time the licence was issued;
- c. the licence holder no longer complies or no longer complies in full with the regulations prescribed by or pursuant to this Act or with the regulations or restrictions attached to the licence;
- d. the statement on the true and fair presentation as referred to in Section 3:35, second paragraph, or Section 3:36, second paragraph, or the actuarial account as referred to in Section 3:36, third paragraph, do not reveal that the financial enterprise's annual accounts or statements present a true and fair view of the size

and the composition of the enterprise or of the result for the relevant financial year;

- e. the licence holder has not obeyed an instruction issued pursuant to sections 7:12 or 7:13 or has not obeyed the direction in full;
- f. the licence holder does not comply with the regulations prescribed by or pursuant to the Money Laundering and Terrorism Financing (BES Islands) Act (*Wet ter voorkoming van witwassen en financieren van terrorisme BES*) or the Sanctions Act 1977 (*Sanctiewet 1977*);
- g. the licence holder has not commenced the activity for which the licence was issued within twelve months of the issue of the licence;
- h. the licence holder has terminated the activity for which the licence was issued or has discontinued the licence holder's business or profession for more than twelve months;
- i. the licence holder has transferred the enterprise for which the licence was issued either in whole or in part;
- j. the licence holder abuses or makes improper use of the licence;
- k. the interests that this Act is designed to protect oppose the maintenance or unchanged maintenance of the licence.

Section 2:15 (mandatory grounds for withdrawal)

1. The supervisory authority withdraws a licence issued by the authority in the event that:

- a. the natural person who was issued the licence dies or the legal person or enterprise that was issued the licence is dissolved;
- b. the licence holder is placed under custodianship or one of more goods of the licence holder are placed under administration by court order;
- c. the licence holder is declared bankrupt.

2. De Nederlandsche Bank withdraws a licence it has granted to conduct the business of a credit institution or insurer in the event that:

- a. an authorisation as referred to in Section 8:10, first paragraph, preamble and under b, has been granted;
- b. an authorisation as referred to in Section 8:10, first paragraph, preamble and under c, has been granted, whereby the licence is withdrawn on the first occasion on which the enterprise's assets are sold during the emergency regulation for the purpose of the distribution of the proceeds between the creditors, shareholders or members.

3. When a the supervisory body in the state in which a foreign financial enterprise has its registered offices withdraws the licence to conduct the enterprise's business in the state in which it has its registered offices then the supervisory authority also withdraws the licence issued to the enterprise pursuant to this Act.

Section 2:16 (reasons and notification)

The applicant or licence holder is issued written notification of a decision to amend, withdraw or restrict a licence, accompanied by a statement of the reasons.

Section 2:17 (liquidation of an enterprise after the withdrawal of a licence)

- 1. A supervisory authority that withdraws a licence may state in its decision to

withdraw the licence that the relevant financial enterprise is required liquidate its operations either in whole or in part within a period specified by the supervisory authority and, when required, with due regard for directions issued by the supervisory authority.

2. During the liquidation of the operations of the financial enterprise, or the liquidation by the official receiver in the event of bankruptcy, the enterprise is deemed to be an enterprise with a licence.

Section 2:18 (changes after the issue of the licence)

1. A financial enterprise that has been issued a licence pursuant to this Act notifies the supervisory authority of all changes in those issues for which the provision of information or documents at the time of the submission of the application for the licence is prescribed pursuant to Section 2:6, third paragraph, which the enterprise knows or can reasonably presume to be of importance to the supervisory authority in its supervision of the financial enterprise.

2. Further regulations governing the changes to be notified pursuant to the first paragraph, the procedures to be followed and the information or documents to be submitted may be prescribed by or pursuant to an Order in Council.

3. An Order in Council may determine that a financial enterprise issued a licence pursuant to this Act is prohibited from making changes to the enterprise's legal form, articles of association, corporate structure or design of its operations without prior permission from or the notification of the supervisory authority.

§ 4. Financial market register

Section 2:19 (Financial market register)

1. The names of financial enterprises that have been issued a licence pursuant to this Act or have submitted a notification as referred to in Section 2:23, first paragraph, are entered in a register of financial markets.

2. The register is public and is maintained by De Nederlandsche Bank and the Netherlands Authority for the Financial Markets, each with respect to the financial enterprises under their supervision pursuant to sections 1:5, third paragraph, or 1:6, third paragraph.

3. Regulations governing the categorisation and design of the register, the information to be entered in the register and amendments of the information entered in the register may be prescribed by an Order in Council.

Section 2:20 (entry in the register)

1. Financial enterprises are entered in the register as soon as possible and in any case within fourteen days after the issue of the licence.

2. The first paragraph is applicable *mutatis mutandis* to amendments in the licence to the extent that the amendments are of importance to the information entered or to be entered in the register.

3. The entry of a financial enterprise whose licence has been withdrawn is deleted. Further regulations governing the entries and the deletion of entries of financial enterprises that have submitted a notification as referred to in Section 2:23, first paragraph, may be prescribed by an Order in Council.

§ 5. Special provisions

Section 2:21 (prohibition on the use of the word "bank")

1. Enterprises other than credit institutions that have been issued a licence to conduct the business of a credit institution pursuant to this Act are prohibited from using the words "bank", "credit" or "savings", as well as translations and forms of those words, in their name or in their operations unless the manner in which they are used makes clear that they are not active in the financial markets.

2. The prohibition on the use of the word "credit" referred to in the first paragraph is not applicable to enterprises that have been granted a licence to offer credit pursuant to this Act.

Section 2:22 (prohibition on raising callable funds)

1. Enterprises are prohibited from raising or receiving callable funds in the course of their business in the public bodies beyond a restricted circle from parties other than professional market operators or to have these funds at their disposal, and from conducting the activities of a broker for the purpose of raising or receiving these funds.

2. The first paragraph is not applicable to raising or receiving callable funds from parties other than professional market operators or having the disposal of these funds in the following instances:

- a. financial enterprises that have been issued a licence to conduct the business of credit institution pursuant to this Act;
- b. the State of the Netherlands;
- c. as a result of offering securities in accordance with or pursuant to the regulations laid down in Chapter 5, paragraph 4.

Section 2:23 (provision of incoming insurers' services)

1. Insurers with their registered offices abroad are prohibited from offering insurance in the public bodies by means of the provision of services from a foreign establishment unless they have notified De Nederlandsche Bank and have demonstrated that:

- a. their registered offices are in Curacao, Sint Maarten or another state designated pursuant to Section 3:1, second paragraph or another part of the Kingdom;
- b. are a legal person by the law of the state in which they have their registered offices;
- c. are authorised to conduct the business of the relevant insurance company in the state in which they have their registered offices and actually conduct this business from a branch in that state a legal person by the law of the state;
- d. comply with the solvency regulations prescribed by or pursuant to Section 3:17 for solvency;

2. De Nederlandsche Bank issues prompt notification of the receipt of the notification referred to in the first paragraph to the insurer that submitted the notification.

3. Following the notification referred to in the second paragraph the insurer may proceed to offer insurance in the public bodies. The insurer may not offer insurance in sectors for which the insurer is not authorised to conduct the business of insurance company in the state in which the insurer has its registered offices.

4. Chapter 3, with the exception of sections 3:1, 3:15 and 3:17 and Chapter 4, paragraph 4, with the exception of sections 4:31 to 4:34 inclusive, are not applicable to an insurer as referred to in the third paragraph.

5. Further regulations governing the conditions attached to permission to offer insurance in the public bodies from a foreign establishment and further regulations governing the first to third paragraphs inclusive may be prescribed by or pursuant to an Order in Council.

CHAPTER 3. GENERAL PROVISIONS GOVERNING FINANCIAL ENTERPRISES

§ 1. Registered offices and legal form

Article 3:1 (location of registered offices)

1. The registered offices of financial enterprises are located in the public bodies, Curacao or Sint Maarten.

2. Our Minister can issue a ministerial regulation determining that in instances to be specified in the ministerial regulation financial enterprises are also permitted to have their registered offices in another state to be designated by Our Minister or in another part of the Kingdom.

3. An Order in Council may prescribe that a financial enterprise with its registered offices abroad that conducts business in or from the public bodies requiring a licence as referred to in sections 2:1 or 2:3 shall conduct that business from a branch in the public bodies.

Section 3:2 (foreign enterprises)

1. A financial enterprise with its registered offices abroad which conducts business requiring a licence as referred to in sections 2:1 or 2:3 in or from the public bodies is authorised to conduct that business in the state in which it has its registered offices.

2. Further regulations imposing restrictions on the nature or the scope of the business that financial enterprises with their registered offices abroad conduct in or from the public bodies and regulations governing the conditions attached to conducting that business may be prescribed by or pursuant to an Order in Council.

Section 3:3 (legal form)

1. Insurers with their registered offices in the public bodies have the legal form of a public limited company or a mutual insurance society.

2. Insurers with their registered offices abroad are a legal person by the law of the state in which they have their registered offices.

3. Further regulations governing the legal form of financial enterprises and regulations governing the structuring and organisation of the enterprises may be prescribed by an Order in Council.

§ 2. Management, organisation and operations

Section 3:4 (reliability of policy-makers)

1. The financial enterprise's policy is determined or jointly determined by

officers whose reliability is beyond doubt. When a body within the enterprise is entrusted with the supervision of the policy and general course of the operations of the enterprise then that supervision is conducted by officers whose reliability is also beyond doubt.

2. The reliability of officers is beyond doubt when their reliability has been established once for the application of this Act, provided that a change in the relevant facts or circumstances does not give cause to a new assessment and for the time during which a new assessment is not prescribed as referred to in the fourth paragraph.

3. Regulations governing the manner in which the reliability of the officers as referred to in the first paragraph is established beyond doubt and the facts and circumstances taken into account when establishing the reliability, as well as the regulations governing those offences which, when perpetrated by an officer as referred to in the first paragraph and in view of the interests that this Act is designed to protect, shall result in the conclusion that the reliability of the officers is not beyond doubt may be prescribed by or pursuant to an Order in Council.

4. The Order in Council referred to in the third paragraph may also determine that a new assessment of the officers' reliability shall be carried out at periodic intervals.

Section 3:5 (suitability of policy-makers)

1. The financial enterprise's day-to-day policy is determined by officers who are suitable in terms of the business conducted by the enterprise. When a body within the enterprise is entrusted with the supervision of the policy and general course of the operations of the enterprise then that supervision is conducted by officers who are also suitable in terms of carrying out that supervision.

2. Further regulations governing the suitability of officers as referred to in the first paragraph may be prescribed by or pursuant to an Order in Council.

Article 3:6 (two pairs of eyes principle and location of the work)

1. Regulations governing the number of natural persons who determine the day-to-day policy of a financial enterprise and the number of natural persons entrusted with the supervision of the policy and general course of the operations of the enterprise may be prescribed by or pursuant to an Order in Council.

2. An Order in Council may also prescribe that one or more officers who determine or jointly determine a financial enterprise's policy carry out their work at a location in the public bodies.

Section 3:7 (appointment of policy-makers)

1. The appointment of officers who determine or jointly determine the policy of a financial enterprise or of members of a body entrusted with the supervision of the policy and the general course of the operations of a financial enterprise without prior approval from the supervisory authority is prohibited.

2. Our Minister can issue a ministerial regulation prescribing further regulations governing the implementation of the first paragraph.

Section 3:8 (honest operations)

1. A financial enterprise conducts an adequate policy for the honest operation of its business and designs its operations in a manner that provides assurances for

honest operations.

2. Further regulations governing honest operations may be prescribed by or pursuant to an Order in Council. These regulations can relate to:

- a. discouraging entanglements of interests;
- b. discouraging money laundering or terrorist financing and ensuring for compliance with the regulations governing financial transactions prescribed by or pursuant to the Sanctions Act, 1977 (*Sanctiewet 1977*);
- c. discouraging criminal offences or other violations of the law by the enterprise or its employees that could harm confidence in the enterprise or financial markets;
- d. the relations with consumers, customers or other third parties that could harm confidence in the enterprise or financial markets;
- e. other acts by the enterprise or its employees that go against the generally-accepted standards under unwritten law to an extent such that they could cause serious harm to confidence in the enterprise or financial markets.

Section 3:9 (controlled operations)

1. A financial enterprise conducts an adequate policy for the controlled operation of its business and designs its operations in a manner that provides assurances for controlled operations.

2. Further regulations governing controlled operations may be prescribed by or pursuant to an Order in Council. These regulations can relate to:

- a. the control of business processes and business risks;
- b. the control of financial risks that could impair the solidity of the enterprise and provisions for the maintenance of the required financial security;
- c. orderly and transparent financial market processes, integrity in the relationships between market parties and due care in the provision of services to consumers and customers.

Section 3:10 (transparent control structure)

1. A financial enterprise is not affiliated with persons in a formal or actual control structure that is opaque to an extent that this impedes or may impede the adequate supervision of the enterprise.

2. A financial enterprise is not affiliated with persons in a formal or actual control structure when those persons are governed by foreign law that impedes or may impede the adequate supervision of the enterprise.

Section 3:11 (competence of employees)

1. A financial enterprise that offers financial products or provides financial services provides for the competence of its employees and other natural persons under its responsibility who are directly engaged in the provision of the products or services. To this end at least a number of the enterprise's actual supervisors possess the competence required to assure the quality of the services provided to the consumers and customers.

2. Further regulations governing the competence of the persons referred to in the first paragraph may be prescribed by or pursuant to an Order in Council. An Order in Council may lay down that Our Minister may, in accordance with regulations laid down in the Order, recognise examination institutes authorised to issue certificates attesting to the competence of the relevant person. In addition, regulations may then be prescribed governing the supervision of compliance with

those regulations.

Section 3:12 (handling of complaints)

1. A financial enterprise that offers financial products or provides financial services has implemented a procedure for the meticulous and consistent processing of complaints from consumers or customers within a reasonable period. The enterprise ensures that the procedure is sufficiently known to all persons involved in handling complaints on behalf of the enterprise.

2. A financial enterprise as referred to in the first paragraph is affiliated with a body recognised by Our Minister which deals with any disputes with consumers or customers arising from the provision of financial products or services, unless no such body has been recognised.

3. Further regulations governing the complaints procedure referred to in the first paragraph and further regulations governing the recognition and procedures of a disputes body as referred to in the second paragraph may be prescribed by or pursuant to an Order in Council.

Section 3:13 (outsourcing to third parties)

1. A financial enterprise that outsources activities to third parties ensures that these third parties comply with the regulations governing the enterprise that is outsourcing the activities as prescribed pursuant to this Act.

2. A financial enterprise does not outsource activities to third parties when the enterprise knows or should know that the relevant third party has not been issued the requisite licence pursuant to this Act or is not permitted to carry out the relevant activities for other reasons.

3. Further regulations governing the provisions of the first and second paragraph may be prescribed by or pursuant to an Order in Council. An Order in Council may also prescribe that activities designated by the Order may not be outsourced.

Section 3:14 (foreign enterprises)

Sections 3:4 to 3:9 inclusive and 3:11 to 3:13 inclusive are applicable to financial enterprises with their registered offices abroad solely with respect to the activities that the relevant enterprise carries out in or from the public bodies.

Section 3:15 (mandatory representative)

1. An Order in Council may prescribe that a financial enterprise with its registered offices abroad that conducts business in or from the public bodies requiring a licence as referred to in sections 2:1 or 2:3 shall appoint a representative in the public bodies.

2. The representative possesses full representative authority for the day-to-day policy to the extent that this relates to the business conducted in or from the public bodies.

3. The representative is, on behalf of the financial enterprise, under the obligation to comply with the regulations prescribed by or pursuant to this Act. The absence of a representative or defaults on the part of the representative does not discharge the relevant enterprise from its obligations to comply with these regulations.

4. Further regulations governing the representation referred to in the first

paragraph and regulations governing the requirements imposed on the representative may be prescribed by or pursuant to an Order in Council.

§ 3. Financial guarantees

Section 3:16 (minimum own funds)

1. A collective investment scheme, securities broker, electronic money institution, credit institution, portfolio manager or insurer possesses a minimum amount of own funds.

2. Without prejudice to the provisions of the first paragraph, an insurer possesses funds to cover the costs incurred in the organisation of the administration and the production network.

3. Regulations governing the amount and composition of the minimum amount of own funds are prescribed by or pursuant to an Order in Council. The regulations laying down the minimum amount of own funds also specify what is understood as 'own funds' for the various categories of financial enterprises.

4. The minimum amount of own funds of an insurer is expressed in terms of a minimum amount of the guarantee fund as referred to in Section 3:17, fourth paragraph.

Section 3:17 (solvency)

1. A securities broker, electronic money institution, credit institution, portfolio manager or insurer possesses adequate solvency.

2. The solvency to be maintained by an insurer is expressed in terms of a solvency margin. The solvency to be maintained by other financial enterprises is expressed in terms of qualifying capital.

3. Regulations governing the calculation of the minimum amount of the solvency to be maintained pursuant to the first paragraph, the composition of the solvency and the valuation of the assets that can be recognised for solvency purposes and the assets that serve as cover for the solvency are prescribed by or pursuant to an Order in Council.

4. A third element of the minimum amount of the solvency margin of an insurer calculated in accordance with the third paragraph is comprised of the guarantee fund.

5. Regulations governing the retention of balance sheet items or off-balance sheet items by credit institutions and electronic money institutions are prescribed by or pursuant to an Order in Council.

Section 3:18 (liquidity)

1. A credit institution or, in cases prescribed by an Order in Council, collective investment scheme, possesses adequate liquidity.

2. Regulations governing the minimum amount, composition and calculation of the liquidity referred to in the first paragraph are prescribed by or pursuant to an Order in Council.

Section 3:19 (technical provisions of insurers)

1. An insurer maintains adequate technical provisions. The technical provisions are fully covered by assets.

2. An insurer conducting the life insurance business sets adequate premiums for

life insurance policies concluded by the insurer which take account of all the enterprise's financial aspects.

3. An insurer covers the obligations arising from claims as referred to in Section 8:25, second paragraph, fully with assets.

4. Regulations governing the technical provisions to be maintained pursuant to the first paragraph, the assets to cover the provisions, the localisation of the assets and the currency in which they are dominated are prescribed by or pursuant to an Order in Council.

Section 3:20 (presumption of proof, foreign enterprises)

1. A financial enterprise with its registered offices abroad that is subjected to prudential supervision in the state in which it has its registered offices is presumed to comply with the relevant requirements imposed on the financial enterprise pursuant to sections 3:16 to 3:19 inclusive during the time in which the financial enterprise is permitted to conduct its business in the state in which it has its registered offices.

2. Further regulations governing the provisions of the first paragraph may be prescribed by or pursuant to an Order in Council.

Section 3:21 (special guarantees, foreign enterprises)

1. An Order in Council may prescribe that an insurer with its registered offices abroad is under the obligation to maintain a solvency fund in the public bodies in accordance with rules prescribed by or pursuant to the Order.

2. Enterprises as referred to in sections 3:16 to 3:18 with their registered offices abroad that are not insurers may be required by or pursuant to an Order in Council to maintain supplementary financial security to cover the obligations towards consumers, customers or other third parties customers designated by the Order that they enter into in or from the public bodies.

Section 3:22 (guarantees, operators of securities exchanges)

An operator of a securities exchange possesses adequate funding to provide for the orderly operation of the market and with due regard for the scope of the transactions carried out on the market and the risks to which the operator is exposed.

Section 3:23 (asset separation)

1. A portfolio manager or securities broker that holds securities or funds for a consumer or customer implements adequate measures to protect the rights of the consumer or customer to the securities or funds and to prevent the use of the securities or funds for trade for the account of the portfolio manager or securities broker.

2. The first paragraph is applicable mutatis mutandis to a trust office that holds funds or monetary values for third parties.

3. An electronic money institution implements adequate measures to safeguard the funds received for the issue of electronic money.

4. In derogation from the provisions of the first paragraph, a portfolio manager or securities broker may make use of the securities referred to in that paragraph for trade for own account when the customer has granted express permission to do so.

5. Further regulations governing the provisions of the first to fourth paragraphs inclusive may be prescribed by or pursuant to an Order in Council.

Section 3:24 (professional liability insurance, intermediaries)

A consultant or intermediary other than a securities broker, authorised agent or sub-authorised agent has concluded a professional liability insurance contract which complies with the regulations prescribed by or pursuant to an Order in Council to cover the liability arising from conducting the profession or business of the consultant or intermediary.

Section 3:25 (obligation to give notification of non-compliance)

A financial enterprise that foresees or should reasonably foresee that the financial enterprise does not or will not comply with the requisite requirements imposed on the financial enterprise pursuant to sections 3:16 to 3:21 inclusive issues prompt notification of the situation to De Nederlandsche Bank.

Section 3:26 (dissolution or liquidation)

1. An electronic money institution, credit insurer or insurer with its registered offices in the public bodies that has decided to proceed to the dissolution or entire or partial liquidation of its business consults with De Nederlandsche Bank on the manner in which the dissolution or liquidation will be carried out at least thirteen weeks before it proceeds to the implementation of the decision.

2. De Nederlandsche Bank may shorten the period referred to in the first paragraph.

§ 4. Holdings in financial enterprises

Section 3:27 (meaning of qualifying holding)

This paragraph and the provisions based on the paragraph understand a qualifying holding as a direct or indirect interest of at least ten percent in the issued share capital of a company or the possession of ten percent or more of the voting rights in the company, either directly or indirectly, or the ability to exercise control comparable to such an interest.

Section 3:28 (declaration of no objection)

1. The acquisition or expansion of a qualified holding in or the exercising of control of a collective investment scheme, electronic money institution, electronic money institution, credit institution, trust office, portfolio manager or insurer with its registered offices in the public bodies is prohibited other than after the issue of a declaration of no objection by De Nederlandsche Bank.

2. An applicant submitting an application for a declaration of no objection to De Nederlandsche Bank shall enclose the information to be determined by De Nederlandsche Bank with the application. Sections 2:7 to 2:9 inclusive are applicable *mutatis mutandis*.

3. The prohibition referred to in the first paragraph is not applicable to:
a. holding, acquiring or expanding a qualified holding in a portfolio manager when the portfolio manager is also a credit institution and the applicant submitting an application for holding, acquiring or expanding a qualifying holding in the credit

institution has already been issued a declaration of no objection by De Nederlandsche Bank or has requested such an application and a decision on the application has not yet been reached;

b. holding, acquiring or expanding qualified holdings in other cases to be designated by or pursuant to an Order in Council.

Section 3:29 (reliability of the holder of a qualified holding)

The reliability of persons who determine or jointly determine or may determine or jointly determine the policy of a financial enterprise specified in Section 3:28, first paragraph, as a result of a qualifying holding must be beyond doubt. Section 3:4, second to fourth paragraphs inclusive, is applicable *mutatis mutandis*.

Section 3:30 (issue of declaration of no objection)

1. De Nederlandsche Bank issues a declaration as referred to in Section 3:28, first paragraph, unless:

a. the reliability of persons who will or could determine or jointly determine the policy of the financial enterprise as a result of the intended qualified holding is not beyond doubt;

b. the persons who will determine the day-to-day policy of the financial enterprise as a result of the qualified holding are not suitable for that role;

c. the financial solidity of the applicant is not assured from the perspective of the business operations of the financial enterprise;

d. following the qualifying holding the financial enterprise will no longer be in a position to comply with the prudential requirements imposed pursuant to this Act;

e. there are good reasons to suspect that money laundering or terrorist financing within the meaning of the Money Laundering and Terrorism Financing (BES Islands) Act (*Wet ter voorkoming van witwassen en financieren van terrorisme BES*) could be an issue or that the risks could be increased on the intended acquisition or expansion of the holding.

2. Sections 2:12, 2:14, preamble and under a to e inclusive, and 2:16 are applicable *mutatis mutandis*.

3. The first paragraph, under c and d, is not applicable to trust offices.

4. Further regulations governing the grounds for refusal of the first paragraph may be prescribed by or pursuant to an Order in Council.

Section 3:31 (submitting an application for a declaration of no objection to the Netherlands Authority for the Financial Markets)

1. An application for a declaration of no objection relating to a qualified holding in a collective investment scheme or portfolio manager may also be submitted to the Netherlands Authority for the Financial Markets in the event that the financial enterprise has yet to be issued a licence pursuant to the Act at the time of the declaration.

2. When the application for a declaration of no objection has been submitted to the Netherlands Authority for the Financial Markets in accordance with the first paragraph then De Nederlandsche Bank issues the decision on the application to the Netherlands Authority for the Financial Markets which in turn notifies the relevant financial enterprise.

Section 3:32 (voidability of decisions without a declaration of no objection)

1. Decisions reached as a result of any control on a financial enterprise associated with a qualified holding in an enterprise specified in Section 3:28, first paragraph, which is exercised without the issue of a declaration of no objection or without due regard for the restrictions attached to a declaration of no objection are voidable.

2. The Court shall void a decision as referred to in the first paragraph on a claim submitted by De Nederlandsche Bank in the event that the decision would have decided differently or not have been reached if the control referred to in the first paragraph had not been exercised and unless a declaration of no objection is nevertheless issued before the time of the judgement or the restrictions that had not been observed are withdrawn before the time of the judgement.

3. The Court makes any arrangements that may be required for the consequences of voiding the decision.

§ 5. Accounts and reports

Section 3:33 (maintenance of the accounts in the public bodies)

A financial enterprise with its registered offices in the public bodies maintains the books, documents and other information carriers relating to its accounts in the public bodies.

Section 3:34 (separate accounts, foreign enterprises)

1. An Order in Council can prescribe the maintenance of separate accounts for the business that a financial enterprise with its registered offices abroad conducts in the public bodies.

2. Further regulations governing the provisions of the first paragraph may be prescribed by or pursuant to an Order in Council.

Section 3:35 (annual accounts and annual report)

1. A collective investment scheme, securities broker, electronic money institution, credit institution, portfolio manager or insurer shall submit its annual accounts and annual report for the past financial year to the supervisory authority within a period to be specified by an Order in Council. The annual accounts shall include at least a balance sheet, profit and loss account, and the requisite explanatory notes.

2. An Order in Council may prescribe that the annual accounts are accompanied by a statement attesting to their true and fair presentation issued by an external or other expert and by other documents to be prescribed by or pursuant to the Order.

3. Further regulations governing the contents of the annual accounts and the annual report and the accompanying documents, as well as regulations governing the form and manner of submission, may be prescribed by or pursuant to an Order in Council.

Section 3:36 (statements)

1. A credit institution or insurer shall submit statements, either on a

consolidated basis or otherwise, to De Nederlandsche Bank at periodic intervals or at times and within periods to be prescribed by an Order in Council which jointly present a true and fair view of the policy conducted by the relevant enterprise and its financial situation.

2. The statements are accompanied by a statement from an external specialist attesting that they present a true and fair view. The external specialist certifies the statements.

3. The statements from a life insurance company shall include an actuarial report and a comparative mortality table. These statements shall be accompanied by a statement from the actuary confirming that the provisions referred to in the actuarial report have been set in a prudent manner and that the comparative mortality table is presented correctly. The actuary certifies the relevant statements.

4. Further regulations governing the contents of the statements and the accompanying documents, as well as regulations governing the form and manner of submission, may be prescribed by or pursuant to an Order in Council. The Order in Council can also prescribe regulations governing the publication of the statements.

Section 3:37 (submission periods)

De Nederlandsche Bank may, should an event occur or have occurred that has or may have serious consequences for the financial position of an electronic money institution, credit institution or insurer, prescribe that one or more statements shall temporarily be submitted at a higher frequency or within a shorter period laid down in Section 3:36, fourth paragraph. These statements are not published.

Section 3:38 (other reporting and notification obligations)

Further regulations governing the periodic accounts and reports to be submitted by financial enterprises and regulations governing the notification of any occurrences and circumstances may be prescribed by or pursuant to an Order in Council.

§ 6. External specialist and actuary

Section 3:39 (external specialist's obligation to give notification)

An external specialist who conducts an audit of the annual accounts or statements of a financial enterprise to determine whether they present a true and fair view notifies the supervisory authority as soon as possible of every circumstance which comes to the external specialist's attention during the audit that:

- a. is contrary to the regulations prescribed by or pursuant to this Act;
- b. is contrary to the obligations imposed on the relevant enterprise pursuant to this Act;
- c. threatens the continuity of the financial enterprise;
- d. results in the refusal to sign a declaration stating that the accounts present a true and fair view or the issue of a reservation.

Section 3:40 (actuary's obligation to give notification)

An actuary who conducts an audit of the adequacy of the technical provisions and the true and fair presentation of an insurer's actuarial reports notifies De Nederlandsche Bank as soon as possible of every circumstance which comes to the actuary's attention during the audit that poses or may pose a threat to the adequacy of the technical provisions or the financial position of the insurer.

Section 3:41 (explanation by the external specialist or actuary)

1. The supervisory authority may call on an external specialist or actuary to give a verbal explanation of a notification as referred to in sections 3:39 or 3:40 when the supervisory authority deems this to be necessary.
2. The supervisory authority offers the relevant financial enterprise an opportunity to attend the verbal explanation.

Section 3:42 (liability of the external specialist or actuary)

An external specialist or actuary who issues a notification pursuant to sections 3:39 or 3:40 is not liable for the resultant loss incurred by a third party unless a plausible case is made that in view of all the facts and circumstances the external specialist or actuary should not, in reasonableness, issued the notification or provided the information.

Section 3:43 (objection to the external specialist or actuary)

1. The supervisory authority can determine that an external specialist or actuary who is unable to provide the necessary assurances that the specialist or actuary will perform the duties relating to a financial enterprise in a satisfactory manner is no longer authorised to make the declarations referred to in this Act for the financial enterprise.
2. A decision as referred to in the first paragraph is accompanied by reasons and is issued in writing to the relevant external specialist or actuary and to the relevant financial enterprise.

§ 7. Financial groups

Section 3:44 (general provisions governing financial groups)

1. An enterprise with its registered offices in a public body that is the parent company of a group as referred to in sections 3:45 or 3:46 provides for operations such that the financial solidity of the group and the credit institutions and insurers belonging to the group is not put in jeopardy by:
 - a. the risk management of the group in its entirety or of the individual members of the group;
 - b. the strategy and policy of the group in its entirety or of the individual members of the group;
 - c. potential conflicts of interests and relationships between the members of the group;
 - d. activities carried out by members of the group that are of material importance to the operations of a credit institution or insurer as referred to in sections 3:45 and 3:46 respectively.
2. Further regulations governing the provisions of the first paragraph may be

prescribed by or pursuant to an Order in Council.

Section 3:45 (consolidated supervision of credit institutions)

1. De Nederlandsche Bank conducts consolidated supervision of a credit institution with its registered offices in the public bodies that is a member of a group.

2. De Nederlandsche Bank's consolidated supervision includes the consolidated annual accounts of the enterprises belonging the group and any significant intra-group contracts and positions between the credit institution and enterprises that are not involved in the consolidated supervision.

3. A credit institution subjected to consolidated supervision calculates its solvency on the basis of its consolidated financial position.

4. A credit institution as referred to in the first paragraph submits periodic reports to De Nederlandsche Bank which include information about the contracts and positions as referred to in the second paragraph that are of significant importance and about the consolidated financial position as referred to in the third paragraph.

5. Further regulations governing the provisions of the first to fourth paragraphs inclusive are prescribed by or pursuant to an Order in Council.

Section 3:46 (supplementary supervision of insurers)

1. De Nederlandsche Bank conducts supplementary supervision of an insurer with its registered offices in the public bodies that is a member of a group.

2. De Nederlandsche Bank's supplementary supervision includes intra-group contracts and positions between:

- a. enterprises affiliated with the insurer;
- b. enterprises with a participating interest in the insurer;
- c. enterprises affiliated with the enterprises referred to under b.

3. An insurer as referred to in the first paragraph calculates the adjusted solvency in cases determined by an Order in Council.

4. An insurer as referred to in the first paragraph submits periodic reports to De Nederlandsche Bank at intervals determined by De Nederlandsche Bank which include information about the contracts and positions that are of significant importance and, where applicable, about the adjusted solvency as referred to in the third paragraph.

5. Further regulations governing the provisions of the first to fourth paragraph inclusive are prescribed by or pursuant to an Order in Council.

Section 3:47 (implementation of measures by De Nederlandsche Bank)

De Nederlandsche Bank implements measures against a credit institution or insurer when the operations as referred to in Section 3:44 or the supervision as referred to in sections 3:45, first paragraph, and 3:46, first paragraph, reveal that the financial position of the credit institution or insurer is or could be in jeopardy.

Section 3:48 (exceptions)

1. De Nederlandsche Bank may decide not to involve an enterprise in the supervision referred to in sections 3:45, first paragraph, or 3:46, first paragraph, when:

- a. the enterprise has its registered offices in a state where there are statutory

impediments to the provision of the information required for the supervision;

b. the enterprise to be involved in the supervision is only of insignificant importance to the objectives to be achieved by the supervision;

c. taking account of the financial position of the enterprise would be misplaced or misleading in the light of the objectives of the supervision.

2. Further regulations governing the provisions of the first paragraph, under b, may be prescribed by or pursuant to an Order in Council.

CHAPTER 4. PROVISIONS GOVERNING SPECIFIC CATEGORIES OF FINANCIAL ENTERPRISES

§ 1. Collective investment schemes

Section 4:1 (management of investment funds)

1. Investment funds are managed by a manager.

2. Solely legal persons with full legal capacity may act as the manager of an investment fund.

3. The obligations resting on collective investment schemes pursuant to this Act are, when the collective investment scheme is an investment fund, addressed to the manager of the fund.

Section 4:2 (management of investment companies)

When an investment company has a management company then the management company serves as the statutory board of the investment company.

Section 4:1, second paragraph, is applicable *mutatis mutandis*.

Section 4:3 (separation of the assets of an investment fund)

1. The management company implements measures to ensure that:
 - a. the investment fund's assets for the unit-holders are acquired by a depositary independent of the management company;
 - b. the depositary may gain access to the investment fund's assets solely with the cooperation of the management company.
2. Further regulations governing the provisions of the first paragraph may be prescribed by or pursuant to an Order in Council.

Section 4:4 (custodianship of assets)

1. When the assets of a collective investment scheme are held by a depositary then the collective investment scheme shall conclude a written management and custody contract with the depositary. The contract complies with regulations governing the contract prescribed by or pursuant to an Order in Council.
2. Solely a legal person with articles of association which state that the sole object of the legal person is to hold and administer the goods in which a collective investment scheme invests may act as a depositary. Sections 3:4 to 3:10 inclusive and 3:13 are applicable *mutatis mutandis* to the depositary.
3. When the investment policy of a collective investment scheme gives cause to the real risk that the capital of the institution and the capital of the depositary will be insufficient to cover the claims as referred to in Section 4:6 then the assets of the collective investment scheme shall be held by a depositary that acts solely as the depositary for the collective investment scheme.

Section 4:5 (minimum own funds)

1. The management company of an investment fund possesses a minimum amount of own funds. An equal obligation rests on the depositary affiliated with a collective investment scheme.
2. Regulations governing the amount and composition of the minimum amount of own funds as referred to in the first paragraph are prescribed by or pursuant to an Order in Council.
3. A management company or depositary as referred to in the first paragraph that foresees or reasonably should foresee that its minimum amount of own funds does not or will not comply with the regulations referred to in the second paragraph issues prompt notification of the situation to De Nederlandsche Bank.
4. Section 3:35 is applicable *mutatis mutandis* to a management company or depositary as referred to in the first paragraph.

Section 4:6 (claims on the capital of an investment fund)

1. The capital of an investment fund shall serve solely to settle claims arising from:
 - a. liabilities relating to the management and custody of the fund;
 - b. units.

2. In derogation from the provisions of the first paragraph, other claims may be recovered from the capital of an investment fund when it has been established that claims as referred to in the first paragraph can be settled and that similar claims will not arise in the future.

3. When the capital of an investment fund following its liquidation is insufficient to settle the claims referred to in the first paragraph then the capital is not allocated to the settlement of the claims arising from the units until the claims relating to the management and custody of the fund have been settled.

4. When the claims referred to in the first paragraph cannot be settled in full from the capital of the investment fund then the capital of the depositary shall in the first instance be used to settle these claims, with the exception of other reasons for preference recognised by law. The third paragraph is applicable *mutatis mutandis*.

Section 4:7 (sub-funds)

1. A sub-fund is deemed to be equivalent to an independent investment fund for the purposes of the application of Section 4:6.

2. A sub-fund is understood as a portion of the capital of a collective investment scheme with separate accounts which is governed by a separate investment policy and funds or other goods are requested or acquired for collective investment specifically for that portion to enable the unit-holders to share in the return on the investments subject to the prevailing conditions applicable specifically to that portion.

Section 4:8 (representation of the interests of the unit-holders)

1. A collective investment scheme acts in the interests of the unit-holders in the investment fund. The collective investment scheme treats its unit-holders in an equivalent manner in equivalent circumstances.

2. The first paragraph is applicable *mutatis mutandis* to the depositary of a collective investment scheme and the depositary affiliated with a collective investment scheme.

Section 4:9 (improper transactions)

No transactions are carried out for or on behalf of a collective investment scheme for the institution's account with a frequency or of an amount such that these, in view of the circumstances, are manifestly carried out solely for the benefit of the collective investment scheme, the management company, the depositary or a party affiliated with the collective investment scheme, the management company or the depositary.

Section 4:10 (prospectus)

1. A collective investment scheme has a prospectus available for the units it offers which contains at least the information referred to in Section 5:4. The prospectus is updated once this is necessary.

2. The collective investment scheme ensures that the prospectus is available to the public without charge. An institution which has a website also publishes the prospectus on its website.

3. Further regulations governing the prospectus prepared by a collective investment scheme for the units it offers or the information it is required to issue

and further regulations governing the prospectus and the availability of the prospectus may be prescribed by or pursuant to an Order in Council.

Section 4:11 (net asset value of units)

1. A collective investment scheme determines the net asset value of its units each time it offers, sells, repurchases or redeems those units.
2. An independent expert carries out an independent valuation of the assets of a collective investment scheme that are not securities which are admitted to trade on a securities exchange at least once a year.
3. A collective investment scheme with a website publishes the information referred to in the first paragraph promptly on its website together with a statement of the time at which the net asset value was determined. A collective investment scheme which does not have a website ensures that the information referred to in the first paragraph is made available in some other suitable manner.
4. Further regulations governing the determination of the net asset value referred to in the first paragraph and the valuation of the assets referred to in the second paragraph may be prescribed by or pursuant to an Order in Council.

Section 4:12 (suspension of the repurchase of units)

A collective investment scheme that suspends the repurchase of units or redemption of units of this nature notifies the Netherlands Authority for the Financial Markets promptly.

Section 4:13 (prevention of confusion about names)

The Netherlands Authority for the Financial Markets may, when it is of the opinion that the name of a collective investment scheme used or to be used in the public bodies gives cause for concern about the possible confusion about names, require the collective investment scheme to supplement its name with an explanatory statement or to change its name.

Section 4:14 (dissolution and liquidation)

1. An investment company whose licence is withdrawn is dissolved by the Court on the request of the Netherlands Authority for the Financial Markets. The Court appoints one or more liquidators.
2. The capital of an investment fund whose licence is withdrawn is liquidated within a period to be determined by the Netherlands Authority for the Financial Markets. The Court appoints one or more liquidators on the request of the Netherlands Authority for the Financial Markets.
3. Dissolution or liquidation as referred to in the first and second paragraph does not take place until the withdrawal of the licence has become irrevocable.

§ 2. Securities exchanges

Section 4:15 (operating a securities exchange)

The operator of a securities exchange ensures that the operation of the securities exchange, the regulations that will govern the securities exchange, the application of those regulations and the supervision of compliance with the regulations comply with the requirements for the adequate performance of the

securities market and the position of the investors.

Section 4:16 (regulations and procedures governing a securities exchange)

1. The operator of a securities exchange has implemented:
 - a. regulations and procedures to provide for equitable and orderly trade, as well as objective criteria for the efficient fulfilment of orders;
 - b. explicit and transparent regulations governing the admission of securities to trade on the securities exchange;
 - c. objective, transparent and non-discriminatory regulations governing access to trade on or membership of the securities exchange;
 - d. regulations governing the initial, continual or occasional provision of information by institutions issuing securities that have been admitted to trade on the securities exchange;
 - e. effective regulations and procedures to provide for compliance with the regulations adopted by the securities exchange;
 - f. effective regulations for the efficient and timely completion of transactions carried out via the securities exchange.
2. The operator of a securities exchange issues the Netherlands Authority for the Financial Markets notification of every intended amendment of the regulations and procedures as referred to in the first paragraph. The amendment is not implemented when the Netherlands Authority for the Financial Markets has issued an objection within four weeks of the receipt of the notification.
3. Further regulations governing the provisions of the first and second paragraph may be prescribed by or pursuant to an Order in Council.

§ 3. Credit institutions, electronic money institutions and money transaction offices

Section 4:17 (participation in the deposit guarantee scheme)

1. A credit institution that has been issued a licence to conduct the business of a credit institution pursuant to this Act participates in the deposit guarantee scheme referred to in Section 8:26.
2. De Nederlandsche Bank sets the amount of the contribution to be paid by credit institutions as referred to in the first paragraph to the deposit guarantee scheme with due regard for the provisions of Section 8:26, third paragraph. The credit institutions obliged to pay a contribution pay the contribution within a period specified by De Nederlandsche Bank.
3. A participating credit institution as referred to in the first paragraph makes information about the deposit guarantee scheme in which it participates on request and on its own initiative. This information is such that deposit holders or potential deposit holders are in a position to determine whether a claim falls under the cover provided by the deposit guarantee scheme.
4. Credit institutions are not permitted to make use of information about the deposit guarantee scheme for advertising purposes.
5. The fourth paragraph is not applicable to credit institutions that state that the deposit guarantee scheme is applicable to them in an advertisement.

Section 4:18 (suitability for payment transactions in the public bodies)

1. A credit institution ensures that the payment or savings accounts it offers in

the public bodies and the associated payment facilities are suitable for payment transactions in the public bodies.

2. The obligation referred to in the first paragraph is not applicable to accounts destined for foreign payment transactions.

Section 4:19 (information about the payer on money transfers)

1. A credit institution, money transaction office or electronic money institution is under the obligation to enclose information about the payer with money transfers.

2. Our Minister can issue a ministerial regulation prescribing further regulations governing the provisions of the first paragraph, as well as regulations governing the retention and availability of the information about the payer to be enclosed with money transfers, the processing of received money transfers that are not accompanied by the required information and the role as an intermediary service provider for money transfers.

Section 4:20 (issue and exchange of electronic money)

1. An electronic money institution or credit institution issues electronic money solely to a maximum of the amount of money received for the issue.

2. An electronic money institution or credit institution exchanges electronic money on the request of the holder of the electronic money it has issued by means of the payment of notes and coins or the transfer to a payment or savings account, whereby solely the necessary costs incurred in the exchange may be charged.

3. Further regulations governing the issue and exchange of electronic money may be prescribed by or pursuant to an Order in Council.

Section 4:21 (consolidated supervision of credit institutions)

A credit institution with its registered offices in the public bodies that is a subsidiary of a credit institution with its registered offices abroad is subjected to adequate consolidated supervision in the state in which the latter credit institution has its registered offices.

Section 4:22 (prohibition on a correspondent bank relationship with a shell bank)

A credit institution is prohibited from entering into or continuing a permanent relationship for the settlement of transactions or fulfilment of orders with:

- a. a foreign credit institution or comparable enterprise without a physical presence in the state in which it was incorporated and which is not a member of the group to which the credit institution belongs;
- b. a foreign credit institution that is known to allow institutions or enterprises as referred to under a to make use of its accounts.

Section 4:23 (acts of credit institutions requiring a declaration of no objection)

1. A credit institution with its registered offices in the public bodies is, other than after the issue of a declaration of no objection from De Nederlandsche Bank, prohibited from:

- a. reducing its own funds by the repayment of capital or payments from its

reserves;

b. acquiring or enhancing a holding in another enterprise that is of significance in relation to its own funds;

c. taking over, either directly or indirectly, all or a significant proportion of the assets and liabilities of another enterprise or institution;

d. entering into a merger with another enterprise or institution;

e. implementing a financial or corporate reorganisation;

f. establishing branches, sub-offices or cashpoints under any name whatsoever;

or

g. amending its articles of association.

2. An applicant submitting an application for a declaration of no objection to De Nederlandsche Bank shall enclose the information to be determined by De Nederlandsche Bank with the application. Sections 2:7 to 2:9 inclusive are applicable *mutatis mutandis*.

3. Further regulations governing the provisions of the first paragraph may be prescribed by or pursuant to an Order in Council.

Section 4:24 (declaration of no objection)

1. De Nederlandsche Bank issues the declaration of no objection referred to in Section 4:23 unless the act for which the declaration is requested:

a. is or could become contrary to the regulations governing the solvency of the relevant institution pursuant to Section 3:17;

b. is or could become contrary to healthy and prudent operations in some other manner;

c. results or could result in an undesirable development in the financial sector.

2. Sections 2:12, 2:14, preamble and under a to d inclusive, and 2:16 are applicable *mutatis mutandis*.

§ 4. Insurers

Section 4:25 (combination of life and non-life)

1. An insurer with its registered offices in the public bodies is prohibited from conducting both the business of life insurance and non-life insurance.

2. An insurer with its registered offices abroad that conducts both the business of life insurance and non-life insurance abroad is prohibited from conducting the business of life insurance in the public bodies.

Section 4:26 (sectors of the non-life insurance business)

1. The business of non-life insurers is classified into the following sectors:

a. accident and health insurance;

b. motor insurance;

c. marine, transport and aviation insurance;

d. insurance of damage by fire and other damage to goods;

e. other forms of non-life insurance.

2. A licence to conduct the business of non-life insurer is issued for one or more specific sectors as referred to in the first paragraph.

3. The risks associated with another sector than the sector or sectors for which a licence to conduct the business of non-life insurer is issued that may be insured as ancillary risks, as well as the risks that may not be combined as ancillary risks with insurance for other sectors, are prescribed by an Order in Council.

Section 4:27 (further regulations governing insurance sectors)

Further regulations governing the classification of the non-life insurance business into sectors and regulations governing the classification of the life insurance business into sectors may be prescribed by an Order in Council. Section 4:26, second and third paragraphs, is applicable *mutatis mutandis*.

Section 4:28 (prohibition on conducting the insurance business in other sectors)

1. Conducting the business of life insurer or non-life insurer in sectors other than sectors for which a licence has been issued is prohibited.
2. The first paragraph is not applicable to risks that are insured as ancillary risks pursuant to the provisions of Section 4:26, third paragraph.

Section 4:29 (prohibition on other business)

1. Insurers who have been granted a licence to conduct the business of life insurer, benefit-in-kind funeral insurer or non-life insurer are prohibited from conducting business other than the insurance business for which the licence has been issued.
2. In derogation from the provisions of the first paragraph, an insurer who has been issued a licence to conduct the life insurance business is also permitted to conduct the benefit-in-kind funeral insurance business.

Section 4:30 (prohibition on the insurance of war and kindred risks)

An insurer is prohibited from providing insurance covering damage caused by or arising from armed conflict, civil war, insurrection, civil commotion, riots or mutiny. However, marine, transport, aviation and travel insurance policies may encompass the insurance of war and kindred risks under the generally accepted war and kindred risk clauses provided that De Nederlandsche Bank has not raised any advance objections against the insurance of these risks.

Section 4:31 (credit, surety and legal assistance)

A contract concluded for either credit insurance, surety insurance or legal assistance insurance may provide cover solely for the risks covered by the type of insurance.

Section 4:32 (motor vehicle liability)

An insurer that offers insurance covering legal liability arising from the use of motor vehicles complies with the insurance requirements imposed pursuant to the Motor Vehicle Insurance Liability (BES Islands) Act (*Wet aansprakelijkheidsverzekering motorrijtuigen BES*).

Section 4:33 (further regulations governing specific sectors or types of insurance)

1. Further regulations governing insurers conducting the business of life insurer or non-life insurer in a specific sector may be prescribed by or pursuant to an

Order in Council.

2. Regulations governing the conditions to be incorporated in insurance contracts may be prescribed by or pursuant to an Order in Council.

Section 4:34 (currency denominated in insurance contracts)

1. Insurance contracts concluded with customers domiciled or established in one of the public bodies are denominated in the currency of the public bodies unless the insured risk is located outside the public body.

2. The first paragraph is not applicable when the parties expressly agree otherwise. The insurer cannot then invoke a stipulation incorporated in the general terms and conditions governing the insurance contract concluded with the customer.

3. An Order in Council may prescribe that the first paragraph is not applicable to categories of insurance designated by the Order. Further regulations governing the location of the insured risk referred to in the first paragraph may also be prescribed by or pursuant to an Order in Council.

Section 4:35 (De Nederlandsche Bank's permission for portfolio transfer)

1. An insurer can transfer the rights and obligations pursuant to life insurance or benefit-in-kind insurance contracts to another insurer solely by means of a written contract and with written permission from De Nederlandsche Bank.

2. An insurer may, provided that De Nederlandsche Bank has granted written permission, transfer the rights and obligations pursuant to non-life insurance contracts to another insurer without the cooperation or consent of the parties who can derive rights from the non-life insurance.

3. An application for permission for a transfer as referred to in the first or second paragraph is submitted in a manner to be determined by De Nederlandsche Bank and is accompanied by the information to be specified by De Nederlandsche Bank.

4. The first paragraph is not applicable to the transfer of rights and obligations pursuant to individual insurance policies on the written request of the policyholder.

Section 4:36 (the policyholders' consent to portfolio transfer)

1. An insurer issues notification of the intention to transfer the rights and obligations pursuant to life insurance or benefit-in-kind insurance contracts in a manner to be determined by De Nederlandsche Bank. The notification includes a period to be determined by De Nederlandsche Bank within which the relevant policyholders may lodge a written objection to the transfer with De Nederlandsche Bank.

2. De Nederlandsche Bank does not grant permission in the event that one-quarter or more of the policy holders submit a written objection to the intended transfer within the period referred to in the first paragraph.

3. De Nederlandsche Bank notifies the insurer of any objections it may have to the transfer after the expiry of the stipulated period.

4. De Nederlandsche Bank grants permission in the event that one-quarter or more of the policy holders have not submitted a written objection to the intended transfer and De Nederlandsche Bank does not have any objections to the transfer. The transfer may then take place. The transfer is applicable to all those involved.

Section 4:37 (notification of portfolio transfer)

1. An insurer that has transferred the rights and obligations pursuant to contracts with permission from De Nederlandsche Bank issues notification of the transfer in a manner to be determined by De Nederlandsche Bank. The transfer enters into effect on the second day after the day on which the notification is issued.

2. De Nederlandsche Bank's advance consent to the content of the notification referred to in the first paragraph is required.

3. The policyholders involved in the transfer of the rights and obligations pursuant to non-life insurance contracts can issue written notification of termination during the three months after the day on which the transfer entered into effect as from the day after the expiry of this period.

Section 4:38 (further regulations governing portfolio transfer)

Further regulations governing the provisions of sections 4:35 to 4:37 inclusive may be prescribed by or pursuant to an Order in Council.

Section 4:39 (prohibition of the transfer of contracts to abroad)

An insurer is prohibited from transferring insurance contracts concluded by an establishment in the public bodies to an establishment of the insurer outside the public bodies.

§ 5. Brokerage

Section 4:40 (duty of care of the provider and broker)

1. The provider of a financial product concluding the first contract for a financial product via the mediation of a specific broker does so only once the provider has verified that the broker has been issued a licence to conduct the profession or business of broker for the product pursuant to this Act.

2. The provider of a financial product who knows or should know that the broker's licence has been withdrawn or that the broker is no longer permitted to conduct the profession or business of broker in the public bodies for some other reason does not conclude any further contracts for financial products via the mediation of the broker.

3. A broker who knows or should know that the licence of the provider of a financial product for whom the broker mediates has been withdrawn or that the provider is no longer permitted to offer financial products for some other reason no longer acts as a broker for the provider.

Section 4:41 (duty of care of sub-brokers)

1. Before a broker allows third parties to mediate in financial products or securities in the broker's name or for the broker's account the broker verifies that the third parties are also permitted to conduct the profession or business of broker for the products or securities pursuant to this Act.

2. A broker who knows or should know that a third party mediating in the broker's name or for the broker's account or for whom the broker mediates in the third party's name or for the third party's account no longer possesses the licence required pursuant to this Act or is no longer permitted to conduct the profession

or business of broker for some other reason no longer allows the third party to mediate or terminates the broker's work in the name or for the account of the relevant third party.

Section 4:42 (portfolio of insurance brokers)

1. An insurance contract concluded via the mediation of a broker or is transferred to the portfolio of a broker is part of the broker's portfolio in the relationship with the relevant insurer until such time as the contract is transferred from that portfolio or the contract is transferred to the insurer's portfolio.

2. An Order in Council may prescribe that a broker mediating in insurance for an insurer is entitled to remuneration or fees for the insurance contracts in the broker's portfolio in accordance with regulations prescribed by or pursuant to the Order.

Section 4:43 (transfer to another portfolio or to the insurer's portfolio)

1. An insurer does not transfer all or part of a broker's portfolio to another portfolio without the consent of the broker or the broker's legal successor.

2. In derogation from the provisions of the first paragraph, the insurer transfers the insurance contract of a policyholder from the broker's portfolio to the portfolio of another broker on the policyholder's request, unless the insurer has well-founded objections to the relevant broker.

3. The first and second paragraphs are applicable *mutatis mutandis* to the transfer of an insurance contract to an insurer's portfolio.

4. The insurer lends its cooperation to the full or partial transfer of a broker's portfolio to the portfolio of another broker when so requested in writing by the broker, unless the insurer has well-founded objections to the relevant broker.

Section 4:44 (collection of insurance premiums)

1. Unless agreed otherwise, the broker collects the premiums for the insurer. The broker is at all times accountable and responsible to the insurer for the collection of the premiums.

2. The payment of the premium due and the costs to the broker releases the policyholder from the payment obligations to the insurer. The obligation to pay the premium due and the costs is transferred to the broker at the time of payment.

Section 4:45 (termination of collection by the broker)

1. Unless agreed otherwise between the insurer and the broker, the insurer may terminate the broker's collection of the premiums in the event that:

- a. the broker seriously neglects the collection of the premiums;
- b. the broker remains in default in the timely transfer of the collected premiums to the insurer or commits acts that justify the presumption that the broker will not comply with the obligations arising from the collection of the premiums.

2. The insurer terminates a broker's collection of premiums in the event that the broker's licence to act as a broker for insurance is withdrawn.

3. The insurer assumes the responsibility for the collection of premiums in the cases in which the collection of premiums by the broker is terminated pursuant to the first or second paragraph.

Section 4:46 (authorised and sub-authorised agents)

1. Sections 4:40 and 4:41 are applicable *mutatis mutandis* to an insurer and the insurer's authorised agent and to an authorised agent and the authorised agent's sub-authorised agent.

2. When a broker in insurance mediates for an authorised agent or a sub-authorised agent then the authorised agent or sub-authorised agent is deemed to be equivalent to an insurer for the purposes of the application of sections 4:40 to 4:45 inclusive.

Section 4:47 (authorisation)

1. The authorisation to be granted to an authorised or sub-authorised agent is granted in writing. An Order in Council may prescribe the preparation of the authorisation in accordance with a model specified by the Order.

2. The insurer issuing the authorisation may restrict the authorisation.

3. A sub-authorisation may be restricted by the insurer issuing the authorisation and by the authorised agent during the period in which the authorised agent's authorisation remains in effect.

4. Restrictions on an authorisation or a sub-authorisation cannot be invoked against third parties. The sub-authorised agent is not regarded as a third party with respect to the insurer.

Section 4:48 (further regulations)

Further regulations governing the mutual relationship between providers of financial products, brokers and authorised and sub-authorised agents as well as the rights and obligations to be taken into account in that relationship may be prescribed by or pursuant to an Order in Council.

CHAPTER 5. MARKET CONDUCT AND SECURITIES TRANSACTIONS

§ 1. General provisions governing market conduct

Section 5:1 (meaning of financial service provider)

This paragraph and the provisions based on the paragraph understand a financial service provider as the party that offers a financial product or provides a financial service.

Section 5:2 (due care towards consumers and customers)

A financial service provider exercises due care in the provision of products and services to consumers and customers. To this end the financial service provider complies with at least the following regulations governing the financial service provider pursuant to this paragraph.

Section 5:3 (provision of information by the financial service provider)

A financial service provider ensures that the information provided or made available to consumers or customers in the form of advertisements or other announcements relating to a financial product, financial service or securities by or

on behalf of the financial service provider is factually correct, explicit and not misleading.

Section 5:4 (pre-contractual information)

1. A financial service provider ensures that the consumer or customer receives the information, in good time and without charge, about a financial product, a financial service or securities required to enable the consumer or customer to form an adequate opinion about that product, service or the securities before entering into a commitment.

2. The information for the consumer or customer referred to in the first paragraph shall at least extend to the costs and risks associated with the product, service or securities.

3. Regulations governing the instances in which, in derogation from the provisions of the first paragraph, all or part of the information referred to in that paragraph may be provided to a consumer or customer after the entering into a commitment relating to a financial product, financial service or securities and the conditions attached to permission for the later provision of all or part of the information may be prescribed by or pursuant to an Order in Council.

4. When a financial product is offered via the mediation of a broker then the obligation to provide information about the product to the consumer or customer referred to in the first paragraph rests on the broker.

Section 5:5 (relationship between provider and intermediary)

1. A consultant or broker informs the consumer or customer about the business relationship the consultant or intermediary, as the occasion arises, maintains with the provider or providers of the financial product about which the consultant or broker provides advice or mediates.

2. The information referred to in the first paragraph also extends to the manner in which the consultant or intermediary, as the occasion arises, receives remuneration from the provider of the product for the services of consultant or intermediary.

3. An Order in Council may prescribe that an intermediary provides the consumer or customer information about the commission, including the arrangement fee and recurrent fees for each payment term, paid to the intermediary for mediation in relation to financial products or securities to be designated by the Order before the contract for the relevant product or securities is concluded.

Section 5:6 (provision of information during the contract)

1. A financial service provider who has concluded a contract for a financial product or financial service with a consumer or customer provides the consumer or customer timely information throughout the term of the contract relating to material changes in the information provided earlier, amendments to the conditions governing the contract that was concluded and other information about the product or service that may reasonably be of relevance to the consumer or customer.

2. When a contract for a financial product was concluded via the mediation of a broker then the obligation to provide information about the product rests on the provider of the product unless the provider and broker have agreed otherwise.

Section 5:7 (appropriate advice)

1. A financial service provider that provides advice to a consumer or customer bases that advice on the financial position, knowledge and experience, objectives and the willingness to accept risks of the consumer or customer.

2. The financial service provider explains the advice and, as required, gives an explanation of the considerations on which the advice was based.

3. A financial service provider that does not provide advice to a consumer or customer when providing a financial service informs the consumer or customer accordingly before carrying out the work for the consumer or customer.

Section 5:8 (appropriate portfolio management)

A portfolio manager collects information about the financial position, knowledge and experience, objectives and the willingness to accept risks of the customer and takes this into account in the management of the customer's portfolio.

Section 5:9 (dealing with customers)

A financial service provider ensures that the complaints of consumers and customers are dealt with in a diligent and consistent manner and are settled within a reasonable period.

Section 5:10 (remuneration of intermediaries)

1. The remuneration an advisor or broker is paid by the provider of a financial service for the provision of financial services may not be such that the remuneration puts or could put the interests of the consumer or customer in jeopardy.

2. Further regulations governing the remuneration of consultants or brokers may be prescribed by or pursuant to an Order in Council.

3. Regulations governing the admissibility of the following may also be prescribed by or pursuant to an Order in Council:

a. the claims settlement commission that a broker charges the policyholder or beneficiary in the event of a claim;

b. the direct or indirect conferral, relinquishment or promise of a commission, return commission or any other benefit that can be valued in monetary terms relating to others than to the broker whose portfolio includes the insurance.

Section 5:11 (authorised or sub-authorised agent)

When an insurance contract is offered or concluded via the mediation of an authorised or sub-authorised agent then the authorised or sub-authorised agent is deemed to be the party offering the insurance for the application of the provisions of this paragraph.

Section 5:12 (further regulations)

Further regulations governing the due care financial service providers are to exercise on the provision of services to consumers or customers and regulations governing the issues provided for in sections 5:3 to 5:9 inclusive may be prescribed by or pursuant to an Order in Council.

§ 2. Extension of credit

Section 5:13 (definitions)

This paragraph and the provisions based on the paragraph understand the following terms as:

credit charge: all costs, in any form whatsoever, which a credit provider charges the borrower in connection with the credit, with the exception of the charge for late payment and charge for early redemption;

charge for late payment: all costs a credit provider charges the borrower for the failure to make repayments or make repayments in time or the interest a credit provider then charges the borrower, with the exception of extrajudicial collection costs.

Section 5:14 (creditworthiness review)

1. A credit provider neither concludes a credit contract with a consumer nor increases the credit limit of an existing contract with a consumer when this is irresponsible in view of the risk of the extension of excessive credit.

2. The credit provider obtains information about the consumer's financial position to assess the risk of the extension of excessive credit. An Order in Council can prescribe that the credit provider consults information about credit already extended to the consumer in a credit register system recognised by Our Minister.

3. Further regulations governing the requirements laid down in the first and second paragraphs and regulations governing the recognition and design of a credit register system registration may be prescribed by or pursuant to an Order in Council.

Section 5:15 (maximum credit charge)

1. A credit provider does not levy a credit charge, charge for late payment or charge for early redemption in excess of the amount permitted pursuant to the second paragraph.

2. Regulations governing the maximum permitted credit charge and charge for late payment are prescribed by or pursuant to an Order in Council. The Order in Council may also prescribe regulations governing the maximum permitted charge a credit provider may levy for early repayment and regulations governing the maximum permitted extrajudicial collection costs that may be charged.

3. A contract contrary to the regulations laid down in the second paragraph is voidable. Solely the borrower may invoke this ground for avoidance.

Section 5:16 (prohibition on tie-in sales)

1. A credit provider does not impose an obligation on a borrower concluding a credit contract to conclude another contract for a financial product or financial service unless:

a. the borrower is expressly assigned the right to determine the counterparty with whom the contract will be concluded, or

b. the contract imposes the obligation to maintain a bank account with the credit provider to provide for the payments arising from the credit contract.

2. The costs the borrower incurs for the payment account as referred to in the first paragraph, under b, may not be excessive.

3. A contract contrary to the regulations laid down in the first or second

paragraph is voidable. Solely the borrower may invoke this ground for avoidance.

§ 3. Borrower's or policyholder's right of revocation

Section 5:17 (right of revocation of a credit contract)

1. A consumer has the right to dissolve the credit contract, without a statement of the reasons, during the five working days after the day on which the credit contract was concluded.
2. In the event of the dissolution of the credit contract pursuant to the first paragraph the consumer immediately repays the credit provider the amount of the credit received or drawn down, together with the interest due on that amount on the date of repayment.
3. When a credit contract dissolved pursuant to the first paragraph is attached to another contract then by operation of law the consumer is no longer bound to the other contract.
4. The first paragraph is not applicable to mortgage loans.

Section 5:18 (right of revocation of life and benefit-in-kind funeral insurance)

1. A policyholder has the right to dissolve a contract for individual life insurance with a term or more than six months or a contract for benefit-in-kind funeral insurance in writing, without a statement of the reasons, during the thirty calendar days after conclusion of the contract.
2. On the dissolution of the contract the parties are relieved of all obligations arising from the dissolved contract.

§ 4. Offering securities

Section 5:19 (prospectus obligation)

1. Offering securities to others than professional market operators beyond a restricted circle or have securities admitted to trading on a securities exchange held in the public bodies is prohibited unless a prospectus for the securities on offer that has been approved by the Netherlands Authority for the Financial Markets is generally available.
2. The first paragraph is not applicable to:
 - a. units in a collective investment scheme;
 - b. categories of securities excepted by a ministerial regulation issued by Our Minister.

Section 5:20 (approval of prospectus)

1. The Netherlands Authority for the Financial Markets approves a prospectus when the prospectus complies with the regulations prescribed by or pursuant to Section 5:21.
2. Following the receipt of an application for the approval of a prospectus the Netherlands Authority for the Financial Markets announces its decision on the approval to the applicant within ten working days or, when the applicant is an issuing institution that has not previously offered securities to the public or previously had securities admitted to trade on a securities exchange held in the public bodies, within twenty working days.

3. Sections 2:6, 2:7, first and second paragraphs, 2:9 and 2:16 are applicable *mutatis mutandis*, on the understanding that when the applicant is offered an opportunity to supplement the application pursuant to Section 2:7, second paragraph, then the periods referred to in the second paragraph begin again from the time at which the applicant has supplemented the application.

Section 5:21 (requirements imposed on the prospectus)

1. The prospectus referred to in Section 5:19 contains all the details which, in view of the nature of the issuing institution and the securities offered to the public or admitted to trade on the securities exchange, is of importance to the ability to make an informed assessment of the capital, financial position, result and prospects of the issuing institution and the guarantor, where relevant, and the rights attached to the securities.

2. The data referred to in the first paragraph is not contradictory or inconsistent with other information possessed by the Netherlands Authority for the Financial Markets relating to the issuing institution, the offerer of the securities or the applicant requesting the admission of the securities to trading on the securities exchange. The details are presented in a manner that is comprehensible for a reasonably informed and prudent person.

3. Further regulations governing the requirements imposed on the prospectus may be prescribed by or pursuant to an Order in Council.

Section 5:22 (continuing obligation to provide information)

1. An issuing institution other than an issuing institution offering securities admitted to trading on a securities exchange for which a licence has been issued as referred to in Section 2:3, first paragraph, under d, makes its annual financial statements generally available within four weeks after the end of the financial year. The annual financial statements include at least the annual accounts audited by an external specialist and the annual report.

2. The first paragraph is not applicable to an issuing institution of securities as referred to in Section 5:19, second paragraph.

3. Further regulations governing the provisions of the first paragraph may be prescribed by or pursuant to an Order in Council.

Section 5:23 (advertising regulations)

1. An issuing institution or offerer of securities ensures that advertisements relating to the securities on offer:

a. state that a prospectus is generally available or will be made available and states where the prospectus can be obtained;

b. are recognisable as advertisements and do not contain incorrect or misleading information and are in agreement with the information enclosed in the prospectus.

2. The first paragraph is not applicable to securities as referred to in Section 5:19, second paragraph.

§ 5. Market abuse

Section 5:24 (meaning of inside information)

This paragraph and the provisions based on the paragraph understand inside information as knowledge of specific information relating directly or indirectly to

an issuing institution of securities as referred to in Section 5:25, first paragraph, or to trading in securities of this nature:

- a. that has not been made public, and
- b. the public disclosure of the information could have a significant effect on the price of the securities or on the price of securities derived from the securities.

Section 5:25 (prohibition on the use of inside information)

1. Everyone is prohibited from making use of inside information by carrying out or bringing about transactions in or from the public bodies relating to:

- a. securities listed on a securities exchange for which a licence as referred to in Section 2:3, first paragraph, under d, or on a securities exchange abroad and admitted by the government or securities when it is plausible that they will be listed on a securities exchange of this nature within the near future;
- b. securities of which the value is jointly determined by the value of the securities referred to under a.

2. The prohibition in the first paragraph is not applicable to:

- a. an intermediary who possesses solely inside information relating to the trade and acts in accordance with the rules of good faith in serving the customers;
- b. a legal person, company or institution of which the employees involved in carrying out or arranging for the transaction possess solely inside information about the trade;
- c. those who carry out or arrange for a transaction to fulfil a due obligation that already existed at the time the person took cognisance of the information referred to in Section 5:24.

3. An Order in Council may prescribe that the prohibition referred to in the first paragraph is not applicable to categories of transactions designated by the Order. A distinction may be made within a category between persons who carry out a transaction or the circumstances in which a transaction is carried out.

Section 5:26 (prohibition on tips)

1. All those who possess inside information are prohibited from:

- a. disclosing inside information to third parties other than within the normal course of their work, profession or position;
- b. recommending to or inducing a third party to carry out or arrange for transactions in securities as referred to in Section 5:25, first paragraph, to which the inside information relates.

2. The prohibition referred to in the first paragraph, preamble and under b, is not applicable to a legal person, company or institution of which the employees involved in the recommendation do not possess inside information.

3. An Order in Council may prescribe regulations governing the instances in which and the circumstances under which disclosure within the normal course of the work, profession or position as referred to in the first paragraph, under a, is an issue.

Section 5:27 (prohibition on market manipulation)

1. Everyone is prohibited from carrying out or arranging for a transaction in securities as referred to in Section 5:25, first paragraph:

- a. that gives or could possibly give an incorrect or misleading signal about the offer of, demand for or price of those securities;
- b. that is intended to maintain the price of the securities at an artificial level;

c. that employs deceit or deception.

2. It is prohibited to disseminate information that gives or could possibly give an incorrect or misleading signal about the offer of, demand for or price of those securities whilst the disseminator of the information knows or can reasonably presume that the information is incorrect or misleading.

3. The first paragraph, preamble and under a and b, is not applicable when the person who carried out or arranged for the transaction can demonstrate that the reasons to do so were justified and that the transaction was in accordance with the customary market practice on the relevant securities exchange. Other categories of transactions may be designated by or pursuant to an Order in Council for which the prohibitions referred to in the first paragraph, preamble and under a and b, are not applicable.

4. The first paragraph is not applicable to the dissemination of information by journalists acting in their normal professional capacity, taking account of the regulations governing their professional group, unless they derive an advantage or gain from the dissemination of the information.

CHAPTER 6. CONTROL OF LISTED COMPANIES

§ 1. General provisions

Section 6:1 (definitions)

1. This Chapter and the provisions based on the Chapter understand the following terms as:

share:

1°. negotiable share as referred to in Section 5 of Book 2 of the Civil Code (BES Islands (*Burgerlijk Wetboek BES*));

2°. a depositary receipt for a share or another negotiable instrument equivalent to a depositary receipt for a share;

3°. an option to acquire a share as referred to under 1° or an instrument as referred to under 2°;

4°. any other negotiable instrument, other than an option as referred to under 3°, to acquire a share as referred to under 1° or an instrument as referred to under 2°;

subsidiary of a person:

1°. a legal person in which the legal person or one more of its subsidiaries, whether or not by virtue of an agreement with other persons with voting rights, can exercise more than half of the voting rights at the general meeting either alone or jointly.

2°. a legal person in which the legal person or one or more of its subsidiaries are members or shareholders, whether or not by virtue of an agreement with other persons with voting rights, can appoint or dismiss more than half of the directors or the supervisory directors, either alone or jointly, even if all persons with voting rights cast their vote.

3°. a company acting under its own name in which the legal person or one or more subsidiaries is or are fully liable as partner for the debts in respect of creditors;

4°. a legal person or company in which the legal person has a participating interest, whereby a participating interest is an issue when the legal person or one or more of the legal person's subsidiaries referred to under 1°, 2° and 3°, acting either individually or jointly provide capital or have capital provided to the legal

person with a view to a sustainable relationship with the company for the purposes of the work of the party holding the participating interest and whereby the existence of a participating interest is presumed when one-fifth or more of the issued share capital is purchased;

recognised securities exchange: securities exchange recognised by a ministerial regulation issued by Our Minister;

voting shares: shares with full voting rights and shares with limited voting rights when the voting rights can be exercised at any meeting for the appointment, suspension or dismissal of an executive director or supervisory director or for the approval or authorisation of or instruction for any act on the part of the executive board, irrespective of whether the shares are listed on a recognised securities exchange or are traded as unlisted shares;

company: a public limited company under the law of the public bodies with voting shares that are listed on one or more securities exchanges or are traded as unlisted shares.

2. This Chapter understands a party affiliated with a person as a party whose acquisition, holding or possession of voting shares is, pursuant to Section 6:3, first paragraph, under b, c, d or e, jointly attributed to that person.

Section 6:2 (voting shares)

'Voting shares' are also understood as:

a. depositary receipts with voting rights, whereby both the shareholder and the holder of the depositary receipt shall be regarded as the owner or the holder of the voting rights attached to the underlying shares;

b. deposit receipts and other documents representing an interest in voting shares, whereby both the shareholder and the holder of the depositary receipt shall be regarded as the owner or the holder of the voting rights granted by the underlying shares;

c. the right of pledge and the right of usufruct for the voting shares when the holder of the right of pledge or usufruct exercises the voting rights attached to the underlying shares, whereby the grantor of the right of pledge or bare owner shall also be regarded as the owner or holder of the voting rights attached to the shares;

d. rights to acquire voting shares, whereby the owner or holder to the right shall be regarded as the joint owner or holder of the voting rights attached to the shares; when the right relates to shares that have not been issued or are held by the company then these shares that the person has the right to acquire shall be taken into account as if they had been issued and are being held by that person for the purpose of the calculation of the percentage of the voting rights due to the person.

Section 6:3 (acquiring, holding or owning shares)

1. Acquiring, holding or owning voting shares by a person shall also be understood as:

a. acquiring, holding or owning, including the commencement of the holding, by a third party at the expense and risk of that person or a person as referred to under b, c, and d;

b. acquiring, holding or owning by a subsidiary of the person or of a person as referred to under c and d;

c. acquiring, holding or owning by the spouse of that person who is not permanently separated from that person, by the person living with that person as

though the parties were married, by minors over whom that person exercises parental authority, or by persons related to that person by blood or by marriage who are largely maintained by that person;

d. acquiring, holding or owning by an executive director, supervisory director or officer of that person or by persons in a relationship with that person as referred to under c and their subsidiaries;

e. acquiring, holding or owning by a third party with whom the person or one or more persons are in a relationship as referred to under b, c and d, has concluded a contract providing for a sustainable joint policy on exercising the voting right in the company or which is intended to acquire participation in the control of the company either jointly or by one or more parties to the contract.

2. When a person concludes a contract as referred to in the first paragraph, under e, with a third party who holds voting rights or a relationship arises between that person and the third party as referred to under a to d inclusive of that paragraph or the third party becomes the subsidiary of that person then the time at which the contract is concluded, the relationship arises or the third party becomes a subsidiary is deemed to be the time at which the shares are acquired by that person.

Section 6:4 (exception for securities transactions)

Voting shares that are acquired or held by persons who are admitted to a recognised securities exchange are, to the extent that the shares are acquired and held in the regular practice of their profession or business operations and to the extent that they are not used to acquire or to endeavour to acquire control of the company, not taken into account in the calculation of the percentage of the voting rights that they have acquired or hold.

§ 2. Notification of a controlling interest

Section 6:5 (obligation to issue notification)

1. A person who, under any title whatsoever, acquires voting shares in the share capital of a company and knows or should know that by acquiring these shares the voting right reaches or exceeds 5, 10, 20, 33 1/3, 50 or 66 2/3 percent of all votes that can be cast representing the issued share capital issues the company prompt notification of the situation.

2. When the shares are acquired other than by the transfer of registered shares then the obligation to issue prompt notification is fulfilled when the company receives the notification within five days of the obligation to issue notification arising.

Section 6:6 (content of the notification)

1. The notification is issued in writing to the office of the company as listed in the Trade Register of the Chamber of Commerce and Industry in the public body in which the company has its registered offices and to the domiciles of the company in the cities in which a recognised securities exchange is established that have been selected by the company for the implementation of this Act and have been notified for inclusion in the aforementioned Trade Register.

2. The message contains:

a. the name and address of the person under the obligation to issue notification and, where applicable, the nature of the person's enterprise or business;

b. the number of each type of voting share held and acquired by the person and, in the event that one of the situations occurs as referred to in sections 6:2 and 6:3, the name and address of the persons who hold or have acquired the shares;

c. the percentage of the votes and the percentage of the issued share capital that the person holds pursuant to sections 6:2 or 6:3;

d. the date on which the obligation to issue notification arose.

3. When the percentage of the voting right held by the person under the obligation to issue the notification amounts to 10 percent or more then the notification also states whether during the coming twelve months the person is of the intention:

a. to acquire more voting shares or expand the voting right in some other manner;

b. to make use of the participating interest in the company to influence the executive board's policy or to arrange for decisions that are not compatible with a regular investment policy, or to acquire representation in the executive board or supervisory board, or to acquire proxies from shareholders for a future shareholders meeting.

4. When the person under the obligation to issue notification states that the person has none of the intentions referred to in the third paragraph, under a and b, then the person is prohibited from acquiring more shares during a period of twelve months without first issuing the requisite notification to the executive board in accordance with this Section at least four months in advance.

Section 6:7 (obligation to issue notification by more than one person)

When more than one person is under the obligation to issue notification pursuant to Section 6:3, first paragraph, then the notification by one person discharges the other persons from their obligation to issue notification.

Section 6:8 (publication of the notification)

1. The executive board of a company that has received notification as referred to in Section 6:5 promptly published the notification in an advertisement placed in one or more newspapers published in the public bodies and informed the shareholders in the customary manner in which announcements or convocations are communicated to the shareholders.

2. The executive board has fulfilled its obligation to publish the notification promptly when the advertisement is placed and the information has been issued within five days of the receipt of the notification at each of the domiciles as referred to in Section.

3. The executive board may omit sections of the notification that are not or relevance or could make a false impression on the shareholders.

§ 3. Public bid

Section 6:9 (public bid)

1. A person who intends, under any title whatsoever, to acquire voting shares in the share capital of a company and knows or should know that following the acquisition the person will hold a voting right of 20 percent or more of the votes that can be cast representing the issued share capital of the company issues the executive board of the company advance notification of the intention to acquire

the shares and offers the executive board an opportunity to confer with the person during a period that the person may not set at less than two weeks after the notification.

2. The invitation to enter into consultations referred to in the first paragraph is submitted in writing, in accordance with Section 6:6, together with a statement of the person's intentions for the company in the event that the person acquires an influence on the company's policy and the manner in which the acquisition will be financed, together with the name and address of each credit institution or other party that has undertaken to finance the acquisition either in whole or in part.

3. The person and the parties affiliated with the person are prohibited from submitting any public or private bid for voting shares or other shares in the company and from acquiring these shares during the period in which the consultations can be held and during the week after the consultations have begun other than with permission from the executive board and the supervisory board.

4. In the event that the executive board has not made use of the invitation to enter consultations or the consultations have not achieved a result approved by the supervisory board within one week then the person is prohibited from acquiring voting shares and other shares in the company exceeding the threshold referred to in the first paragraph other than by submitting a public bid that pays due regard to the conditions as referred to in Section 6:11.

Section 6:10 (obligation to reduce shareholding below the threshold)

1. A person whose holding of voting shares, for any reason whatsoever, increases to above the threshold referred to in Section 6:9, first paragraph, without the consent of the executive board and supervisory board of the company or as a result of a public bid as referred to in Section 6:11 shall promptly reduce the shareholding to below that threshold.

2. In the event that the threshold referred to above was transgressed unintentionally or through no fault of the person or the parties affiliated with the person then the executive board is authorised, with the permission of the supervisory board, to grant the person full or partial dispensation from the obligation to reduce the shareholding to below the threshold. Conditions can be attached to this dispensation.

3. Within ten days after the holding of voting shares of a person increasing to above the aforementioned threshold unintentionally or through no fault of the person or the parties affiliated with the person, or after the person has taken cognisance of the situation, or after the refusal of a request for dispensation as referred to in the second paragraph, then the person can notify the executive board of the intention to submit a public offer as referred to in Section 6:11. The person is not then obliged to reduce the shareholding below the threshold. This obligation is revived once the person abandons the intention.

Section 6:11 (public bid without consent from the executive board and supervisory board)

A public bid submitted by a person or a party affiliated with the person for the purposes of or which can result in the person's acquisition of voting shares in the company's issued share capital in excess of the threshold as referred to in Section 6:9, first paragraph, and which is submitted without the consent of the executive board and supervisory board of the company shall:

a. be submitted in the form of a public bid for all the shares in the company other than the shares held by the company;

b. shall offer a cash price per share for each type of share that is not lower than:

1°. the highest price quoted by recognised securities exchanges or announced for the type of share during the twelve months immediately preceding the bid; and

2°. the highest price for the type of share that the person and the parties affiliated with the person offered for any shares of that type during the twenty-four months immediately preceding the bid;

c. offer an opportunity to accept the bid during an initial tendering period of at least four weeks and at most ten weeks and during a consecutive second tendering period of at least two weeks in the event that the initial bid submitted was a conditional bid and becomes unconditional during the initial tendering period;

d. be unconditional and irrevocable provided that the bidder is able to stipulate one or more of the following conditions:

1°. that the shares tendered during the initial tendering period include a number of voting shares such that the person will be able to cast at least 50% or a higher percentage to be specified by the person of the votes representing the issued share capital;

2°. that during the initial tendering period no third party shall announce that it is submitting or intends to submit its first public offer for all or some of the shares or that the third party has reached agreement with the company on the acquisition of voting shares amounting to five percent or more of the votes representing the issued share capital;

3°. that during the initial tendering period all the necessary judicial or administrative permission required for the acquisition of the shares is or has been granted or that commitments to that effect have been or will be made;

4°. that a condition attached to the permission or commitment to grant permission referred to under 3° has not been met;

5°. that during the first tendering period no circumstances occur that were not known and did not need to be known by the person on submitting the bid that would have been of decisive importance if they had been known at the time of the submission of the bid.

§ 4. Miscellaneous provisions

Section 6:12 (cooling-off period)

When a person or a party affiliated with that person has submitted a public offer as referred to in Section 6:11 and that person has acquired voting shares that, together with the voting shares that person held on submitting the bid, enable that person to cast fewer than 85 percent of the votes representing the share capital then during the period of one year after the tendering period or tendering periods that person or a party affiliated with that person shall be prohibited from:

a. entering into any business transaction with the company relating to a substantial part of the company's capital assets;

b. concurring with, cooperating in or encouraging others to concur with or cooperate in the divestment of substantial capital assets of the company and its subsidiaries or in any decision to dissolve, merge or relocate the registered offices of the company.

Section 6:13 (non-recognition or nullification of the share transfers)

1. In the event that registered shares are transferred and the company's executive board knows or suspects that:
 - a. either the transfer should have been notified pursuant to paragraph 2 and the notification was not issued;
 - b. or that the transfer is in conflict with a prohibition on acquiring voting shares pursuant to this Chapter;
 - c. or that the transfer was the consequence of the acceptance of a bid which was submitted in conflict with the provisions of paragraph 3;then the company is authorised either not to recognise the transfer or, in the event that notice of the transfer is served the company, to declare the transfer null and void by means of a registered letter to that effect send to both the intended transferee and the intended transferor.
2. When the non-recognition of a transfer is the consequence of a suspicion then the transfer is recognised after a period of two weeks unless the suspicion has been substantiated with proof or has been succeeded by a reasonable ground for suspicion.
3. The transfer is recognised immediately once the reason for the non-recognition of the transfer ceases to exist.

Section 6:14 (conditions attached to casting votes)

1. A person allocated voting shares may cast total votes of no more than 5 percent of the votes representing the share capital of the company:
 - a. during the period in which the person has yet to issue the obligatory notification pursuant to Section 6:5;
 - b. during the period of four weeks after the notification has been issued in the event that the person has acquired voting shares without the issue of the advance notification as referred to in Section 6:6, third paragraph;
 - c. until the person has reduced the shareholding to below the threshold as referred to in Section 6:10 or has been granted dispensation from the reduction by the executive board and the supervisory board.
2. A person who or a party affiliated with that person which is of the intention to submit a public offer for the voting shares of a company and the parties affiliated with that person may not convene a shareholders' meeting, attend or be represented at shareholder's meetings or exercise the right to cast the votes attached to the voting shares of the company during the period until the public bid is submitted pursuant to Section 6:11 or until agreement has been reached with the executive board and the supervisory board that the bid may be issued other than in accordance with the provisions of Section 6:11. Should the intention be abandoned then the prohibition pursuant to this Section remains in force for one year after the issue of the requisite written notification to the executive board.
3. Votes cast contrary to the first or second paragraph nevertheless remain valid other than in the event of a suspension as referred to in Section 6:15.
4. For the purposes of the quorum specified in the articles of association, shares for which no votes may be cast pursuant to the first or second paragraph are deemed not to have been issued.

Section 6:15 (suspension by the company)

1. In the event that the executive board of a company knows or suspects that a person is exercising or endeavouring to exercise voting rights or other rights contrary to the provisions of Section 6:14 then the executive board is authorised to suspend that person's rights referred to above by means of a registered letter

sent to that person.

2. The executive board may announce the suspension in the manner referred to in Section 6:8 when the executive board is of the opinion that the announcement is in the interest of the company or the shareholders.

3. In the event that it transpires or that there is a suspicion that a person or persons is or are endeavouring to exercise rights during a shareholders' meeting in contravention of the provisions of Section 6:14 then the chair may adjourn the meeting for a minimum of half an hour and a maximum of three hours to consult with the relevant person or persons. When these consultations fail to prove the contrary or remove the suspicion then the chair is entitled to suspend the person or persons and continue the meeting in their absence.

4. When the suspension was the consequence of a suspicion then the suspension shall be terminated after a period of two weeks unless the suspicion has been substantiated with proof or has been succeeded by a reasonable ground for suspicion.

5. A suspension shall also be terminated immediately when the provisions of Section 6:14 no longer bar the person or persons involved from exercising the rights withheld during the suspension.

Section 6:16 (shareholders' decisions outside of meetings)

The shareholders of a company as referred to in this Chapter may make valid decisions outside the meetings only when the executive board requests them to reach a decision.

§ 5. Exceptions and further regulations

Section 6:17 (exceptions and further regulations)

1. An Order in Council may prescribe that paragraphs 2 and 3 are not applicable to specific categories of companies coming into consideration for that exception or that thresholds other than the threshold referred to in those paragraphs are applicable to those companies.

2. Further regulations governing the issues regulated in this Chapter may be prescribed by or pursuant to an Order in Council.

CHAPTER 7. ENFORCEMENT

§ 1. Introductory provisions

Section 7:1 (definitions)

This Chapter and the provisions based on the Chapter understand the following terms as:

instruction: obligation imposed by the supervisory authority to following a certain line of conduct relating to the issues specified in an instruction notice within a period specified by the authority;

punitive sanction: an administrative sanction, to the extent that this is intended to add the punishment of the offender;

administrative penalty: a punitive sanction resulting in the unconditional obligation to pay a sum of money;

administrative sanction: an obligation other than an instruction imposed by the

supervisory authority due to an offence;

restorative sanction: administrative sanction with the objective of the entire or partial undoing or termination of an offence, the prevention of a recurrence of the offence, or the elimination or limitation of the consequences of an offence;

order on pain of a penalty payment: a restorative sanction entailing:

1^o. an order to rectify the offence either in whole or in part, and

2^o. the obligation to pay a sum of money if the order is not complied with or not complied with in time;

offender: the person who perpetrates or co-perpetrates an offence;

offence: conduct contrary to the provisions prescribed by or pursuant to this Act;

supervisor: a person entrusted with the supervision of compliance with the provisions stipulated by or pursuant to this Act.

Section 7:2 (offences perpetrated by legal persons)

Offences can be perpetrated by both natural persons and legal persons. Section 53, second and third paragraphs, of the Criminal Code (BES Islands) (*Wetboek van Strafrecht BES*) is applicable *mutatis mutandis*.

Section 7:3 (grounds for justification; various offences)

1. The supervisory authority does not impose an administrative sanction when there are grounds for the justification of the offence.

2. An administrative penalty can be imposed for each of two or more infringements of the regulations.

§ 2. Supervision of compliance

Section 7:4 (designation of supervisors)

1. The supervision of compliance with the provisions stipulated by or pursuant to this Act is entrusted to supervisors designated by a decision of the supervisory authority to that effect.

2. A decision as referred to in the first paragraph can limit the powers vested in a supervisor.

3. Any such decision as referred to in the first paragraph shall be announced by publication in the Netherlands Government Gazette.

4. A ministerial regulation issued by Our Minister can prescribe further regulations governing the manner in which supervisors perform their duties.

Section 7:5 (proof of identity)

1. Supervisors carry proof of identity with them during the performance of their duties which is issued by the administrative body bearing the responsibility for the relevant supervisor's duties.

2. Supervisors produce their proof of identity immediately they are requested to do so.

3. The proof of identity complies with the regulations prescribed by Section 5:12, third paragraph, of the General Administrative Law Act.

Section 7:6 (principle of proportionality)

A supervisor exercises the supervisor's powers solely to the reasonable extent required for the performance of the duties.

Section 7:7 (entry of premises)

1. A supervisor is authorised to enter all premises together with all the necessary equipment.
2. If necessary, the supervisor gains access with the aid of the police.
3. The supervisor is authorised to have persons accompany him or her designated by the supervisor for that purpose.
4. Title X of the Third Book of the Code of Criminal Procedure (BES Islands) (*Wetboek van Strafvordering BES*) is applicable *mutatis mutandis* to the entry of homes without the resident's permission, with the exception of sections 155, fourth paragraph, 156, second paragraph, 157, second and third paragraphs, 158, first paragraph, last sentence, and 160, first paragraph, and subject to the proviso that authorisation is granted by the Procurator General.

Section 7:8 (demanding information)

A supervisor is authorised to demand information.

Section 7:9 (inspection of proof of identity)

A supervisor is authorised to demand the inspection of identity papers as referred to in Section 2 of the Compulsory Identification (BES Islands) Act (*Wet identificatieplicht BES*).

Section 7:10 (inspection of information and documents)

1. A supervisor is authorised to demand inspection of business information and documents.
2. The supervisor is authorised to make copies of the information and documents.
3. When copies cannot be made on location then the supervisor is authorised to remove the information and documents for a short period of time for that purpose after the issue of a receipt.
4. A financial enterprise is under the obligation to allow the inspection of its books, documents and other information carriers relating to the enterprise's business conducted in or from the public bodies when so requested by the supervisor and to grant the supervisor access to their location.

Section 7:11 (obligation to cooperate)

1. All persons are under the obligation to cooperate fully with the supervisor in providing the assistance the supervisor can reasonably request in exercising the supervisor's powers.
2. Persons with a privilege pursuant to their office, profession or the statutory regulations can refuse to cooperate to the extent that this arises from their obligation to maintain confidentiality.

§ 3. designation and appointment of a custodian and prohibition on activities

Section 7:12 (general authorisation to issue instructions)

1. The supervisory authority can issue an instruction to a financial enterprise or other person that does not fulfil an obligation resting on that financial enterprise or person pursuant to sections 1:7, second paragraph, 1:26, 1:27, 2:1 to 2:3 inclusive, 2:12, 2:17, 2:18, 2:21 to 2:23 inclusive, chapters 3 to 5 inclusive, sections 7:10, fourth paragraph, and 7:11, first paragraph, or Chapter 8, paragraphs 1 and 2.

2. De Nederlandsche Bank may also issue an instruction to a financial enterprise on its detection of indications of a development that could put the financial enterprise's honest or controlled operations, equity, solvency or liquidity in jeopardy.

3. The decision to issue an instruction is accompanied by the reasons and is issued in writing to the party to whom the instruction is addressed.

4. An instruction does not impair contracts between the party to whom the instruction is addressed and third parties.

Section 7:13 (issue of instructions to the operator of a securities exchange)

1. The Netherlands Authority for the Financial Markets may issue the operator of a securities exchange an instruction to follow a certain line of conduct with respect to a third party which does not comply with the regulations referred to in Section 4:16, first paragraph.

2. The Netherlands Authority for the Financial Markets may issue the operator of a securities exchange an instruction to suspend, interrupt or terminate trading in a specific security within a reasonable period specified by the Netherlands Authority for the Financial Markets when this necessary for the purpose of the protection of the investors in the security or the protection of the orderly trade in the security.

3. Once the Netherlands Authority for the Financial Markets has issued an instruction as referred to in the second paragraph it may apply to the Court for the exclusion of the relevant security from trading on the securities exchange when this necessary for the purpose of the protection of the investors in the security or the protection of the orderly trade in the security.

4. Section 7:12, third paragraph, is applicable *mutatis mutandis* to an instruction as referred to in the first, second or third paragraph.

Section 7:14 (appointment of a custodian)

1. The supervisory authority may appoint one or more persons as a custodian for some or all of the bodies or representatives of a financial enterprise that does not comply with the provisions laid down by or pursuant to this Act.

2. A decision as referred to in the first paragraph is made solely when:

a. the financial enterprise has failed to comply, either in whole or in part, with an instruction issued pursuant to Section 7:12, first paragraph, within the specified period;

b. the breach referred to in the first paragraph puts the adequate performance of the enterprise in serious jeopardy, or

c. the breach referred to in the first paragraph puts the interests of consumers or customers in serious jeopardy.

3. A decision relating to an instance as referred to in the second paragraph,

under b or c, is not made until the enterprise has been offered an opportunity to state its view.

Section 7:15 (danger to financial guarantees)

1. Without prejudice to the provisions of Section 7:14, De Nederlandsche Bank may appoint one or more persons as a custodian for some or all of the bodies or representatives of a financial enterprise on its detection of indications of a development that could put the financial enterprise's honest or controlled operations, equity, solvency or liquidity in jeopardy.

2. A decision as referred to in the first paragraph is made solely:

- a. when the financial enterprise has failed to comply, either in whole or in part, with an instruction issued pursuant to Section 7:12, second paragraph, within the specified period, or;
- b. when prompt intervention is necessary and the enterprise has been offered an advance opportunity to state its view.

Section 7:16 (decision to appoint a custodian)

1. The decision to appoint a custodian contains a specification of the interests the custodian is to protect. The decision is accompanied by reasons and issued in writing to the relevant enterprise.

2. The supervisory authority appoints the custodian for a period of a maximum of two years and with the option to extend the period by successive periods of a maximum of one year. An extension comes into immediate effect.

Section 7:17 (consequences of the appointment of a custodian)

1. As from the time the financial enterprise is notified of the decision to appoint a custodian the relevant bodies or representatives may exercise their powers solely after permission from the custodian and with due regard for the custodian's instructions.

2. Following the appointment of a custodian:

- a. the financial enterprise's bodies and representatives cooperate with the custodian in full;
- b. every person of a body of the enterprise that carries out acts contrary to the provisions of the first paragraph is jointly and severally liable for loss caused by those acts unless the acts cannot be imputed to the person and the person was not negligent in implementing measures to avert the concomitant consequences;
- c. the acts referred to under b, to the extent that they are legal acts, are voidable in the event that the counterparty knew or should have known that the permission required for the acts pursuant to the first paragraph had not been granted.

3. The costs incurred by and remuneration of a custodian appointed pursuant to sections 7:14 or 7:15 are charged to the relevant enterprise.

Section 7:18 (the supervisory authority's powers)

1. The supervisory authority may permit the bodies or representatives for whom a custodian has been appointed permission to carry out specific legal acts without permission from the custodian.

2. The supervisory authority may replace the custodian it has appointed at any time.

3. Once the circumstances that gave cause to the appointment of the custodian no longer exist the supervisory authority terminates the appointment of the custodian. The decision to terminate the appointment is laid down in writing and the financial enterprise is notified promptly.

Section 7:19 (raising callable funds)

Sections 7:14 and 7:16 to 7:18 inclusive are applicable *mutatis mutandis* to everyone who in the course of their business in or from the public bodies raises or receives callable funds beyond a restricted circle or has those funds at their disposal.

Section 7:20 (prohibition on transactions or activities)

1. The supervisory authority may, when a financial enterprise with its registered offices abroad does not comply with an instruction issued pursuant to sections 7:12 or 7:13, impose a prohibition on the relevant enterprise from concluding new contracts in the public bodies.

2. The Netherlands Authority for the Financial Markets may, when a financial enterprise other than an enterprise which requires a licence pursuant to Section 2:3 fails to comply with the regulations governing the enterprise pursuant to Chapter 5, paragraphs 1 to 3 inclusive, impose a prohibition on the relevant enterprise from carrying out the activities contrary to the regulations.

3. The decision to impose a prohibition is accompanied by the reasons and is issued in writing to the enterprise on which the prohibition is imposed.

4. A prohibition as referred to in the first paragraph does not extend to the performance of contracts concluded prior to the time at which the prohibition is imposed.

§ 4. Order on pain of a penalty payment

Section 7:21 (imposition of an order on pain of a penalty payment)

1. The supervisory authority can impose an order on pain of a penalty payment for the violation of regulations prescribed by or pursuant to the sections referred to in the enclosure to this Act or for failure to comply in full with an instruction issued pursuant to sections 7:12 or 7:13 or failure to comply with the instruction in time.

2. An order on pain of a penalty payment may be imposed once the threat of the violation becomes clear.

3. The supervisory authority does not impose an order on pain of a penalty payment for an offence while the imposition of another order on pain of a penalty payment for the same offence is still in effect.

4. Further regulations governing the exercising of the power referred to in the first paragraph may be prescribed by or pursuant to an Order in Council.

Section 7:22 (the offender's view)

1. Before it imposes an order on pain of a penalty payment the supervisory authority offers the party on which it intends to impose the order an opportunity to state the party's view.

2. The first paragraph is not applicable when the requisite urgency dictates otherwise or when the party involved has already been offered an opportunity to

state the party's view and no facts or circumstances have arisen since that time.

Section 7:23 (content of the order)

1. The order on pain of a penalty payment specifies the restoration measures to be implemented.

2. An order on pain of a penalty payment relating to undoing an offence or the prevention of the recurrence of the offence specifies a period within which the perpetrator can comply with the order without forfeiting a penalty payment.

3. The decision to impose an order on pain of a penalty payment is drawn up in writing and states:

- a. the offence, and the regulation that has been breached;
- b. where relevant, a statement of where and when the offence was established.

Section 7:24 (amount of the penalty payment)

1. The supervisory authority sets the penalty payment as a lump sum or a payment per unit of time during which the order is not fulfilled, or a payment for each non-compliance with the order.

2. The supervisory authority also sets an amount above which no further penalty payment is forfeited.

3. The amounts are in reasonable proportion to the seriousness of the infringed interest and the intended effect of the penalty payment.

4. Further regulations governing the amount of the penalty payment may be prescribed by or pursuant to an Order in Council.

Section 7:25 (payment of a forfeited penalty payment)

A forfeited penalty payment is paid within six weeks after the payment has been forfeited by operation of law.

Section 7:26 (lifting the order or reducing the penalty payment)

1. The supervisory authority that has imposed an order on pain of a penalty payment may, on the request of the offender, lift the order, suspend the term of the order for a specific time or reduce the penalty payment in the event of the offender's permanent or temporary, entire or partial inability to fulfil the offender's obligations.

2. The supervisory authority that has imposed an order on pain of a penalty payment may, on the request of the offender, lift the order when the decision has been in force for one year and no penalty payment has been forfeited.

Section 7:27 (decision to collect the penalty payment)

1. The supervisory authority gives a decision in the form of an order for the collection of the penalty payment before issuing a demand for the payment of the penalty payment.

2. The supervisory authority also gives a decision in the form of an order for the collection of the penalty payment when so requested by an interested party.

3. The supervisory authority reaches a decision on the request within four weeks.

Section 7:28 (collection after an amendment of the order)

1. When, as a result of a decision given in the form of an order for the withdrawal or amendment of the order on pain of a penalty payment, an earlier decision already given in the form of an order for the collection of the penalty payment cannot continue to exist then that decision in the form of an order is void.

2. The supervisory authority may issue a new order that is compatible with the amended order on pain of a penalty payment.

Section 7:29 (objection and appeal)

1. An objection, appeal or further appeal against an order on pain of a penalty payment also extends to an order for the collection of the penalty payment to the extent that the plaintiff contests the order for the collection of the penalty payment.

2. The provisions of the first paragraph are applicable *mutatis mutandis* to an application for a provisional ruling.

§ 5. Administrative penalty

Section 7:30 (imposition of an administrative penalty)

1. The supervisory authority can impose an administrative penalty for the violation of regulations prescribed by or pursuant to the sections referred to in the enclosure to this Act or for failure to comply in full with an instruction issued pursuant to sections 7:12 or 7:13 or failure to comply with the instruction in time.

2. Regulations governing the exercising of the power referred to in the first paragraph may be prescribed by or pursuant to an Order in Council.

Section 7:31 (amount of an administrative penalty)

1. The amount of the administrative penalty is prescribed by an Order in Council. The administrative penalty for a separate offence is a maximum of USD 250,000 or, when an administrative penalty for the same offence has been imposed on the offender within the past five years, the administrative penalty for a separate offence is a maximum of a maximum of USD 500,000.

2. The Order in Council referred to in the first paragraph prescribes the amount of the administrative penalty to be imposed for each of the offences specified in the Order. The offences are classified into categories by the seriousness of the offence and are accompanied by the associated base amounts, minimum amounts and maximum amounts.

3. In derogation from the provisions of the first paragraph, the supervisory authority may, when the gain from the offence accruing to the offender amounts more than half of the maximum administrative penalty that may be imposed for the offence pursuant to the Order in Council referred to in the first paragraph, set the amount of the administrative penalty at a maximum of double the gain accruing from the offence.

4. Section 1, second paragraph, of the Criminal Code (BES Islands) (*Wetboek van Strafrecht BES*) is applicable *mutatis mutandis*.

Section 7:32 (grounds for exception)

The supervisory authority does not impose an administrative penalty when:

- a. the offence cannot be imputed to the offender;
- b. the offender has died;
- c. an administrative penalty has already been imposed on the offender for the same offence or a notification as referred to in Section 7:36, third paragraph, has already given notice that an administrative penalty will not be imposed for the offence;
- d. criminal proceedings have been initiated against the offender for the same conduct and the hearings have already begun or the right to prosecute has expired pursuant to Section 76 of the Criminal Code (BES Islands) (*Wetboek van Strafrecht BES*).

Section 7:33 (offender's right to remain silent)

1. The person being heard in connection with the imposition of an administrative penalty on that person is not under the obligation to make a statement about the offence.
2. The person concerned is informed of the right not to answer before the hearing begins.

Section 7:34 (penalty report)

1. The supervisory authority or the supervisor competent for the offence draws up a report.
2. The report is dated and states:
 - a. the name of the offender;
 - b. the offence, and the regulation that has been breached;
 - c. where relevant, a statement of where and when or the period in which the offence was established.
3. When an official report as referred to in Section 186 of the Code of Criminal Procedure (BES Islands) (*Wetboek van Strafvordering BES*) has been drawn up for the offence then the official report replaces the penalty report for the purposes of the application of this paragraph.

Section 7:35 (offender's right of inspection)

1. When so requested the supervisory authority offers the offender an opportunity to inspect the information on which the imposition of an administrative penalty or the intention to impose a penalty is based and to make copies of that information.
2. The supervisory authority makes the maximum effort to ensure that the offender is provided this information in language that is comprehensible to the offender when this is, in reasonableness, required for the offender's defence.

Section 7:36 (the offender's view)

1. Before it imposes an administrative penalty the supervisory authority offers the offender an opportunity to state the offender's view. The report is sent or handed to the offender together with the invitation to state the offender's view.
2. The supervisory authority arranges for assistance by an interpreter when this is, in reasonableness, required for the offender's defence.

3. Once the supervisory authority, having heard the offender, decides either that no administrative penalty will be imposed or that the offence will be brought before the Public Prosecutor then the offender is notified accordingly in writing.

Section 7:37 (decision to impose an administrative penalty)

1. The supervisory authority reaches a decision on the imposition of an administrative penalty within thirteen weeks after the date stated on the report referred to in Section 7:34.

2. The decision to impose an administrative penalty is drawn up in writing and states:

- a. the name of the offender;
- b. the offence, and the regulation that has been breached;
- c. where relevant, a statement of where and when the offence was established.
- d. the amount of the penalty;
- e. the period within which the penalty must be paid.

3. The decision-making period referred to in the first paragraph is, in the event that the offence is submitted to the Public Prosecutor, suspended from the date of submission until the day on which the supervisory authority is once again competent to impose an administrative penalty.

Section 7:38 (lapse of administrative penalty)

1. An administrative penalty that is not final and conclusive lapses on the offender's death. An administrative penalty which is final and conclusive but has not been paid lapses at that same time.

2. An administrative penalty that has already been imposed lapses in the event that the Common Court of Justice of Aruba, Curacao, Sint Maarten, and of Bonaire, Sint Eustatius and Saba applies Section 25 of the Code of Criminal Procedure (BES Islands) (*Wetboek van Strafvordering BES*) and orders the prosecution of the offender for the relevant offence.

3. The power to impose an administrative penalty lapses five years after the day on which the offence was committed.

4. When an objection or appeal is lodged against the administrative penalty then the period after which the penalty lapses is suspended until a final and conclusive decision has been reached on the objection or appeal.

§ 6. Payment of penalty payments and administrative penalties

Section 7:39 (appropriation of sums of money due)

Sums of money to be paid pursuant to an obligation imposed by an administrative sanction accrue to the supervisory authority that imposed the sanction.

Section 7:40 (method of payment)

1. Forfeited penalty payments or administrative penalties are paid at an office designated by the supervisory authority or by transfer to a bank account designated by the supervisory authority for that purpose.

2. Payments are made in the public bodies' legal tender unless the supervisory authority determines otherwise.

3. The payment is made at the time of the payment at the office or, in the event

of a transfer, the time at which the supervisory authority's bank account is credited with the amount.

4. The debtor bears the costs incurred in making the payment.

Section 7:41 (default in the event of non-payment)

1. The offender is in default when the forfeited penalty payment or administrative penalty is not paid within the period specified in sections 7:25 or 7:37, under e, respectively.

2. Default results in the obligation to pay statutory interest pursuant to sections 119, first and second paragraph, and 120 of Book 6 of the Civil Code (BES Islands) (*Burgerlijk Wetboek BES*).

3. The supervisory authority specifies the amount of statutory interest due in a decision.

§ 7. Prescription period of penalty payments and administrative penalties

Section 7:42 (prescription period governing collection power)

1. The power to collect a forfeited penalty payment lapses one year after the date on which the penalty payment was forfeited.

2. The legal claim to the payment of a sum of money arising from an administrative payment lapses five years after the expiry of the prescribed period for payment.

Section 7:43 (interruption of the prescription period)

1. The prescription period is interrupted by an act of judicial recourse pursuant to Section 316, first paragraph, of Book 3 of the Civil Code (BES Islands) (*Burgerlijk Wetboek BES*). Section 316, second paragraph, of Book 3 of the Civil Code (BES Islands) (*Burgerlijk Wetboek BES*) is applicable *mutatis mutandis*.

2. The supervisory authority can also interrupt the prescription period by issuing the debtor a written demand for payment.

Section 7:44 (new prescription period after an interruption)

1. The interruption of the prescription period results in the commencement of a new prescription period on the next day. The new period is equal to the length of the original period.

2. However, when the prescription period is interrupted by the institution of an action which is later allowed then Section 324 of Book 3 of the Civil Code (BES Islands) (*Burgerlijk Wetboek BES*) is applicable *mutatis mutandis*.

Section 7:45 (extension of the prescription period)

1. The prescription period for the supervisory authority's right to claim payment is extended by the time during which the debtor is granted a suspension of payment after the commencement of the period.

2. The first paragraph is applicable *mutatis mutandis* when:

- a. the debtor has been granted a moratorium;
- b. the debtor is declared bankrupt.

§ 8. Publication of offences

Section 7:46 (public warning)

The supervisory authority may, with a view to the interests that this Act is designed to protect, issue a public warning in the event of a violation of a prohibitory provision of this Act and on the imposition or violation of a prohibition as referred to in Section 7:20, as required accompanied by a statement of the considerations that resulted in the warning.

Section 7:47 (the view of the person involved)

1. When the supervisory authority is of the intention to issue a public warning then the authority issues the person involved written notification of the intended decision and offers the person involved an opportunity to state the person's view.
2. The supervisory authority may decide not to apply the provisions of the first paragraph when the requisite urgency dictates otherwise or when the address of the person involved is unknown and the address cannot be obtained with reasonable effort.

Section 7:48 (decision to issue a public warning)

The decision to issue a public warning is drawn up in writing and states at least the offence that was established, the content of the publication, the reasons on which the decision rests and the manner and period in which the public warning will be issued.

Section 7:49 (issue of the public warning)

1. A public warning is issued no earlier than five working days after the day on which the person involved was notified of the intended decision to issue a public warning pursuant to Section 7:47.
2. When a petition as referred to in Section 85, first paragraph, of the Administrative Decisions Appeals (BES Islands) Act (*Wet administratieve rechtspraak BES*) against the decision to issue a public warning is filed then the implementation of the decision is suspended until the Court has reached a decision on the application.
3. The first paragraph is not applicable when the address of the person involved is unknown and the address cannot be obtained with reasonable effort.
4. The supervisory authority may, in derogation from the provisions of the first and second paragraph, proceed to the immediate issue of the public warning when the protection of the interests that this Act is designed to protect does not allow a delay.

Section 7:50 (publication of the imposition of an administrative penalty)

1. The supervisory authority publishes a decision to impose an administrative penalty pursuant to the provisions of this Act following the notification of the decision when the penalty is imposed for the violation of:
 - a. a prohibitory provision of this Act or a prohibition as referred to in Section 7:20;
 - b. sections 4:3, 4:9, 5:3, 5:4, 5:5, 5:6, 5:7, 5:8 or 5:10;
 - c. regulations prescribed by or pursuant to a section specified in the annex as

referred to in Section 7:30, first paragraph, when the violation of that regulation has been penalised with a fine of the highest category pursuant to an Order in Council as referred to in Section 7:30.

2. The publication of a decision to impose an administrative penalty is issued no earlier than five working days after the day on which the person involved was notified of the intended decision to impose an administrative penalty. Sections 7:47, 7:48 and 7:49, second to fourth paragraph, are applicable *mutatis mutandis*.

3. The supervisory authority may decide not to publish the decision to impose an administrative penalty when publication of that decision is or could be contrary to the objective of the supervisory authority's supervision of compliance with this Act.

Section 7:51 (publication of the final and conclusive imposition of an administrative penalty)

The supervisory authority, without prejudice to the provisions of Section 7:50, publishes a decision to impose an administrative penalty pursuant to this Act once the decision has become final and conclusive. Section 7:50, third paragraph, is applicable *mutatis mutandis*.

Section 7:52 (publication of the imposition of an order on pain of a penalty payment)

The supervisory authority publishes a decision to impose an order on pain of a penalty payment pursuant to this Act once a penalty payment has been forfeited. Sections 7:47 to 7:49 and 7:50, third paragraph, are applicable *mutatis mutandis*.

Section 7:53 (hearing in camera)

1. When a petition as referred to in Section 85, first paragraph, of the Administrative Decisions Appeals (BES Islands) Act (*Wet administratieve rechtspraak BES*) is filed against a decision to issue a public warning or against the publication of a decision as referred to in sections 7:50, first paragraph, 7:51 or 7:52 then the court's hearing is held in camera.

2. When the Court responds to a petition as referred to in Section 85, first paragraph, of the Administrative Decisions Appeals (BES Islands) Act (*Wet administratieve rechtspraak BES*) imposes a prohibition on the issue of a public warning or the publication of a decision as referred to in sections 7:50, first paragraph, 7:51 or 7:52 then:

- a. when a notice of appeal is lodged against the contested decision then court's hearing is held in camera;
- b. when an administrative reconsideration of the contested decision is conducted then the aggrieved party and the other parties are not heard in public.

CHAPTER 8. SPECIAL PRUDENTIAL MEASURES, EMERGENCY REGULATION AND DEPOSIT GUARANTEE SYSTEM

§ 1. Special prudential measures for credit institutions

Section 8:1 (periodic evaluations of risks)

1. De Nederlandsche Bank carries out periodic evaluations of current and potential future risks which entail an evaluation of the manner in which a credit institution fulfils its obligations to conduct controlled operations and of the qualifying capital of the institution.

2. De Nederlandsche Bank assesses the results from the evaluation referred to in the first paragraph to determine whether, taking account of the nature and scope of the relevant risks, the policy conducted by the credit institution, the manner in which it has organised its operations and the institution's qualifying capital provide assurances for the appropriate management and adequate cover of those current and potential future risks.

3. De Nederlandsche Bank adjusts the frequency and scope of the evaluation referred to in the first paragraph according to the nature, size and complexity of the relevant credit institution and to the importance of the institution's activities to the financial system.

Section 8:2 (special measures)

1. De Nederlandsche Bank may, in the event that a credit institution does not comply with the regulations governing controlled operations or the qualifying capital prescribed by or pursuant to sections 3:9, first and second paragraph, under b, and 3:17, impose the obligation on the institution to:

- a. maintain qualifying capital in excess of the amount prescribed pursuant to Section 3:17;
- b. provide for the solvency requirements by conducting a specific policy governing the provisions or treating the enterprise's assets in a specific manner;
- c. limit the risk to which the enterprise is exposed.

2. When De Nederlandsche Bank is of the opinion that the evaluation referred to in Section 8:1 reveals that the operations or qualifying capital of a credit institution provide insufficient assurances for the controlled and sustainable cover of its risks and that other measures cannot reasonably result in the controlled and sustainable cover of those risks within a reasonable period then De Nederlandsche Bank can impose an obligation on the relevant credit institution to maintain a larger amount of qualifying capital.

3. De Nederlandsche Bank lifts a measure as referred to in the first paragraph once the credit institution restores compliance with the regulations prescribed by or pursuant to sections 3:9, first and second paragraphs, under b, and 3:17. De Nederlandsche Bank lifts a measure as referred to in the second paragraph when the operations and the qualifying capital of the credit institution once again provide sufficient assurances for the controlled and sustainable cover of the risks to which the institution is exposed.

§ 2. Special prudential measures for insurers

Section 8:3 (recovery plan)

1. When the rights of parties such as policyholders, insured parties or persons

entitled to benefits accruing from insurance contracts concluded with an insurer are put in jeopardy then De Nederlandsche Bank may require the insurer to draw up a recovery plan to be submitted to the Bank for its approval within eight weeks or within a shorter period to be determined by De Nederlandsche Bank, unless Section 8:5 is applicable.

2. Regulations governing the recovery plan referred to in the first paragraph may be prescribed by or pursuant to an Order in Council.

3. When De Nederlandsche Bank has required the insurer to prepare a recovery plan and the insurer's financial position subsequently deteriorates further then De Nederlandsche Bank may impose an obligation to maintain a larger minimum amount of solvency margin than prescribed pursuant to Section 3:17 to provide assurances that the insurer can continue to comply with the minimum amount of solvency margin requirement prescribed pursuant to that Section within the near future.

4. The higher minimum amount of the solvency margin is set on the basis of the recovery plan referred to in the first paragraph. A period may then also be specified for the attainment of this higher minimum amount.

Section 8:4 (inadequate technical provisions)

1. When an insurer with its registered offices in the public bodies does not comply with the regulations governing the technical provisions prescribed by or pursuant to Section 3:19 then De Nederlandsche Bank may restrict the insurer's disposal of the insurer's securities or prohibit the insurer from disposing of those securities without authorisation from De Nederlandsche Bank.

2. The insurer can invoke the invalidity of a legal act carried out contrary to the restriction or prohibition when the counterparty knew or could not have been unaware of that measure.

3. De Nederlandsche Bank lifts the restriction or prohibition once the insurer restores compliance with the regulations prescribed by or pursuant to Section 3:19.

Section 8:5 (inadequate solvency margin)

1. An insurer that no longer complies with the solvency margin required pursuant to Section 3:17 submits, unless the second paragraph is applicable, a restructuring plan to De Nederlandsche Bank for approval within eight weeks or within a shorter period to be determined by De Nederlandsche Bank.

2. When the solvency margin has declined or, in the opinion of De Nederlandsche Bank will decline, to below the amount of the guarantee fund prescribed by or pursuant to Section 3:17, fourth paragraph, then the insurer submits a financing plan to De Nederlandsche Bank for approval within eight weeks or within a shorter period to be determined by De Nederlandsche Bank.

3. Regulations governing the content of the restructuring plan and financing plan referred to in the first and second paragraph respectively are prescribed by or pursuant to an Order in Council.

4. De Nederlandsche Bank may permit amendments to an approved plan when so requested by the insurer. De Nederlandsche Bank may also require amendments to the plan or withdraw the approval of the plan in the event of changed circumstances.

Section 8:6 (statement of securities covering the technical provisions)

An insurer whose solvency margin does not comply with the regulations governing the solvency margin prescribed by or pursuant to Section 3:17 submits a statement of the securities referred to in Section 3:19 and any changes in those securities to De Nederlandsche Bank within a period to be specified by the Bank.

Section 8:7 (restriction of disposal of securities)

1. De Nederlandsche Bank may, in the event that in the instance referred to in Section 8:5, first paragraph, exceptional circumstances arise on the basis of which it is expected that the insurer's financial position will deteriorate further, and in the event of the instance referred to in Section 8:5, second paragraph, restrict the insurer's disposal of the insurer's securities, irrespective of their location, or prohibit the insurer of disposing of the securities without authorisation from De Nederlandsche Bank.

2. Section 8:4, second paragraph, is applicable *mutatis mutandis*.

3. De Nederlandsche Bank lifts the restriction or prohibition once the insurer restores compliance with the regulations governing the solvency margin prescribed by or pursuant to this Act.

§ 3. Emergency regulation and bankruptcy

Section 8:8 (no declaration of bankruptcy other than after the withdrawal of the licence)

1. A claim or petition for the bankruptcy of a credit insurer or insurer, including a petition filed by the enterprise, is not heard while the relevant enterprise still possesses a licence to conduct business as a credit institution or insurer issued pursuant to this Act.

2. Once the licence of a credit institution or insurer has been withdrawn no decision is reached on the claim or petition until the Court has offered De Nederlandsche Bank an opportunity to state its view.

3. The statutory provisions governing moratoriums are not applicable to credit institutions and insurers.

Section 8:9 (declaration of emergency regulation)

1. In the event that the solvency or liquidity of a credit institution that has been issued a licence to conduct the business of a credit institution pursuant to this Act exhibits indications of a threatening development and no or insufficient improvement in that development is foreseen then in the interests of the joint creditors De Nederlandsche Bank may request the Court to declare the emergency regulation applicable to the credit institution.

2. In the event that the interests of the joint creditors of an insurer that has been issued a licence to conduct the business of an insurer pursuant to this Act demands a special remedy for the liquidation of the operations of the insurer then De Nederlandsche Bank may request the Court to declare the emergency regulation applicable to the insurer.

3. In the event that the solvency or liquidity of a credit institution or insurer other than an enterprise that has been issued a licence to conduct the business of credit institution or insurer is such that it is, in reasonableness, to be expected that the credit institution or insurer will be unable to fulfil some or all of its obligations to its creditors then De Nederlandsche Bank may request the Court to declare the emergency regulation applicable to the credit institution or insurer in

the interests of the joint creditors.

Section 8:10 (authorisation granted to De Nederlandsche Bank on the declaration of the emergency regulation)

1. On declaring the emergency regulation to be applicable the Court authorises De Nederlandsche Bank for:

a. the transfer of all or part of the obligations of the credit institution that the credit institution assumed in conducting the business of a credit institution to obtain funds or all or part of the insurer's obligations pursuant to insurance contracts;

b. the full or partial liquidation of the operations of the credit institution or the portfolio of the insurer in the event that the licence has been withdrawn, or

c. both the transfer as referred to under a and the liquidation as referred to under b.

2. An authorisation as referred to under b and c granted in connection with an insurer also extends to the liquidation of the equity of the insurer's business as long as the insurer's equity is not negative.

3. De Nederlandsche Bank's petition pursuant to Section 8:9 may state which of the authorisations, in the Bank's opinion, is the most appropriate.

Section 8:11 (hearing the petition for the declaration of the emergency regulation)

1. The Court hears De Nederlandsche Bank's petition for the declaration of the applicability of the emergency regulation with all possible speed at a hearing in camera and in accordance with civil procedure to the extent that the provisions of this paragraph do not diverge from this procedure.

2. The Court is authorised to inspect or arrange for the inspection of the accounts and business documents of the credit institution or insurer. Sections 7:10, second and third paragraph, and 7:11 are applicable *mutatis mutandis*.

3. The Court does not issue an order until the credit institution or insurer and De Nederlandsche Bank have been offered an opportunity to be heard.

4. An appeal the credit institution or insurer lodges against the withdrawal of a licence does not suspend the hearing of De Nederlandsche Bank's petition to declare the applicability of the emergency regulation.

5. The Court's order is accompanied by reasons and, when De Nederlandsche Bank's petition is granted, delivered in open court. The bailiff arranges for the publication of the substance of the order in an announcement in the Netherlands Government Gazette and issues prompt notification of the order.

6. When the authorisation referred to in Section 8:10, first paragraph, extends to a transfer as referred to under a in that Section then the authorisation may be expanded to an authorisation as referred to under c of the aforementioned Section on the recommendation of the delegated judge or on the request of De Nederlandsche Bank.

7. No appeal whatsoever can be lodged against the order other than cassation in the interests of the law.

Section 8:12 (consequences of the declaration of the emergency regulation)

1. When a petition for the declaration of the emergency regulation is pending at the same time as a claim or petition for the declaration of bankruptcy then the

petition or claim for the declaration of bankruptcy is suspended until a decision has been reached on the petition for the declaration of the applicability of the emergency regulation. When the Court declares the applicability of the emergency regulation then the petition or claim for the declaration of bankruptcy lapses by operation of law.

2. The consequences of the declaration of the applicability of the emergency regulation include a limitation whereby the credit institution or insurer for which the emergency regulation has been declared applicable may be declared bankrupt solely pursuant to Section 8:22.

3. The Court may terminate the applicability of the emergency regulation on De Nederlandsche Bank's request. The bailiff arranges for the announcement of any such termination in the Netherlands Government Gazette.

4. When the emergency regulation is declared applicable to an insurer then from the day on which the emergency regulation is declared applicable the assets referred to in Section 3:19 may not be supplemented with any assets other than the premiums received from that date or the assets acquired with those premiums, to the extent these are required to cover the technical provisions.

5. When an insurer is declared bankrupt without the prior applicability of the emergency regulation or more than one month after the termination of the applicability of the emergency regulation then the prohibition referred to in the fourth paragraph comes into effect on the day of the bankruptcy order.

Section 8:13 (exercising the powers of the members of the executive board and supervisory board)

1. Once the Court has declared the emergency regulation applicable then De Nederlandsche Bank exercises, exclusively, all the powers of the members of the executive board and supervisory board of the credit institution or insurer. De Nederlandsche Bank safeguards the interests of the joint creditors.

2. The members of the executive board and supervisory board of the credit institution or insurer are under the obligation to provide the assistance requested by De Nederlandsche Bank when De Nederlandsche Bank exercises the powers referred to in the first paragraph.

3. De Nederlandsche Bank is empowered to authorise the members of the executive board or supervisory board of the credit institution or insurer to carry out specific acts.

4. De Nederlandsche Bank is authorised to dismiss members of the executive board and supervisory board on behalf of the credit institution or insurer. Any such dismissal pays due regard to the agreed or statutory period of notice, subject to the understanding that a period of six weeks shall in any case be sufficient.

5. De Nederlandsche Bank may authorise persons to exercise some or all of the powers vested in the Bank pursuant to the first paragraph. De Nederlandsche Bank can request the Court to set the remuneration for the authorised persons. De Nederlandsche Bank announces the name and address of persons it authorises and the termination of any such authorisation in the Netherlands Government Gazette.

Section 8:14 (decisions of shareholders or members)

1. Once the emergency regulation has been declared applicable to a credit institution or insurer with its registered offices in the public bodies then decisions reached by the shareholders or members do not come into effect unless De Nederlandsche Bank grants its approval.

2. When a decision by the shareholders or members required pursuant to the articles of association of a credit institution or insurer as referred to in the first paragraph required for an act is not reached or does not receive the approval required pursuant to the articles of association then De Nederlandsche Bank may make this decision.

Section 8:15 (payments on shares and retrospective levies)

De Nederlandsche Bank is, irrespective of the relevant provisions of the articles of association of the credit institution or insurer, empowered under the authorisation granted pursuant to Section 8:10:

- a. to call and collect all payments yet to be made on the credit institution's issued share capital;
- a. to call and collect all payments yet to be made on the insurer's issued share capital or guarantee capital;
- c. to impose and collect retrospective levies to the maximum laid down in the articles of association when the insurer has the legal form of a mutual insurance society.

Section 8:16 (consequences for creditors)

1. Following the declaration of the applicability of the emergency regulation the credit institution or insurer cannot be compelled to settle debts that arose before the declaration. Any executions that have been initiated are suspended and any attachments lapse. Section 32 of the Bankruptcy (BES Islands) Act (*Faillissementswet BES*) is applicable *mutatis mutandis* to the debts referred to in the first sentence.

2. De Nederlandsche Bank may make distributions to creditors towards the settlement of debts governed by the provisions of the first paragraph to the extent that any such distribution is justifiable in view of the liquidity position of the credit institution or insurer.

3. The first paragraph is not applicable to claims covered by a pledge or mortgage on the property of the insurer or to hire-purchase instalments.

4. However, the declaration is applicable to claims covered by a pledge or mortgage that cannot be recovered from the secured property.

5. The declaration of the applicability of the emergency regulation does not have a beneficial effect for the co-debtors or guarantors of the credit institution or insurer.

6. Section 231a of the Bankruptcy (BES Islands) Act (*Faillissementswet BES*) is applicable *mutatis mutandis*.

Section 8:17 (debt setoff and debt assumption)

1. Sections 224 and 225 of the Bankruptcy (BES Islands) Act (*Faillissementswet BES*) are applicable *mutatis mutandis* to debt setoff and debt assumption, subject to the understanding that the debtor wishing to set off a debt against a debt payable to order or bearer is under the obligation to prove that the debtor was already the owner of the order or bearer paper in good faith at the time of the order granting the application for authorisation.

2. Sections 226, 226a, 227, 227a, 228 and 229 of the Bankruptcy (BES Islands) Act (*Faillissementswet BES*) are applicable *mutatis mutandis* to reciprocal contracts in general and to futures business, hire-purchase contracts, leases and contracts of employment, in particular, when a credit institution or insurer is a

party to the declaration of the applicability of the emergency regulation.

3. Section 230 of the Bankruptcy (BES Islands) Act (*Faillissementswet BES*) is applicable *mutatis mutandis* to the settlement of debts to the credit institution or insurer after the declaration of the applicability of the emergency regulation.

Section 8:18 (special authorisation of De Nederlandsche Bank)

1. The Court may, at the same time it grants the authorisation referred to in Section 8:10, first paragraph, or subsequently and on the request of De Nederlandsche Bank, grant special authorisation for:

a. amendments, at the time of the transfer of the rights and obligations pursuant to contracts for the acquisition of funds or pursuant to insurance contracts, of those contracts subject to the understanding that clauses in contracts from which claims arise as referred to in Section 8:16, third and fourth paragraph, claims covered by a pledge or mortgage on the property of the credit institution and hire-purchase instalments cannot then be amended;

b. reductions of the term of contracts for the acquisition of funds or insurance contracts.

2. Amendments as referred to in the first paragraph, under a, relating to insurance contracts do not result in the imposition of additional obligations on the policyholders.

3. Section 8:11, first to fifth paragraphs inclusive and seventh paragraph, is applicable *mutatis mutandis* to the special authorisation.

4. Once the transfer of rights and obligations has taken place pursuant to the authorisation referred to in Section 8:10, first paragraph, De Nederlandsche Bank publishes an announcement of the transfer and any acts carried out pursuant to the special authorisation as referred to in the first paragraph in the Netherlands Government Gazette and in at least two daily newspapers designated by the Court. De Nederlandsche Bank may also, when the Bank is of the opinion that this is necessary in the interest of the creditors of the credit institution or the policyholders, insured persons or persons entitled to benefits, publish the announcement of the aforementioned transfer and acts by other means.

5. The transfer and amendment referred to in the first paragraph, under a, come into effect for all other interested parties in the relevant credit institution or insurer on the day after the publication in the Netherlands Government Gazette.

Section 8:19 (no prejudice arising from the transfer of rights)

A transfer of rights and obligations pursuant to this Chapter may not prejudice the rights of the remaining creditors.

Section 8:20 (costs of the emergency regulation)

1. The Court sets the costs incurred as a result of the emergency regulation. These costs are charged to the relevant credit institution or insurer.

2. The costs of the emergency regulation encompass the relevant costs incurred by De Nederlandsche Bank and the remuneration for work carried out by or on behalf of De Nederlandsche Bank.

Section 8:21 (equivalence of the emergency regulation to bankruptcy)

The legal position of a credit institution or insurer is deemed to be equivalent to bankruptcy for the purposes of the application of sections 200, 355, 356 and 360

of the Criminal Code (BES Islands) (*Wetboek van Strafrecht BES*) during the time in which the emergency regulation is in force.

Section 8:22 (declaration of bankruptcy following a petition filed by De Nederlandsche Bank)

1. De Nederlandsche Bank files a petition for the declaration of the bankruptcy of a credit institution or insurer when De Nederlandsche Bank has ascertained that the relevant enterprise has negative equity and the objective of the emergency regulation has not been or can no longer be achieved or – if the emergency regulation has not previously been declared applicable – that there are no longer reasonable prospects of the declaration of the applicability of the emergency regulation resulting in the achievement of the objective of the emergency regulation.

2. The assessment of the amount of the equity of an insurer with its registered offices abroad takes account solely of the assets and liabilities that, in De Nederlandsche Bank's opinion, accrue to the insurance business conducted from the establishments in the public bodies.

3. The credit institution or insurer is declared bankrupt irrespective of whether the enterprise had ceased payments. The first title of the Bankruptcy (BES Islands) Act (*Faillissementswet BES*) is also applicable.

Section 8:23 (termination of the emergency regulation on declaration of bankruptcy)

The emergency regulation is terminated by operation of law one the credit institution or insurer is declared bankrupt. The following regulations are applicable at that time or when the credit institution or insurer is declared bankrupt within one month after the termination of the emergency regulation:

a. the time at which the period referred to in Section 39 of the Bankruptcy (BES Islands) Act (*Faillissementswet BES*) commences begins from the time at which the declaration of the applicability of the emergency regulation becomes enforceable;

b. a debt offset may, in derogation from the provisions of Section 49 of the Bankruptcy (BES Islands) Act (*Faillissementswet BES*), be invoked solely when the debt payable and debt due both arose before the time at which the declaration of the applicability of the emergency regulation became enforceable or arose from an act carried out with the bankrupt enterprise before that time;

c. acts carried out pursuant to sections 8:13, 8:14 and 8:15 by or on behalf of De Nederlandsche Bank during the period in which the emergency regulation was in force are deemed to be acts carried out by the official receiver whilst estate debts that arose during that period are also deemed to constitute estate debts in the bankruptcy;

d. the estate is not liable for commitments assumed by the credit institution or insurer contrary to Section 8:13, first and third paragraphs, during the time that the emergency regulation was in force other than commitments of benefit to the enterprise;

e. claims arising from life insurance contracts may, in derogation from Section 105, first paragraph, of the Bankruptcy (BES Islands) Act (*Faillissementswet BES*) be filed by the submission of the policy or a copy of the policy and without the need for a statement of the amount of the claim. The official receiver sets the amount of any claims recognised by the official receiver.

Section 8:24 (report to the Minister)

De Nederlandsche Bank submits a report to Our Minister as soon as possible after the termination of the emergency regulation and, when so requested, during the term of the emergency regulation.

Section 8:25 (preferential claims)

1. In the event of the applicability of the emergency regulation or bankruptcy of an insurer the insurer's estate debts are, in accordance with the Bankruptcy (BES Islands) Act (*Faillissementswet BES*) and depending on the nature of relevant estate debt, either apportioned between all the assets referred to in Section 3:19 or deducted from a specific estate asset.

2. Without prejudice to the provisions of the first paragraph, in the event of the applicability of the emergency regulation or bankruptcy the assets referred to in the first paragraph serve solely for the settlement of the claims on the insurer relating to the payments of benefits pursuant to insurance contracts concluded from the establishments in the public bodies other than payments of benefits due to another insurer pursuant to a reinsurance contract.

3. No other claims can be recovered from the assets referred to in the first paragraph other than claims that are covered by a pledge or mortgage on the assets unless it has been established that claims as referred to in the first paragraph can be settled and that similar claims will not arise in the future.

4. In the event that the claims referred to in the second paragraph cannot be settled in full with the assets referred to in the first paragraph then for the settlement of the remaining part of their claims the relevant creditors rank below the other creditors in the distribution of the proceeds from the insurer's other goods.

§ 4. Deposit guarantee scheme

Section 8:26 (deposit guarantee scheme)

1. The objective of the deposit guarantee scheme is to compensate deposit holders in the event that a credit institution is not in a position to comply with its obligations arising from deposit claims. The credit institutions bear the cost of the deposit guarantee scheme.

2. The deposit guarantee scheme referred to in the first paragraph may be part of a Caribbean deposit guarantee scheme in which other states in the Caribbean part of the Kingdom participate.

3. Regulations may be prescribed by or pursuant to an Order in Council governing:

a. the categories of enterprises and persons who fall within the scope of or are excluded from the deposit guarantee scheme;

b. the categories of claims that fall within the scope of the deposit guarantee scheme, the manner in which they are submitted and determined, the conditions attached to compensation for these claims and the amount of the compensation;

c. the application of the deposit guarantee scheme and its implementation in relation to the emergency regulation;

d. the financing and funding of and the distribution of the income from the deposit guarantee scheme.

Section 8:27 (fund management trust)

1. The funds for the financing and fund of the deposit guarantee deposit may be placed in a fund management trust to be formed by De Nederlandsche Bank or, in the event of a Caribbean deposit guarantee scheme as referred to in Section 8:26, second paragraph, to be formed jointly by De Nederlandsche Bank.

2. Further regulations governing the provisions of the first paragraph and regulations governing the board of a trust as referred to in the first paragraph may be prescribed by or pursuant to an Order in Council.

Section 8:28 (administration by De Nederlandsche Bank)

1. De Nederlandsche Bank is entrusted with the administration of the deposit guarantee scheme in the public bodies.

2. On the application of the deposit guarantee scheme De Nederlandsche Bank provides for the payment of compensation for the claims from deposit holders coming into consideration for compensation pursuant to Section 8:26, third paragraph, under a and b.

3. De Nederlandsche Bank is authorised to outsource the administration of the deposit guarantee scheme and the performance of the duty referred to in the second paragraph either in whole or in part. Further regulations may be prescribed by an Order in Council.

Section 8:29 (subrogation)

1. De Nederlandsche Bank acquires the rights of a deposit holder arising from a claim against the financial enterprise that is unable to pay to the extent that the financial enterprise has paid compensation as referred to in Section 8:28, second paragraph.

2. When the funds for the financing and funding of the deposit guarantee scheme have been placed with a trust as referred to in Section 8:27, first paragraph, then in derogation from the provisions of the first paragraph the trust acquires the rights from the deposit holder referred to in the first paragraph.

Section 8:30 (no joint and several liability of De Nederlandsche Bank)

The concurrence of deposit holder claims on a credit institution for which the deposit guarantee scheme has been applied with entitlements to compensation for the claims eligible for compensation pursuant to Section 8:26, third paragraph, under a and b, does not result in the joint and several liability of De Nederlandsche Bank and the estate or the credit institution.

CHAPTER 9. PENAL PROVISIONS

Section 9:1 (indictable offences)

1. Violations of sections 2:1, first paragraph, and 2:3, first or second paragraphs, or of a prohibition as referred to in Section 7:20 are, to the extent that they are committed with intent, punished with imprisonment for a maximum of five years or a fine of the fifth category.

2. Violations of sections 1:20, first paragraph, 2:21, first paragraph, 2:22, first paragraph, 2:23, first paragraph, 3:28, first paragraph, 3:39, 3:40, 4:9, 5:3, 5:15, 5:19, 5:25, first paragraph, 5:26, first paragraph, 5:27, first or second

paragraph, 6:5, first paragraph, 6:6, 6:8, first paragraph, 6:9, 6:10, first paragraph, 6:11, 6:12, 7:11, first paragraph, and 8:11, second paragraph, in conjunction with Section 7:11, first paragraph, are, to the extent that they are committed with intent, punished with imprisonment for a maximum of two years or a fine of the fifth category.

3. The punishable offences referred to in the first and second paragraph are indictable offences.

Section 9:2 (summary offences)

1. Violations of sections 2:1, first paragraph, and 2:3, first or second paragraphs, or of a prohibition as referred to in Section 7:20 are, to the extent that they are not committed with intent, punished with detention for a maximum of one year or a fine of the fifth category.

2. Violations of sections 1:20, first paragraph, 2:21, first paragraph, 2:22, first paragraph, 2:23, first paragraph, 3:28, first paragraph, 3:39, 3:40, 4:9, 5:3, 5:15, 5:19, 5:25, first paragraph, 5:26, first paragraph, 5:27, first or second paragraph, 6:5, first paragraph, 6:6, 6:8, first paragraph, 6:9, 6:10, first paragraph, 6:11, 6:12, 7:11, first paragraph, and 8:11, second paragraph, in conjunction with Section 7:11, first paragraph, are, to the extent that they are not committed with intent, punished with detention for a maximum of six months or a fine of the fourth category.

3. The punishable offences referred to in the first and second paragraph are summary offences.

Section 9:3 (investigation of offences)

1. The investigation of offences punishable pursuant to sections 9:1 and 9:2 are, without prejudice to Section 184 of the Code of Criminal Procedure (BES Islands) (*Wetboek van Strafvordering BES*), entrusted to the officers designated pursuant to the Order of Our Minister of Justice in agreement with Our Minister. These officers are also entrusted with the investigation of offences punishable pursuant to sections 185 to 188 inclusive and 190 of the Criminal Code (BES Islands) (*Wetboek van Strafrecht BES*) to the extent that these offences relate to an order, demand or act given or carried out by themselves.

2. An order as referred to in the first paragraph is announced by publication in the Netherlands Government Gazette.

CHAPTER 10. TRANSITIONAL AND FINAL PROVISIONS

§ 1. Transitional law

Section 10:1 (licences)

1. Once this Act has entered into force licences to conduct the business of credit institution or money transaction office issued pursuant to Section 2 of the Banking Industry and Credit System (Supervision) (BES Islands) Act 1994 (*Wet toezicht bank- en kredietwezen 1994 BES*) are founded on Section 2:1, first paragraph, under a, under 1^o, subject to the understanding that once this Act has entered into force licences issued to conduct the business of credit provider other than credit institutions are founded on Section 2:3, first paragraph, under c.

2. Once this Act has entered into force licences to conduct the business of

insurance company issued pursuant to Section 9 of the Insurance Industry (Supervision) (BES Islands) Act (*Wet toezicht verzekeringsbedrijf BES*) are founded on Section 2:1, first paragraph, under b.

3. Once this Act has entered into force licences to conduct the business of trust office issued pursuant to Section 4 of the Trust Offices (Supervision) (BES Islands) Act (*Wet toezicht trustwezen BES*) are founded, with the exception of the annexes accompanying the licences as referred to in sections 6 and 7 of that Act, on Section 2:1, first paragraph, under a, under 2^o.

4. Once this Act has entered into force licences to operate a securities exchange issued pursuant to Section 2 of the Securities Exchanges (Supervision) (BES Islands) Act (*Wet toezicht effectenbeurzen BES*) are founded on Section 2:3, first paragraph, under d.

5. Once this Act has entered into force licences issued to collective investment schemes pursuant to Section 3 of the Collective Investment Schemes and Administrators (Supervision) (BES Islands) Act (*Wet toezicht beleggingsinstellingen en administrateurs BES*) are founded on Section 2:3, second paragraph.

Section 10:2 (licences by operation of law)

1. At the time this Act enters into force persons who were listed on an Annex as referred to in sections 6 or 7 of the Trust Offices (Supervision) (BES Islands) Act (*Wet toezicht trustwezen BES*) are issued a licence as referred to in Section 2:1, first paragraph, under a, under 2^o, by operation of law, subject to the understanding that the licence is issued solely for the provision of trust services as referred to in Section 1 of the Trust Offices (Supervision) (BES Islands) Act (*Wet toezicht trustwezen BES*).

2. Licences issued pursuant to the first paragraph lapse after a period of six months commencing on the date this Act enters into force.

3. At the time this Act enters into force brokers who were listed in the register for insurance brokers pursuant to Section 4 of the Insurance Agency and Broking (BES Islands) Act (*Wet assurantiebemiddelingsbedrijf BES*) are issued a licence to conduct the business of broker in insurance as referred to in Section 2:3, first paragraph, under a, by operation of law.

Section 10:3 (enterprises with their registered offices abroad)

Section 3:1, first paragraph, is not applicable during the period in which a financial enterprise that had its registered offices outside the public bodies, Curacao and Sint Maarten at the time this Act enters into force does not relocate its registered offices to another state.

Section 10:4 (dispensations)

1. Once this Act enters into force dispensations granted pursuant to the Insurance Agency and Broking (BES Islands) Act (*Wet assurantiebemiddelingsbedrijf BES*), the Banking Industry and Credit System (Supervision) (BES Islands) Act 1994 (*Wet toezicht bank- en kredietwezen 1994 BES*), the Collective Investment Schemes and Administrators (Supervision) (BES Islands) Act (*Wet toezicht beleggingsinstellingen en administrateurs BES*), the Securities Exchanges (Supervision) (BES Islands) Act (*Wet toezicht effectenbeurzen BES*), the Trust Offices (Supervision) (BES Islands) Act (*Wet toezicht trustwezen BES*) or the Insurance Industry (Supervision) (BES Islands)

Act (*Wet toezicht verzekeringsbedrijf BES*), that related to an existing obligation in part arising from this Act are founded, to the extent that dispensation can be granted from the regulations prescribed by or pursuant to Section 1:27, on Section 1:27.

2. Once this Act enters into force dispensations granted pursuant to Section 9 of the Disclosure of Major Holdings in Listed Companies (BES Islands) Act (*Wet zeggenschap in ter beurze genoteerde vennootschappen BES*) are deemed to be dispensations as referred to in Section 6:10.

Section 10:5 (reliability and suitability of policy-makers)

1. When De Nederlandsche Bank or the Netherlands Authority for the Financial Markets has established the reliability of a person as referred to in Section 3:4, first paragraph, pursuant to the Insurance Agency and Broking (BES Islands) Act (*Wet assuratiebemiddelingsbedrijf BES*), the Banking Industry and Credit System (Supervision) (BES Islands) Act 1994 (*Wet toezicht bank- en kredietwezen 1994 BES*), the Collective Investment Schemes and Administrators (Supervision) (BES Islands) Act (*Wet toezicht beleggingsinstellingen en administrateurs BES*), the Securities Exchanges (Supervision) (BES Islands) Act (*Wet toezicht effectenbeurzen BES*), the Trust Offices (Supervision) (BES Islands) Act (*Wet toezicht trustwezen BES*) or the Insurance Industry (Supervision) (BES Islands) Act (*Wet toezicht verzekeringsbedrijf BES*) then the reliability of that person is beyond doubt for the application of this Act provided that a change in the relevant facts or circumstances does not give cause to a new assessment and for the time during which a new assessment is not prescribed as referred to in Section 3:4, fourth paragraph.

2. When a person as referred to in Section 3:5, first paragraph, has been found to be sufficiently competent pursuant to an Act referred to in the first paragraph then that person is also deemed to be suitable for the application of this Act provided that a change in the relevant facts or circumstances does not give cause to a new assessment.

Section 10:6 (declarations of no objection)

Once this Act enters into force declarations of no objection issued pursuant to Section 46 of the Banking Industry and Credit System (Supervision) (BES Islands) Act 1994 (*Wet toezicht bank- en kredietwezen 1994 BES*) or Section 81 of the Insurance Industry (Supervision) (BES Islands) Act (*Wet toezicht verzekeringsbedrijf BES*) are deemed to be declarations of no objection issued pursuant to Section 3:28.

Section 10:7 (instructions and notices)

1. From the time this Act enters into force instructions issued pursuant to the Banking Industry and Credit System (Supervision) (BES Islands) Act 1994 (*Wet toezicht bank- en kredietwezen 1994 BES*), the Collective Investment Schemes and Administrators (Supervision) (BES Islands) Act (*Wet toezicht beleggingsinstellingen en administrateurs BES*), the Trust Offices (Supervision) (BES Islands) Act (*Wet toezicht trustwezen BES*) or the Insurance Industry (Supervision) (BES Islands) Act (*Wet toezicht verzekeringsbedrijf BES*), are deemed to be equivalent to an instruction issued pursuant to Section 7:12.

2. A request to implement specific measures or follow a specific line of conduct pursuant to Section 22, first paragraph, of the Banking Industry and Credit

System (Supervision) (BES Islands) Act 1994 (*Wet toezicht bank- en kredietwezen 1994 BES*) is deemed to be an instruction for the application of the first paragraph.

3. From the time this Act enters into force a notice issued pursuant to the Banking Industry and Credit System (Supervision) (BES Islands) Act 1994 (*Wet toezicht bank- en kredietwezen 1994 BES*), the Collective Investment Schemes and Administrators (Supervision) (BES Islands) Act (*Wet toezicht beleggingsinstellingen en administrateurs BES*) or the Insurance Industry (Supervision) (BES Islands) Act (*Wet toezicht verzekeringsbedrijf BES*) is deemed to be a decision pursuant to Section 7:14.

Section 10:8 (administrative penalties)

1. From the time this Act enters into force an administrative penalty imposed for the violation of a regulation prescribed by or pursuant to the Insurance Agency and Broking (BES Islands) Act (*Wet assurantiebemiddelingsbedrijf BES*), the Banking Industry and Credit System (Supervision) (BES Islands) Act 1994 (*Wet toezicht bank- en kredietwezen 1994 BES*), the Collective Investment Schemes and Administrators (Supervision) (BES Islands) Act (*Wet toezicht beleggingsinstellingen en administrateurs BES*), the Trust Offices (Supervision) (BES Islands) Act (*Wet toezicht trustwezen BES*) or the Insurance Industry (Supervision) (BES Islands) Act (*Wet toezicht verzekeringsbedrijf BES*) is deemed to be equivalent to an administrative penalty imposed pursuant to Section 7:30.

2. Once this Act has entered into force the supervisory authority can impose an administrative penalty for the violation of a regulation prescribed by or pursuant to an act referred to in the first paragraph during the period of up to one year after the violation. The law applicable to the imposition of a penalty imposed before this Act entered into force continues to be applicable.

3. Sections 7:50 and 7:51 are not applicable to penalties as referred to in the first and second paragraph.

Section 10:9 (emergency regulation and bankruptcy)

The law applicable at the time of a declaration of the applicability of an emergency regulation to or a declaration of bankruptcy of a credit institution or insurer before this Act entered into force continues to be applicable to the settlement of the emergency regulation or bankruptcy.

Section 10:10 (obligation of confidentiality and confidential information)

Sections 1:20 to 1:25 inclusive are applicable *mutatis mutandis* to details and information issued or received pursuant to the Insurance Agency and Broking (BES Islands) Act (*Wet assurantiebemiddelingsbedrijf BES*), the Banking Industry and Credit System (Supervision) (BES Islands) Act 1994 (*Wet toezicht bank- en kredietwezen 1994 BES*), the Collective Investment Schemes and Administrators (Supervision) (BES Islands) Act (*Wet toezicht beleggingsinstellingen en administrateurs BES*), the Securities Exchanges (Supervision) (BES Islands) Act (*Wet toezicht effectenbeurzen BES*), the Trust Offices (Supervision) (BES Islands) Act (*Wet toezicht trustwezen BES*) or the Insurance Industry (Supervision) (BES Islands) Act (*Wet toezicht verzekeringsbedrijf BES*).

Section 10:10a (limitation of the liability of the supervisory authorities)

Section 1:13a is not applicable to an act or omission of De Nederlandsche Bank, the Netherlands Authority for the Financial Markets, the members of their bodies or their employees that occurred before Section II of the Limitation of the Liability of De Nederlandsche Bank and the Netherlands Authority for the Financial Markets Act (*Wet aansprakelijkheidsbeperking DNB en AFM*) entered into force.

§ 2. Amendments of other acts

Section 10:11 (abrogation of existing supervision acts)

The following acts are abrogated:

- a. the Insurance Agency and Broking (BES Islands) Act (*Wet assuratiebemiddelingsbedrijf BES*);
- b. the Banking Industry and Credit System (Supervision) (BES Islands) Act 1994 (*Wet toezicht bank- en kredietwezen 1994 BES*);
- c. the Collective Investment Schemes and Administrators (Supervision) (BES Islands) Act (*Wet toezicht beleggingsinstellingen en administrateurs BES*);
- d. the Securities Exchanges (Supervision) (BES Islands) Act (*Wet toezicht effectenbeurzen BES*);
- d. the Trust Offices (Supervision) (BES Islands) Act (*Wet toezicht trustwezen BES*);
- d. the Insurance Industry (Supervision) (BES Islands) Act (*Wet toezicht verzekeringsbedrijf BES*);
- g. the Disclosure of Major Holdings in Listed Companies (BES Islands) Act (*Wet zeggenschap in ter beurse genoteerde vennootschappen BES*).

Section 10:12 (Criminal Code, (BES Islands) (*Burgerlijk Wetboek BES*))

1. The text "a credit institution registered pursuant to the Banking Industry and Credit System (Supervision) (BES Islands) Act 1994 (*Wet toezicht bank- en kredietwezen 1994 BES*)" in sections 344, first paragraph, and 350, second paragraph, of Book 1 of the Criminal Code (BES Islands) (*Burgerlijk Wetboek BES*) is replaced by: "a credit institution listed in the financial markets register pursuant to the Financial Markets (BES Islands) Act (*Wet financiële markten BES*)".

2. The text "a credit institution as referred to in Article 1, first paragraph, under a, of the *Wet toezicht bank- en kredietwezen 1994 BES* ('BES Banking and Credit System (Supervision) Act'), 1994" in Section 206, second paragraph, of Book 3 of the Criminal Code (BES Islands) (*Burgerlijk Wetboek BES*) is replaced by: "a credit institution within the meaning of the Financial Markets (BES Islands) Act (*Wet financiële markten BES*)".

Section 10:13 (Government Accounts Act 2001 (*Comptabiliteitswet 2001*))

The text "Banking Industry and Credit System (Supervision) (BES Islands) Act 1994 (*Wet toezicht bank- en kredietwezen 1994 BES*)" in Section 91, sixteenth paragraph, of the Government Accounts Act 2001 (*Comptabiliteitswet 2001*) is replaced by: "Financial Markets (BES Islands) Act (*Wet financiële markten BES*)".

Section 10:14 (Bailiff's (BES Islands) Act (*Deurwaarderswet BES*))

The text "a credit institution within the meaning of Section 1, first paragraph, under c, of the Banking Industry and Credit (Supervision) (BES Islands) Act 1994

(*Wet toezicht bank- en kredietwezen 1994 BES*)" in Section 12a of the Bailiff's (BES Islands) Act (*Deurwaarderswet BES*) is replaced by: "a credit institution within the meaning of the Financial Markets (BES Islands) Act (*Wet financiële markten BES*)".

Section 10:15 (Pension (BES Islands) Act (*Pensioenwet BES*))

The Pension (BES Islands) Act (*Pensioenwet BES*) is amended as follows:

1. In Section 1a, first paragraph, under c, "Insurance Industry (Supervision) (BES Islands) Act (*Wet toezicht verzekeringsbedrijf BES*)" is replaced by: "Financial Markets (BES Islands) Act (*Wet financiële markten BES*)".

2. In Section 7a, first paragraph, under c, "Section 60 of the Insurance Industry (Supervision) (BES Islands) Act (*Wet toezicht verzekeringsbedrijf BES*)" is replaced by: "Section 8:9, second or third paragraph, of the Financial Markets (BES Islands) Act (*Wet financiële markten BES*)".

3. In Section 76c, first paragraph, under b, "Insurance Industry (Supervision) (BES Islands) Act (*Wet toezicht verzekeringsbedrijf BES*)" is replaced by: "Financial Markets (BES Islands) Act (*Wet financiële markten BES*)".

Section 10:16 (Motor Vehicle Insurance Liability (BES Islands) Act (*Wet aansprakelijkheidsverzekering motorrijtuigen BES*))

In Section 1 of the Motor Vehicle Insurance Liability (BES Islands) Act (*Wet aansprakelijkheidsverzekering motorrijtuigen BES*) the definitions of "licence" and "insurer" are amended to read as follows:

insurance: insurance required for the motor vehicle insurance sector pursuant to the Financial Markets (BES Islands) Act (*Wet financiële markten BES*);

insurer: enterprise that may conduct the business of non-life insurer in the motor vehicle insurance sector pursuant to the Financial Markets (BES Islands) Act (*Wet financiële markten BES*).

Section 10:17 (Exceptional Medical Expenses Insurance (BES Islands) Act (*Wet algemene verzekering bijzondere ziektekosten BES*))

The text "pursuant to the regulations of the Insurance Industry (Supervision) (BES Islands) Act (*Wet toezicht verzekeringsbedrijf BES*)" in Section 17, first paragraph, of the Exceptional Medical Expenses Insurance (BES Islands) Act (*Wet algemene verzekering bijzondere ziektekosten BES*) is replaced by: "pursuant to the regulations governing conducting the business of insurance company prescribed by or pursuant to the Financial Markets (BES Islands) Act (*Wet financiële markten BES*)".

Section 10:18 (Monetary System (BES Islands) Act (*Wet geldstelsel BES*))

The text "an institution as referred to in Section 1, first paragraph, under c, of the Banking Industry and Credit System (Supervision) (BES Islands) Act 1994 (*Wet toezicht bank- en kredietwezen 1994 BES*)" in Section 1, under e, of the Monetary System (BES Islands) Act (*Wet geldstelsel BES*) is replaced by: "a credit institution within the meaning of the Financial Markets (BES Islands) Act (*Wet financiële markten BES*)".

Section 10:19 (Notaries (BES Islands) Act (Wet op het notarisambt BES))

The text "an institution as referred to in Section 1, first paragraph, under c, of the Banking Industry and Credit System (Supervision) (BES Islands) Act 1994 (*Wet toezicht bank- en kredietwezen 1994 BES*)" in Section 76a, first paragraph, of the Notaries (BES Islands) Act (*Wet op het notarisambt BES*) is replaced by: "a credit institution within the meaning of the Financial Markets (BES Islands) Act (*Wet financiële markten BES*)".

Section 10:20 (Code of Civil Procedure (BES Islands) (Wetboek van Burgerlijke Rechtsvordering BES))

The text "a registered credit institution within the context of the supervision of the banking industry and credit system" in Section 445 of the Code of Criminal Procedure (BES Islands) (*Wetboek van Burgerlijke Rechtsvordering BES*) is replaced by: "a credit institution listed in the financial markets register pursuant to the Financial Markets (BES Islands) Act (*Wet financiële markten BES*)."

§ 3. Date of entry into force and official title

Section 10:21 (date of entry into force)

This Act enters into force at a time determined by Royal Decree, whereby different times may be determined for the various sections or parts of the sections and for the various categories of financial enterprises that can be distinguished pursuant to this Act.

Section 10:22 (official title)

This Act may be cited as: "Financial Markets (BES Islands) Act (*Wet financiële markten BES*)".

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

Given

THE MINISTER OF FINANCE,

Annex as referred to in sections 7:21, first paragraph, and 7:30, first paragraph

A. Sections pursuant to which an order on pain of a penalty payment can be imposed

1:7, second paragraph,	4:8 to 4:11 inclusive,	4:46,
2:1, first paragraph,	4:13,	4:47, first paragraph,
2:3, first and second paragraph,	4:15,	4:48,
2:17, first paragraph,	4:16, first and third paragraph,	5:2 to 5:10 inclusive,
2:21, first paragraph,	4:17,	5:14,
2:22, first paragraph,	4:18, first paragraph,	5:15, first and third paragraph,
2:23, first, third and fifth paragraph,	4:19 and 4:20,	5:16, first and second paragraph,
3:1, first and third paragraph,	4:22,	5:19, first paragraph,
3:2 and 3:3,	4:23, first and third paragraph,	5:21,
3:4, first paragraph,	4:25,	5:22, first and third paragraph,
3:5 to 3:13 inclusive,	4:26, third paragraph	5:23, first paragraph,
3:15 to 3:19 inclusive,	4:27 in conjunction with	7:10, fourth paragraph,
3:21 to 3:24 inclusive,	4:26, third paragraph,	7:11, first paragraph,
3:28, first paragraph,	4:28, first paragraph,	7:17, first and second paragraph, under a
3:29,	4:29, first paragraph,	7:19,
3:33 to 3:40 inclusive,	4:30 to 4:33 inclusive,	7:20, first and second paragraph,
3:44,	4:34, first paragraph,	8:2, first and second paragraph,
3:45, third to fifth paragraph inclusive,	4:35, first to third paragraph inclusive,	8:3,
3:46, third to fifth paragraph inclusive,	4:36, first paragraph,	8:4, first paragraph,
4:1, first and second paragraph,	4:37 to 4:39 inclusive,	8:5, first to third paragraph inclusive,
4:2 to 4:4 inclusive,	4:40, second and third paragraph,	8:6,
4:5, first and second paragraph,	4:41, second paragraph,	8:7, first paragraph.
	4:43,	
	4:45, second and third paragraph,	

B. Sections pursuant to which an administrative penalty can be imposed

1:7, second paragraph,	4:8 to 4:13 inclusive,	5:15, first and second paragraph,
2:1, first paragraph,	4:15 to 4:17 inclusive,	5:16, first and second paragraph,
2:3, first and second paragraph,	4:18, first paragraph,	5:19, first paragraph,
2:17, first paragraph,	4:19 and 4:20,	5:21,
2:18,	4:22,	5:22, first and third paragraph,
2:21, first paragraph,	4:23, first and third paragraph,	5:23, first paragraph,
2:22, first paragraph,	4:25,	5:25, first paragraph,
2:23, first, third and fifth paragraph,	4:26, third paragraph	5:26, first paragraph,
3:1, first and third paragraph,	4:27 in conjunction with	5:27, first and second paragraph,
3:2 and 3:3,	4:26, third paragraph,	7:10, fourth paragraph,
3:4, first paragraph,	4:28, first paragraph,	7:11, first paragraph,
3:5 to 3:13 inclusive,	4:29, first paragraph,	7:17, first and second paragraph, under a
3:15 to 3:19 inclusive,	4:30 to 4:33 inclusive,	7:19,
3:21 to 3:26 inclusive,	4:34, first paragraph,	7:20, first and second paragraph,
3:28, first paragraph,	4:35, first to third paragraph inclusive,	8:2, first and second paragraph,
3:29,	4:36, first paragraph,	8:3,
3:33 to 3:40 inclusive,	4:37 to 4:41 inclusive,	8:4, first paragraph,
3:44,	4:43,	8:5, first to third paragraph inclusive,
3:45, third to fifth paragraph inclusive,	4:45, second and third paragraph,	8:6,
3:46, third to fifth paragraph inclusive,	4:46,	8:7, first paragraph.
4:1, first and second paragraph,	4:47, first paragraph,	
4:2 to 4:5 inclusive,	4:48,	
	5:2 to 5:10 inclusive,	
	5:14,	