



### Disclaimer

*This is an English translation of the original Dutch text, furnished for convenience only. In case of any conflict between this translation and the original text, the latter shall prevail.*

## **Legal framework: notification letters financial reporting**

Listed below you will find some relevant sections of the legal framework (January 2016). The latest information can be found on [www.wetten.overheid.nl](http://www.wetten.overheid.nl) albeit in the Dutch language.

***Wet toezicht financiële verslaggeving (Financial Reporting Supervision Act, hereinafter Wtfv)***<sup>1</sup>

### **Section 1**

In this Act and the provisions ensuing from this Act, unless otherwise stipulated, the following terms shall have the following meaning:

- a. [...]
- b. issuer of securities (hereinafter issuer): an issuer as referred to in Section 1:1 of the *Wet op het financieel toezicht* (Financial Supervision Act, hereinafter Wft)<sup>2</sup> of which the Netherlands is the home Member State as referred to in Section 5:25a(c) of this Act:
  1. with a registered office in the Netherlands in accordance with its articles of association, the securities of which are admitted to trading on a regulated market, as referred to in Section 1:1 of the Wft or to trading on a system comparable with a regulated market from a state which is not a Member State as referred to in Section 1:1 of the Wft which is located or operates in a state which is not a Member State of the European Union;
  2. with a registered office in accordance with its articles of association in another Member State or a state that is not a Member State, the securities of which are admitted to trading on a regulated market as referred to in Section 1:1 of the Wft;

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<sup>1</sup> Originally translated as the 'Act on the Supervision of Financial Reporting' on the Ministry of Finance website.

<sup>2</sup> Originally translated as the 'Act on Financial Supervision' on the Ministry of Finance website.

c. [...]

d. financial reporting:

1. the annual accounts or financial statements adopted as referred to in Section 361 of Book 2 of the Dutch Civil Code;
2. the management report as referred to in Section 391 of Book 2 of the Dutch Civil Code;
3. the data that are added to the annual accounts and the management report pursuant to Section 392 of Book 2 of the Dutch Civil Code;
4. if the issuer has its registered office in another Member State, the financial statements drawn up and made generally available in accordance with Section 5:25c(1) and (4) of the Wft and the management report drawn up and made generally available in accordance with Section 5:25c(1) and (4) of the Wft;
5. if the issuer has its registered office in a state that is not a Member State, the financial statements and management report drawn up and made generally available in accordance with Section 5:25c (1) and (5) of the Wft or the annual financial reporting made generally available in accordance with Section 5:25c (1) in conjunction with Section 5:25v (1);
6. the declarations made generally available in relation to the financial statements and the management report, as referred to in Section 5:25c (2c) of the Wft; and
7. the semi-annual accounts made generally available, the semi-annual management report made generally available, and the statements made generally available, as referred to in Section 5:25d of the Wft, or the semi-annual financial reporting made generally available under Section 5:25d (1) in conjunction with Section 5:25v (1).
8. the prepared management report on payments made to governments, as referred to in Section 5:25e of the Wft.

[...]

## **Section 2**

1. Under the Wtffv, the Authority for the Financial Markets (hereinafter AFM) may request an issuer to provide a further explanation concerning the application of the regulations of Section 3 of the IAS Regulation, Title 9 of Book 2 of the Dutch Civil Code or Section 5:25c (2), (4) or (5), Section 5:25d (2)

or (4) to (10), 5:25e or Section 5:25v (1) of the Wft. This further explanation must be provided within a reasonable deadline to be set by the AFM.

2. The AFM must maintain confidentiality with regard to the request referred to in Subsection 1 and the further explanation provided on the basis thereof.

2a. Subsection 2 does not apply with respect to other divisions of the AFM which are in charge of the supervision pursuant to other supervisory laws.

3. Subsection 1 does not apply in relation to the auditor's report referred to in Section 393(5) of Book 2 of the Dutch Civil Code or the report by the auditor referred to in Section 5:25c(4) of the Wft or the report or assessment by the auditor referred to in Section 5:25d (3) of that Act.

4. Subsection 1 and Sections 3 and 4 do not apply to collective investment schemes as referred to in Section 1:1 of the Wft whose units of participation are redeemed or repaid out of the assets, directly or indirectly, at the request of the unit-holders.

5. The provisions of this Section and Sections 3 and 4 apply *mutatis mutandis* to annual accounts or financial statements, management reports, and the information of an issuer to be appended thereto that has been made public in accordance with Section 394 (2) of Book 2 of the Dutch Civil Code.

6. Sections 5:13 and 5:20 of the *Algemene wet bestuursrecht* (General Administrative Law Act, hereinafter Awb) apply *mutatis mutandis* to the provisions of this Section.

### **Section 3**

1. The AFM may, once the further explanation referred to in Section 2(1) has been obtained, notify the issuer in writing that the financial reporting or a part thereof does not comply with the regulations referred to in Section 2(1). The AFM may furthermore issue the notification referred to in the first sentence if the further explanation referred to in the first sentence is not received within the deadline the AFM has set.

2. The notification referred to in Subsection 1 may be accompanied by a recommendation to the issuer to publish a press release within a reasonable deadline to be set by the AFM and to file this press release with the AFM, in which the issuer:

- a. explains how the regulations referred to in Subsection 1 will be applied in future and the consequences thereof for its financial reporting; or
- b. explains which parts of the financial reporting are not in compliance with the regulations of Section 3 of the IAS Regulation, Title 9 of Book 2 of the Dutch Civil Code or Sections

5:25c (2), (4), or (5), Section 5:25d (2) or (4) to (10), 5:25e or Section 5:25v (1) of the Wft and describes the consequences thereof for its financial reporting.

3. The AFM is obliged to maintain confidentiality with regard to the notification referred to in Subsection 1 and the recommendation referred to in Subsection 2. The AFM may, in derogation from the first sentence, provide the data obtained through performing its duties in accordance with this law to other divisions within the AFM which are in charge of other duties.

4. By Decree, rules may be imposed in relation to:

- a. documents to be added to the press release referred to in Subsection 2, and
- b. the manner in which and the deadline by which the press release referred to in Subsection 2 must be published and filed with the AFM.

#### **Section 4**

1. The AFM may issue a request as referred to in Section 452 of Book 2 of the Dutch Civil Code if an issuer has not adequately responded to the request referred to in Section 2(1) or Section 5:20 of the Awb.
2. The AFM may, after sending a notification as referred to in Section 3(1) to an issuer without making a recommendation as referred to in Section 3(2), issue a request as referred to in Sections 447 or 454 of Book 2 of the Dutch Civil Code in the interests of correct operation of the securities markets or the position of investors in such markets.
3. The AFM may issue a request as referred to in Sections 447 or 454 of Book 2 of the Dutch Civil Code if the issuer does not adequately respond to the recommendation referred to in Section 3(2) or the provisions of Section 3(4).
4. The AFM will disclose publicly the fact that it has made a request as referred to in Sections 447, 452, or 454 of Book 2 of the Dutch Civil Code once it has provided the issuer with the opportunity to disclose publicly within a reasonable time period the fact that the AFM has issued a request as referred to in Sections 447, 452, or 454 of Book 2 of the Dutch Civil Code and the issuer has failed to do so. If the AFM discloses publicly the fact that a request has been made, it will state on such occasion the name of the issuer, the date on which the request was made, the statutory basis for the request, and, if the request is one referred to in Subsections 2 or 3, the respect in which the financial reporting requires revision according to the request.
5. Section 2(2) and (2a) apply *mutatis mutandis* to data and information originating from a further explanation provided to the AFM on the basis of an order issued under Section 452, Subsection 4 of Book 2 of the Dutch Civil Code and to requests as referred to in this Section.

6. The AFM may, in requests as referred to in this Section, include data or information originating from a further explanation which has been provided to it under Section 2(1), or on the basis of an order under Section 452(4) of Book 2 of the Dutch Civil Code.

[...]

### ***Besluit toezicht financiële verslaggeving (Financial Reporting (Supervision) Decree, hereinafter Btfv)***<sup>3</sup>

#### **Section 2**

1. An issuer will make an announcement as referred to in Section 3(2) of the Act generally available in accordance with Section 47(1), second and third sentence of the *Wet toezicht effectenverkeer 1995*<sup>4</sup> (Securities Transactions (Supervision) Act 1995).
2. The reasonable deadline to be set by the AFM for the announcement to be made generally available will be at least 10 working days from the day of receipt of the recommendation referred to in Section 3(2) of the Act.

[...]

### ***Wet op het financieel toezicht (Financial Supervision Act, hereinafter Wft)***

#### **Section 1:1**

In this Act and the provisions ensuing from this Act, unless otherwise stipulated, the following terms shall have the following meaning

[...]

regulated information: information which an issuer or a person who seeks, without the issuer's consent, the admission of its securities to trading on a regulated market makes generally available pursuant to Section 5:25c to 5:25f, 5:25h or 5:25i;

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<sup>3</sup> Originally translated as 'Decree on the Act on the Supervision of Financial Reporting' on the Ministry of Finance website.

<sup>4</sup> Section 2(1) of the Btfv still refers to Section 47 of the *Wet toezicht effectenverkeer 1995* (Securities Transactions (Supervision) Act 1995). After the introduction of the Wft and the implementation of the EU Transparency Directive the manner of making regulated information generally available and the simultaneous filing thereof with the AFM is provided in Section 5:25m(1), (2) and (6) of the Wft in conjunction with Section 5(4) of the Decree on Implementation of the Directive for Issuer Transparency under the Wft.

[...]

### Section 5:25a

1. For the purposes of this Section, the following terms shall, to the extent necessary, in derogation from Section 1:1, have the following meaning:
  - a. shareholder: a party that, whether or not for its own account, directly or indirectly holds shares or depositary receipts for shares in an issuer;
  - b. auditor: an auditor as referred to in Section 393(1) of Book 2 of the Dutch Civil Code or, if an issuer has its registered office in another Member State, an external auditor who, under the laws of that Member State implementing Section 34 of the Annual Accounts Directive, is qualified to audit the annual accounts;
  - c. home Member State: home Member State as referred to in Section 2 (1)(i) of the Transparency Directive;
    - 1°. for an issuer issuing shares or bonds with a denomination per bond of less than € 1,000: the Member State where the issuer has its registered office or, if it has its registered office in a non-Member State, the Member State of the supervisory authority where the securities are offered to the public for the first time after the effective date of the Prospectus Directive or where for the first time admission of securities to trading on a regulated market is applied for, unless as a consequence the home Member State is not determined according to the preference of the issuer with its registered office in a non-Member State and the issuer in retrospect decides to choose for another home Member State;
    - 2°. for an issuer other than referred to under (1°), the Member State which has selected an issuer from either the Member State where it has its registered office, or the Member State where its securities were admitted to trading on a regulated market situated or operating in that Member State;
  - d. bond: security as referred to under (b) of the definition of security in Section 1:1, not being a security equivalent to a share or giving the right, through conversion or by exercising the right attached to it, to acquire shares or negotiable instruments equivalent to shares.
2. An issuer discloses its home Member State in accordance with or pursuant to Sections 5:25m, 5:25p and 5:25w.
3. An issuer discloses its home Member State by informing, in so far as applicable, the supervisory authority of the Member State in which it has its registered office, the supervisory authority of

the home Member State and the supervisory authorities of all Member States in which the securities of the issuer are admitted to trading on a regulated market of its home Member State.

4. Subsection 2 does not apply to issuers who in accordance with Section 2 (1)(i) of the Transparency Directive selected a home Member State and informed the supervisory authority of this home Member State on this matter before 27 November 2015, unless the issuer on or after 27 November 2015 chooses another home Member State.

#### **Section 5:25m**

1. An issuer shall make regulated information generally available in a non-discriminatory manner. In doing so, the issuer shall make use of media that may reasonably be assumed to guarantee a fast and effective distribution of the regulated information in all Member States.
2. The general availability referred to in Subsection 1 shall take place by means of a press release that is issued simultaneously in the Netherlands as well as in each of the other Member States where the financial instruments issued by the issuer have been admitted with its consent to trading on a regulated market or where the admission of those financial instruments to trading on such a market has been requested with its consent.

[...]

6. The issuer shall send the regulated information simultaneously with the general availability to the body referred to in Subsection 5, as well as, if it has not been designated as such, to the AFM.

[...]

#### ***Besluit uitvoeringsrichtlijn transparantie uitgevende instellingen Wft (Decree on Implementation of the Directive for Issuer Transparency under the Wft)***

#### **Section 5**

[...]

4. Regulated information is made available by the issuer in full and unedited and in such a manner that:
  - a. It is made clear that it concerns regulated information;
  - b. It is possible for the public to make a correct and timely assessment of the information;
  - c. The identity of the issuer is clear;
  - d. The subject of the regulated information is clear; and
  - e. The time and date of the press release is clear.

[...]

## **Burgerlijk Wetboek Boek 2 (Dutch Civil Code Book 2)**

### **Section 447**

1. At the request of those who are authorized to this end under Section 448, the Enterprise Chamber of the Amsterdam Court of Appeal may order a legal entity or company as referred to in Section 360 to which this Title applies, an issuer with registered office in the Netherlands in accordance with its articles of association as referred to in Section 1(b), of the Wtffv, or an collective investment scheme as defined in Section 1:1 of the Wft to draw up the annual accounts, the management report, or the data that are to be added to the annual accounts and the management report in accordance with instructions it issues.
2. The request may be made only on the basis that the requestor is of the opinion that the documents referred to in Subsection 1 do not comply with the regulations imposed under or pursuant to Section 3 of Regulation (EC) No 1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards (OJ L 243), this Title, or the Wft, respectively. The request will indicate the respect in which the documents require revision.
3. A request does not relate to the report of the auditor as referred to in Section 393(5).

[...]

### **Section 449**

1. The request referred to in Section 447 must be submitted within two months from the date on which the annual accounts are adopted. If the request referred to in Section 447 is made with regard to an issuer as referred to in Section 1(b) of the Wtffv, the period referred to in the first sentence is nine months.
2. The request concerning annual accounts that have not yet been adopted may be made up to two months or, in the case of an issuer as referred to in Section 1(b) of the Wtffv, nine months after the date on which the annual accounts are filed with the Dutch Trade Register. If, after the day of filing, the annual accounts are adopted, the period ends two months or, in the case of an issuer as referred to in Section 1(b) of the Wtffv, nine months after the date on which the adoption of the annual accounts is made known, either from the filing of a notification or from the filing of the annual accounts.

3. If a press release as referred to in Section 3(2) of the Wtfv is made generally available, the period ends two months after the date on which this press release is made generally available in the manner stipulated under or pursuant to that section, but no earlier than the end of the periods referred to in Subsections 1 and 2.
4. With regard to defects that are not evident from the documents, the period ends two months or, in the case of an issuer as referred to in Section 1(b) of the Wtfv, nine months after the date on which the person making the request could no longer reasonably been unaware of these defects, but at the latest two years after the end of the period set forth in the preceding Subsections.

[...]

#### **Section 454**

1. At the request of the AFM, the Enterprise Chamber of the Amsterdam Court of Appeal may order a issuer incorporated under the laws of another state as referred to in Section 1(b)(2°) of the Wtfv to issue a public notification in which it explains that the annual financial reporting as referred to in Section 1(d)(4°) and (5°) of the Wtfv do not comply with the regulations referred to in Section 5:25c(2), (4), or (5) or Section 5:25v (1) of the Wft, or explains how the regulations will be applied in the future.
2. The AFM may submit the request solely on the basis that the documents referred to in Subsection 1 do not comply with the regulations referred to in Section 5:25c(2), (4), or (5) or Section 5:25v(1) of the Wft. The request indicates the respect in which the documents are not in compliance.
3. The request does not relate to the report by the auditor referred to in Section 5:25c(4) of the Wft.
4. The request can be made at the latest six months after the date on which the annual accounts, under Section 5:25c(1), are made generally available. Subsections 3 and 4 of Section 449 apply *mutatis mutandis*.
5. Subsections 1-3 and 5-7 of Section 450 apply *mutatis mutandis* to the treatment of the request by the Enterprise Chamber.

[...]