Banking Regulation

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CONTENTS

Netherlands

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Introduction

Following the financial crises between 2008–2013, EU (and Dutch) regulatory law has seen a historic overhaul unlike anything before. This has led to Dutch banks being subject to an extremely detailed, opaque and expansive set of regulatory requirements, and thus a significant increase in regulatory compliance costs. However, over the past year, the crisis-prevention legislation appears to have reached its final stages.

Up until recently, the Dutch legislator has been highly critical of the banking sector. This resulted in some gold-plating rules above and beyond EU banking legislation. For instance, in the past few years there has been a focus on stricter inducement, remuneration and ethical conduct regulations.

Recently this regulatory strictness does seem to have largely abated, possibly with the intention of attracting banks to the Netherlands after Brexit. Some non-EU banking groups have already decided to use the Netherlands as their EU hub.

As the financial crises have largely been overcome, banks are facing new – non-financial – challenges, and regulators and supervisors are shifting their attention accordingly. Two of those challenges, which have the full attention of Dutch supervisory authorities, are cyber-resilience and integrity. Recent cyber-attacks led to banks being on highest alert regarding the way they manage their IT and Business Continuity risks. Also, in the past years, as a result of the Panama and Paradise papers, the global geopolitical situation and the market access of new, often unregulated financial market players, the Dutch regulators are increasingly focusing on integrity of the banking sector. This includes a tightening of supervision on customer due diligence, anti-money laundering, tax evasion and sanctions rules.

There are also some other developments in the Dutch banking landscape. In a historically non-competitive market, Dutch banks are experiencing increasing competition from specialised mortgage credit providers and Fintech (payment) companies. Banks are now also increasingly involved in developing Fintech initiatives themselves to counter new competitive financial services providers. Dutch regulators appear to be open to such new initiatives.

Regulatory architecture: Overview of banking regulators and key regulations

Dutch financial regulatory framework

The largest part of the Dutch legislation on the financial services industry is derived from European legislation. The rest consists of specific national legislation. Regulatory rules are incorporated into the Dutch Financial Supervision Act (*Wet op het financieel toezicht*

(**Wft**)) and further decrees and regulations. The Wft includes provisions on market entry, the integrity and soundness of business operations and internal procedures, governance requirements, capital requirements, the conduct of business, the offering of securities and prospectus requirements.

In addition to the Wft, many directly applicable EU regulations contain regulatory rules for Dutch financial institutions. We note that some of this EU legislation results from agreements within the Financial Stability Board or the Basel Committee on Banking Supervision, thus covering more jurisdictions than just that of the EU.

As a result of the introduction of the Wft in 2007, the Dutch supervisory structure has changed from the traditional sectoral model to a functional model on a cross-sectoral basis. In line with this 'Twin Peaks' model, the Netherlands has a prudential supervisory authority and a conduct supervisory authority. The Dutch Ministry of Finance is currently exploring the options regarding a revision of the Wft in the near future in order to resolve several identified shortcomings in the structure of the Wft.

Dutch financial sector regulators

Prudential supervision in the Netherlands is primarily carried out by the Dutch Central Bank (*De Nederlandsche Bank* (**DNB**)). As a result of the EU Banking Union, prudential supervision on banks is also conducted by the European Central Bank (**ECB**). This is in addition to conduct supervision carried out by the Dutch Authority for the Financial Markets (*Autoriteit Financiële Markten* (**AFM**)). These two authorities cooperate in order to avoid overlap and to promote the efficiency and effectiveness of their supervision. The responsibilities and powers of the AFM and DNB are set down in the Wft and the General Administrative Law Act (*Algemene wet bestuursrecht*).

AFM

The AFM is responsible for supervising the conduct of business of all financial undertakings that are active on the Dutch financial market. Conduct supervision focuses on ensuring orderly and transparent financial market processes and the exercise of due care in dealing with clients by financial undertakings. The AFM is also responsible for the approval of prospectuses, market abuse supervision and matters regarding the trading infrastructure.

The AFM is a strict supervisory authority that is not reluctant to impose formal measures such as fines or orders subject to a penalty when the proper treatment of consumers is at stake.

DNB

DNB is responsible for prudential supervision of financial undertakings. It also supervises compliance with the Anti-Money Laundering and Anti-Terrorist Financing Act (*Wet ter voorkoming van witwassen en financieren van terrorisme* (**Wwft**)) by financial undertakings standing under its prudential supervision. DNB assesses and enforces the adequacy of the procedures and measures implemented by financial undertakings to combat money laundering and terrorist financing. DNB is also the central bank of the Netherlands and, in this capacity, is responsible for systemic supervision.

DNB too is a strict supervisory authority which focuses not on formalistic compliance with rules *per se*, but on effects that it deems undesirable. In comparison to other supervisory authorities, DNB is less data-driven but more governance/conduct-driven.

ECB

As a result of the EU Banking Union, from 4 November 2014 the ECB is the prudential supervisory authority for all banks with a seat within the euro currency area. This has significantly changed the role of DNB. The ECB now conducts direct prudential supervision

on significant Dutch banks such as ABN AMRO Group N.V., ING Group N.V., Coöperatieve Rabobank U.A. and the Nederlandse Waterschapsbank N.V. Regarding other, less significant, Dutch banks, DNB remains the direct prudential supervisory authority. Nevertheless, the ECB continues to be of great influence due to its powers to adopt regulations, create guidelines, recommendations and take binding decisions, all of which have to be followed by DNB. In addition, the ECB decides on approvals for banking licences and declarations of no-objection (regardless of whether the relevant bank is significant or not). So far, it appears that the ECB is more formalistic and more data-driven than DNB.

Recent regulatory themes and key regulatory developments in your jurisdiction

EU developments

As set out above, Dutch banking regulation is largely dictated by the EU. The main reasons for the EU's interest in banking regulations are the recent financial crises. After the credit crisis and the euro crisis, the EU found that the effects of a failing bank could not be contained within national borders. There was a tight nexus between national EU Member States and their local banks. Banks have a significant amount of sovereign debt on their balance sheet, whilst national governments would have to bail these banks out if they were to fail, resulting in a vicious cycle.

As a result, there is a strong desire for one harmonised set of bank regulatory rules and methodologies at EU level, countering regulatory arbitrage and overly close ties between banks and their national supervisory authorities. Those harmonised rules are laid down in the so-called Single Rulebook. The EU consistently uses the directly applicable regulations more often. Through the EU Banking Union, the EU has created one institutional banking supervisory mechanism.

Since the worst parts of the crisis seem to be behind us, the EU is increasingly looking for a consolidation, and even a clean-up of the regulatory framework for banks. The EU legislator is trying to perfect the post-crisis regulations, all the while looking for rules that may stimulate the economy. Below we will list a number of current EU regulatory developments.

Brexit

The UK's vote to leave the EU has raised significant challenges for financial institutions operating in and from the UK. To prevent possible future EU market access limitations, some UK banks are considering creating EU continental subsidiaries in another Member State.

Due to logistical reasons, financial services infrastructure, workforce, language skills, tax structure and quality of life, the Netherlands is generally considered a suitable option for an EU-based regulated subsidiary. The Dutch 20% bonus cap is considered a disadvantage, however, although there may be some exceptions to get around that (and DNB has given some favourable interpretations).

Although some time has passed since the UK's vote to leave the EU, the full implications of Brexit for banks and other financial institutions still remain unclear. There are currently several options still in discussion that would allow financial institutions to continue to sell their services throughout the EU. Even if there will be no EU passport into or from the UK, there may be regulatory equivalence designations. Equivalence would mean that the EU would consider the standards of regulation and supervision in a bank's non-EU home state to be 'equivalent' to those of the EU. That would allow for a lighter market entry regime for those banks.

CRD 5 and CRR 2

Although CRD IV and CRR entered into force only five years ago, the European Commission (**EC**) has already reviewed and revised CRD IV and CRR in 2016, and the EU Council has published compromise proposals early 2018. The proposed "CRD V and CRR 2" measures aim to further reduce risk in the banking sector. It is expected that these proposed measures will be reached at the end of 2018, but will not enter into force before 2020 or even 2021.

Some of the proposed measures likely to have the greatest impact on banks are:

1. Banks' capital requirements:
   - Some of the existing capital disclosure requirements will be set as mandatory minimum rules. For example, a binding leverage ratio of 3% will be introduced. Also, a liquidity requirement for long-term assets, the Net Stable Funding Ratio (NSFR), will be mandatory to comply with.
   - Certain existing capital requirements will be amended to further de-risk banks and to take account of systemic importance. For example, the quality of capital that can be taken into account to calculate the large exposures limit (only Tier 1 capital) will be improved.
   - The conditions under which supervisory authorities may require Pillar 2 add-ons to a bank's capital buffer will be harmonised and enhanced.
2. Group structures:
   - The new rules introduce an approval requirement for the ultimate holding companies of banking groups and financial conglomerates. An EU intermediate holding company is required for non-EU significant bank groups with more than two EU entities.
3. Proportionality:
   - The new proposals contain measures aimed to apply a regulatory requirement on a proportionate basis, taking into account a bank's size and complexity. This includes proportionality with respect to remuneration. One of the amendments consists of exempting deferred variable remuneration and pay-out in instruments with respect to: (i) banks with a balance sheet total of €5 billion; or (ii) persons receiving variable remuneration of less than €50,000 (being less than 33% of that person's annual salary).

Markets in Financial Instruments Directive II

The Markets in Financial Instruments Directive (**MiFID**) has been reviewed and amended, resulting in "MiFID II" and the respective regulation "MiFIR". The MiFID II legislative package entered into force in all EU Member States on 3 January 2018.

Some MiFID II highlights are:

- the introduction of a new regulated trading platform – Organised Trading Facility (OTF) – intended to capture trades that are currently executed on non-regulated platforms (such as certain derivatives and bond trades);
- strengthened pre/post-trade transparency reporting requirements;
- stricter governance requirements and more accountability on investment firms' senior management;
- new and stricter rules for commodity derivatives trading;
- new rules relating to the increased use of technology performed electronically at very high speed (e.g. high-frequency trading firms); and

- investor protection to safeguard clients' interests by providing the client with increased information on products and services. This also includes enhanced product governance and inducement rules.

BRRD/SRMR

The Bank Recovery and Resolution Directive (**BRRD**) and the Single Resolution Mechanism Regulation (**SRMR**) provide for regulations relating to the recovery and resolution of failing banks.

Provisions of the BRRD and the SRMR include, *inter alia*, resolution powers and instruments like the bail-in tool. If the resolution authority deploys the bail-in, certain types of the bank's debt can be written off or converted into share capital. In addition, banks must draw up recovery plans in line with the BRRD/SRMR. The resolution authority will draw up a resolution plan for every bank involved. The bank can be asked to assist in drawing up the plan. Furthermore, banks are subject to a capital requirement relating to their capital that can be bailed in, known as the Minimum Requirements for own funds and Eligible Liabilities (**MREL**).

In order to properly apply these resolution tools, BRRD/SRMR grants resolution authorities the right to impose temporary restrictions on termination rights of any party to a financial contract with a bank under resolution. The suspension of termination rights is only allowed when the bank continues to perform its delivery and payment obligations, and lasts temporarily.

Under the Banking Union, the SRMR sets out a single resolution framework for significant banks, and has introduced a common resolution authority for such banks – the Single Resolution Board (**SRB**).

The EC has proposed to amend BRRD and the SRMR. The amendments intend to further strengthen, harmonise and specify the BRRD/SRMR resolution frameworks. The highlights of these amendments are as follows.

- The SRB has introduced its new policy concerning the MREL-level for banks in December 2017. The most interesting novelty is the shift from informative to specifically binding MREL targets for the majority of the largest and most complex SRB banks.
- The SRB will continue the implementation of its oversight function with regard to less significant banks in order to further harmonise resolution mechanisms across Member States.
- The introduction of the Total Loss Absorbing Capacity (**TLAC**) requirement for Global Systemically Important Institutions (**G-SIIs**) requires them to hold a minimum level of capital and other instruments that can bear losses in case of resolution of the G-SII. This requirement will be integrated in the existing MREL requirement.
- The ranking of debt instruments is currently determined at Member States' national level. A new EU Directive on creditor hierarchy was published in December 2017. The new Directive provides for an EU harmonised hierarchy for specifically issued 'non-preferred' unsecured debt instruments (senior debt). This facilitates banks to issue a new class of loss-absorbing debt instruments that can be used for a possible bail-in under the BRRD. The Directive entails that senior debts will rank between the fully subordinated capital instruments and the regular, unsecured claims. As a result, banks may issue this new type of debt instrument to meet the requirements for loss absorption under the BRRD. This new "non-preferred" debt instrument meets the BRRD's MREL and the TLAC. We expect that the final Dutch act implementing this Directive will enter into force no later than the required implementation date of 1 January 2019.

- A moratorium tool that can be applied by the supervisory authority in respect to a bank's payment obligations in the early intervention phase. These payment obligations can be suspended for a maximum of five days.

Capital Markets Union

In September 2017, the EC published new proposals for stronger and more integrated European financial supervision for the EU Capital Markets Union, building on its 2015 Capital Markets Union Action Plan.

By creating a Capital Markets Union, the EC is trying to stimulate the economic growth potential of Europe by strengthening and diversifying financing sources for European companies and long-term investment projects. The subsequent CMU proposals are numerous and cover a broad area.

For instance, the EU has already adopted a Regulation on securitisation in December 2017. In this manner, a safe and liquid market for securitisation is being promoted. Currently ongoing CMU proposals include:

- Proposed CRR measures intended to increase banks' lending capacity to provide loans to small and medium-sized enterprises (SMEs) and fund infrastructure projects. One of the proposed measures is a capital reduction for banks in respect to SME loans.
- Proposals to create a liquid market for non-performing loans that are held by banks.
- Intention to put forward a legislative proposal for an EU-framework on covered bonds to help banks finance their lending activity.
- Clearer rules on ownership of securities and claims to remove uncertainty about applicable law and to promote cross-border transactions.
- Proposals to expand the direct supervisory powers of the European Securities and Markets Authority (**ESMA**). Some of the powers the EC proposes to entrust to ESMA, and that are relevant to banks, relate to:
    - *Market abuse*: ESMA will have the right to act in specific cases, which have cross-border implications for the integrity of financial markets or financial stability in the EU. ESMA will also be able to require investigations.
    - *Product intervention powers*: These powers are set out in the directly applicable Markets in Financial Instruments.

Developments in the Netherlands

Over the past few years, the Dutch government has been very critical of the banking sector. As a result, it has introduced a number of rules that are stricter than the EU standard or which are in addition to these EU rules. For instance, in recent years, the Dutch Act on the Remuneration Policy of Financial Undertakings introduced a 20% bonus cap applicable to all employees of Dutch financial undertakings. This created a more stringent bonus cap than that imposed by the EU's CRD IV. Furthermore, the Dutch legislator has focused on the banking sector's integrity. It has, for instance, introduced a bankers' oath applicable to all bank staff. Such an oath has been linked to a code of conduct, with disciplinary rules applicable to all employees in the Dutch banking industry. If such employees violate their oath, they can be sanctioned by a disciplinary board.

It seems that the Dutch legislator has recently somewhat loosened its regulatory strictness, partly due to the new Dutch government coalition installed in the autumn of 2017. For instance, investigations by the regulator into taking protective measures for professional one-man businesses and SME companies have resulted in the conclusion that the banking

sector's self-regulatory measures may be sufficient. A recent example of such self-regulation is the Dutch banking sector's code of conduct for SME loans.

New financial markets rules

On an annual basis, the Dutch legislator proposed a set of new regulatory rules. The bill for the Dutch Financial Markets (Amendment) Act 2018 (*Wijzigingswet financiële markten 2018*) is still being processed by the Dutch Parliament, but is expected to take effect mid-2018. The corresponding Financial Markets (Amendment) Decree 2018 has been proposed for consultation and will also take effect mid-2018. With respect to banks, the proposed novelties include the following:

- A provider of mortgage loans is most likely not allowed to charge a fee which is higher than the financial disadvantage suffered by the provider resulting from a change to the risks to customers that may lead to payment arrears.
- The decision period for applications for banking licences may be extended to 26 weeks as opposed to the current term of 13 weeks.

In addition to the above typically Dutch rules, the Dutch legislator is still in the process of implementing the Second EU Payment Services Directive (**PSD2**). While it should have been implemented on 13 January 2018, in the Netherlands it will likely be implemented mid-2018. Under PSD2, banks must among other things open their payment account data to third parties payment services providers through open application programming interface (**APIs**), and securely authenticate all account access and payment authorisations.

Bank governance and internal controls

Dutch banks are subject to a large number of detailed requirements for governance and internal control. This section lists the key requirements. We note that a very important source of governance requirements for Dutch banks is the EBA's Guidelines on Internal Governance. The governance of a bank should be set on the basis of the principle of proportionality. Some governance provisions only apply to significant banks, given their size, internal organisation, scale and the complexity of their operations.

Suitability and integrity screening

All managing directors and supervisory board members of a bank are required to be assessed on suitability and integrity, and have to pass both. For banks, the screenings are conducted by DNB.

As of 1 April 2015, suitability and integrity screening is extended to staff members who are hierarchically positioned directly below the management board and who might influence the risk profile of the bank. This is called the 'second echelon' and usually includes senior management, such as heads of departments within the bank. The bank itself must determine which staff members fall into this category, and must have the relevant testing procedures in place.

Furthermore, parties seeking a declaration of no-objection for holding or acquiring a qualifying holding in a bank will also be screened for integrity. A participation in a bank can be described as a "qualifying holding" when it represents a direct or indirect stake of at least 10% or more of the shares and/or voting rights in the bank.

Dutch suitability testing especially is very thorough and is based on the supervisor's assessment of many (subjective) competences of a candidate. This has attracted a lot of criticism from the financial sector. The integrity and suitability screening processes have recently been examined by an independent commission. Further to the recommendations of

the commission, DNB has made several improvements in the screening process.

Supervisory board committees

A Dutch bank must have a supervisory board. The supervisory boards of banks are required to establish certain committees. The following committees may be required, depending on a bank's significance:

- a nominating committee;
- a risk committee;
- a remuneration committee; and
- an audit committee.

Internal control environment

Banks are required to ensure controlled and sound business operations. They must have an adequate organisational structure and clear reporting lines. According to the Wft, the internal organisation should include:

- a 'three lines of defence' model, which has:
  - (i) an organisational unit that monitors if the business line is in compliance with legal regulations and internal rules of the bank (compliance function, second line of defence); and
  - (ii) an organisational unit that assesses independently, at least annually, whether the organisational structure is effective (audit function, third line of defence);
- a risk management department, that should assess and manage risk – such as credit risks, market risks and operational risks;
- a customer due diligence process;
- a systematic integrity risk analysis;
- a procedure on the prevention of conflicts of interest;
- a procedure on the administration and reporting of incidents; and
- a recovery plan in case of financial difficulties.

Significant banks are also required to have an independent risk-management function that is subject to additional rules. This function should be entirely independent from other operational functions and have direct access to the management and supervisory board. It must also have the authority to report directly to the supervisory board if necessary.

DNB has named the prevention of financial-economic crime as one of its supervision priorities for 2018. This aspect of supervision is not part of the SSM, which leaves DNB as the primary integrity supervisor for both significant and insignificant banks.

Sound remuneration policies

The financial crisis has led to national and international scrutiny on whether incentives generated by bank executives' compensation programmes led to excessive risk-taking. This has led to remuneration rules for banks, set out in CRD IV (implemented into the Dutch Regulation on Sound Remuneration). These rules are applicable to senior management and other risk-taking staff, also called the 'identified staff". The CRD IV remuneration rules contain, for instance, requirements to defer part of a bonus payment over a period of three to five years, and to pay out a part of the bonus in share-like instruments.

As stated in Part 2 above, the EC has proposed proportionality thresholds for these requirements. The Dutch cabinet has already indicated that it considers these thresholds to be too high.

At a domestic level, the Remuneration Policy (Financial Enterprises) Act (**the Dutch Remuneration Act**) entered into force on 7 February 2015. The Dutch Remuneration Act contains stricter rules than the remuneration rules in CRD IV. The most important rule in the Dutch Remuneration Act is the bonus cap of 20% of the fixed remuneration component of the total remuneration. The Dutch Remuneration Act is applicable to all types of regulated financial undertakings and their subsidiaries, and the bonus cap applies to each person working under the responsibility of the bank. Certain higher caps may apply to Dutch banks (or group companies of those banks) that have staff mainly working outside of the Netherlands.

Outsourcing of functions

The outsourcing of certain functions by banks is permitted but is subject to strict conditions. One of these conditions is that an outsourcing agreement should be in place. The bank itself remains responsible for the performance of outsourced functions.

Bank capital requirements

Dutch banks are subject to a very detailed set of capital requirements regulations set out in CRD IV, CRR, and a large number of underlying binding technical standards and guidelines. The CRR contains the European implementation of the Basel III Framework. As an EU regulation, the CRR is directly applicable in the Netherlands. As an EU Directive, CRD IV has been implemented in the Netherlands via the Wft. CRR and CRD IV became fully effective on 1 January 2014.

Most importantly, the CRD IV/CRR framework contains the following capital requirements:

Minimum own funds: a bank must maintain a buffer consisting of own funds in relation to the risk-weighted exposure of its assets. The risk-weighted amount will be determined by considering a bank's risks relating to its assets, such as credit risk, operational risk, market risk, etc. The capital buffer must be at least 8% and may be much larger, with possible additional buffers such as a capital conservation buffer, a counter-cyclical buffer and a buffer for systemic importance. Besides, the bank's supervisor may impose higher 'Pillar II'-buffers. The buffers must be met with strong capital that meets a number of requirements. These capital forms consist of equity (Common Equity Tier 1), subordinated perpetual capital instruments that are contingently convertible into equity (Additional Tier 1) and subordinated loans with a maturity of more than five years (Tier 2).

Liquidity Coverage Ratio (LCR): a bank must have a liquidity buffer that consists of sufficient liquid assets to cover a bank's net out-flows in a stressed period of 30 days. The buffer must be higher than the out-flows. The relevant assets are weighted based on their liquidity. For instance, notes and coins are highly liquid, and thus have a 100% weighting. Liquidity outflows are also weighted. A retail deposit falling under the deposit guarantee scheme is not likely to be withdrawn, and will thus have an outflow weighting of 5%.

Net stable funding ratio (NSFR): a bank must currently only disclose its NSFR ratio, which reflects the bank's stable funding in relation to its long-term assets (such as mortgage loans). In accordance with the CRR 2 proposals set out in Part 2 above, the NSFR will be a mandatory requirement. As a result, a bank's stable funding must be more significant than its long-term assets.

Leverage ratio: The minimum own funds requirement is based on risk-weighting. After the financial crisis, an unweighted capital requirement was introduced: the leverage ratio. The leverage ratio is determined by dividing a bank's total Tier 1 capital by that bank's

unweighted exposure (consisting of the bank's assets plus off-balance items). Currently, a bank only has to disclose its leverage ratio. In accordance with the CRR 2 proposals set out in Part 2 above, a leverage ratio of at least 3% will become mandatory.

The competent supervisory authorities (ECB for significant Dutch banks and DNB for less significant Dutch banks) will annually assess the banks' capital position. The assessment is called a Supervisory Review and Examination Process (**SREP**). The ECB has determined a harmonised approach for all national supervisory authorities for conducting the SREP. Depending on the outcome of the SREP, the authorities may impose additional 'Pillar II' capital requirements on a bank.

We note that as of December 2017, some changes to the Basel III Framework (**Basel IV**) were published. Among other things, a capital floor (of 72.5%) based on the standardised approach is introduced. The Basel IV framework will only take effect once transposed into EU legislation, which will likely not occur before 2022.

Rules governing banks' relationships with their customers and other third parties

Duty of care

The Wft contains various provisions regarding the duty of care of banks in relation to its clients. Generally speaking, the degree of protection depends on the degree of professionality of the client. Professional clients need less protection than retail clients.

The duty of care also differs per financial service provided by banks. Consumer protection rules apply, for instance, to the provision of loans (consumer loans and mortgage loans) and regular banking activities, such as deposits. If banks provide these services to parties acting in the course of their business, the protection requirements do not apply. However, when it comes to investment services (under MiFID), professional investors are also protected.

The duty of care requirements largely consist of providing detailed information before entering into any agreement with the client and during the contractual relationship as well (when a transaction is executed, for example). Banks are also often required to verify whether the specific financial service is suitable for the client, based on their personal situation.

Integrity (anti-money laundering, etc.)

The European Anti-Money Laundering Directives are implemented in the Dutch Anti-Money Laundering and Anti-Terrorist Financing Act (*Wet ter voorkoming van witwassen en financieren van terrorisme* (**Wwft**)). The purpose of the Wwft is to combat money-laundering and the financing of terrorism.

The Fourth EU Anti-Money Laundering Directive is likely to be implemented into Dutch law in the spring of 2018. The new Directive is more prescriptive regarding the CDD-requirement and the ongoing monitoring. Furthermore, Member States are obliged to create central registers containing information on the beneficial ownership of clients of corporations.

The adequacy and effectiveness of the procedures and measures implemented by financial institutions to combat terrorist financing and money laundering will be assessed and enforced by DNB. Banks must conduct customer due diligence when taking on a new client. The intricacy of such due diligence must be risk-based (low, medium, high), depending on client type, jurisdiction type, service type, distribution channel type, and so on.

The monitoring of integrity risks in relation to, for instance, money laundering, continues to be a high DNB supervision priority. For example, DNB requires each bank to employ a systematic integrity risk analysis (**SIRA**). The SIRA is a cyclical process, which consists

of: i) the identification of risks; ii) the analysis of the likelihood of a specific risk occurring; iii) the determination of the most important risks; and iv) decisions on control measures to be taken. This process should be reviewed on a regular basis.

Deposit Guarantee Scheme and Investor Compensation Scheme

If a bank is bankrupt and thus no longer able to meet its obligations, its clients can make a claim on the basis of the Deposit Guarantee Scheme or the Investor Compensation Scheme. Both are based on EU Directives. Whether the claim will be sustained depends on whether the relevant conditions are met.

The Deposit Guarantee Scheme guarantees an amount of €100,000 per person per bank, regardless of the number of accounts held. The Deposit Guarantee Scheme is pre-funded. In other words, Dutch banks must contribute to a Dutch Deposit Guarantee Fund on the basis of the size of their activities. We note that, in view of the EU Banking Union, there are currently proposals for a European Deposit Insurance Scheme at an EU level. However, these plans are politically controversial, and it is not clear whether they will materialise.

Retail investors who are granted an investment service or ancillary service, or who put their financial instruments in the care of a bank, will be compensated if the bank is no longer able to meet its obligations under these investment services. The maximum amount compensated is €20,000 per person.

Alternative dispute resolution regarding financial services

In the Netherlands, all financial services providers must be affiliated with the Dutch Financial Services Complaints Tribunal (*Klachteninstituut Financiële Dienstverlening* (**KiFiD**)). KiFiD is a form of alternative dispute resolution. The aim of KiFiD is to provide an accessible facility for consumers who have a dispute with their financial services provider. KiFiD offers mediation facilities in the form of an ombudsman. KiFiD also offers an alternative judicial procedure. KiFiD is only able to give a binding judgment if both parties agree thereto.

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Bart is recommended in both *Chambers 2017 Europe* and *The Legal 500 2017 Europe* in the category Banking & Finance: Regulatory. *The Legal 500* states: "Bart Bierman combines 'accuracy' and 'good knowledge of the industry'."

Bart frequently publishes articles in law journals and in literature. He also regularly lectures on regulatory topics. He is a visiting lecturer at the Financial Law Master at Leiden University.

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