

FINNIUS

New approval requirement for bank financial holdings

15 March 2021

 3 MINUTES

Financial holdings of Dutch banks need to take action this spring. Before 28 June 2021 financial holdings require to have filed for an application for approval with the Dutch Central Bank (*De Nederlandsche Bank*, **DNB**) or the European Central Bank (**ECB**). Last week DNB published the procedure for an application on its website, see [link](#).

The requirement for financial holdings to obtain DNB or ECB approval is a result of the implementation of the Capital Requirements Directive V (**CRD**, see Article 21a) in the Dutch Financial Supervision Act (*Wet op het financieel toezicht*, **DFSA**) on 28 December 2020 (see Section 3:280a DFSA). The reason for the approval requirement is to ensure that the consolidated supervision requirements applicable to a bank are met throughout the group, and that financial holdings can be held directly responsible for compliance with these requirements.

Scope of financial holdings

The approval requirement applies to financial holdings and mixed financial holdings with a registered office in the Netherlands of a bank, which themselves are (i) not a subsidiary of a bank, investment firm or a financial holding with a registered office in the Netherlands or another Member State or (ii) subject to the prudential requirement of the Capital Requirements Regulation and the DFSA on a sub-consolidated basis.

Conditions

Approval is only granted if the following conditions are met (Section 3:280b DFSA and Section 4.01 Decree on prudential supervision financial groups *Wft* (*Besluit prudentieel toezicht financiële groepen Wft*, **Bptfg**)):

- the internal arrangements and distribution of tasks within the group of the financial holding are adequate for the purpose of complying with the requirements imposed by CRD and the Capital Requirements Regulation on a consolidated or sub-consolidated basis;
- the structural organisation of the group of the financial holding does not obstruct or otherwise prevent effective supervision. In view hereof the shareholder structure and the role of the financial holding are in particular relevant; and
- the financial holding has at least two natural persons determining the day-to-day policy of the financial holding, which are considered fit and proper. If a person has been tested previously, re-assessed is only needed if there is a reasonable cause, such as a new position or role within the financial holding or a new misdemeanour.

Also, in case the financial holding has a declaration of no-objection (**DNO**) from DNB or the ECB, a new assessment of (part of) the DNO may be required if DNB or the ECB is of the opinion that there is reasonable cause to do so. Reasonable cause may consist of a change in the financial position of the financial holding since the DNO.

Exemption

Financial holdings that are set up to only hold participations in subsidiaries may, subject to certain conditions, qualify for an exemption from the approval requirement (Section 3:280c DFSA and Section 4.02 Dptfg). The conditions include that the financial holding's main purpose is to hold subsidiaries, the financial holding has not been designated as a resolution entity and the financial holding itself does not take any administrative, operational or financial decisions that affect the group. Also, there should be no obstacles to effective supervision on a consolidated basis.

Process

For a financial holding of a Dutch less significant bank, DNB is authorised to provide the approval or exemption. The application form is available via DNB's website. In case of a significant bank, approval or exemption needs to be obtained from the ECB directly.

If an application has not been submitted by 28 June 2021, DNB or the ECB can take measures, such as issuing an instruction or imposing an order subject to a penalty or a fine.

Action required!

We urge banks and their financial holdings to start their application process for an authorisation or exemption as soon as possible. Although the forms themselves are not yet published, the conditions and details to be provided in that connection are clear. Depending on the type of financial holding and its activities the application process may be more or less burdensome. Financial holdings may re-use already submitted information (provided the information is still up-to-date). Also, as financial holdings already need to have a suitable and trustworthy management board, only relevant changes or incidents will have to be filed.

We would be happy to assist you with further advice or with the preparation and filing of the forms.

Specialists



Bart Bierman

Partner

T +31 (0)20 767 01 80

T +31 (0)20 767 01 85 (direct)

M +31 (0)6 31 67 03 93

bart.bierman@finnius.com



Marijke Kuilman

T +31 (0)20 767 01 80

M +31 (0)6 27 06 62 72

marijke.kuilman@finnius.com