

# 182. Key Dutch regulatory aspects of financial sector acquisitions

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In this article, we consider the most important regulatory aspects of an acquisition of a financial institution. We discuss certain key subjects to be considered in a due diligence (DD), which supervisors are involved and the declaration of no objection as referred to in Section 3:95 of the Financial Supervision Act (Wft). We conclude with a few practical tips.

## 1. Introduction

The acquisition of a company naturally involves many things.<sup>1</sup> Depending on the nature of the business of the company, various areas of law play an important role in the successful completion of the acquisition. An important factor is whether the parties involved are subject to some kind of supervision, which is usually the case in the financial sector.

The acquisition of a company licensed by De Nederlandse Bank N.V. (DNB) or the Netherlands Authority for the Financial Markets (AFM), such as a bank, insurer or investment firm, also referred to as a financial institution, triggers various regulatory aspects. Approval from the regulator must be sought prior to *closing* and the actual transfer of the shares. This also applies if the buyer is not a financial institution itself.

Below we consider the main regulatory aspects of a share acquisition or a takeover of a financial institution. We discuss a few key subjects to be considered in *due diligence*, which supervisors are involved, what approvals are required under the Financial Supervision Act (*Wet op het financieel toezicht*, Wft) and what the procedure generally looks like. We focus on the declaration of no-objection (*verklaring van geen bezwaar*) as referred to in Section 3:95 Wft.<sup>2</sup> We conclude with a few practical tips.

1 A previous version of this article was published in *Tijdschrift voor de Ondernemingsrechtpraktijk* (TOP 2022/325, number 5 – September 2022). The article has been translated and updated to include most recent developments and legislation.

2 For example, a bank's acquisition of a company or acquisition of assets may require a declaration of no-objection as referred to in Section 3:96 Wft. We do not discuss this declaration of no-objection herein. Also, we do not focus on the transfer or regulated activities to a third party and the obligation of such third party to apply for a (new) license.

## 2. What regulatory aspects might play a role in an acquisition?

### 2.1 Due diligence – key subjects

First, in the due diligence phase, it is crucial for the buyer to examine all relevant information about the company's or financial institution's licence and other communications with the regulator.<sup>3</sup> For example, the financial institution may have been sent a stern letter or even had a formal enforcement measure imposed (such as an instruction or a fine) by the regulator. This has implications for the institution; it may have to adjust its business operations or face a fine and the associated publication thereof. In the worst-case scenario, there is a risk that the financial institution will lose its licence to operate. The length and depth of the due diligence varies per institution and its regulatory history.

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Second, it is essential for the buyer to understand the financial institution's internal operations. To this end, the data room should contain policies such as a procedure manual, internal control policy, IT policy, outsourcing procedures, customer identification procedures, anti-money laundering procedures and (integrity) risk analyses. This is because the Wft prescribes in detail how a financial institution must be structured.<sup>4</sup> From this information, the buyer can therefore

3 On *due diligence*, see for example: M. Brink, *Due diligence. A consideration of due diligence under Dutch law* (diss. Maastricht), The Hague: Boom Juridische uitgevers 2009.

4 Section 3:10, Section 3:17, Section 4:11, Section 4:14 Wft jo. Section 10-26k Prudential Rules Wft Decree (Bpr).