

Act on the Supervision of Trust Offices *)

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

To all to whom these presents shall come, greetings! be it known:

Whereas We have considered that it is desirable that trust offices be placed under supervision with a view to promoting the integrity of the financial system;

Now therefore, by and with the advice of the Council of State, and in joint consultation with Parliament, We have found good to enact, as We hereby enact:

Chapter 1. Introductory provisions

Section 1

In this Act and the provisions based upon it, the following terms shall be defined as stated below:

- a. trust office: a legal entity, partnership or natural person providing, either by itself or together with other legal entities, partnerships or natural persons, one or more of the services referred to in (d) in a professional capacity or on a commercial basis on the instructions of another legal entity, partnership or natural person, not being part of the group to which the trust office belongs;
- b. object company: the legal entity or partnership to which the services referred to in paragraph (d)(1) and (2) are provided;
- c. ultimate beneficial owner: the natural person who has a qualifying holding in an object company or who is a beneficiary of at least ten percent of the capital of a foundation (*stichting*) or a trust as referred to in the Convention on the Law Applicable to Trusts and on their Recognition (Treaty Book (*Trb.*) 1985, 141);
- d. service:
 - 1° being a manager or partner of a legal entity or partnership;
 - 2° making an address or correspondence address as referred to in sections 9(1)(b) and 10(a) of the Trade Registry Decree (*Handelsregisterbesluit 1996*) available to a legal entity or partnership, if at least one of the ancillary activities listed below is provided for the benefit of that legal entity or partnership or for the benefit of another legal entity, partnership or natural person belonging to the same group:
 - i) providing advice or assistance in the area of private law;
 - ii) providing tax advice or preparing tax returns and related work;

- iii) performing work in connection with preparing, reviewing or auditing financial statements or keeping accounting records;
- iv) recruiting a manager for the legal entity or partnership;
- v) other ancillary activities designated by an Order in Council;
- 3° selling legal entities;
- 4° being a trustee within the meaning of the Convention on the Law Applicable to Trusts and on their Recognition (Treaty Book 1985, 141); or
- 5° other services designated by an Order in Council;
- e. branch office: one or more parts of a trust office, not having legal personality;
- f. group: an economic entity in which legal entities, partnerships and natural persons are organisationally associated;
- g. qualifying holding: a direct or indirect interest of at least ten percent of the issued share capital or a comparable interest, or the ability either directly or indirectly to exercise at least ten percent of the voting rights, or exercising comparable control;
- h. Our Minister: Our Minister of Finance.
- i. supervisory authority: De Nederlandsche Bank N.V.

Chapter 2. Licensing

Rubric 1 Prohibition provisions

Section 2

1. Working as a trust office from an establishment in the Netherlands without a licence from the supervisory authority is prohibited.
2. The prohibition in subsection (1) shall not apply to:
 - 1° De Nederlandsche Bank N.V.;
 - 2° a legal entity under public-law as referred to in section 1 of Book 2 of the Civil Code (*Burgerlijk wetboek*);
 - 3° a legal entity, partnership or natural person performing or having performed in a professional capacity or on a commercial basis engagements of a temporary nature which relate to management and organisational issues, with the associated responsibilities and authorities, insofar as they provide the services referred to in section 1(d)(1o).
3. Our Minister shall be entitled to grant an exemption from the prohibition contained in subsection (1) if this is justified by the conditions of a particular category of trust offices, provided that, in his opinion, such is not contrary to the interests which this Act seeks to protect. An exemption may be made subject to instructions and limitations.
4. The supervisory authority shall be entitled to grant, on application, a dispensation from the prohibition contained in subsection (1), if this is justified by the specific conditions of a trust office, provided that, in his opinion, such is not contrary to the interests which this Act seeks to protect. A dispensation may be made subject to instructions and limitations.
5. Subject to instructions to be laid down by the supervisory authority, a licence as referred to in subsection (1) may be granted to a group of trust offices. Unless otherwise stipulated in the

licence, the licence as well as the instructions and limitations attaching to it shall apply in equal measure to all trust offices belonging to the group.

Rubric 2 Licensing requirements

Section 3

1. An applicant for a licence shall provide the following information:
 - a. the identity and antecedents of the managers and supervisory directors of the trust office;
 - b. the identity and antecedents of those persons who determine or help to determine the policy of the trust office;
 - c. the identity and antecedents of those persons who have a qualifying holding in the trust office, and the size of the qualifying holding concerned;
 - d. the formal and actual control structure of the group to which the trust office belongs;
 - e. the name, address and registered office of the trust office and, if applicable, the names and addresses of its branch offices;
 - f. the envisaged management, including the measures aimed at promoting and ensuring the reputable conduct of business, and the envisaged administrative organisation and internal control of the trust office;
 - g. other information and records that the supervisory authority deems to be in the interest of assessing the application.
2. If the antecedents of the persons referred to in subsection (1)(a),(b) and (c) have been assessed earlier by one of the authorities which have the duty of implementing the Act on Money Transaction Offices (*Wet inzake de geldtransactiekantoren*), the Act on the Supervision of Collective Investment Schemes (*Wet toezicht beleggingsinstellingen*), the Act on the Supervision of the Securities Trade 1995 (*Wet toezicht effectenverkeer 1995*), the Act on the Supervision of the Credit System 1992 (*Wet toezicht kredietwezen 1992*), the Prepaid Funeral Services Insurance Supervision Act (*Wet toezicht natura-uitvaartverzekeringsbedrijf*) or the Act on the Supervision of the Insurance Industry 1993 (*Wet toezicht verzekeringsbedrijf 1993*), the application shall include information on the date of that assessment and the name of the authority which performed the assessment in addition to the information referred to in subsection (1).
3. A licence may be made subject to instructions and limitations.
4. The supervisory authority shall decide on the application within thirteen weeks of its receipt.

Section 4

The supervisory authority shall grant a licence unless:

- a. the supervisory authority is of the opinion, based on the intentions or antecedents of persons referred to in section 3(1)(a),(b) and (c), that the trustworthiness of any of those persons is not beyond doubt;
- b. the supervisory authority is of the opinion that the expertise of one or more of the persons referred to in section 3(1)(a) and (b) is inadequate to work in a professional capacity or on a commercial basis as a trust office;

- c. the supervisory authority is of the opinion that the group to which the trust office belongs has a formal or actual control structure which is so unclear that it forms or could form an obstacle to the proper exercise of the supervision of the trust office;
- d. the supervisory authority is of the opinion, given what the trust office has provided with the application pursuant to section 3(1)(f) and (g), that the trust office will not be in a position to meet the rules imposed pursuant to section 10.

Section 5

1. A trust office shall notify the supervisory authority in advance of a change in the information referred to in section 3(1)(a),(b) and (c), insofar as it concerns the identity of the persons listed there, or the information referred to in section 3(1)(d).
2. A change as referred to in subsection (1) shall not be implemented if the supervisory authority rejects the proposal within six weeks of receipt of the notification as referred to in subsection (1) or, if the supervisory authority has requested additional data or information, within six weeks of the receipt of that data or information.
3. If a change occurs in the antecedents, as referred to in section 3(1)(a),(b) and (c), or in the information, as referred to in section 3(1)(e) to (g) inclusive, the trust office shall notify the supervisory authority immediately in writing.

Rubric 3 Revoking the licence

Section 6

The supervisory authority shall be entitled to revoke a licence:

- a. at the request of the holder;
- b. if the holder is declared to be bankrupt or if a debt rescheduling arrangement pursuant to Part III of the Bankruptcy Act (*Faillissementswet*) has been declared to be applicable to it;
- c. in the case of winding up or, if the holder is a natural person, the death of the holder;
- d. if the holder is evidently no longer performing work as a trust office for a period of more than six months;
- e. if the holder fails to fulfil the rules laid down in or pursuant to this Act;
- f. if information becomes known to the supervisory authority that if it had been known at the time that the licence was granted would have meant that the licence would not have been granted;
- g. if following the enforcement of a writ of execution as referred to in section 8(9), the supervisory authority has not received the payment due pursuant to that section.

Rubric 4 The register

Section 7

1. The supervisory authority shall keep a register in which shall be entered the trust offices which may provide their services under a licence as referred to in section 2(1), and the trust offices which may provide their services by virtue of a dispensation as referred to in section 2(4).
2. The register shall contain the following information on a trust office:

- a. the name, address and registered office of the trust office and, if applicable, the names and addresses of its branch offices;
 - b. the date the trust office was entered in the register;
 - c. the registration number of the trust office at the Chamber of Commerce; and
 - d. the instructions and limitations attaching to the licence or the dispensation, unless the protection of personal privacy or legitimate business interests dictates otherwise.
3. The supervisory authority shall ensure that the entry of a trust office whose licence or dispensation has been revoked shall be cancelled.
 4. The supervisory authority shall permit inspection of the register by the public free of charge.

Rubric 5 Fees

Section 8

1. The applicant shall pay the supervisory authority a fee in respect of processing a licence application.
2. A registered trust office shall pay an annual fee to the supervisory authority to cover the costs relating to the supervision of registered trust offices.
3. The amount of the fees referred to in this section shall be set so that the total of the combined annual fees shall not exceed the costs that the supervisory authority incurs with respect to processing licence applications and the supervision that the supervisory authority exercises over registered trust offices.
4. The fees referred to in this section shall be set by Our Minister.
5. The fees payable pursuant to this section shall be paid within four weeks of the date of the letter by which the payment obligation is imposed.
6. In the event of default of payment, the amount payable shall be increased by statutory interest, calculated from the date of expiry of the period referred to in subsection (5).
7. If the amount payable is not paid within the specified period, the supervisory authority shall send a written demand stating that this amount plus interest and the costs of the demand must be paid within two weeks of the date of the demand. The demand shall include notification that insofar as the amount is not paid within the specified period, it shall be collected in accordance with subsection (8).
8. In the absence of payment by the due date, the supervisory authority shall be entitled to collect the amount plus the costs of the demand and of the collection by writ of execution.
9. The writ of execution shall be served by bailiff's notification at the expense of the trust office and shall be an enforceable order within the meaning of Book Two of the Code of Civil Procedure (*Wetboek van Burgerlijke Rechtsvordering*).
10. During a period of six weeks from the date of service, an objection may be lodged to the writ of execution by serving a writ of summons to the supervisory authority.
11. The objection shall not suspend enforcement unless, if requested, the administrative court decides otherwise.

Chapter 3. Supervision and information

Section 9

1. The supervisory authority shall be entitled to obtain or cause to be obtained all information that is reasonably required for the purposes of discharging the duties and exercising the powers that the supervisory authority has pursuant to this Act and for the purposes of checking compliance with the rules laid down in or pursuant to this Act from:
 - a. trust offices entered in the register;
 - b. trust offices to which an exemption as referred to in section 2(3) applies;
 - c. any person associated in a group with a trust office referred to in (a) or (b);
 - e. any person in respect of whom there are reasonable grounds for suspecting that he is acting contrary to the rules laid down in or pursuant to this Act.
2. Those from whom the information referred to in subsection (1) is requested shall provide it within a reasonable period to be stipulated by the supervisory authority.
3. Sections 5:12, 5:13, 5:15, 5:16, 5:17 and 5:20 of the General Administrative Law Act (*Algemene wet bestuursrecht*) shall apply *mutatis mutandis* to persons who are charged by the supervisory authority with obtaining information or with discharging other duties and exercising other powers that the supervisory authority has in accordance with the provisions laid down in or pursuant to this Act, provided that if an investigation is instituted pursuant to section 14(1), the person against whom that investigation is instituted and who is not subject to supervision pursuant to this Act is only required to provide business information and documents for inspection.

Section 10

1. For the purposes of business integrity, rules shall be imposed on trust offices by or pursuant to an Order in Council. These shall include rules regarding the administrative organisation, including the financial accounting system and internal control, such that:
 - a. the trust office knows the identity of the ultimate beneficial owner or has information showing that there is no ultimate beneficial owner;
 - b. the trust office has knowledge of the source and destination of the funds of the object company;
 - c. the trust office has knowledge of the relevant parts of the structure of the group to which the object company belongs;
 - d. the trust office has knowledge of the objective for which the structure referred to in (c) was set up;
 - e. the trust office knows the identity of the buyer and of the holders of a qualifying holding in the buyer if it provides a service as referred to in section 1(d)(3);
 - f. the trust office, in its capacity as trustee, knows the identity of the settlor of a trust within the meaning of the Convention on the Law Applicable to Trusts and on their Recognition (Treaty Book 1985, 141);
 - g. no service is performed by the trust office if the provisions of paragraph (a) or (e) are not met.

2. If requested, a trust office shall send a report on its management, administrative organisation and internal control to the supervisory authority within a reasonable period to be stipulated by the supervisory authority. The supervisory authority shall decide the manner in which the report is to be made and the period to which it is to relate.

Section 11

1. The supervisory authority shall be entitled, if the provisions of section 5(1) or (3) are not met or if a situation arises as referred to in section 6(e) to order a trust office or the competent bodies to follow a certain course of action with respect to specified matters. The trust office or the competent bodies to which the instruction is given shall follow that order within a period to be stipulated by the supervisory authority.
2. If the expertise and trustworthiness of the persons referred to in section 3(1)(a), (b) or (c), insofar as they determine or co-determine policy under a formal or actual control structure, are no longer beyond doubt, the supervisory authority shall be entitled to order that these persons shall no longer be allowed to determine or co-determine the trust office's policy.

Chapter 4. Provisions regarding the exchange of data or information

Section 12

1. Data and information provided or obtained with respect to individual legal entities, partnerships or natural persons by or pursuant to this Act and data and information obtained from an agency as referred to in section 13(1) shall not be published and are confidential.
2. Anyone who performs any duty by virtue of the implementation of this Act or of decrees or orders issued under this Act shall be prohibited from using or disclosing data or information furnished under this Act or obtained from an agency as referred to in section 13(1), or data or information received during the examination of business information and documents, except insofar as such use or disclosure is required for the performance of his duty or by this Act.
3. The provisions of subsections (1) and (2) shall not affect the applicability of the provisions of the Code of Criminal Procedure (*Wetboek van Strafvordering*) with regard to those persons to whom subsection (2) applies.

Section 13

1. Notwithstanding the provisions of section 12(1) and (2), the supervisory authority shall be entitled to provide data or information obtained in the course of discharging the duty assigned to it pursuant to this Act to Dutch or foreign governmental agencies or to Dutch or foreign agencies designated by their respective governments that are charged with the supervision of the financial markets or of legal entities, partnerships or natural persons that operate in those markets, unless:
 - a. the provision of the data or information cannot be made on the basis of reciprocity;
 - b. the information relates to a legal entity or partnership to which or a natural person to whom the trust office provides services, notwithstanding the applicability of the provisions of the Sanctions Act 1977 (*Sanctiewet1977*), the Disclosure of Unusual Transactions (Financial

- Services) Act (*Wet melding ongebruikelijke transacties*), Dutch tax laws, bilateral tax treaties and conventions on the exchange of data or information or on the implementation of binding decisions of international organisations regarding the supervision of the financial markets or of natural persons or legal entities that operate in those markets;
- c. the purpose for which the data or information is to be used has not been sufficiently defined;
 - d. the intended use of the data or information does not come within the scope of supervision of the financial markets or of natural persons, legal entities or partnerships that operate in those markets;
 - e. the provision of data or information would be contrary to Dutch law or public order;
 - f. the confidentiality of the data or information is not sufficiently guaranteed;
 - g. the provision of the data or information reasonably is or could be in conflict with the interests that this Act aims to protect; or
 - h. there are insufficient safeguards to ensure that the data or information will not be used for a purpose other than that for which it has been provided.
2. Insofar as the data or information as referred to in subsection (1) has been obtained from a foreign governmental agency or a foreign agency designated by its government that is charged with the supervision of the financial markets or of natural persons, legal entities or partnerships that operate in those markets, the supervisory authority shall not provide it to a Dutch or foreign agency as referred to in subsection (1) unless the foreign agency from which the data or information was obtained has given express permission for the provision of the data or information and in such a case has given permission for the use for a purpose other than that for which the data or information was provided.
 3. If a foreign agency as referred to in subsection (1) or (2) requests the supervisory authority for permission to use the data or information that has been provided pursuant to that subsection for a purpose other than that for which it has been provided, that request shall only be granted:
 - a. if the intended use is not contrary to subsection (1), or
 - b. if the foreign agency could obtain possession of that data or information from the Netherlands for that other purpose in accordance with the relevant procedures in a manner other than that provided for in this Act.
 4. If the request referred to in subsection (3) relates to a criminal investigation, it shall not be granted other than with the consent of Our Minister of Justice.

Section 14

1. Pursuant to conventions on the exchange of data or information or pursuant to binding decisions of international organisations regarding the supervision of the financial markets or of natural persons, legal entities and partnerships that operate in those markets, the supervisory authority shall be entitled, on behalf of an agency that operates in a State that is a party with the Netherlands to a convention or that is subject to the same binding decision of an international organisation as the Netherlands and that is charged in that State with implementing the statutory regulations regarding the supervision of the financial markets, to request information from or institute an investigation or cause an investigation to be instituted

with regard to any registered trust office that is subject to its supervision pursuant to this Act or with regard to any persons in respect of whom there are reasonable grounds for suspecting that they are in possession of data or information that may be relevant to the implementation of the statutory regulations referred to above.

2. Those persons from whom data or information as referred to in subsection (1) is requested shall provide this data or information within a period to be stipulated by the supervisory authority.

Section 15

1. The supervisory authority shall provide the data or information that it has obtained in the course of discharging the duty assigned to it pursuant to this Act and which relates to the trustworthiness of persons referred to in section 3(1)(a), (b) and (c) to the authorities which have the duty of supervising money transaction offices, collective investment schemes, securities brokers and asset managers, credit institutions, central credit institutions, financial institutions or insurance companies pursuant to the Act on Money Transaction Offices (*Wet inzake de geldtransactiekantoren*), the Act on the Supervision of Collective Investment Schemes (*Wet toezicht beleggingsinstellingen*), the Act on the Supervision of the Securities Trade 1995 (*Wet toezicht effectenverkeer 1995*), the Act on the Supervision of the Credit System 1992 (*Wet toezicht kredietwezen 1992*), the Prepaid Funeral Services Insurance Supervision Act (*Wet toezicht natura-uitvaartverzekeringsbedrijf*) or the Act on the Supervision of the Insurance Industry 1993 (*Wet toezicht verzekeringsbedrijf 1993*), insofar as in the opinion of the supervisory authority it is or could be relevant to supervision that is carried out by that other authority.
2. The provisions of subsection (1) shall not apply if the data or information has been obtained from a foreign governmental agency or a foreign agency designated by its government as referred to in section 13, unless the foreign agency from which the data or information was obtained has given express permission for the provision of the data or information and in such a case has given permission for the use for a purpose other than that for which the data or information was provided.

Section 16

1. The supervisory authority shall be entitled to permit an officer of a foreign agency as referred to in section 14(1) to participate in the implementation of a request as referred to in that subsection.
2. Those against whom an investigation has been instituted as referred to in section 14(1) shall provide all co-operation to the officer referred to in subsection (1) necessary for the sound performance of that investigation, provided that those against whom that investigation is instituted and who are not subject to supervision pursuant to this Act, are only required to provide business information and documents for inspection.
3. The officer referred to in subsection (1) shall follow the instructions of the person charged with implementing the request.

Section 17

1. Written agreements between the supervisory authority and other supervisory authorities which serve to produce the exchange of information referred to in section 13, shall be submitted for prior consent to Our Minister. Our Minister shall be entitled to withhold his consent only if in his opinion those agreements would be incompatible with the interests that are served by conventions or binding decisions as referred to in section 14(1) or with the public interest.
2. In the written agreements as referred to in subsection (1) that are concluded with the supervisory authorities of a State with which the Kingdom of the Netherlands has not signed a convention as referred to in that subsection, it shall be stipulated that, if such a convention with that State would subsequently be established, those agreements shall once again be submitted for consent to Our Minister. In that case Our Minister shall check those agreements for compliance with the convention concerned.
3. The consent as referred to in subsection (1) or (2) shall be deemed to be given if Our Minister has not decided within four weeks following the receipt of the proposal concerned or, if he has requested additional information, within four weeks following the receipt of that request.
4. Written agreements as referred to in subsection (1) to which Our Minister has given his consent shall be published by the supervisory authority in the Government Gazette (*Staatscourant*).

Chapter 5. Recommendations and reporting

Section 18

1. The recommendations of the supervisory authority may be obtained for the purposes of granting, amending or withdrawing an exemption as referred to in section 2(3), for determining the amounts to be set as referred to in section 8(4) and for laying down the rules as referred to in sections 20(3) and 21(3). The supervisory authority shall be obliged to make these recommendations.
2. Once a year, by the first day of May, the supervisory authority shall report to Our Minister on the discharge and the exercise of its duties and powers respectively during the previous calendar year. This report shall be published by the supervisory authority, provided that data relating to an individual trust office may not be published without the written consent of that trust office.

Chapter 6. Appeals

Section 19

Notwithstanding the provisions of section 8:7 of the General Administrative Law Act (*Algemene wet bestuursrecht*), the court at Rotterdam shall be competent to hear appeals against decisions pursuant to this Act.

Chapter 7. Cease and desist orders and administrative fines

Section 20

1. The supervisory authority shall be entitled to impose a cease and desist order under penalty in respect of a breach of the provisions laid down in or pursuant to sections 2(1), (3) to (5) inclusive, 3(3), 5, 9(2) and (3), insofar as it concerns the provisions of section 5:20 of the General Administrative Law Act and the provisions on the furnishing of business information and documents for inspection, 10, 11, 14(2) and 16(2).
2. Sections 5:32(2) to (5) inclusive and 5:33 to 5:35 inclusive of the General Administrative Law Act (*Algemene wet bestuursrecht*) shall apply mutatis mutandis.
3. Our Minister shall be entitled to lay down rules regarding the exercise of the power referred to in subsection (1).

Section 21

1. The supervisory authority shall be entitled to impose an administrative fine in respect of a breach of the provisions laid down in or pursuant to sections 2(1), (3) to (5) inclusive, 3(3), 5, 9(2) and (3), insofar as it concerns the provisions of section 5:20 of the General Administrative Law Act (*Algemene wet bestuursrecht*) and the provisions on the furnishing of business information and documents for inspection, 10, 11, 14(2) and 16(2).
2. The fine shall be due to the supervisory authority.
3. Our Minister shall be entitled to lay down rules regarding the exercise of the power referred to in subsection (1).

Section 22

1. The amount of the fine shall be determined in the manner set out in the Annex to this Act, provided that the fine for each individual breach shall not exceed €900,000.
2. The Annex sets out the fine to be imposed in respect of each breach defined therein.
3. The Annex may be amended by an Order in Council.
4. The supervisory authority shall be entitled to set a fine at a level lower than that laid down in the Annex if the amount of the fine is disproportionately high in a particular case, on the grounds of special circumstances.

Section 23

Those with regard to whom an act is performed by the supervisory authority from which they can reasonably deduce that a fine will be imposed on them on account of a breach shall not be obliged to make any statement regarding the matter. They shall be notified of this before an oral request for information is made to them.

Section 24

1. If the supervisory authority intends to impose a fine, it shall notify the party involved stating the grounds on which the intention is based.

2. Notwithstanding the provisions of Division 4.1.2 of the General Administrative Law Act (*Algemene wet bestuursrecht*), the supervisory authority shall give the party involved the opportunity to express its views either in writing or orally, before the fine is imposed, unless the breach is one designated in the Annex referred to in section 22.

Section 25

1. The supervisory authority shall impose the fine by order.
2. The order must state in any event:
 - a. the offence for which the fine is being imposed and the provision that has been breached;
 - b. the amount of the fine and the information used to determine this amount; and
 - c. the period referred to in section 27(1) within which the fine must be paid.

Section 26

1. The effect of an order imposing a fine shall be suspended until the period for lodging an appeal has expired or, if an appeal has been lodged, until a decision has been given on the appeal.
2. Notwithstanding the provisions of subsection (1), the effect of the order imposing a fine for a breach that has been designated pursuant to section 24(2) shall be suspended until the period for lodging an objection has expired or, if an objection has been lodged, until a decision has been given on the objection.

Section 27

1. The fine shall be paid within six weeks of the entry into force of the order imposing it.
2. In the event of default of payment, the fine shall be increased by statutory interest, calculated from the date on which a period of six weeks has expired since the announcement of the order, unless the breach is a breach designated pursuant to section 24(2).
3. If the fine is not paid by the due date, the supervisory authority shall send a written demand stating that the fine plus interest and the costs of the demand must be paid within two weeks. The demand shall include notification that insofar as the fine is not paid within the specified period, it shall be collected in accordance with subsection (4).
4. In the absence of payment by the due date, the supervisory authority shall be entitled to collect the fine, plus the costs of the demand and of collection by writ of execution.
5. The writ of execution shall be served by bailiff's notification at the expense of the offender and shall be an enforceable order within the meaning of Book Two of the Code of Civil Procedure (*Wetboek van Burgerlijke Rechtsvordering*).
6. During a period of six weeks from the date of service, an objection may be lodged to the writ of execution by serving a writ of summons on the supervisory authority.
7. An objection shall not suspend enforcement, unless, if requested, the administrative court decides otherwise.
8. An objection may not be founded on the assertion that the fine has been set wrongfully or at too high a level.

Section 28

1. The power to impose a fine shall lapse if criminal proceedings have been instituted regarding the breach and the hearing has begun, or if the right to criminal proceedings has lapsed pursuant to section 74 of the Criminal Code (*Wetboek van strafrecht*).
2. The right to criminal proceedings in respect of a breach as referred to in section 21 shall lapse if the supervisory authority has already imposed a fine in respect of that breach.

Section 29

1. The power to impose a fine shall lapse three years after the date on which the breach was committed.
2. The period referred to in subsection (1) shall be interrupted by notification of the order imposing the fine.

Section 30

The activities in respect of the imposition of a cease and desist order or a fine shall be carried out by persons who have not been involved in establishing that a breach has occurred or in the preceding investigation.

Chapter 8. Publication of offences

Section 31

In order to promote compliance with this Act and notwithstanding the provisions of section 12, the supervisory authority shall be entitled to publish:

- a. its refusal to grant a licence or a dispensation, when such rejection is no longer subject to appeal and the applicant is acting as if he had been granted the licence or dispensation;
- b. the fact that a legal entity or partnership to which or a natural person to whom, in its opinion, the prohibition as referred to in section 2(1) applies does not hold a licence;
- c. the fact that a legal entity, partnership or natural person holding a licence is not complying with the instructions or limitations attaching to that licence;
- d. the fact that a legal entity, partnership or natural person to which an exemption as referred to in section 2(3) or a dispensation as referred to in section 2(4) applies is not complying with the instructions or limitations attaching to that exemption or dispensation;
- e. the fact that a trust office has not complied with an order pursuant to section 11.

Section 32

Those with regard to whom an act is performed by the supervisory authority from which they can reasonably deduce that the supervisory authority will publish their action or omission pursuant to section 31 shall not be obliged to make any statement regarding the matter. They shall be notified of this before an oral request for information is made to them.

Section 33

1. If the supervisory authority intends to publish a fact pursuant to section 31, it shall notify the party involved stating the grounds on which the intention is based.
2. Supplementary to section 4:8 of the General Administrative Law Act (*Algemene wet bestuursrecht*), the supervisory authority shall not be bound to give the party involved the opportunity to express its views if the address of the party involved is not known and it is also not possible to obtain the address using reasonable endeavours.

Section 34

The order to publish a fact pursuant to section 31 must state in any event:

- a. the fact that is to be published;
- b. the way in which the fact is to be published; and
- c. the period after which the fact will be published.

Section 35

Unless deferment is not conducive to compliance with this Act, the effect of the order to publish a fact pursuant to section 31 shall be suspended until the period for lodging an appeal has expired or, if an appeal has been lodged, until a decision has been given on the appeal.

Section 36

Notwithstanding the provisions of section 3:40 of the General Administrative Law Act (*Algemene wet bestuursrecht*), the order to publish a fact pursuant to section 31 shall come into effect on the day on which the fact is published, and the effect shall not be suspended for the period for lodging an appeal or, if an appeal has been lodged, during the appeal if the address of the party involved is not known and it is also not possible to obtain the address using reasonable endeavours.

Section 37

1. The power to publish a fact pursuant to section 31 shall lapse if criminal proceedings have been brought regarding the fact and the hearing has begun, or if the right to criminal proceedings has lapsed pursuant to section 74 of the Criminal Code (*Wetboek van Strafrecht*).
2. The right to criminal proceedings in respect of an offence as referred to in section 31 shall lapse if the supervisory authority has already published the fact.

Section 38

1. The power to publish a fact pursuant to section 31 shall lapse three years after the date on which the offence was committed.
2. The period referred to in subsection (1) shall be interrupted by notification of the order publishing the fact.

Section 39

The activities in respect of the publication of a fact pursuant to section 31 shall be carried out by

persons who have not been involved in establishing the fact or in the preceding investigation.

Chapter 9. Amendment of other Acts

Section 40

A paragraph shall be added to the Annex to the Act on Administrative Jurisdictions regarding Administrative Organisation (*Wet bestuursrechtspraak bedrijfsorganisatie*) reading:

16. the Act on the Supervision of Trust Offices (*Wet toezicht trustkantoren*).

Section 41

The following shall be inserted in section 27(b)(4) of the Act on the Supervision of Collective Investment Schemes (*Wet toezicht beleggingsinstellingen*) after “Act on Money Transaction Offices (*Wet inzake de geldtransactiekantoren*)”: or the Act on the Supervision of Trust Offices (*Wet toezicht trustkantoren*).

Section 42

The following shall be inserted in section 34(4) of the Act on the Supervision of the Securities Trade 1995 (*Wet toezicht effectenverkeer 1995*) after “Act on Money Transaction Offices (*Wet inzake de geldtransactiekantoren*)”: or the Act on the Supervision of Trust Offices (*Wet toezicht trustkantoren*).

Section 43

The following shall be inserted in section 68(4) of the Act on the Supervision of the Credit System 1992 (*Wet toezicht kredietwezen 1992*) after “Act on Money Transaction Offices (*Wet inzake de geldtransactiekantoren*)”: or the Act on the Supervision of Trust Offices (*Wet toezicht trustkantoren*).

Section 44

The following shall be inserted in section 6(4) of the Prepaid Funeral Services Insurance Supervision Act (*Wet toezicht natura-uitvaartverzekeringsbedrijf*) after “Act on Money Transaction Offices (*Wet inzake de geldtransactiekantoren*)”: or the Act on the Supervision of Trust Offices (*Wet toezicht trustkantoren*).

Section 45

The following shall be inserted in section 11(4) of the Act on the Supervision of the Insurance Industry 1993 (*Wet toezicht verzekeringsbedrijf 1993*) after “Act on Money Transaction Offices (*Wet inzake de geldtransactiekantoren*)”: or the Act on the Supervision of Trust Offices (*Wet toezicht trustkantoren*).

Section 46

The following shall be inserted in section 16(1) of the Act on Money Transaction Offices (*Wet inzake de geldtransactiekantoren*) after “Act on the Supervision of the Securities Trade 1995 (*Wet*

toezicht effectenverkeer 1995)” with the substitution of “or” by a comma: or the Act on the Supervision of Trust Offices (*Wet toezicht trustkantoren*). In addition, the following shall be inserted in section 16(1) of the Act on Money Transaction Offices (*Wet inzake de geldtransactiekantoren*) after “securities brokers and asset managers” with the substitution of “or” before “securities brokers and asset managers”: or trust offices.

Section 47

A paragraph shall be added to section 10(2) of the Sanctions Act 1997 (*Sanctiewet 1997*) with the substitution of the full stop for a semi-colon at the end of paragraph h, reading:

i. trust offices registered pursuant to section 7(1) of the Act on the Supervision of Trust Offices (*Wet toezicht trustkantoren*).

Section 48

The following shall be added in alphabetical order in section 1(2⁰) of the Economic Offences Act (*Wet op de economische delicten*): the Act on the Supervision of Trust Offices (*Wet toezicht trustkantoren*), sections 2(1), (3), (4) and (5), 3(3), 5(1), (2) and (3), 9(2) and (3) insofar as the provisions of section 5:20 of the General Administrative Law Act (*Algemene wet bestuursrecht*) and the provisions on the furnishing of business information and documents for inspection, 10, 11, 14(2) and 16(2) are concerned.

Section 49

Section 1(a)(1^o) of the Identification (Financial Services) Act (*Wet identificatie bij dienstverlening*) shall read as follows:

1^o. a credit institution as referred to in section 1, subsection 1(a)(1^o) of the Act on the Supervision of the Credit System 1992 (*Wet toezicht kredietwezen 1992*) which has been registered pursuant to section 52, subsection 2(a) to (d) inclusive of that Act, or a credit institution as referred to in section 1, subsection 1(a)(2^o) of the Act on the Supervision of the Credit System 1992 (*Wet toezicht kredietwezen 1992*).

Chapter 10. Transitional and final provisions

Section 50

1. A legal entity, partnership or natural person that at the time this Act enters into force is working in or from the Netherlands as a trust office shall be presumed not to be acting in contravention of the prohibition referred to in section 2(1).
2. Within eight weeks of the date when this Act enters into force, a trust office as referred to in subsection (1) shall report in writing to the supervisory authority and, within a period to be stipulated by the supervisory authority, provide the data and information which the supervisory authority deems necessary to assess whether the trust office meets the conditions laid down in or pursuant to this Act. Such report shall be regarded as an application for a licence as referred to in section 2(1).

3. The supervisory authority shall decide upon the application for a licence within one year following the receipt of the data and information referred to in the first sentence of subsection (2) or, if the supervisory authority has requested additional data or information, within one year following the receipt of that additional data and information.
4. Notwithstanding the provisions of section 4:5(4) of the General Administrative Law Act (*Algemene wet bestuursrecht*), the decision not to process an application for a licence, shall be notified to the trust office within eight weeks following the receipt of the data and information referred to in the first sentence of subsection (2) or after the stipulated period has expired without reaction.
5. If the trust office fails to comply or does not comply on time with the provisions of subsection (2), subsection (1) shall no longer apply.
6. If, after taking cognisance of the data and information pursuant to the first sentence of subsection (2), the supervisory authority is of the opinion that the trust office does not comply with the provisions laid down in or pursuant to this Act, subsection (1) shall no longer apply.

Section 51

This Act shall enter into force on a date to be determined by Royal Decree.

Section 52

This Act may be cited as the Act on the Supervision of Trust Offices (*Wet toezicht trustkantoren*).

Direct and ordain that these presents shall be published in the Bulletin of Acts, Orders and Decrees (*Staatsblad*) and that all ministerial departments, authorities, boards and public servants whom this concerns shall enforce strict implementation.

*) Unofficial translation. Dutch text is binding.

THE MINISTER OF FINANCE,

Annex as referred to in section 22 of the Act on the Supervision of Trust Offices

Section 1

For the breaches specified in tables 1 and 2, committed after the date of entry into force of this present Act, the rates have been fixed as follows:

Rate number:	Amount (fixed rate):
1.	€ 453
2	€ 907
3.	€ 5,445
4.	€ 21,781
5.	€ 87,125

Section 2

1. If a fine is imposed for the breach of a provision as referred to in table 1¹, the amount of this fine shall be determined on the basis of the following classification by revenues, with the corresponding factors.²

Classification

Category I: trust offices with revenues of less than € 45,400; factor: 0.5;

Category II: trust offices with revenues of at least € 45,400 but less than € 90.800; factor: 1;

Category III: trust offices with revenues of at least € 90,800 but less than € 226,900; factor: 2;

Category IV: trust offices with revenues of at least € 226,900 but less than € 453,800; factor: 3;

Category V: trust offices with revenues of at least € 453,800; factor: 4.

2. The fine shall be determined by multiplying the amount, referred to in section 1, with the factor corresponding to the category classified by revenues, referred to in subsection (1).

3. If the supervisory authority has not been furnished with the information on revenues, the supervisory authority shall be entitled to request the party on whom the fine is to be imposed to provide such information within a period to be stipulated by the supervisory authority. If the party involved fails to comply with this request within the stipulated period, Category V shall apply when determining the fine.

Section 3

If a breach is concerned that has been assigned rate number 1 or 2, the party involved need not be given the opportunity, pursuant to section 24(2), to express its views before the fine is imposed.

¹ Table 1 lists those provisions that refer to trust offices.

² Table 2 lists those provisions that refer, in principle, to everyone.

Table 1

Breach of provisions laid down in or pursuant to section:	Rate number:
3(3)	3
5	2
9(2)	3
9(3) ³	3
10	3
11	3
14(2)	3
16(2)	3

Table 2

Breach of provisions laid down in or pursuant to section:	Rate number:
2(1)	5
2(3)	3
2(4)	3
2(5)	3
9(2)	3
9(3) ⁴	3
11	3
14(2)	3
16(2)	3

³ Insofar as it concerns the provisions of section 5:20 of the General Administrative Law Act and the provisions on the furnishing of business information and documents for inspection.

⁴ See footnote 3.

Act on the Supervision of Trust Offices

EXPLANATORY MEMORANDUM *)

GENERAL

1. Introduction

1.1 Trust industry

1. Many international group structures include one or more Dutch legal entities or partnerships. The main reasons for this are the internationally competitive conditions for business development in the area of corporate law and the tax system as well as the well-developed professional financial services industry. Trust offices are involved in setting up and maintaining such structures. On behalf of other enterprises, trust offices conduct the management of legal entities and partnerships, which in this bill are referred to as object companies. Management usually involves the trust office acting as manager of the object company and providing a correspondence address and administrative support. It is often more efficient for multinational businesses to sub-contract the management of object companies to specialised trust offices rather than to employ their own staff in the Netherlands for that purpose. This management involves varying amounts of economic activity. The work is often limited to support activities for channelling capital and corporate income for a multinational enterprise (especially financing, royalty and holding companies). In these cases, the managed object companies are also known as conduit companies. There are estimated to be more than 150 trust offices in the Netherlands. These include a number of trust subsidiaries of banks but the majority of trust offices are not related to banks. Little is known about the latter group, in particular, as they are not regulated. The volume of funds channelled through object companies managed by trust offices is estimated at over €1,000 billion per year.⁵ For the Netherlands, which has a relatively large trust industry, the memorandum entitled “The Integrity of the Financial Sector and the Fight Against Terrorism”⁶ (hereafter: the memorandum) announced a law placing trust offices under supervision in order to have a better view of the industry and to limit the integrity risks recognised internationally and nationally.

1.2 Positioning in government policy

International

Alongside the positive aspects of these activities for trust offices and other financial service providers, certain conduit structures also make the Netherlands vulnerable. In the discussion on harmful tax competition in the European Union and the Organisation for Economic Co-operation and Development (hereafter: the OECD), the Netherlands has been held to account for giving

⁵ The Nederlandsche Bank has made this estimate based on information on the Dutch balance of payments.

⁶ Parliamentary Papers II 2001/02, 28 106, No. 2.

advance assurance (rulings) on the tax treatment of conduit structures. Partly in reaction to this, the Netherlands has tightened its policy on tax rulings.⁷

It is also conceivable that multi-tiered international group structures could be misused by internationally operating money launderers. In such cases, the financial flows have a more respectable source and destination on paper than, say, if financial flows go directly to a tax haven where banking secrecy prevails. The inter-governmental Financial Action Task Force on Money Laundering (hereafter: the FATF) which makes recommendations on combating money laundering and the financing of terrorist crimes states⁸ that multi-tiered international group structures whose ultimate user (the ultimate beneficial owner) can remain anonymous form a threat to the integrity of the financial system. In the main, these seem to be structures which terminate in a jurisdiction where information on the ultimate beneficial owner is completely unavailable or cannot be exchanged with foreign governments. The OECD also describes these risks in its report⁹ on the misuse of legal entities and puts forward proposals to limit them. The ministers of the OECD countries stated at their annual conference¹⁰ that this report will assist member states in their efforts against money laundering and corruption. The FATF emphasises the importance of financial service providers (trust and company service providers) who co-operate in setting up and maintaining such structures knowing the identity of the ultimate beneficial owner.

National

The trust industry in the Netherlands also recognises the risk of misuse of multi-tiered international group structures, for example, for money laundering. The professional association of certain of the large trust offices¹¹ has, therefore, been working for some time with a code of conduct and the professional association of the small and medium-sized trust offices¹² intends to develop one. A requirement of the code of conduct is that the ultimate beneficial owner must be known. As much information must already be available at trust offices under the codes of conduct, the additional administrative burden of this bill is limited. There have been preliminary consultations with the Netherlands Bankers' Association, the VIMS and the DFA. They support the introduction of a statutory regime placing all trust offices operating in the Netherlands under supervision of integrity, as this will make a significant contribution towards a level playing field and to the quality of the trust industry in the Netherlands.

The reasons for converting partial self-regulation into supervision are in line with the wishes of the industry. The first reason is that not all trust offices are members of the associations and so the same code of conduct does not apply throughout. Secondly, the regulations can be more easily

⁷ Amended ruling policy as at 1 April 2001, IFZ (International Tax Policy and Legislation Directorate) 2001/292M, 293M and 294M.

⁸ Review of the FATF Forty Recommendations Consultation Paper, 30 May 2002; "Trust and Company Service Providers" section, pp 92 et. seq.

⁹ OECD report "Behind the Corporate Veil: Using Corporate Entities for Illicit Purposes", May 2001; pp. 77 et. seq.

¹⁰ May 2001.

¹¹ Vereniging International Management Services (VIMS).

¹² Dutch Fiduciary Association (DFA).

enforced by an independent supervisory authority. An analysis of crimes¹³, articles in the media and advertisements on the Internet (in which traders in companies advertise doing business anonymously) suggest that the risks identified internationally also exist in the Netherlands.

In the absence of European rules in this respect, the Netherlands has a particular interest in seeing the supervision of trust offices introduced as it has a sizeable trust industry whilst trust services are often closely intertwined with other financial services. So it is of great importance, to protect the good reputation of the national financial industry, that adequate control is exercised on identified integrity risks. Therefore, this bill introduces a licensing system, with supervision aimed at reputable conduct of business. The new legislation will only have limited effects on *bona fide* trust offices as these already comply with the industry's self-imposed code of conduct, with the understanding that the effectiveness of integrity supervision must be enhanced with a view to non-*bona fide* companies. The framing of the legislation took account of the current state of the discussions in the OECD and the FATF on combating money laundering and financing of terrorist crimes.¹⁴

The incorporation of the European directive on preventing the use of the financial system for money laundering¹⁵ in the Identification (Financial Services) Act¹⁶ and the Disclosure of Unusual Transactions (Financial Services) Act¹⁷ is also of relevance to trust offices. These Acts apply also to certain services which are offered by trust offices. When this legislation enters into force, trust services and trust offices as referred to in this bill will explicitly be added to the Decree on the Identification (Financial Services) Act and the Disclosure of Unusual Transactions (Financial Services) Act. At the same time, the Police Records Decree will be amended so that the integrity¹⁸ of the people who control a trust office can be tested.

2. Aims

2.1 General

The aim of the bill is to promote the integrity of the financial system by regulating the trust industry. As a significant part of the existing code of conduct (including customer-due-diligence) will be put on a statutory basis and thus apply generally, the bill contributes to combating the laundering of the proceeds of criminal conduct (including corruption and tax fraud) through legal entities and partnerships established in the Netherlands. This is of great importance for the protection of the good reputation of the national financial sector.

¹³ Algemene criminaliteitsbeeldanalyse Oost-Europa 2000-2001; Kernteam Noord- en Oost Nederland (A general analysis of Eastern European crime 2000-2001).

¹⁴ For information: international developments in this area will be followed both during and after the legislative process.

¹⁵ Directive 2001/97/EC of the European Parliament and of the Council of 4 December 2001 amending Council Directive 91/308/EEC on the prevention of the use of the financial system for the purpose of money laundering.

¹⁶ Wet identificatie bij dienstverlening, 13 December 2001, Bulletin of Acts, Orders and Decrees (*Staatsblad*) No. 665.

¹⁷ Wet melding ongebruikelijke transacties, 16 December 1993, Bulletin of Acts, Orders and Decrees (*Staatsblad*) No. 705.

¹⁸ Policy Rule on Integrity Testing, Government Gazette (*Staatscourant*), 19 April 2000, No. 78.

2.2 Considerations

The OECD report lists a number of options to remove anonymity from those using a structure of legal entities. In the first option, the identity of the ultimate beneficial owner (information on ultimate beneficial ownership and control) must be disclosed to the authorities in advance. In the second option, the information must be available to the authorities at the service provider; the service provider acts as a gatekeeper. The third option relies on the authorities' investigative capabilities. Service providers must report unusual transactions and managers must meet certain integrity requirements. Supervision must be considered if the gatekeeper approach is adopted. The report does not express a preference for any particular option or combination of options. The most appropriate solution depends on the local situation and can, therefore, differ from country to country.

The above options were considered in the Dutch situation. Important preconditions were effectiveness and the least additional administrative burden. The first option in the OECD report is thought mainly suitable for tax havens without a further relevant real economy. In countries with an extensive commercial sector, such as the Netherlands, the mandatory advance notification of all changes in the control of legal entities would be unnecessarily burdensome from an administrative point of view. On the other hand, relying merely on investigative capabilities would be inadequate. In a situation where there is only a conduit company in the Netherlands, much of the relevant information will be abroad. It would be difficult and time-consuming for the Dutch authorities to compile this information. The second option, in which the information is held by the gatekeeper, is therefore the most effective for the Netherlands with its relatively large trust industry. Many trust offices will already have this information available under their own codes of conduct and so under this bill trust offices act as gatekeepers when they perform certain services.

The services to be placed under supervision by the bill are in line with those identified by the FATF insofar as relevant to the Dutch situation. The main category for the Netherlands is services needed for maintaining and managing an object company. This involves being the manager of an object company or providing it with a (mail) address and administrative support services. The second category is services for setting up or making changes to the group structure. Incorporating a company in the Netherlands requires a certificate of no objection from the Minister of Justice (including a review of antecedents). This requirement can be avoided, however, for example by using existing Dutch legal entities or certain legal entities set up under foreign law. To get a better picture of the latter situation, the bill classifies the sale of legal entities as a qualifying service. Finally, Dutch trust offices can also play a role in an Anglo-Saxon legal concept: the trust. The international documents from the OECD and the FATF referred to above show that trusts are particularly vulnerable to money laundering and financing of terrorist crimes, as a person using a trust can remain anonymous. For this reason, being a trustee is also included as a qualifying service, although in actual practice this legal concept seems to be little used in the Netherlands.

3. Contents of the bill

3.1 General

The gatekeeper approach involves the supervision focusing initially on the contact in the Netherlands, the trust office. The services defined in the bill may only be performed under a licence issued by the supervisory authority. A number of conditions are placed on this licence. For instance, the integrity of the people having a certain interest in or control over the trust office (such as managers and other persons who determine policy) will be tested and their antecedents investigated.

3.2 Administrative organisation

The administrative organisation of the trust office must be structured in such a way that it meets the requirements imposed by this bill. For that purpose, the trust office will prepare a file for every client (the so-termed client acceptance file), based on which the supervisory authority can assess whether the requirements imposed by this bill have been met. One of the main requirements is that the trust office has up-to-date information on the ultimate beneficial owner who is using the tiered group structure (see also the notes to section 1(c)) and if the trust office is selling a legal entity, it must know the buyer. The records must also show that the trust office has knowledge of (a) the source and destination of funds of the object company, (b) the relevant parts of the group structure and (c) the objective for which the structure was set up. If the trust office itself acts as a trustee, it must know who the settlor of the trust is.

3.3 Supervisory authority

The various supervisory duties and powers in the bill will be allocated to the Nederlandsche Bank (DNB). The allocation of supervisory duties has no bearing on the powers to impose generally binding instructions. In this way, justice is being done to DNB's independent authority to exercise supervision whilst the Minister keeps his overall responsibility for the quality of the regulatory framework. The supervision referred to in this bill specifically concerns integrity testing. This bill is not about the soundness of trust offices or the proper structuring of the market process or the protection of consumers (it does not aim at prudential control or at conduct-of-business supervision). The main subject of this bill is the integrity of the trust office and relationship integrity, the integrity of clients of the trust office, in the sense that the buyer (as the ultimate beneficial owner) of the services must be known to the trust office. The supervision of integrity will, therefore, follow an independent course alongside the revision of the financial supervision system. Developments in this area are, of course, being followed where relevant to achieve a consistent approach. DNB will be designated as the supervisory authority as insight is needed into the substantial flows of funds through object companies managed by trust offices in the Netherlands. DNB is already familiar with some of the trust offices and the financing companies managed by trust offices from a perspective other than trust supervision as financing companies are required to notify DNB of their transactions with non-residents and their financial position abroad, in connection with the preparation of the Dutch balance of payments and net external asset position. Financing companies also report to DNB for exemptions or dispensations under

the Act on the Supervision of the Credit System 1992 (*Wet toezicht kredietwezen 1992*). In many cases, these notifications and reports are made by trust offices (on behalf of the financing companies). Furthermore, DNB has experience of supervising the trust subsidiaries of banks. The existing prudential supervision of the trust subsidiaries of banks only changes insofar as this bill differs in terms of the supervision of integrity. To create a level playing field with trust offices not related to banks, only the provisions specifically addressing trust offices under this bill will apply in those situations. To supervise the trust subsidiaries of banks, working arrangements will be made within DNB to avoid overlaps in the supervision of this category. For this category, special working programmes are being used which have been developed to supervise trust activities for the bank (i.e. the parent of the trust subsidiary) and which will, in due course, be made fully consistent with this bill as far as the supervision of trust activities of the banking subsidiary is concerned. Finally, DNB will check compliance by the trust offices with the Disclosure of Unusual Transactions (Financial Services) Act (*Wet melding ongebruikelijke transacties*) and the Identification (Financial Services) Act (*Wet identificatie bij dienstverlening*).

3.4 Exchange of information

As noted in the OECD report,¹⁹ the most appropriate solution may vary from country to country. There are a number of national and international agreements applying to the Netherlands on the exchange of information, particularly in the areas of tax and mutual assistance in criminal matters.²⁰ This remains unchanged under this bill. The sections in this bill on the exchange of information by DNB are supplementary and focus on the exchange of information on the trust office under supervision and not on information on the client (including the ultimate beneficial owner). Information on the trust office under supervision may be exchanged nationally (for example, with other supervisory authorities) but also internationally, on a reciprocal basis.

4. Administrative burden

In deciding the most appropriate solution for the Dutch situation from the OECD report (see section 2.2 above), the main considerations were effectiveness and the least additional administrative burden. Consequently, the decision was made for the 'gatekeeper' option in which the obligations of trust offices are modelled as far as possible on the obligations already arising from existing codes of conduct. This means that the additional administrative burden is kept to a minimum.

For an estimate of the annual costs involved in the continuous obligations ensuing from this bill, a standard financing and holding structure has been adopted. It is assumed that this structure will remain unchanged during the first four years. A trust office acts as director of a Dutch object company forming part of this structure, provides domicile to this object company and keeps its records. In the first year, the client acceptance file must be formed in conformity with the requirements stipulated in section 10. The trust office will send a form to the client or his adviser

¹⁹ OECD report "Behind the Corporate Veil: Using Corporate Entities for Illicit Purposes", May 2001; pp. 75 et. seq.)

²⁰ Such as tax treaties and treaties on mutual assistance in criminal matters.

with the request to submit information. The information received will subsequently be assessed against the requirements of section 10 and be processed into a client acceptance file. The information will, as a rule, be compiled by an employee of the trust office and be approved by a manager. The cost for the employee can be estimated at €150 (2 hours at €75) and for the manager at €40 (0.33 hour at €120). During the following three years, the cost of keeping the client acceptance file up-to-date in conformity with the requirements of section 10 can be estimated at €135 (3 times 0.6 hour at €75) and the cost for verification by a manager at €90 (3 times 0.25 hour at €120). Based on the above, the average annual administrative costs for a new client would be around €100. The costs for an existing client will be considerably lower. An estimate of the client portfolios and their average turnover cannot now be given. On the advice of Actal (the Dutch Advisory Board on Administrative Burden) it will be examined two years after this bill has become law and entered into force whether such an estimate can indeed be made to help measure the administrative burden. Trust offices already have on file much of the information requested or to be kept, for instance on the basis of a code of conduct. Most trust offices consulted through the professional associations (NVB, VIMS and DFA; estimated joint market share of about 90%) already apply codes of conduct. This bill makes the requirements the same for all trust offices whilst compliance with these requirements will be supervised.

The licence application will involve a one-off additional administrative burden as the application forms have to be completed. DNB will see to it that the licence application process will run as effectively as possible from a viewpoint of reducing the administrative burden. It is estimated that there are 150 trust offices in the Netherlands (about 15 large trust offices are represented by the VIMS and about 30 small and medium-sized trust offices by the DFA). It is assumed that most of the estimated remaining group of trust offices unknown to DNB and the Ministry of Finance are small.

The computation below is an estimate of the average costs of an application. The costs will probably be higher for large trust offices and lower for small ones. It is assumed that an employee of the trust office will prepare the licence application, costing €600 (8 hours at €75) with the support of a secretary costing €120 (4 hours at €30). The management of the trust office will check that the application is in order and sign it, costing €240 (2 hours at €120). The cost of an average application will thus be €960. Assuming that, in any event, 45 trust offices (represented by VIMS and DFA) will submit a licence application, the total costs will be €43,200 (45 times €960). If all the trust offices in the estimated remaining group submit an application, the total costs will rise to €144,000 (150 times €960).

5. Consultations with interested parties

During the preparation of the bill, consultations were held with the professional associations of trust offices (NVB, VIMS and DFA; see also section 1.2). This was followed by a public consultation procedure whereby comments were invited. The reactions from market participants showed their approval of the bill (the reactions have been posted on the website of the Ministry of Finance). Their technical suggestions for improvement have been incorporated into the bill. The

bill has also been submitted to the Dutch Data Protection Authority (DDPA), the Court of Audit and Actal. DDPA and the Court of Audit have seen no reason for any comments. Actal's comments have been incorporated into the bill (see section 4 on administrative burden). Consultations on the bill have also been conducted with DNB (see section 3.3).

Notes on individual sections

Section 1

Paragraph (a) defines a trust office as a legal entity or partnership or natural person providing, either by itself or together with other legal entities, partnerships or natural persons, one or more of the services referred to in paragraph (d) in a professional capacity or on a commercial basis on the instructions of legal entities, partnerships or natural persons outside the group it belongs to. The definition aims to include all possible legal forms that a trust office could assume. These may be natural persons, or Dutch or foreign legal entities or partnerships, or a group of them. A legal entity or partnership or natural person is not considered to be a trust office if the services listed in paragraph (d) are provided within the same group. To avoid misunderstanding, it is emphasised here that the above does not mean that the staff of a trust office are themselves regarded as a trust office insofar as they perform the services listed in paragraph (d) on behalf of that trust office.

It has been decided to use the term "trust office" as this is the name by which the legal entities, partnerships and natural persons that offer the services commercially are known. There is no connection with the Anglo-Saxon legal concept of a trust, even though trust offices do act as trustees in some cases (see paragraph (d)(4°)).

An activity must be performed in a professional capacity or on a commercial basis to be defined as a qualifying service. This is intended to indicate that a single or very occasional provision or offer of trust services is excluded. There is in any event a qualifying service if that service is offered actively, for example, by advertising. An indication that services are being offered in a professional capacity or on a commercial basis is the fact that the services are performed for different clients (not being members of the same group).

Paragraph (b) defines the object company. In practice, this will often be a private company with limited liability, but it could, for example, be a foundation or a legal entity or partnership set up under foreign law.

Paragraph (c) defines the ultimate beneficial owner. The ultimate beneficial owner of the group structure is the natural person who owns a qualifying holding in an object company. If the shares in the structure are held, for example, by a foundation or a manager of a trust (trustee), the ultimate beneficial owner of the structure is defined as the natural person who is beneficiary of at least ten percent of the funding capital of the foundation or of the assets governed by the trust deed. If there is no ultimate beneficial owner, for example, because there is a wide group of

shareholders in a stock-exchange listed company, the information showing this must be included in the client acceptance file. The same applies for beneficiaries of the funding capital of foundations and of the assets governed by a trust deed if none of the natural persons is a beneficiary of at least ten percent of the assets. The ultimate beneficial owner is not necessarily the same as the “ultimate beneficiary” in tax terminology.

Paragraph (d) defines the term “service” as referred to in the definition of a trust office. There are four separate qualifying trust services (as noted in section 2.2 above, this is in line with the services identified by the FATF). Trust offices may be offering only one of the services. In practice, it will usually be more than one. The first service listed is being a manager of an object company. It is common for the ultimate beneficial owner of an international structure to have a trust office manage or help manage its object company established in the Netherlands.

The second service listed is making available an address as referred to in sections 9(1)(b) and 10(a) of the Trade Registry Decree (*Handelsregisterbesluit 1996*). Making available a correspondence address is only a qualifying service if it is the only address in the Netherlands as referred to in section 10(a) of the Trade Registry Decree (*Handelsregisterbesluit 1996*). In practice, one of the ancillary services listed in 2° is nearly always provided in addition to providing domicile. These ancillary services are provided to the object company to which domicile is also being provided or to a legal entity, partnership or natural person forming part of the group to which the object company belongs. An ancillary service is providing advice or assistance in private law, including the provision of secretarial and support services to the management, such as filing annual reports with the Chamber of Commerce, redirecting post or organising and holding general meetings of shareholders. Another ancillary service could be the recruitment of a person for the position of manager of an object company.

The third service concerns selling legal entities established under Dutch or foreign law. This concerns used legal entities such as dormant companies which, as a rule, have very few, if any, remaining assets. A statement of no objection has already been issued for these companies by the Minister of Justice but the review of antecedents was of the people who determined policy at that time, and so the new ultimate beneficiary in the company can remain anonymous. A trust office that sells these legal entities must, therefore, verify the ultimate beneficial owner.

The fourth service is acting as a trustee. Under a trust deed, a trust office may act as a manager (trustee) of, for example, a block of shares. The beneficiary of the assets governed by the trust deed may also be the settlor of the trust. This situation may give the impression to the outside world that the manager of the shares is also the ultimate beneficial owner, and so the real ultimate beneficial owner can remain anonymous. In this situation, section 10 therefore requires the trust office to know who the ultimate beneficial owner is.

Finally, services and ancillary services can be designated by an Order in Council, which allows a degree of flexibility to react appropriately to new developments in services (for example, services

via the Internet). These will be services or ancillary services which are variants of the above-mentioned services or ancillary services and which could involve risk from the viewpoint of integrity.

Paragraph (e) defines the term “branch office”. These are parts of a trust office with no autonomous legal personality, which are established in the same or a different country from that where the trust office is established.

The term “group” in paragraph (f) is in line with the definition in section 24b of Book 2 of the Civil Code but the definition of a group in paragraph (f) goes further than the Civil Code definition, as natural persons may also be part of the group. An indication that a natural person is a member of a given group is that he works exclusively or almost exclusively for the group or owns a qualifying holding in a legal entity or partnership which is a member of the group.

Paragraph (g) defines the term “qualifying holding”. To reduce the administrative burden as much as possible, the bill has opted for interests or voting rights of at least ten percent. A comparable financial interest or comparable control are also covered by the term qualifying holding. A comparable financial interest may arise when shares do not entitle holders to an equal share of the profits (e.g. in the case of preference shares). Comparable control may arise as a result of disproportionate or special voting rights (e.g. in the case of priority shares).

Section 2

The prohibition on working as a trust office without a licence covers services offered commercially or professionally “from an establishment in the Netherlands”. For the definition of the term ‘establishment’ reference has been made to articles 43 ff. of the EC Treaty. To be defined as such, an establishment has to engage in real economic activity in the Netherlands from a fixed address. An establishment which does not have the form of a branch-office or agency, but which consists merely of a simple office managed by the company’s own staff or by an independent person authorised to act on behalf of the company, shall also come under the definition of establishment.

Subsection (2) defines which legal entities, partnerships, and natural persons within the definition of a trust office are exempt from the licensing obligation. These include, for example, interim-managers who are engaged temporarily by businesses to act as managers to solve a specific business problem or to implement specific measures (section 2(2)(3^o)). The exemption does not apply if the interim-manager also performs one of the other qualifying services. The temporary nature of the engagements is not based just on its short period but also on its definition. The interim-manager is not engaged for an indefinite period, but for a fixed period or until specific objectives have been met. The intensity of the interim-management engagement means that the natural person performing the engagement cannot normally also perform another interim-management engagement during the same period.

Subsection (3) and (4) allows for block exemptions and individual dispensations. Exemptions and dispensations may be made subject to instructions and limitations. The exempt categories to be designated must in any event be defined unambiguously and in a way that permits relatively easy checks of whether an entity or person is indeed within the relevant category. The possibilities for exemptions or dispensations are in any event limited. If the exemption or dispensation policy is too lenient, the objective of the legislation, the promotion of the integrity of the financial system, could be in jeopardy. Grounds for an exemption or dispensation from the obligation to apply for a licence are that the integrity risks described in the Explanatory Memorandum do not exist or are negligible. Another ground for such an exemption or dispensation is that comparable integrity supervision has already been provided for otherwise in respect of specific instances or a specific situation.

Subsection (5) allows DNB to grant a group licence in case there are several trust offices within one group.

Section 3

The application for a licence must contain information on the identity and antecedents of the managers, supervisory directors and persons who determine or help determine policy. If the trust office is part of a group, its policy may be determined or partly determined by the managers of other legal entities or partnerships within that group. As it is desirable to be aware of all the people who could influence the management of a trust office or who have a certain financial interest in the trust office, the licence application must also contain information on the identity and antecedents of those people who have a qualifying holding in the trust office, and the size of that qualifying holding. Under paragraph (d), the application must be accompanied by a clear statement of the control structure of the group to which the trust office belongs. The address in paragraph (e) is the place where the trust office actually performs its work. Paragraph (f) asks for information on the envisaged management; this must meet the requirements set out in section 10 of this bill. Paragraph (g) regulates the authority for requiring the provision of other information and documents, if this is deemed important for assessing the licence application.

For an effective processing, subsection (2) stipulates that the applicant must declare which relevant persons have already been subject to an antecedent assessment. The details of when and by which authority this was done must also be stated.

Under subsection (3), certain instructions and limitations may be attached to the licence if this contributes to promoting the integrity of the financial system in the Netherlands.

The period for reaching a decision is thirteen weeks. Sections 4:5 and 4:15 of the General Administrative Law Act (*Algemene wet bestuursrecht*) also applies, i.e. if DNB requests additional information, the period is suspended until the day on which the application is supplemented or the day on which the period for supplementing the application has expired without reaction.

Section 4

A licence will not be granted if any of paragraphs (a) to (d) inclusive apply. Paragraph (a) defines the situation in which there are doubts about the integrity of managers, supervisory directors, persons who determine or help determine policy and holders of qualifying holdings. The test for this is set out in detail in the Policy rule on integrity testing (*Beleidsregel Betrouwbaarheidstoetsing* - Government Gazette (*Stcrt.*) 19 April 2000, No. 78). If the manager of a trust office or the holder of a qualifying holding in a trust office is itself a legal entity, that legal entity will be ignored and the underlying natural person will be tested. In that case, it concerns the ultimate manager/natural person and the ultimate shareholder/natural person.

Under paragraph (b), the application will be refused if the information submitted under section 3 would show that the directors, supervisory directors or persons determining or co-determining the policy of the trust office are not sufficiently expert to ensure a reputable conduct of business in line with this bill. Considerations in this respect are the level of education and experience of these managers of trust offices. If the trust office is part of a group whose control structure is not clear and supervision would thereby be impeded, this may be a reason for not granting a licence (paragraph (c)). Finally, DNB may conclude that the envisaged management or administrative organisation of the licence applicant is such that the trust office is unable to comply with the rules imposed by section 10.

Section 5

A change in the identity or antecedents of the managers, supervisory directors, persons who determine or help determine policy or holders of a qualifying holding or a change in the control structure must be notified to DNB in advance if reasonably possible. Advance notification is not possible for example, in unexpected circumstances such as the death of one of the above persons. In such cases, notification should be made as soon as possible. The degree of the integrity of these persons and the form of the control structure are circumstances under which a licence is retained or not (see above under section 4). A change in the identity of directors, supervisory directors, persons determining or co-determining policy, holders of a qualifying holding or a change in the control structure may therefore not be implemented if DNB rejects the proposal. The trust office must notify other relevant additions to and changes in the information provided under section 3(1) to DNB as quickly as possible. DNB will see to it the above reports are processed as effectively as possible from a viewpoint of reducing the administrative burden.

Section 6

This section sets out the grounds for revoking a licence. Firstly, DNB may revoke the licence at the request of the licence holder. Generally, this will be the case if the trust office is no longer acting as such (in or from the Netherlands) (see also paragraph (d)). In these cases, DNB will revoke the licence immediately unless, in its opinion, this conflicts with the interests that this bill aims to protect. DNB may revoke the licence if a trust office ceases to exist as a result of bankruptcy or is being wound up. Paragraphs (e) and (f) relate to the situation in which the licence holder no longer meets the licence requirements, either because the requirements for the

administrative organisation/internal control are not met, or because DNB has received information which would have led to it rejecting the application for a licence had it been aware of that information at the time that it was dealing with the licence application. This could, for example, be information on the persons who actually determine policy or on the services which are offered that comes to light in the course of supervision. Finally, DNB may revoke the licence if the licence holder (despite repeated reminders) refuses to pay the fees (under section 8) or an administrative fine or penalty imposed on it.

Section 7

For reasons of transparency, DNB will keep a public register listing all licensed trust offices as well as trust offices that have been granted a dispensation.

Section 8

The financing system will eventually be in line with the outcome of the Supervision Financing Memorandum. Until then, the system will as far as possible be in line with that used for the recently-enacted Act on Money Transaction Offices (*Wet inzake de geldtransactiekantoren*). A trust office must pay a fee in respect of its licence application. In addition, an annual fee is payable for the supervision by trust offices listed in the public register. The fees must be no higher than needed to cover costs. The amounts will be set by ministerial order by the Minister of Finance. If a trust office fails to pay for the costs of supervision, DNB may collect the amount due by way of a writ of execution.

Section 9

Under this section, DNB may obtain information from any trust office or associated legal entity, partnership or natural person within a group for exercising its supervisory duties. The same applies to trust offices that have been granted a dispensation or are covered by an exemption. In addition, anyone not registered as a trust office and who is not covered by an exemption or been granted a dispensation is required by this section to provide information to DNB if DNB has reason to believe that the party involved is providing services as referred to in section 1.

A number of provisions of Division 5.2 of the General Administrative Law Act (*Algemene wet bestuursrecht*) are stated as applying. Pursuant to section 5:12, the natural person exercising supervision on behalf of DNB (hereafter: the examining officer) must carry an identification card when performing his duties that must be produced on request. Section 5:13 imposes the principle of proportionality on supervision activities. This means that the examining officer may not use a power if it is not strictly necessary for the performance of his duties. Section 5:15 permits the examining officer to enter any place, with the exception of a dwelling. Section 5:16 entitles the examining officer to require the provision of information. This section does not limit the group of people from whom information can be demanded. In principle, therefore, information can be required of anybody. The principle of proportionality, however, means that this power cannot be exercised against everyone under all circumstances. The power to require information can be effected through the duty to co-operate in section 5:20 (see below). Co-operation in this context

means that replies must be truthful. Section 5:17 empowers the examining officer, among other things, to require inspection of business information and documents. The examining officer can, therefore, for example, require inspection of the files of the trust office. Finally, section 5:20 obliges everyone to co-operate fully with the examining officer within such reasonable time limit as he may specify. The examining officer must, therefore, specify a reasonable period within which the person concerned must meet the demand. All conceivable forms of co-operation are covered by this section. This duty to co-operate implies a duty to provide information and copies of the required information and documents (Parliamentary Papers II 23 700, No. 3, p. 147). Finally, the duty to co-operate means that information must be provided promptly and in a truthful and not misleading way. DNB also has the above powers available under the existing supervision of trust subsidiaries of banks. Section 9 of this bill also addresses inspection of specific client acceptance files (see section 10 for the content of these files) and there may also be random testing of files of the object companies which, if requested, have been rendered anonymous or, in the case a trust office acting as a trustee, in the file on the trust. A clear statutory basis is important for trust offices as the clause in the contract between the trust office and the client on confidentiality vis-à-vis third parties often includes "except under a statutory duty of disclosure".

The situation may arise that legal practitioners, such as attorneys-at-law and prospective and practising notaries, provide the services referred to in section 1 of this bill commercially, and are therefore designated as trust office. Under subsection (2) of section 5:20, attorneys-at-law and notaries can be bound by a duty of confidentiality by virtue of their office or profession or by statutory provisions and refuse to co-operate insofar as their duty of confidentiality makes this necessary. The right of non-disclosure by notaries and attorneys-at-law applies to their professional activities (such as legal proceedings) and therefore not to activities they perform in their capacity of trust office. Furthermore, a contractual duty of confidentiality is insufficient to appeal to the right of non-disclosure as referred to in subsection (2) of section 5:20. Matching up with the type of services that an attorney-at-law or notary performs in a specific situation would take careful account of the position of trust that attorneys-at-law and prospective and practising notaries have in social and economic life.

Section 10

This section specifies that rules will be imposed to ensure a reputable conduct of business. These include rules with respect to the administrative organisation of trust offices, including the financial accounting system, and the system of internal control. The regulatory powers in this section have been delegated by the phrase "by or pursuant to an Order in Council", which provides for the opportunity to subdelegate powers to DNB or the Minister by an Order in Council. Under section 10 the above rules will stipulate that the administrative organisation of the trust office must be so structured that certain information on the client of the trust office is available; this information will be included in a client acceptance file. Intrinsicly, section 10 therefore indicates as a legal basis which information the trust office is obliged to keep. The powers to set further rules within the boundaries of section 10 will be transferred to DNB.

First of all, the trust office must know the ultimate beneficial owner. This is, of course, impossible if there is no ultimate beneficial owner as may be the case for example, if there is a wide group of shareholders in a stock-exchange listed company (see the notes to section 1(c) on the term “ultimate beneficial owner”). In that case, the information showing this must be included in the client acceptance file. Constructions in which the trust office can under certain circumstances request another person to disclose the identity of the ultimate beneficial owner for the purposes of supervision are not sufficient.

In order to have a proper picture of the role that the object company plays in the group structure, the trust office must have insight into the source and destination of the funds of the object company. If the funds have been raised by the issue of securities on a stock exchange, it is of course sufficient that the trust office knows that the funds were obtained in that way and the securities involved.

The trust office must have information on the part of the worldwide group structure relevant to the supervision. If a large multinational business is involved, it may be that part of the global group structure is not relevant for Dutch supervision. If an ultimate beneficial owner of the structure can be determined, it will at any rate be the legal entities or partnerships between the ultimate beneficial owner and the object company which are of relevance in the group structure.

Paragraph (d) stipulates that the trust office knows the reason why the existing structure has been chosen. This information may provide insight into the function of the object company within the structure.

If the trust office sells legal entities, it must know the identities of the buyer and the holders of a qualifying holding in the buyer. If the trust office also provides one of the other trust services to the buyer or the group of the buyer, the identity of the buyer or of the holder of a qualifying holding in the buyer may be the same as the identity of the ultimate beneficiary (paragraph a).

If the trust office acts as trustee, it must not only know the identity of the ultimate beneficiary (paragraph a) but also the identity of the settlor of the trust.

Finally, paragraph (g) stipulates that the trust office may not provide any services if paragraph (a) or (e) is not complied with. DNB may set a period within which the other information to be compiled by the trust office (under paragraphs (b) to (d) and (f)) must be present in the client acceptance file. It may be that the requirements of this section cannot be met in a specific case. If so, the trust office may show, with different information, that the requirements have nevertheless been met effectively.

Section 10(2) imposes a duty on a trust office to report, if requested, to DNB on its management, administrative organisation and system of internal control. For example, statistical information on

situations in which the trust office has refused to perform a legal transaction under subsection 1(g).

Section 11

This section allows measures to be taken in the form of an order if sections 5(1) or (3) or 6(e) are not complied with. This means that, in case of non-compliance with the requirements of section 10, it is not necessary to revoke the licence of the trust office immediately. In certain circumstances, revoking the licence could be excessive. This section does not affect the ability to revoke the licence without prior order, if the circumstances so indicate.

This section does not refer to section 6(d), under which the licence may be revoked if the holder is evidently no longer working as a trust office as, in such cases, it is not necessary to issue an order to follow a certain course of action. The licence may be revoked if it proves that services are in fact no longer being provided, for example, after obtaining or arranging for the obtaining of information.

Sections 12 to 16 inclusive

Sections 12 to 16 inclusive permit DNB (under the customary guarantees to those involved) to cooperate with and exchange information with Dutch or foreign competent authorities. As stated in the OECD report, the most suitable option may vary from country to country. There are a number of national and international agreements on the exchange of information applying to the Netherlands, particularly in the areas of tax and mutual assistance in criminal matters. This bill does not alter the situation and so does not affect the operation of the Code of Criminal Procedure (*Wetboek van Strafvordering*), the Sanctions Act 1977 (*Sanctiewet 1977*), the Disclosure of Unusual Transactions (Financial Services) Act (*Wet melding ongebruikelijke transacties*), Dutch tax laws, bilateral tax treaties and conventions on the exchange of data or information or on the implementation of binding decisions of international organisations regarding the supervision of the financial markets or of natural persons and legal entities that operate in those markets. The sections in this bill on the exchange of information by DNB are supplementary and focus on the exchange of information on the trust office under supervision and not on information on the ultimate beneficial owner (client information). Information on the trust office under supervision may be exchanged nationally (for example, with other supervisory authorities) but also internationally, on a reciprocal basis.

Section 17

Section 13 permits DNB, under certain conditions, to exchange information with Dutch and foreign authorities or with Dutch and foreign agencies designated by their respective governments that are charged with the supervision of the financial markets or of natural persons and legal entities that operate in those markets. Because of the significance of these powers to exchange information, section 17(1) stipulates that written agreements between DNB and other supervisory authorities that serve to produce the exchange of information referred to here, must be submitted for prior consent to the Minister. The Minister may withhold his consent only if such

an agreement would be incompatible with the public interest or with conventions for the exchange of information signed by the Kingdom of the Netherlands or with relevant binding decisions of international organisations (including Community-wide regulations). Subsection (2) stipulates that the written agreements must stipulate that they shall once again be submitted for consent to the Minister, if a convention for the exchange of information would subsequently be established with the other State in question. In that case, these agreements shall be checked for compliance with the subsequently established convention, in order to avoid their incompatibility with that convention.

To promote a quick decision-making process and an easy consent regime, subsection (3) provides for the possibility of silent consent as far as the consent referred to in subsection (1) and (2) is concerned. DNB will verify that the proposal or the requested further information has been received by the Minister. Under subsection 4, DNB will publish the written agreements to which the Minister has given his consent, in the Government Gazette (*Staatscourant*). This publishing obligation only applies to written agreements of a general nature. It is observed, perhaps unnecessarily, that in case of any incompatibility, a convention or binding decision as referred to in section 14 takes precedence over the written agreement.

Section 18

The obligation to report is in line with that in other financial supervision laws.

Section 19

Under this section, an interested party may appeal pursuant to a decision under this bill to the court in Rotterdam. This court has also been designated as the competent court in other financial legislation.

Sections 20 to 30 inclusive

Sections 20 to 30 inclusive include provisions on cease and desist orders under penalty and administrative fines. Comparable provisions exist in other financial supervision legislation.²¹

These provisions are included in this bill to strengthen administrative-law enforcement.

Legislation is only effective if a breach of the rules set out in the law can be tackled immediately and effectively.

DNB is charged with implementing the provisions of this bill and is, therefore, itself primarily responsible for enforcing the relevant rules. It is noted for the sake of good order that responsibility for laying down further rules in this area is a power of the Minister which may not be delegated to DNB. Cease and desist orders under penalty and administrative fines are two separate administrative enforcement tools. The choice of the most effective enforcement instrument depends on the nature of the provision that has been breached, the seriousness of the breach and the relevant circumstances.

In the case of a cease and desist order under penalty, DNB imposes a restraint on the offender against a certain norm which involves rectifying the breach and preventing its continuation. This instrument is particularly suitable for on-going breaches which are continuing at the date the breach is discovered and for breaches whose consequences can be rectified by the trust office.

The administrative fine is of a purely punitive nature and is more suited to breaches which are not continuing and breaches which occurred in the past.

Sections 31 to 39 inclusive

Section 31 permits DNB in certain circumstances to publicise certain facts, for example, the fact that an application for a licence or dispensation has been refused or the fact that a legal entity, partnership or natural person is wrongfully not in possession of a licence. In certain cases, this power can be an effective additional enforcement instrument for DNB. After all, it is of the greatest importance for those operating in the financial markets to build up a good name and reputation.

This is an enforcement instrument that will be used in cases of breaches of supervision legislation. Therefore, the punitive nature of the power is now expressed specifically in the provisions and the provisions are included in a separate chapter. With a view to the punitive nature, certain provisions have been added to protect those whose acts or omissions are published. It will not, however, always be possible to offer guarantees to an offender, for example, if the offender has no known address or conceals his identity. In such cases, it is not reasonable to insist that DNB offers all guarantees to an offender before it takes the necessary enforcement measures.

It is, however, worthy of note that this covers data or information on individual trust offices which DNB has received pursuant to the provisions in this bill or by making use of certain supervisory powers. If DNB wishes to publish this confidential information, this is a departure from the confidentiality clause and the procedural guarantees must be taken into account. When a breach of the supervision legislation is known in the market or is otherwise in the public domain (by publication in the Government Gazette (*Staatscourant*), in newspapers, via the Internet, public registers, etc.), DNB is naturally free to issue a warning on the basis of that public information. DNB will verify the information.

Sections 40 to 49 inclusive

By means of sections 40 to 48 the Act on the Supervision of Trust Offices (*Wet toezicht trustkantoren*) is included in other legislation as a law on supervision. In addition, operating illegally as a trust office, breaches of instructions and limitations attaching to an exemption or dispensation, failure to report in writing in advance of or immediately after a change in the data referred to in section 3(1), failure to provide information, failure to follow the rules with respect to the administrative organisation and the system of internal control, and failure to comply with

²¹ Government Gazette 1999, 509.

orders are designated as economic offences. The FIOD-ECD (Tax Authority Investigation Agency) is charged with investigating summary and criminal offences that have been made punishable under the Economic Offences Act (*Wet op de economische delicten*). If such acts are performed wilfully they constitute a criminal offence; in other cases a summary offence. Section 49 provides for an amendment to the Identification (Financial Services) Act (*Wet identificatie bij dienstverlening*), whereby the obligations under that Act and the corresponding independent supervision of finance companies will cease to exist. Finance companies comprise credit institutions that are exempt from the obligation to apply for a licence and credit institutions that have been granted dispensation under the Act on the Supervision of the Credit System 1992 (*Wet toezicht kredietwezen 1992*). This amendment results from the adoption of the gatekeeper approach, which aims to supervise the service provider, in this case the trust office. It seeks closer correspondence with developments at the earlier-mentioned international bodies ¹⁾, which mention trust offices as being vulnerable to money laundering schemes (but do not mention finance companies as a risk group). In addition, it will limit the administrative burden because recourse will be had as much as possible to the existing partial self-regulation of the trust sector.

Section 50

Transitional arrangements for existing trust offices have been provided for. They are not covered by the prohibition if they notify DNB within eight weeks after the entry into force of this law and provide the information requested on time. The notification will be regarded as a licence application. If the licence application is refused, the transitional arrangements will no longer apply. The transitional arrangements offer trust offices some time to move to the licensing system without having to cease operations. DNB has additional time during the transitional period to process all licence applications during the start-up phase.

THE MINISTER OF FINANCE,
G. Zalm

*) Unofficial translation. Dutch text is binding.

1) Review of the Financial Action Task Force Forty Recommendations Consultation Paper, 30 May 2002; "Trust and Company Service Providers" section, pp. 92 et seq. and OECD report "Behind the Corporate Veil: Using Corporate Entities for Illicit Purposes", May 2001; pp. 77 et. seq.