The Netherlands’ new Act on Financial Supervision

BY JAN BROEKHUIZEN, BOEKEL DE NERÉE

The Dutch are currently preparing themselves for a major recodification of their financial supervisory laws and regulations. On 1 January 2007 a new Act on Financial Supervision will enter into force. In this new Act, and the regulations to be based on it, almost all rules and prescriptions for the Dutch financial market and the supervision thereof will be combined.

The major objective of the Act on Financial Supervision is to make the regulation of the Dutch financial markets more goal and market-oriented and more transparent. The new Act will also better delineate and separate the tasks of the two Dutch financial supervisors: the Dutch Central Bank, which will be in charge of prudential supervision, and the Authority for the Financial Markets, which will be in charge of market conduct supervision. In addition, the rules which financial institutions must obey will be simplified to a certain extent, and the new Act is intended to have the effect of reducing administrative burdens on market participants.

The Act on Financial Supervision will combine seven important existing statutes – of which here are noted the Credit System Supervision Act 1992, the Securities Trade Supervision Act 1995, the Investment Institutions Supervision Act and the Financial Services Act – into one new Act. The idea is to have general rules for as many different topics as possible and to provide for consistency in the regulation of the various sectors subject to financial supervision rather than to look (solely) at the type of institution (bank, insurer, etc) subject to supervision.

The Act on Financial Supervision will initially consist of five parts: a general part which includes rules concerning the two Dutch financial supervisors, the Dutch Central Bank and the Authority for the Financial Markets, a part dealing with market access to and from the Dutch financial markets, a part with rules on prudential supervision of financial institutions, and parts setting rules for the market conduct of financial institutions (such as conduct vis-à-vis consumers) and for acting on the financial markets (such as market abuse rules). At a later stage, other rules will be added to the Act, such as rules dealing with settlement systems and rules implementing MiFID (Markets in Financial Instruments Directive, 2004/39/EC) in the Netherlands. Implementation of MiFID will however probably not take place before 1 January 2008. The provisions of the Act on Financial Supervision will be elaborated in regulations both at the level of the Minister of Finance and at the level of the Dutch Central Bank and the Authority for the Financial Markets.

Although it was not the intention of the Ministry of Finance to introduce substantial material changes to the financial supervision in the Act on Financial Supervision, the proposed integration of existing statutes into one Act on Financial Supervision will nevertheless lead to certain changes following from the new regulatory structure, terminology and statutory norms.

An example of the type of changes that the Act on Financial Supervision will bring is the regulation of companies that attract repayable funds from professional market parties only (and subsequently onlend or invest these funds). At present these companies qualify as ‘credit institutions’ under the Credit System Supervision Act 1992 and can ensure that they qualify for an exemption from the otherwise applicable banking licence obligation by, inter alia, attracting their funds from professional market parties only and by sending a standard form notification to the Dutch Central Bank within two weeks after commencing their business. Under the Act on Financial Supervision, a definition of ‘bank’ will be introduced (and a ‘credit institution’ will be redefined as a ‘bank or an electronic money institution’). A ‘bank’ will be defined such that it will not include companies that attract funds from professional market parties only. Consequently, there will also be no need for these companies to qualify for an exemption from a banking licence obligation.

The Act on Financial Supervision is a major legislative operation, one that has not been unanimously welcomed by Dutch academia nor by the Dutch legal profession. There will certainly be some fatigue in the financial markets about yet another major change to the Dutch regulatory landscape. Only as recently as 1 January of this year, the new Financial Services Act was introduced in the Netherlands. All these changes come on top of a substantial EU financial regulatory programme. Time will tell whether one of the other aims of the new Act on Financial Supervision – increasing the Dutch financial sector’s level of competitiveness, both nationally and internationally – will in fact be achieved.

Boekel De Nerée is a leading independent Dutch law firm of Advocaten and Civil Law Notaries. Based in Amsterdam, we offer specialist advice to clients in a wide range of industries. Our Corporate Practice includes an Anglo-American Advisory Group specifically geared to serve the interests of clients from English speaking parts of the world, providing clients with peace of mind when dealing with matters in the Dutch jurisdiction.

THE EUROPEAN LAWYER November 2006