



**GLOBAL LEGAL INSIGHTS**

**BANKING LAWS AND  
REGULATION**

**NETHERLANDS | 2022  
NINTH EDITION**

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# GLI | BANKING REGULATION 2022

The Global Legal Insights – Banking Regulation 2022 covers key topics including regulatory architecture, themes and developments, bank capital requirements, bank governance / internal controls, Fintch, rules governing banks' relationships with their customers and other third parties in 20 jurisdictions.

The contributions were prepared by a group of banking practitioners from around the world. Authors were invited to offer their own perspective on the banking topics of interest in their own jurisdictions, explaining technical developments as well as any trends in banking policy. The aim is to provide

banking directors, advisers and revenue authorities with analysis and comment on the chosen jurisdictions. For more information on GLI – Banking 2022, reference is made to <https://www.globallegalinsights.com/practice-areas/banking-and-finance-laws-and-regulations>

This brochure contains the Dutch chapter of the GLI – Banking 2022 which was prepared by Buren N.V. For more information on Buren N.V., reference is made to page 18 of this brochure. Please feel free to contact us in case you would have any questions or comments in relation to this brochure or otherwise.







# 1. INTRODUCTION

The year 2021 was, again, a turbulent year that remained dominated by the COVID-19 crisis as, although vaccines were made available, they have not proven to be 100% effective against infection, causing the pandemic to continue. The paralysis of Dutch society went on, with the exception of (certain weeks during) summertime and an apotheosis of complete lockdown in mid-December 2021, proclaimed in view of the imminent Omicron variant and the limited number of available hospital beds (in particular, intensive care beds) in the Netherlands.

During 2021, Dutch banks continued to offer their services online, which generally led to a significant reduction in the level and quality of services, in particular of services to retail clients. Some offices were temporarily closed due to lockdown measures while others were closed down permanently, in favour of online banking and video-conferencing services. The use of ATMs significantly decreased due to an increase in electronic payments and for cost-cutting reasons (in smaller towns), and due to the fact that many ATMs suffered from so-called “ATM gas attacks”. New rules were also introduced by Dutch banks that limit the amount of cash that retail clients can obtain through ATMs: generally, each withdrawal in excess of EUR 12,000 per calendar year will cost the customer EUR 5 plus an additional 0.5% of the amount drawn.

In 2021, most Dutch banks introduced negative interest on positive bank balances for both professional and retail customers, generally from EUR 100,000 and up. Certain banks calculate the threshold amount over all bank accounts maintained by a customer whilst other banks calculate the amount per bank account held.

In the professional sector, Dutch banks continue to tighten their rules on accepting clients and know-your-customer investigations in order to prevent issues of money laundering and terrorism financing, resulting therein that, for new customers (both retail and professional), it is considered virtually impossible to obtain a Dutch bank account. Existing customers are faced with burdensome requirements for (re) identification and know-your-customer inquiries, sometimes resulting in the bank closing down the account for presumption of money laundering without

firm substantiation. The Dutch Supreme Court (*Hoge Raad*) ruled in November 2021 that, in principle, each customer has the right to operate a bank account and that specific sectors (e.g. Dutch coffeeshops (not selling coffee but soft drugs), sauna and sex businesses or money transfer businesses) may not be excluded upfront, although a bank is not obliged to allow substantial cash deposits. The Supreme Court therewith considered that the specific duty of care rested with banks, resulting, in certain circumstances, in a contracting obligation to offer current accounts to non-retail clients. Entities that make use of Dutch trust offices (companies that offer, inter alia, domiciliation and management services to Dutch establishments of internationally operating companies) are under specific scrutiny. Certain banks started to close down their bank accounts as soon as they noted that a trust office was involved (whereas Dutch trust offices are licensed and are subject to ongoing supervision by the DCB (as defined below)).

In 2021, house prices in the Netherlands boomed and underwent the biggest increase seen since 2000. Prices of existing houses went up by an average of 15.2%, and in certain parts of the country (including in rural areas) by more than 20%, making it impossible for firsttime buyers to purchase their own house. There are a variety of factors contributing to the increase, inter alia, the low interest rate on mortgages and, in the cities, the predominant presence of professional investors using “buy-to-let” schemes, leading to a decrease in the number of available owner-occupied houses and causing rental prices to increase to a level that is unaffordable for starting tenants, particularly in the cities.



## 2. REGULATORY ARCHITECTURE: OVERVIEW OF BANKING REGULATORS AND KEY REGULATIONS

### Dutch regulatory framework

The Dutch regulatory framework for financial services comprises the Dutch Act on Financial Supervision (*Wet op het financieel toezicht*, the **AFS**), the decrees promulgated thereunder and EU regulations that directly apply in Dutch law. The AFS is, for the majority of its provisions, based on EU directives, including but not limited to the Markets in Financial Instruments Directive II (**MiFID II**), the Second Payment Services Directive (**PSD 2**), the transparency Directive, and Capital Requirements Directives IV and V (**CRD IV** and **CRD V**).

The AFS is drafted as “principle-based” law rather than “rule-based” law, which means that it provides a framework and that market parties have the relative freedom to determine how to interpret compliance. A (limited) level of self-regulation is permitted. The AFS has been designed for functional supervision rather than sectoral supervision. Its chapters are: (1) general provisions, scope, sanctions and provisions regarding cooperation of the supervisory authorities; (2) market access for financial enterprises (inter alios, banks, payment institutions, investment firms, managers of alternative investment funds, insurance

firms, credit providers, advisors and financial intermediaries); (3) prudential supervision of financial institutions and rationalisation measures; (4) conduct supervision of financial institutions; (5) market conduct supervision; (6) specific measures in respect of the stability of the financial system; and (7) concluding provisions.

### Regulatory authorities in the Netherlands

As set forth above, the AFS has been designed for functional supervision, to be distinguished in prudential supervision and market conduct supervision. Two regulatory authorities are engaged in supervision: the Dutch Central Bank (De Nederlandsche Bank N.V., the **DCB**); and the Netherlands Authority for the Financial Markets (Autoriteit Financiële Markten, the **AFM**). The DCB conducts prudential (financial) supervision in cooperation with the European Central Bank (the **ECB**), while the AFM is engaged in conduct supervision. The mutual cooperation of both regulators is laid down in the AFS, in bilateral agreements among the DCB and the AFM, and in the Dutch General Administrative Law Act (*Algemene wet bestuursrecht*).







### The DCB

The DCB is responsible for prudential supervision of financial undertakings, integrity supervision and supervision of compliance with the Anti-Money Laundering and Anti-Terrorist Financing Act (*Wet ter voorkoming van witwassen en financieren van terrorisme*, the *Wwft*). The DCB grants (in cooperation with the AFM) licences to payment institutions, insurance companies and pension funds. Furthermore, the DCB is the central bank of the Netherlands and, in that role, carries out supervision of the banking system in the Netherlands in general, of the Dutch payment system and the balance of payments as well as carrying out monetary tasks. The DCB's attitude when exercising supervision is rather more pragmatic than formalistic and the DCB is, in comparison with other supervisory authorities in Europe, approachable to market parties.

### The ECB

The ECB is, since the introduction of the EU Banking Union in 2014, the relevant authority exercising prudential supervision of banks with their seat within the Eurozone (the countries that have adopted the euro as their legal tender) whereas that task, in respect of supervision and licensing of Dutch banks, was formerly designated to the DCB. The ECB directly supervises seven "significant entities" in the Netherlands, working together with the DCB, and the DCB exercises supervision of the less significant

financial institutions in the Netherlands. The ECB is the licensing authority for all banks (irrespective of whether they are significant entities or not) and for granting declarations of no objection in respect of, *inter alia*, major holdings in banks. Furthermore, the ECB is an influential supervisor as it is engaged in adopting regulations and issuing guidelines and binding regulations. The ECB's supervision is less pragmatic than the DCB's supervision; it operates from a greater distance from market parties and, consequently, is not as approachable as the DCB.

### The AFM

The AFM is the competent authority for conduct supervision in the Netherlands, on all financial institutions active in the Netherlands. Conduct supervision is designed to safeguard orderly and transparent procedures in the Dutch financial markets as well as sound trading procedures, and further focuses on trustworthiness and expertise of the persons in relevant functions as financial institutions. Though the AFM is approachable for market parties, it acts in a fairly formalistic manner and does not hesitate to publish violations of the AFS by market parties (which it is obliged to do pursuant to the AFS) and to impose penalties.

The AFM is also engaged in supervision of compliance with the Financial Reporting (Supervision) Act (*Wet toezicht financiële verslaggeving*).

# 3. RECENT REGULATORY THEMES AND KEY REGULATORY DEVELOPMENTS IN THE NETHERLANDS

## Brexit

Brexit was the main topic in 2020 and remained important throughout 2021, although no significant changes occurred during 2021 in terms of regulatory matters. Still, the European Commission has not taken an “equivalence” decision that recognises that the regulatory or supervisory regime of a non-EU country (e.g. the UK) is equivalent to the corresponding EU regime and there is no substitute for the regulations that applied pre-Brexit.

To alleviate adverse consequences resulting from the post-Brexit regime, certain UK financial service providers (banks and investment firms) onboarded the European Union by obtaining a licence and subsequent passporting throughout the European Union whereby Luxembourg and France turned out to be preferential jurisdictions well known for their flexible regulatory authorities. Passporting arrangements allow EU (and EEA) financial institutions to provide financial services through a branch office or on a cross-border basis throughout the entire European Union (and thus also in the Netherlands).

The practice of “reverse solicitation” (pursuant to article 1:19c of the AFS, an implementation of MiFID II), whereby services to Dutch resident customers are provided on the sole initiative of the client, remained an issue in 2021. Reverse solicitation has turned out to be increasingly popular and market parties, in the absence of clear guidance as to how this must be interpreted, have developed creative solutions. It is clear that a relationship between a Dutch customer and a UK financial institution is not deemed to be based on reverse solicitation if the relationship is renewed on the sole initiative of the customer, following Brexit. In order to prevent misuse of MiFID II, on 13 January 2021, the European Securities and Markets Authority (ESMA) issued a publication whereby it reminded firms that “where a third-country firm solicits clients or potential clients in the Union or promotes or advertises investment services or activities together with ancillary services in the Union, it should not be deemed as a service

provided at the own exclusive initiative of the client”. ESMA said that such is true “regardless of any contractual clause or disclaimer purporting to state, for example, that the third country firm will be deemed to respond to the exclusive initiative of the client”. Therewith, the applicability of reverse solicitation seems narrow. In December 2021, ESMA replied to a request for support in relation to the report on reverse solicitation, submitted by the European Commission. A survey throughout the National Competent Authorities (NCAs) revealed that, as ESMA reports, “however, a couple of NCAs provided some interesting information on the extent to which reverse solicitation is used in their jurisdiction that allows ESMA to share some anecdotal evidence of the use of reverse solicitation within the Union”. It appears that in some jurisdictions within the European Union, 25% of the total subscriptions in funds were based on reverse solicitation. Although the Dutch regulatory authority did provide input to the survey, the Netherlands was not mentioned in ESMA’s letter.





## UBO register

A bill on the ultimate beneficial owner (UBO) register has been adopted and implemented in the Wwft and in the Dutch Commercial Register Act (*Handelsregisterwet*). This legislative step has been made pursuant to the Fourth EU Anti-Money Laundering Directive, and Dutch legal entities must register their UBOs with the Netherlands Chamber of Commerce (*Kamer van Koophandel Nederland*) no later than 27 March 2022 – 18 months after its entry into force. The UBO register keeps records of the UBOs of legal entities, foundations and trusts, and certain exceptions apply; for example, one-man businesses are excluded. A UBO must be a natural person who (i) is the ultimate owner, or (ii) has a decisive influence on the respective legal entity. If no UBO can be identified, alternative criteria will determine an appropriate UBO substitute. For limited liability companies (legal persons), a UBO is a natural person who ultimately controls the company through (i) a direct or indirect ownership of more than 25% of the shares, voting rights or ownership interest, or (ii) other means; for example, the right to appoint or dismiss the majority of the members of the management board or to exercise decisive control over the legal entity.

On 23 November 2021, a bill for the registration of UBOs of trust and similar constructions was accepted by Dutch parliament. The bill regulates the obligation to register a UBO, not only of legal entities but also of, e.g., investment funds that have been structured in the form of a “fund for joint account”, not being a legal person. In respect of such funds, the UBOs will be: (i) the fund manager; (ii) the depositary; and (iii) each participant with an interest ver 3%. It is expected that the new law will come in force mid-2022, after which relevant parties will be granted a three-month period for registration.

## PSD 2

PSD 2 was implemented in the AFS in February 2019, enabling payment service providers to offer more services to customers, such as payment initiation services (the providers of which may, subject to approval of the account holder, give an order to execute a payment from that account) and account information services whereby the service providers, subject to approval of the account holder, obtain access to payment data of the account holder. The main goal of the new rules was to create a level playing field for financial service providers and bring an end to the monopoly position of banks whereby it

is seen that fintech companies will blossom. Currently, the Netherlands has a high adoption rate of fintech innovation and Amsterdam is seen as a “hotspot” for finance and fintech in Europe. Furthermore, due to a joint implementation of major banks in the Netherlands, led by the Dutch Payments Association, the Netherlands is the European leader in adoption of digital real-time payments.

## COVID-19

During the whole of 2021, various COVID-19 supportive measures were put in place to provide financing to suffering businesses. Measures varied from direct financial support, possibilities to borrow funds from banks but guaranteed by the Dutch state, and specific regulations for sectors, such as the cultural and creative sector and agricultural businesses, were put in place and still remain. The low number of bankruptcies in 2021 in the Netherlands is attributed to the level of COVID-19 support.





# 4. BANK GOVERNANCE AND INTERNAL CONTROLS

Based on the AFS, European legislation and the guidelines of the European Banking Association (the **EBA**), banks in the Netherlands are subject to a substantial number of requirements on their governance and internal controls, whereby the size and importance of the bank are dependent on the impact of those requirements (proportionality). A brief overview of the requirements is set forth below.

## Integrity and suitability of persons

All policymakers (*beleidsbepalers*) of a bank, which includes the members of the board of directors (*bestuur*), the supervisory directors (*commissarissen*) and key staff members (those persons who are in a position to have influence on the bank's risk profile, such as senior members holding key positions), must undergo a screening of their integrity and a suitability test prior to being appointed in their function. Whether a person is a key staff member is determined by the bank's management.

Furthermore, all persons who hold a "qualifying interest", being participation in a Dutch bank of at least 10% (capital, voting rights or comparable influence), must obtain a declaration of no objection from the ECB prior to obtaining their qualifying interest. On the other hand, a bank with its seat in the Netherlands must obtain a declaration of no objection from the DCB for acquiring a qualifying interest in other companies, among which include financial institutions from outside the European Union (third country) and non-financial institutions from the European Union or in a third country, large asset deals and certain mergers.

Though Dutch corporate law recognises the principle of a "one-tier board" (which has executive directors and non-executive directors in one management board), Dutch banks are organised on the basis of a "two-tier board" with a separate board of directors and a board of supervisory directors (*raad van commissarissen*). Banks are obliged to establish a separate supervisory board. As banks qualify as "public interest entities" under the Audit Firms Supervision Act (*Wet toezicht accountantsorganisaties*), the supervisory board must establish an audit committee. Depending on

the size of the bank, the supervisory board may be obliged to establish: (i) a nomination committee; (ii) a risk committee; and (iii) a remuneration committee.

## Internal control

The DCB continuously expresses the importance it attaches to prevention of economic crime and systematic risk analysis. Pursuant to the AFS, a sound governance system must be in place in banks. Aspects of good governance are the presence of control functions, such as a risk control function, a compliance function and an internal audit function, following the "three-lines-of-defence model" as set forth in the AFS, for compliance, comprising: (i) governance of operations management and internal control; (ii) the setting up of an independent function that monitors and follows up the operational management's governance and internal control, at least annually; and (iii) an audit that reviews and evaluates overall governance and internal control.

The governance system requires in any case the presence of a systematic integrity risk analysis (**SIRA**), which must include procedures for the examination of the nature and magnitude of integrity risks and a management framework for drafting integrity policy, measures and procedures. A bank must first understand the risk of being exposed to money laundering, corruption and terrorism financing in order to understand which measures are needed to combat these crimes. A SIRA must be systematic: risks must be identified and analysed and required measures implemented periodically.

Furthermore, banks must have in place, inter alia:

1. a risk management department; and
2. procedures for customer due diligence, prevention of conflicts of interest, incident reporting and recovery plans.

## Specific Dutch remuneration policies

Though the rules that apply to remuneration in the financial sector in the Netherlands are based on the rules that apply in all EU Member States (from CRD IV and CRD V), the Dutch rules are stronger. The Netherlands has chosen a wider scope of the

remuneration rules and a lower bonus ceiling than those indicated in the European regulations for financial institutions (banks, investment firms, insurers and managers of collective investment schemes). The Dutch Remuneration Policy (Financial Enterprises) Act (*Wet Beloningsbeleid Financiële Ondernemingen*) includes additional requirements for variable remuneration. These rules include the bonus ceiling, rules relating to retention payments, welcome and severance packages and publication obligations.

The bonus ceiling provides that bonuses for employees at Dutch financial institutions may not exceed 20% of their fixed salary (whereas EU rules allow for 100%, applying only to persons known as identified staff). So-called “guaranteed bonuses” are prohibited. Severance payments for directors (day-to-day policymakers) may not exceed one year’s salary. Severance payments may not be paid out at all in the following situations: (i) voluntary leave of a person; (ii) in case of non-performance; or (iii) to directors (day-to-day policymakers) in case of a failing company. Furthermore, a bonus clawback applies. The supervisory board of a financial institution may adjust or reclaim a bonus paid to a director, e.g. if the economic position of the financial institution is weak or

if it has not achieved the objective for which the bonus was offered. This bonus clawback applies to all employees. In addition thereto, adjustment or reclaim is mandatory if employees contravene professional standards or are responsible for large losses. There are a few exceptions of the bonus cap available, though the law explicitly mentions and prohibits constructions that aim to circumvent the bonus cap or to apply measures that circumvent other applicable rules. It is sometimes said that the fact that the Netherlands has implemented extremely strict remuneration rules has affected the attractiveness of Amsterdam for financial institutions post-Brexit. Though with the implementation of CRD V the Dutch government has, in principle, chosen not to implement substantial changes to the Dutch remuneration system, the implementation of CRD V leads to a change in scope. Where certain financial institutions were previously exempted from the bonus ceiling, e.g. managers of alternative investment funds, managers of UCITS or even non-financial enterprises, upon the implementation of CRD V, the bonus ceiling applies insofar as those entities are subsidiaries of a bank or an investment firm, which means an expansion of the scope. For





the latter category, the bonus ceiling will be a maximum of 100%. In respect of persons who are primarily active in a third country (non-EU country), the maximum will be 200% provided certain specific conditions are met (e.g. approval of the shareholders).

### **Outsourcing of functions by banks**

The outsourcing of certain functions by banks is permitted but is subject to strict conditions laid down in the AFS, the order in council promulgated thereunder and the guidelines of the EBA. Outsourcing must be based on an agreement. The outsourcing bank remains at all times responsible for the performance of outsourced functions and activities.





# 5. BANK CAPITAL REQUIREMENTS

The capital requirements for banks are part of the EU Banking Union's single rulebook and implement the Basel III agreement – the internationally agreed bank capital adequacy standards – in EU legislation. Capital requirements applicable to Dutch banks are set forth in CRD IV, CRD V, the Capital Requirements Regulation (CRR) and Capital Requirements Regulation II (CRR II), and in several technical standards and guidelines. CRD IV and CRR have been effective in the AFS since 1 January 2014 onwards. CRD V was implemented in the AFS on 29 December 2020. CRR and CRR II (the latter from 28 June 2021 onwards), being regulations, apply directly in Dutch law without the need for separate implementation.

In brief, the following capital requirements apply under the legislative framework:

1. Minimum of own funds: a buffer that is expressed as a percentage of risk-weighted assets. The risk-weighted assets concept in essence means that safer assets are attributed a lower allocation of capital, while riskier assets are given a higher risk weight. The riskier the assets, the more capital the bank has to maintain. Capital may comprise “Tier 1 capital”, which is considered to be going concern capital. Going concern capital allows a bank to continue its activities and keeps it solvent. The highest quality of Tier 1 capital is called Common Equity Tier 1 capital. Additional Tier 1 capital is formed by subordinated perpetual capital instruments contingently convertible into equity. “Tier 2 capital” is considered to be gone concern capital. Gone concern capital allows an institution to repay depositors and senior creditors if a bank becomes insolvent. Capital buffers may be extended with additional funds, e.g. a capital conservation buffer, a countercyclical buffer and a buffer for systemic importance. CRD V introduces a binding leverage ratio of 3% and an additional leverage ratio for global systemically important banks (significant banks). Furthermore, CRD V introduces a liquidity requirement for long-term assets: the “Net Stable Funding Ratio” (NSFR).

2. Liquidity Coverage Ratio: a buffer to be kept that consists of sufficient liquid assets to fund cash outflows for 30 days whereby the buffer must always be higher than the (expected) outflows.
3. NSFR: under CRR II, disclosure of NSFR is a mandatory requirement. NSFR is the minimum amount of required stable funding a bank must maintain based on the liquidity, residual maturity and counterparty of the assets over a one-year time horizon. The ratio is calculated as available stable funding over required stable funding, taking into account the accounting value of assets, liabilities, off-balance-sheet items and regulatory capital.
4. Leverage ratio: pursuant to CRR II, a leverage ratio of at least 3% must be maintained, which is calculated by Tier 1 capital divided by consolidated assets where Tier 1 capital includes common equity, reserves, retained earnings and other securities after subtracting goodwill.

In the Netherlands (the DCB for Dutch banks that are not significant and the ECB for significant banks), a bank's capital position is assessed annually on the basis of the “Supervisory Review and Evaluation Process” (the SREP). The goal of the SREP is to promote a resilient banking system as a prerequisite for a sustainable and sound financing of the economy. The SREP involves a comprehensive assessment of banks' strategies, processes and risks, and takes a forward-looking view to determine how much capital each bank needs to cover its risks. Once a year, the ECB publishes a summary of all SREP results for the banks under its direct supervision.



## 6. RULES GOVERNING BANKS' RELATIONSHIPS WITH THEIR CUSTOMERS AND OTHER THIRD PARTIES

### Duty of care

The AFS and the decree on conduct supervision promulgated thereunder contain various provisions regarding the duty of care (*zorgplicht*) of banks in relation to their customers whereby the degree of protection distinguishes between professional customers and retail customers. Furthermore, specific rules attach to various services that banks provide. The provision of regular banking activities (bank and savings account services), consumer credit and mortgage loans requires more protective measures and are more regulated when offered to retail customers than to customers who act in the course of a business or profession. The same applies to the provision of investment services (under MiFID II), which also require a higher level of duty of care. Duty of care provisions contain detailed rules in respect of the form and substance of agreements

with customers, due execution rules, personal circumstances (financial and non-financial) of the customer and verification of the customer's knowledge of matters that are covered by the specific services, in order to establish that a certain product or service is suitable for that specific customer. Violation of the rules of the AFS may lead to the AFM or DCB imposing penalties or, in certain matters, criminal liability under the Economic Offenses Act (*Wet op de economische delicten*). Apart from that, there is the general duty of care as laid down in Dutch law, violation of which may lead to civil liability (unlawful act) towards the affected party. The latter duty of care generally does not distinguish between consumers and professional parties. It is noted that banks and other financial service providers (in particular when they perform services to retail customers) are deemed to hold a special role in society that imposes an additional duty of care.





## Deposit Guarantee Scheme and Investor Compensation Scheme

If a bank has gone bankrupt and is thus no longer able to meet its obligations, its customers may invoke the terms of the relevant Deposit Guarantee Scheme (*depositogarantiestelsel*) or Investor Compensation Scheme (*beleggerscompensatiestelsel*) if certain criteria have been met. Both compensation schemes are based on EU legislation. Currently, the Deposit Guarantee Scheme, operated by the DCB, offers a guaranteed amount of EUR 100,000 per bank per person (irrespective of the number of bank accounts held by that bank). The Deposit Guarantee Scheme is pre-funded and all Dutch banks contribute to the Dutch Deposit Guarantee Fund, *pro rata*, the size of their activities. However, if the Deposit Guarantee Scheme appears to be insufficiently funded to cover all its obligations (e.g. in case of bankruptcy of a large bank), the deficits will have to be made up by the taxpayers of the country of origin. The European Commission has proposed to come to an overall European Deposit Guarantee Scheme, though it is yet unclear whether and, if yes, when that will come into force. Retail investors who are provided with an investment service or ancillary service within the meaning of MiFID II, or who put their financial instruments in the care of a bank, will be compensated on the basis of the Investor Compensation Scheme if the bank is no longer able to meet its obligations under the investment service agreement. The maximum amount compensated is EUR 20,000 per person/investor.

## Business Loan Guarantee Scheme

The Business Loan Guarantee Scheme, GO-C, was introduced to help businesses deal with the COVID-19 crisis. Under the Business Loan Guarantee Scheme, banks were able to benefit from a guarantee from the Dutch state for up to 90% of the amount of the new facilities in respect of eligible credit and/or bank guarantee facilities – the amount for which the government stood as a guarantor was EUR 150 million. Its availability ended on 31 December 2021, but the government announced in December 2021 that there are plans to reopen the guarantee facility in the first quarter of 2022 and to make it available until the end of the second quarter of 2022. Further information had not been made available on the date of this publication.

## Dispute resolution

All Dutch financial institutions are obliged to connect with the Dutch Financial Services Complaints Tribunal (*Klachteninstituut Financiële Dienstverlening*, KiFiD).

KiFiD is a form of alternative dispute resolution for consumers. KiFiD's goal is to provide a lowthreshold facility for retail clients (consumers) who have a dispute and want to institute a claim against their financial service provider. KiFiD offers mediation facilities in the form of an ombudsman and also offers alternative legal proceedings. If so requested by both parties, KiFiD may express binding advice. Such advice cannot be challenged in a regular court other than through a marginal review (*marginale toetsing*) by which the regular court may only assess whether KiFiD could have come to their conclusion, taking into account the principle of reasonableness





## 7. ABOUT BUREN

BUREN is an independent, internationally oriented firm of lawyers, notaries and tax lawyers with offices in Amsterdam, Beijing, The Hague, Luxembourg and Shanghai. The firm's heritage dates back to 1898.

BUREN has more than 70 legal professionals providing a full range of legal services to domestic and international business clients who conduct business nationally and globally. The firm works closely together with its clients to tailor solutions in alignment with their business goals. BUREN has carefully established a global network with premier and reputable law firms and other service providers.

In addition, it has dedicated regional practices (China, Japan, CIS, Germany, Hong Kong and Latin America) staffed by native speakers and professionals who have a profound knowledge of local business and culture.

## 8. ABOUT BUREN | BANKING & FINANCE

*A complex environment for bank financing calls for integrated and alternative solutions*

Our banking & finance team provides assistance to our clients on a broad range of financing arrangements - acting for lender or borrower - including acquisition finance, project finance, real estate finance, general banking finance and capital markets finance. We furthermore advise financial institutions on their activities in the Netherlands in respect of license requirements and ongoing compliance with these requirements.

*A credible partner for your finance transactions*

Recent additional capital requirements for banks and other financial institutions have resulted in a more complex environment for bank financings. Our team provides tailored advice and assistance for a wide range of transactions. Including increasingly attractive alternative means of financing.

Our banking & finance team forms an important part of our integrated domestic and international corporate practice. We have broad experience in assisting in both domestic and international finance transactions, preparation of finance and security documentation and opinion letters.

Our specialists are experienced in capital market financing, assisting with initial public offerings, set-up of corporate governance and ongoing listing compliance. Our multidisciplinary approach considers all relevant Dutch law aspects from a corporate, tax and notarial perspective. Our broad international network enables us to help clients realize their goals, in the Netherlands and anywhere in the world.

Our clients are listed and private companies, domestic and multinational corporations - public and private - across all sectors.

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