

# Notes

to the application form for a declaration of  
no-objection (DNO) – Section 3:95 of the Wft

**DeNederlandscheBank**

EUROSYSTEM

# Notes

to the application form for a declaration of no-objection (DNO) for a qualifying holding in a financial enterprise having its registered office in the Netherlands.

These notes describe what DNB wants to see when considering your application for a DNO. In addition to providing you with these notes, we have listed all relevant sections of the law for your convenience. They are included in the PDF file 'Relevant sections of the law for the application of a DNO', which you can find on the 'application for a DNO' page of our Open Book on Supervision website.

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# 1 Introduction

- 4 If you wish to acquire a qualifying holding in a financial enterprise, you must obtain a declaration of no-objection (DNO) issued by De Nederlandsche Bank N.V (DNB). In specific cases, you must also apply for a DNO if you wish to increase an existing qualifying holding in a financial enterprise.

## Qualifying holding in a financial enterprise

A qualifying holding is a direct or indirect holding of 10% or more of the issued capital of an enterprise or the power to exercise, directly or indirectly, 10% or more of the voting rights in an institution, or the power to exercise, directly or indirectly, an equivalent degree of control in an enterprise. Such control may comprise special rights in respect of appointment, dismissal or suspension of management or supervisory board members of the financial enterprise. In determining the number of voting rights of holders of participating interests in an enterprise, we also take into account the votes that the holder has or is deemed to have.

You must apply for a DNO if you intend to acquire or increase a qualifying holding in the following types of financial enterprise (the target enterprise):

- Settlement agent<sup>1</sup>
- Bank
- Manager of an undertaking for collective investment in transferable securities (UCITS)
- Investment firm
- Payment institution<sup>2</sup>
- Electronic money institution
- Special purpose reinsurance vehicle
- Financial institution with a certificate of supervised status
- Premium pension institution
- Insurance or re-insurance company

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<sup>1</sup> The obligation to obtain a DNO applies to settlement agents licensed under Section 2:3.0b of the Financial Supervision Act (*Wet op het financieel toezicht - Wft*).

<sup>2</sup> The obligation to obtain a DNO applies to payment institutions providing any of the services under points 1 to 7 listed in Annex I of PSD2.

## A qualifying holding in a bank

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If you want to apply for a DNO for the acquisition and holding of a qualifying holding in a bank, please use the following form: 'Application for a Declaration of No-Objection – 3:95 bank'.

The European Central Bank (ECB) decides on applications related to qualifying holdings in banks. DNB will assess these applications to the extent that they relate to Dutch banks and will submit its opinion to the ECB.

## Joint Guidelines

DNB – or the ECB, if the applicant is a bank – assesses DNO applications based on the Joint Guidelines on the prudential assessment of acquisitions and increases of qualifying holdings in the financial sector (JC/GL/2016/01).

## 2 General information

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### Applicant

#### **Step B. in the digital DNO application form.**

Under "applicant", you fill in the details of the prospective acquirer, i.e. the party acquiring or increasing the qualifying holding. Legal entities as well as natural persons can apply for a DNO.

You must fill in the applicant's address details. If the applicant is a legal entity having its registered office in the Netherlands, you must provide its Dutch Chamber of Commerce registration number, an extract from the Trade Register and the most recent version of its articles of association. If the legal entity has its registered office outside the Netherlands, you must provide a comparable unique identification number from the trade register of the relevant country, and an extract from the trade register of the country where the legal entity has its registered office. If such a document is available in the jurisdiction where the entity was incorporated, we also need the most recent version of its articles of association.

### External consultant

#### **Step C. in the digital DNO application form.**

You can also submit your application through an external consultant. We recommend that you engage the services of a consultant to assist you in the application process. Practice has shown that applications are often more complete and of a substantially higher quality if the applicant has sought advice, for example from a legal consultant. We can assess a complete and well-substantiated DNO application more quickly and more thoroughly. If you decide to use the services of an external consultant please also provide us with this consultant's details.

### Type of financial institution

#### **Step F. in the digital DNO application form.**

If the applicant is a payment institution with its registered office outside the EU or the EEA, you must indicate whether it is subject to anti-money laundering and counter-terrorist financing (AML/CFT) regulations and describe the extent to which these correspond to the recommendations of the Financial Action Task Force (FATF). These recommendations are recognised as the international standard for combating money laundering, terrorist financing and proliferation. We advise you to check whether the country where the applicant has its registered office is affiliated with the FATF.

# 3 Control structure and legal group structure of the applicant

## Step G. in the digital DNO application form.

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### Bandwidth

Your application must specify a bandwidth. With a bandwidth DNO, the size of the qualifying holding may vary within the specified bandwidth without the need to apply for a new or amended DNO. Bandwidths have a lower limit of 10% (the DNO threshold) and can have upper limits of 20%, 33%, 50% or 100%. Please note that the upper limit for payment institutions is 30% instead of 33%.

Your application must include the bandwidth that corresponds to the actual intended size of the intended qualifying holding, which means this question does not concern any further intended increases of your holding in the future. Please note that in situations of acting in concert you must indicate the bandwidth that corresponds with the total holding (see below).

You must notify us of certain specific changes in the size of holdings, for example a reduction in size to below 20% for holdings with a bandwidth of 10%-33%, or if the size of the holding falls below 10%. In the latter case, the issued DNO will lapse by operation of law.

### Calculation method for indirect qualifying holdings

For assessing the appropriate bandwidth for an indirect qualifying holding, DNB applies the calculation method set out in the Joint Guidelines of EBA, EIOPA and ESMA on the prudential assessment of acquisitions and increases of qualifying holdings in the financial sector (JC/GL/2016/01). The first step for this calculation method is to apply the control criterion. When the control criterion does not recognise a qualifying holding, DNB applies the multiplication criterion.

### Control criterion

If an indirect shareholder has or will acquire a controlling interest over an existing or prospective shareholder of a financial target company, then full control of the underlying shareholder will pass to the acquirer. This applies across the entire chain of indirect shareholders in the financial target company's shareholding structure. Annex II of the revised Joint Guidelines contains examples to illustrate this.

### Multiplication criterion

The multiplication criterion entails multiplying the percentages of the holdings across the corporate chain, starting from the participation held directly in the target undertaking, which has to be multiplied by the participation held at the level immediately above (the result of such multiplication is the size of the indirect holding) and continuing up the corporate chain for so long as the result of the multiplication continues to be 10% or more.

### Notification of changes

You must notify us of certain specific changes in the size of holdings, for example a reduction in size to below 20% for holdings with a bandwidth of 10%-33%, or if the size of the holding falls below 10%. In the latter case, the issued DNO will lapse by operation of law.

### Acting in concert

Cooperation among shareholders aimed at creating a long-term common voting policy, based for example on a shareholder agreement or family relationships, may increase shareholders' influence on the target enterprise. This situation is referred to as "acting in concert" and has implications for the bandwidth of the DNO, and for establishing whether all parties requiring a DNO are actually in scope. Such a policy can be agreed on orally and in writing. For example, a party is deemed to control the voting rights of a third party if it has made agreements with this party providing for a long-term common policy on exercising these voting rights.

If this is the case, the aggregate of voting rights that can be exercised by the parties that entered into the agreement must be taken into account when determining the bandwidth. All parties involved in the agreement will have to base their considerations of whether they need a DNO, and the applicable bandwidth, on this aggregate of voting rights.

You must provide the following information as an annex to your application form:

- the identity of the other parties involved;
- the manner of their involvement;
- plans or agreements made with these other parties regarding the financial institution;
- the percentage of the voting rights.

Please contact us before submitting your application if you are in doubt as to whether a situation qualifies as acting in concert.

### Legal group structure

You must submit an organisation chart (shareholder structure) with your application showing the full legal group structure and control structure. The organisation chart must show the applicant-acquirer's group structure before and after the acquisition/increase of the proposed qualifying holding.

It must also specify the persons or legal entities that hold or will hold a direct or indirect qualifying holding in the financial enterprise, stating the percentages of their interests and their voting rights. In some cases you may also have to provide information on the identities and interests of the investors involved in the acquisition/increase of the proposed qualifying holding.

Please also indicate which entities in the organisation chart are under supervision, listing the names of the relevant supervisory authorities and their contact persons.

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### Complex structures

If your DNO application involves acquiring or increasing a qualifying holding in a complex structure, you may have to provide additional information. Examples of complex structures may include multiple layers of enterprises, often involving (i) entities without a capital structure and/or without a specific legal form, (ii) entities established to separate legal and economic ownership, or a combination of these situations.

If your application involves a complex structure, please contact us before submitting your formal application, to discuss any additional information you may have to provide. For example, we may ask you to provide an overview of the organisational structure showing the economic ownership and control relationships, a substantiation of which entities within this structure are subject to the DNO requirement, or an explanation of the tax positions of the entities in the organisational structure.

### Financial and non-financial relationships

If your organisation has financial or non-financial relationships with the target enterprise, you must describe the nature of these relationships and provide information on any shareholder agreements. The same applies if your organisation has financial or non-financial relationships with other shareholders or parties entitled to exercise voting rights, management or supervisory board members, or policymakers or co-policymakers of the financial enterprise.

You may provide information on the extent of control that shareholders jointly hold in the enterprise (see also "acting in concert"), the voting right ratios and the persons that co-determine the enterprise's policy in addition to the shareholders. You must also state if there are any intra-group financial loans or claims within the group of shareholders.

### Conflicts of interests

If your financial and non-financial relationships or any other interests or activities are likely to cause a conflict of interests with respect to the financial enterprise, you must describe any measures taken to mitigate such conflicts of interests.

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## Trusts

Please indicate whether the proposed qualifying holding relates to a trust, and if this is the case, you should indicate whether this trust is a legal entity and provide the names and details of the trustees and beneficial owners of the trust. The trustees are the individuals managing the trust's assets. The beneficial owners are the ultimate rightful claimants to the trust's assets. Please provide a description of the type of trust, stating which natural persons are responsible for exercising control on behalf of the trust.

Please provide a list of trustees and a description of their respective shares in the distribution of income. You must also provide a list of beneficial owners with a qualifying holding, and a description of their respective shares in the distribution of income.

## 4 Reputation

### **Step H. in the digital DNO application form.**

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The propriety of the applicant of a DNO must of course be beyond doubt. In addition to the propriety assessment we also assess DNO applicants' competence. In assessing competence, we distinguish between management competence and technical competence. Management competence largely depends on experience in acquiring and managing holdings, and the careful consideration observed in the process. Technical competence is mostly evident through experience in leading a financial enterprise as a majority shareholder. The experience must also show proof of exercising due care. Together, propriety and competence determine the applicant's reputation.

If the applicant is a natural person, we will assess this individual's reputation. If the applicant is a legal entity, we will assess the reputation of the legal entity and of its day-to-day policymakers. All individuals to be assessed must complete and submit a separate "Initial assessment application form for a declaration of no-objection". An authorised representative may also do this on their behalf.

We perform track record assessments based on the information provided by the natural person to be assessed, and our review of that information. We verify whether the propriety of this person is beyond doubt. The person's intentions, actions and antecedents must not stand in the way of performing the duties of the job. In particular, we review criminal, financial and tax compliance, supervisory and tax administrative law antecedents, and other relevant information.

#### **If the applicant is a legal entity**

Please provide a list of all day-to-day policymakers of the legal entity submitting the application. It is your responsibility as an applicant to ensure we receive the necessary information for our assessments in time. If the acquisition or increase of the qualifying holding involves the appointment of a management or supervisory board member at the financial enterprise, the digital "Application form for an initial assessment or regular assessment in the context of a licence" must be completed and submitted for this individual.

#### **If the applicant is a natural person**

On the digital form you must indicate whether the natural person is a day-to-day policymaker of the financial enterprise in which the qualifying holding is to be acquired. If this is not the case, the digital "Initial assessment application form for a declaration of no-objection" must be submitted by or on behalf of this individual.

### **Additional questions for payment institutions**

If the applicant is a payment institution, you must answer two additional questions.

The policymakers of the applicant institution or the applicant (as a natural person) must provide an overview of their involvement in other enterprises as a shareholder or board member. The policymaker must also indicate if and how they are related to politically exposed persons (PEPs). PEP's are individuals who are or have been entrusted with prominent public functions, as well as the immediate family members or close associates of these individuals. If the policymaker is married to a PEP or is otherwise related to PEPs as a blood relative or in a financial sense, they may be at a higher risk of blackmail or other forms of pressure.

### **Appointments**

The acquisition or increase of the qualifying holding may involve the appointment of a day-to-day policymaker or supervisory board member at the financial enterprise or its mixed financial or insurance holding with registered offices in the Netherlands. We will assess this day-to-day policymaker or supervisory board member on fitness and propriety. You need to submit specific information for this assessment; click this [link](#) for more information.

The fit and proper assessment takes place before the appointment. If the appointment is connected to the proposed acquisition or increase of the qualifying holding, it will be considered as part of the DNO application assessment. The financial enterprise must submit the application and the information required for the fit and proper assessment.

### **Dutch holding company**

In this context, a Dutch holding company is taken to include a financial holding company, a mixed financial holding company or an insurance holding company having its registered office in the Netherlands.

### **Financial holding company**

A financial institution is considered to be a financial holding company if it meets the following two conditions.

- It has as its subsidiaries exclusively or mainly banks, investment firms within the meaning of the Capital Requirements Regulation (CRR, Regulation (EU) No. 575/2013) or financial institutions of which at least one subsidiary is either a bank or an institution within the meaning of the CRR.
- The institution is not a mixed financial holding company.

### **Mixed financial holding company**

A mixed financial holding company is a parent company that is not a regulated entity and that together with its subsidiaries, of which at least one is a regulated entity with its head office in the European Union, and forms a financial conglomerate with other entities.

**Insurance holding company**

An insurance holding company is a parent company that is not a mixed financial holding company and that has as its subsidiary a re-insurance company, a life insurance company, or a non-life insurance company having its registered office in a Member State and that exclusively or mainly has holdings in subsidiaries that are reinsurers, life insurers or non-life insurers.

**Certificate of good conduct/criminal record extract**

As part of the reputation assessment, you must be able to submit a statement issued by a competent authority on (the absence of) criminal-law antecedents. Please check our [Open Book on Supervision](#) pages for information about the situations in which a certificate of good conduct or a criminal record extract is required.

If you are unable to submit this statement for whichever reason, we recommend that you contact us before submitting your application.

# 5 Applicant's financial soundness

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## Step I. in the digital DNO application form.

### Business case

We assess the applicant's financial soundness to check whether it is able to finance the proposed qualifying holding and whether it is able to maintain a healthy financial situation for itself and for the financial enterprise in the medium term. We therefore focus on the aim of the proposed acquisition or increase of the qualifying holding.

You must explain these aspects in a business case, in which you describe the period for which the proposed holding is to be held and your intentions with respect to the qualifying holding. You should also indicate whether you intend to act as an active or passive shareholder.

Finally, you must include a track record of investments in the financial sector over the past five years, unless of course this is your first investment. In that case, you only need to confirm there are no other investments in the financial sector.

### Applicant's financial soundness

In order to assess the applicant's financial soundness, it must submit its most recent financial figures. The information to be provided depends on whether the application is submitted by a natural person or a legal entity.

#### Legal entity

A legal entity must submit the following documents:

- annual financial statements/balance sheets over the last three financial years, together with an independent auditor's report
- a credit rating if available

If the financial statements and independent auditor's reports are not available for all years, the most recent annual accounts must in any event have been audited by an independent auditor. The most recent financial statements must not be older than twelve months before the date of submission. If the period between the DNO application and the most recent financial statements is more than twelve months, you must provide an interim balance sheet or statement of assets together with an independent auditor's report, security interests and guarantees. If the legal entity is newly formed or still in formation, you must submit a formation balance sheet together with an external auditor's report or a pro forma balance sheet.

The financial statements and independent auditor's report must comprise:

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- a balance sheet;
- profit and loss account
- notes to the financial statements and any other relevant financial information;
- off-balance sheet liabilities (where applicable).

### **Natural person**

A natural person must submit the following documents.

- A recent list of assets including security interests and guarantees, not older than twelve months and submitted together with an independent auditor's report of factual findings.
- An overview of holdings in the financial sector in which the applicant has an interest of over 50%.

The independent auditor's report on agreed-upon procedures must include a detailed description of the procedures performed in accordance with the International Standard on Related Services (ISRS) 4400, "Engagements to Perform Agreed-Upon Procedures Regarding Financial Information".

# 6 Impact on the financial enterprise/qualifying holding

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## Step J. in the digital DNO application form.

Please describe the impact that you as the applicant expect to have on the financial enterprise. The information to be provided depends on your or your enterprise's degree of control in the financial enterprise, also taking into account the bandwidth. Again, you must take situations of acting in concert into account (see section 3 of these explanatory notes).

### All bandwidths

#### Explanatory notes

Please provide a description of the bandwidth of control and how control is exercised with respect to:

- The financial position of the financial enterprise (e.g. dividend policy).
- The strategic policy of the financial enterprise.
- The allocation of funds and resources of the financial enterprise.

#### Policy plan

Besides this additional information, you must submit a policy plan setting out your intentions and expectations regarding the qualifying holding in the medium term, addressing at least the following points:

- financial targets for the medium term (e.g. return on equity, cost-benefits ratio, earnings per share, etc.);
- possible redirection of activities/products/targeted customers and possible reallocation of funds and resources of the financial enterprise;
- integration of the financial enterprise into the applicant's group structure, describing the expected synergies/cost benefits, and a description of the group policy regarding intra-group transactions and intra-group relationships.
- possible changes with respect to governance (management board, supervisory board, key functions).

If it involves an insurance or re-insurance company, we would ask you to also include the following information in the policy plan:

- possible changes with respect to investment policy, reinsurance policy, capital policy and dividend policy including leverage, claims settlement relating to unit-linked insurance products and intra-group policy.

## Additional information for a bandwidth of up to 100%

### Change of control

If the applicant obtains majority control in the financial enterprise, implying a change in control, the following information must be submitted to substantiate the proposed holding.

- The intended strategy with respect to the holding.
- A detailed description of the significant changes the applicant envisages for the financial enterprise.
- A description of the applicant's intentions and expectations regarding the financial enterprise for the medium term, addressing the following points:
  - Outlook for financial position
  - Corporate governance and organisational structure

### Outlook for financial position

We also require you to submit information about the outlook for the financial position of the financial enterprise at the consolidated and individual levels for the next three years, including:

- a balance sheet and profit and loss account;
- relevant prudential capital requirements and solvency ratios;
- information on the level of risk exposures (credit risk, market risk, operational risk, etc.) for the financial enterprise.
- Estimated intra-group claims and liabilities.

### Corporate governance and organisational structure

Last but not least, your application must include a description of the impact of the proposed qualifying holding on the corporate governance and the organisational structure of the financial enterprise. You must at least address the following subjects.

- The composition (including proposed appointments) and duties of the management board and the main committees and bodies (e.g. senior management team, risk committee, audit committee, remuneration committee, etc.) and key function holders.
- Changes in procedures and systems related to administration, accounting, audit, internal control, and compliance (including anti-money laundering policy), including intended appointments in key positions in these areas (e.g. auditor, controller, compliance officer and a portfolio manager appointed by the applicant with respect to the proposed holding).
- IT systems and IT architecture. This involves changes in e.g. the following areas:
  - outsourcing policy;
  - data flowchart;
  - in-house and external software;
  - essential data;
  - system security procedures and tools (e.g. back-up systems, continuity plans, audit trails, etc.)

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- The outsourcing policy (e.g. type of operational processes, selection of external service providers, etc.), and the rights and obligations of the parties involved in the outsourcing agreements (e.g. audit arrangements, service level agreements, etc.).

Please contact us if you have any questions about the information to be submitted.

## 7 Funding

### **Step K. in the digital DNO application form.**

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Please provide information on how the proposed holding is to be financed, including information on the source of funds and the transfer of payments. Based on the information you submit – and in order to issue a DNO to you – we must be able to exclude that the financing of the qualifying holding is used for purpose of money laundering or terrorist financing.

You must include the following information with your application.

- Details on the origin of the resources used to finance the proposed holding and the proportion of borrowed capital in the total amount.
- Information on the means and the network used to transfer payments for the proposed holding (availability of resources, financial arrangements)
- Information on the means used to access capital sources and capital markets.
- Information on the financial instruments to be issued for the funding of the proposed holding, at least specifying the underwriting of such instruments and their maturities, terms and conditions, security interests and guarantees.
- Information on whether the applicant, for the funding of the proposed holding has entered into any kind of financial relationship with other shareholders (or future shareholders) of the target financial enterprise, at least specifying maturities, terms, pledges and guarantees.
- Information on the extent to which the applicant's assets or those of the financial enterprise are to be sold in the short term, at least specifying conditions of sale, price and valuation, and details on their characteristics.

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