

Remunerations reforms

Since the start of the international economic and financial crisis a large number of new regulations aimed at remuneration control have been introduced by both European and local authorities. These regulations vary from disclosure obligations to employee co-determination rights and bonus caps.

Certain regulations specifically cover the financial sector while others (also) apply to corporates. In the past year Clifford Chance has issued newsletters and alerters on some of these regulations, eg the *Act on Claw Back and Revision of Bonuses (Wet bevoegdheid tot aanpassing en terugvordering van bonussen en winstdelingen van bestuurders en dagelijks beleidsbepalers)* and the draft for the legislative proposal on the *Act on the Remuneration Policy of Financial Institutions (Wet beloningsbeleid financiële ondernemingen)*. Below we have included an update on the latter as a legislative proposal has now been submitted to Dutch Parliament. In addition, a brief outline is included on the implementation of the remuneration paragraphs of the *Capital Requirements Directive IV into the Financial Supervision Act (Wet op het financieel toezicht)* and the *Regulation on Sound Remuneration Policies (Regeling beheerst beloningsbeleid)* as well as an update on the 'bankers' oath'.

Act on the Remuneration Policy of Financial Institutions (*Wet beloningsbeleid financiële ondernemingen, the "Act"*)

In June 2014, the Dutch Government issued the legislative proposal for the Act to Dutch Parliament. Once adopted in final form, the Act's remuneration requirements and restrictions will apply on top of the restrictions already imposed under the remuneration paragraphs of the *Alternative Investments Fund Managers Directive (2011/61/EU or AIFMD)* and the Dutch rules implementing the *Capital Requirements Directive (CRD III and CRD IV, also see below)*.

The Act will, in principle, only apply to financial institutions with their statutory seat in the Netherlands. The umbrella concept of financial institution covers banks, investment firms, fund managers, payment services providers, custodians, insurers and certain other financial services providers. The Act will, however, also apply to subsidiaries of such Dutch companies, whether located inside or outside the Netherlands. Furthermore, if the ultimate parent company of the Dutch financial institution is also established in the Netherlands, that parent company will be required to apply the

remuneration rules throughout its group (unless the main business of the group as a whole is not financial services related).

The legislative proposal for the Act includes a bonus cap of 20%, which will, however, not apply to AIFMD managers, managers of UCITS collective investment schemes (in the meaning of Directive 2009/65/EC) and Dutch branch offices of EEA banks and investment firms. The cap does seem to apply to Dutch branches of non-EEA banks and non-EEA investment firms. Furthermore, the Act includes eg a maximisation of

Key issues

- Legislative proposal for the Act on the Remuneration Policy of Financial Institutions submitted to Dutch Parliament.
- Remuneration paragraphs of Capital Requirements Directive IV implemented into the Financial Supervision Act and Regulation on Sound Remuneration Policies.
- Dutch government has submitted to Parliament a legislative proposal extending the 'bankers' oath' to all bank employees.

severance payments to one year salary for board members, a prohibition on guaranteed bonuses, and stricter rules on adjustment and claw-back of remuneration.

The proposal for the Act is expected to be enacted and enter into force by 1 January 2015.

Capital Requirements Directive IV

On 1 August 2014 the Capital Requirements Directive (CRD IV) was implemented into the Financial Supervision Act (*Wet op het financieel toezicht*) and the Regulation on Sound Remuneration Policies (*Regeling beheerst beloningsbeleid*).

In this regard a bonus cap of 100% of the fixed salary was introduced into the Financial Supervision Act. This cap can be extended to 200% if the shareholders, owners or members (each time to the extent relevant) agree thereto. It is intended that the bonus cap will be a temporary measure, to be repealed once the Act on the Remuneration Policy of Financial Institutions takes effect. From that time, the 20% bonus limit will apply.

In addition, certain amendments were implemented in the Regulation on Sound Remuneration Policies. These amendments are limited in scope. Most important changes are the further elaboration on the prohibition to award guaranteed bonuses and the provisions relating to the claw back and revision of bonuses.

It is noted that introduction of the above mentioned remuneration rules into your organisation may require involvement of the works council.

Proposed changes to Act on regulation of the remuneration of senior officials in the public and semi-public sector (*Wet Normering Topinkomens*) ("WNT")

A legislative proposal providing for changes to the WNT is currently pending (the "Proposal"). The Proposal provides for a lower maximum salary for senior officials in the public and semi-public sector. According to the Proposal, the maximum will be set at an amount equal to 100% of a Dutch Minister's salary. Since the introduction of the WNT per 1 January 2013, the relevant maximum was 130% of this amount.

It is currently envisaged that the Proposal will be enacted per 1 January 2015. The new maximum salary (including holiday and end of year payments) will then amount to EUR 144,108, to be updated annually. When the expense allowances and pension contributions are included, the relevant maximum amount is EUR 169,425.

Bankers oath

In an attempt to restore confidence in the financial sector, the Dutch government has submitted to Parliament a legislative proposal extending the 'bankers' oath' to all bank employees. This supplements the existing requirement for policy makers of Dutch financial institutions to swear the oath, as well as a pending legislative proposal which would require employees of various financial institutions to take the oath if they influence the risk profile of the

institution or are directly involved in the provision of financial services.

In addition, a new regime of professional disciplinary sanctions will be introduced to which the same bank employees would be subject should they violate the industry's binding standards of integrity and duty of care. Such a regime would resemble self-regulatory tribunals that have long been standard for medical professionals. Bank employees would be subject to the disciplinary rules on the basis of private law. However, the Netherlands Authority for the Financial Markets (AFM) and the Dutch Central Bank (DCB) would monitor compliance by the banks. According to the proposal, the disciplinary rules should provide adequate safeguards for a due process and be applied and implemented by an independent and external expert agency. The AFM and DCB would monitor whether banks would actually make the rules work in practice. The further development and organisation of the disciplinary regime is left to the respective banks and the banking sector.

Implementation of both proposed measures would take place through amendments to the Financial Supervision Act. For newly appointed employees, the rules are expected to apply from 1 January 2015, for existing employees the rules are expected to apply from 1 January 2016.

Clifford Chance's Amsterdam employment, pensions and benefits team is more than happy to assist you with both the assessment of the impact of the above regulations and changes thereto to your organisation as with any possible subsequent actions. For financial institutions, we work together with our Financial Services & Markets team.

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This publication does not necessarily deal with every important topic or cover every aspect of the topics with which it deals. It is not designed to provide legal or other advice.

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