Nederlandse Vereniging van Banken

Code Banken

9 september 2010

The original Dutch text will be binding and shall prevail in case of any variance between the Dutch text and the English translation.

PREAMBLE

- The Banking Code (*Code Banken*) was drawn up by the Netherlands Bankers' Association (NVB) in response to the report entitled 'Restoring Trust' ('*Naar herstel van vertrouwen*'), which was published by the Advisory Committee on the Future of Banks (*Adviescommissie Toekomst Banken*) on 7 April 2009. The recommendations from chapters 1 and 2 of the Advisory Committee's report have been used as the basis for this Banking Code.

- The Banking Code applies to all activities in the Netherlands performed by banks that are in possession of a banking licence granted under the Financial Supervision Act (Wet op het financieel toezicht (Wft), irrespective of whether they perform their activities in the Netherlands or in another Member State, and irrespective of whether those activities are performed by a branch. Banks that are part of a group can apply parts of the Banking Code at group level or on a consolidated basis. The principles of the Code apply in full to the relevant entities of the banking group. Where article 3:111 of the Wft applies, the Code does not apply on an individual basis. It is recommended that the Code should apply to all entities of Dutch incorporated banking groups which operate outside the European Union and to those entities that operate in the Netherlands, irrespective of their country of incorporation. It is expressly recommended that activities and branches of banks licensed in another Member State should apply the Banking Code.

- The Dutch Corporate Governance Code applies to listed banks. Non-listed banks often apply this Corporate Governance Code on a voluntary basis. The Banking Code contains principles that are based on the Dutch Corporate Governance Code of 10 December 2008. The Banking Code focuses in particular on the role of the bank's executive board and supervisory board and on the function of risk management and auditing at banks. The Banking Code also contains principles about remuneration.

- The Banking Code does not stand on its own but is instead part of the full set of national, European and international laws and regulations, case law and codes, which is viewed in its entirety. This national, European and international context and the activities and other specific characteristics of the individual bank (and the group, if the bank is part of a group) shall all be taken into account when applying the Banking Code.

- All banks shall report every year in their annual report regarding the manner in which they applied the principles of the Banking Code in the previous year, providing a substantiated explanation – where applicable – of why a particular principle may not have been applied, either partly or in full. All banks shall place this report on their website.

- The decisive factor as regards the proper functioning of the Banking Code is not the extent to which there is compliance with the letter of the Code (it is not a case of 'ticking off boxes'), but the way in which the intentions behind the Banking Code are treated.

- It is the responsibility of the bank's executive board to consider the interests of all of the parties involved with the bank, such as its clients, shareholders and employees, in an integrated manner. These considerations shall take into account the continuity of the bank, the environment in society in which the bank operates and legislation, regulations and codes that apply to the bank. The bank shall always treats its clients with due care.

- The Dutch version of the Banking Code contains a number of terms derived from English. In the interest of readability, a number of these terms are briefly explained below:
  - Risk appetite *(*in Dutch*: risicobereidheid)* refers to the amount of reasonably foreseeable risk that the bank – given its proposed activities – is prepared to accept in the pursuit of its objectives.
  - The term Product Approval Process *(*in Dutch*: Product Goedkeuringsproces)* refers to the procedure by which the bank decides whether a particular product will be produced or distributed at its own expense and risk or for the benefit of its clients. This process comprises extensive testing in relation to aspects of the duty of care and risk management.

- The Banking Code repeatedly refers to the role of the supervisory board's risk committee. A similar committee can perform the function of the risk committee in the supervisory board of a bank that does not have a specific risk committee.

- The Banking Code will come into effect on 1 January 2010. When they present their annual report for the financial year 2009, banks shall explain on their website what preparatory steps they took in 2009 to ensure that they can apply the Banking Code from 1 January 2010 onwards.

- Compliance with the Banking Code shall be monitored annually by an independent monitoring committee, to be appointed by the NVB in consultation with the Minister of Finance.

Contents

1 COMPLIANCE WITH THE CODE

The Banking Code uses the ‘comply or explain’ principle, which means that banks shall apply the principles of the Banking Code. The application of the principles depends in part on the activities and other specific characteristics of the bank (and of the group if the bank is part of a group). There are differences in many areas between the banks that are covered by the Code. For example, they have different corporate governance structures, operate in different markets or submarkets and may have a national or international focus. Departures from the Code, if substantiated, can therefore be justified.

2 SUPERVISORY BOARD

2.1 Composition and expertise

2.1.1 The supervisory board shall be composed in such a way that it is able to perform its tasks properly. Complementarity, a collegial board, independence and diversity are preconditions for the supervisory board to perform its tasks properly.

2.1.2 The supervisory board shall have a sufficient number of members to properly perform its function, including in its committees. The appropriate number of members depends on the nature, size and complexity of the bank.

2.1.3 The members of the supervisory board shall have thorough knowledge of the bank's functions in society and of the interests of all parties involved in the bank. The supervisory board shall carefully consider the interests of all parties involved in the bank, such as the bank's clients, its shareholders and its employees.

2.1.4 Each member of the supervisory board shall be capable of assessing the main aspects of the bank's overall policy in order to form a balanced and independent opinion about the basic risks involved. Each member of the supervisory board shall also possess the specific expertise needed to perform his or her role in the supervisory board. To this end, whenever a vacancy arises on the supervisory board, an individual profile shall be drawn up for the new member of the board.

2.1.5 As part of the process to fill the vacancy of chairman of the supervisory board, an individual profile shall be drawn up that also focuses on the bank's requirements in terms of expertise and experience in relation to the financial sector and familiarity with the socio-economic and political culture and the social environment of the bank's main markets.

2.1.6 Each member of the supervisory board – the chairman in particular – shall be sufficiently available and contactable to properly perform his or her tasks in the supervisory board and the supervisory board's committees.

2.1.7 Each member of the supervisory board shall receive suitable compensation for the amount of time that he or she spends on supervisory board activities. This compensation shall not depend on the bank's results.

2.1.8 The chairman of the supervisory board shall organise a programme of lifelong learning, with the aim of maintaining the expertise of the supervisory board directors at the required standard and improving their expertise where necessary. The learning programme shall cover relevant developments at the bank and in the financial sector, corporate governance in general and in the financial sector in particular, the duty of care towards the client, integrity, risk management, financial reporting and audits. Every member of the supervisory board shall take part in the programme and meet the requirements of lifelong learning.

2.1.9 The assessment of the effectiveness of the lifelong learning referred to in principle 2.1.8 shall be part of the annual evaluation performed by the supervisory board.

2.1.10 In addition to the supervisory board's annual self-evaluation, the functioning of the supervisory board shall be evaluated under independent supervision once every three years. The involvement of each member of the supervisory board, the culture within the supervisory board and the relationship between the supervisory board and the executive board shall be part of this evaluation.

2.2 Tasks and working methods

2.2.1 As part of its supervisory tasks, the supervisory board shall pay special attention to the bank's risk management. All discussions about risk management shall be prepared by a risk committee or a similar committee, which committee shall be appointed by the supervisory board from its ranks for this purpose.

2.2.2 Both the risk committee and the audit committee shall be subject to specific requirements as regards competency and experience. For example, a number of members of the risk committee must have sound knowledge of the financial aspects of risk management or the experience needed to make a thorough assessment of risks. A number of members of the audit committee must have sound knowledge of financial reporting and internal control systems and audits or the experience needed to thoroughly supervise these areas.

3 EXECUTIVE BOARD

3.1 Composition and expertise

3.1.1 The executive board shall be composed in such a way that it is able to perform its tasks properly. Complementarity, a collegial board and diversity are preconditions for the executive board to perform its tasks properly.

3.1.2 Each member of the executive board shall possess a thorough knowledge of the financial sector in general and the banking sector in particular. Each member of the executive board shall have thorough knowledge of the bank's functions in society and of the interests of all parties involved in the bank. In addition, each member of the executive board shall possess thorough knowledge so that he or she is able to assess and determine the main aspects of the bank's overall policy and then form a balanced and independent opinion about the risks involved.

3.1.3 The chairman of the executive board shall organise a programme of lifelong learning, with the aim of maintaining the expertise of the executive board directors at the required standard and improving their expertise where necessary. The learning programme shall cover relevant developments at the bank and in the financial sector, corporate governance in general and in the financial sector in particular, the duty of care towards the client, integrity, risk management, financial reporting and audits.

3.1.4 Every member of the executive board shall take part in the programme referred to in 3.1.3 and meet the requirements of lifelong learning. They have to satisfy this condition in order to sit on the executive board. The supervisory board shall ascertain whether the members of the executive board continue to fulfil the expertise requirements developed by De Nederlandsche Bank [the Dutch central bank].

3.1.5 Each year, the bank shall indicate in its annual report in what manner it implemented principles 3.1.3 and 3.1.4.

3.1.6 Taking into account the risk appetite approved by the supervisory board, the executive board shall ensure a balanced assessment between the commercial interests of the bank and the risks to be taken.

3.1.7 Within the executive board one member shall be responsible for preparing the decision-making with regard to risk management. This member of the executive board shall be involved, in a timely manner, in the preparation of decisions that are of material significance for the bank as regards the risk profile, especially where these decisions may result in departure from the risk appetite approved by the supervisory board. Risk management shall also include a focus on the interests of financial stability and on the impact that systemic risk could have on the risk profile of the bank.

3.1.8 The member of the executive board who is responsible for preparing the decision-making with regard to risk management may combine his or her function with other focus areas, on the condition that he or she does not bear any individual commercial responsibility for the commercial task areas and operates independently from those areas.

3.2 Tasks and working methods

3.2.1 In all of its actions, the bank's executive board shall ensure that it carefully considers the interests of all of the parties involved in the bank, such as the bank's clients, its shareholders and its employees. These considerations shall take into account the continuity of the bank, the environment in society in which the bank operates and legislation, regulations and codes that apply to the bank.

3.2.2 Maintaining a continued focus on its clients' interests is a necessary precondition for the continuity of the bank. Without prejudice to the principle formulated in 3.2.1, the executive board shall ensure that the bank always treats its clients with due care. The executive board shall see to it that the duty of care for the client is embedded in the bank's culture.

3.2.3 The members of the executive board shall perform their tasks in a meticulous, expert and fair manner, taking into account the applicable laws, codes of conduct and regulations. Each member of the executive board shall sign a moral and ethical conduct declaration. A declaration has been included in the explanatory notes to this code. This declaration is a model declaration, which means that each bank can supplement it as it deems appropriate.

3.2.4 The executive board shall ensure that the declaration referred to in principle 3.2.3 is translated into principles that form guidelines for the behaviour of all of the bank's employees. The content of these principles shall be expressly pointed out to every new employee of the bank when he or she joins the bank by inserting a reference to these principles in the new employee's contract of employment. Every new employee shall be required to comply with these principles.

4 RISK MANAGEMENT

4.1 The executive board – and primarily the chairman of the executive board – shall be responsible for adopting, implementing, monitoring and, where necessary, adjusting the bank's overall risk policy. The executive board shall propose the risk appetite to the supervisory board for approval at least once a year. Any material changes to the risk appetite in the interim shall also require the supervisory board's approval.

4.2 The supervisory board shall supervise the risk policy pursued by the executive board. As part of their supervision, the supervisory board shall discuss the bank's risk profile and assess at a strategic level whether capital allocation and liquidity impact in the general sense are in line with the approved risk appetite. In the performance of this supervisory role, the supervisory board shall be advised by the risk committee formed from the ranks of the supervisory board for this purpose.

4.3 The supervisory board shall assess periodically at the strategic level whether the commercial activities in the general sense are appropriate in the context of the bank's risk appetite. The executive board shall provide the supervisory board with the relevant information for this assessment in such a way that the supervisory board is able to form a sound opinion.

4.4 The executive board shall ensure that risk management is arranged adequately so that the executive board is aware in good time of any material risks run by the bank so that these risks can be managed properly. The executive board shall take any decisions that are of material significance for the risk profile, the capital allocation or the liquidity impact.

4.5 Every bank shall have a *Product Approval Process*. The executive board shall organise the product approval process and shall be responsible for the process working properly. Products that go through the product approval process at the bank shall not be launched on the market or distributed without careful consideration of the risks by the bank's risk manager and a careful assessment of any other relevant factors, including the duty of care towards the client. Based on an annual risk analysis, the in-house auditor shall check whether the product approval process has been designed properly, is present and is working effectively and shall then inform the executive board and the relevant supervisory board committee (risk committee or similar committee) about the results.

5 AUDITS

5.1 The executive board shall ensure that a systematic audit is conducted of the management of the risks related to the bank's business activities.

5.2 Each bank shall have its own, internal auditor who shall occupy an independent position within the bank. The head of the internal audit team shall present a report to the chairman of the executive board and shall report to the chairman of the audit committee.

5.3 The internal auditor shall have the task of assessing whether the internal control measures have been designed properly, are present and are working effectively. This assessment shall include the quality and effectiveness of the system of governance, risk management and the bank’s control procedures. The internal auditor shall report the findings to the executive board and the audit committee.

5.4 The internal auditor, the external auditor and the supervisory board’s risk committee and/or audit committee shall consult periodically, including as regards the risk analysis and the audit plan of both the internal auditor and the external auditor.

5.5 As part of the general audit assignment for the financial statements, the external auditor shall produce a report for the executive board and the supervisory board which shall contain the external auditor’s findings concerning the quality and effectiveness of the system of governance, risk management and the bank’s control procedures.

5.6 The internal auditor shall take the initiative in arranging talks with De Nederlandsche Bank and the external auditor at least once a year to discuss each other’s risk analysis and findings and each other’s audit plan at an early stage.

6 REMUNERATION POLICY

6.1 Basis

6.1.2 The bank shall implement a meticulous, restrained and long-term remuneration policy that is in line with its strategy and risk appetite, objectives and values, taking into account the long-term interests of the bank, the relevant international context and wider societal acceptance. The supervisory board and the executive board shall take this basis into account when performing their tasks in relation to the remuneration policy.

6.2 Governance

6.2.1 The supervisory board shall be responsible for the implementation and evaluation of the remuneration policy adopted with regard to the members of the executive board. The supervisory board also approves the remuneration policy for the senior management and oversees its implementation by the executive board. Additionally, the supervisory board approves the principles of the remuneration policy for other bank employees. The bank's remuneration policy shall also comprise the policy on awarding retention, exit and welcome packages.

6.2.2 The supervisory board shall annually discuss the highest variable incomes at the bank. The supervisory board shall ensure that the executive board assesses whether variable incomes are consistent with the remuneration policy adopted by the bank, and in particular whether they comply with the principles set out in this section. Furthermore, the supervisory board shall discuss material retention, exit and welcome packages, assess whether they are consistent with the remuneration policy adopted by the bank and ensure that these packages are not excessive.

6.3 Remuneration of members of the executive board

6.3.1 The total income of a member of the executive board shall be in reasonable proportion to the remuneration policy adopted by the bank. At the time when his or her total income is decided, it shall be slightly below the median level for comparable positions in the relevant markets both inside and outside the financial sector. The relevant international context shall be a major factor.

6.3.2 In the event of dismissal, remuneration may not exceed one year's salary (the 'fixed' remuneration component). If the maximum of one year's salary would be manifestly unreasonable for an executive board member who is dismissed during his or her first term of office, such board member shall be eligible for severance pay not exceeding twice the annual salary.

6.3.3 When variable remuneration is awarded to the executive board, the long-term component shall be taken into account as well as profitability and/or continuity of the bank and a material part of the variable remuneration shall be conditional and shall not be paid until at least three years have passed.

6.3.4 Shares granted to executive board members without financial consideration shall be retained for a period of at least five years or at least until the end of the employment, if this period is shorter. If options are granted, they shall, in any event, not be exercised in the first three years after the date on which they were awarded.

6.4 Variable remuneration

6.4.1 The allocation of variable remuneration shall be related to the bank's long-term objectives.

6.4.2 Every bank shall set a maximum ratio of variable remuneration to fixed salary that is appropriate for the bank in question. The variable remuneration per annum of members of the executive board shall not exceed 100% of the member's fixed income.

6.4.3 Variable remuneration shall be based on the performances of the individual, his part of the business and the performance of the bank as a whole according to pre-determined and assessable performance criteria. In addition to financial performance criteria, non-financial performance criteria shall also make up a significant portion of the assessment of the individual. Performance criteria shall be defined in terms that are as objective as possible in the bank's remuneration policy.

6.4.4 When performances are assessed based on the pre-determined performance criteria, financial performances shall be adjusted to allow for estimated risks and capital costs.

6.4.5 In exceptional circumstances – for example, if application of the pre-determined performance criteria would result in undesired variable remuneration for a member of the executive board – the supervisory board shall have the discretionary power to adjust the variable remuneration if, in its opinion, this remuneration would have unfair or unintended effects.

6.4.6 The supervisory board shall be authorised to reclaim variable remuneration allocated to a member of the executive board based on inaccurate data (whether or not the inaccurate data is financial in nature).

DRAFT EXPLANATORY NOTES

A number of principles of the Banking Code are explained below. In particular, those points are addressed that depart from or go beyond the recommendations made by the Advisory Committee on the Future of Banks ('Maas Committee') in its report of 7 April 2009.

- 1 See Maas Committee introduction.
- 2.1.1 The Banking Code expressly stresses the importance of complementarity, a collegial board and independence as far as the composition of the supervisory board and the supervisory board as a whole is concerned. In contrast to the recommendations by the Maas Committee, it was decided to explicitly state these elements in the Banking Code and not to include a quantitative provision concerning the size of the supervisory board (Maas 1.3) since the size of the supervisory board does not necessarily have a decisive impact on its effectiveness.
- 2.1.2 See Maas Committee 1.3.
- 2.1.3 See Maas Committee 1.1.
- 2.1.4 De Nederlandsche Bank (DNB) will strengthen the existing expertise requirements as for the supervisory board (Maas 1.2 and 1.5) and the executive board (Maas 1.16 and 1.17).
- 2.1.5 See Maas Committee 1.7 and 1.4. Principle 2.1.5 expressly does not mean that the chairman of the supervisory board must come from the financial sector.
- 2.1.6 See Maas Committee 1.7. and 1.4.
- 2.1.7 See Maas Committee 1.6.
- 2.1.8 See Maas Committee 1.5.
- 2.1.9 See Maas Committee 1.8. This Banking Code assumes the usual practice of annual evaluation by the supervisory board of its own performance.
- 2.1.10 See Maas Committee 1.8 – In this case, independent supervision can also mean internal supervision.
- 2.2.1 The recommendations in the Maas report state that the supervisory board should focus more on risk management and the report suggests in particular setting up a separate risk committee for this purpose (1.9). This recommendation has been adopted, with the option of the tasks being performed by another specific committee – in many cases this will be the audit committee. Allowing another committee to perform these tasks addresses the fact that smaller banks in particular are not always able to establish a separate risk committee.
- 2.2.2 See Maas Committee 1.1. and 1.9.
- 3.1.1 In addition to the importance of diversity as highlighted by the Maas Committee report (Maas 1.12), the Banking Code also expressly emphasises the importance of complementarity and a collegial board for the executive board as regards the composition and expertise of the executive board. This serves to underline the importance of a collegial board in the banking sector in order to ensure a stable in-house governance structure that is equipped in all circumstances to oversee and address in-house and external developments.
- 3.1.2 The banking examination described by the Maas Committee for prospective new members of the executive board (recommendation 1.16) is implemented in such a way by the Banking Code, that not only new members but also incumbent members – in short, all members – of the executive board must permanently possess knowledge that is sound enough to assess the main aspects of the bank's overall policy and to formulate an independent and balanced opinion of the risks that will be run.
  Incidentally, the principle as formulated in 3.1.2 should not be an obstacle to persons from outside the financial sector joining a bank's executive board. In that case, the expertise test and the lifelong learning programme should ensure that persons joining the executive board from another sector acquire the required level of knowledge in the short term.
- 3.1.3 See Maas Committee 1.17.
- 3.1.4 See Maas Committee 1.17.

- 3.1.5 As regards the lifelong learning programme, the banks must actively explain in their annual report how they have implemented the provisions of the Code.
- 3.1.6 Instead of the proposal put forward by the Maas Committee in 1.18, the Banking Code allocates collective responsibility to the members of the executive board for a balanced consideration of the bank's commercial interests and the risks involved.
- 3.1.6 See Maas Committee 1.20
- 3.1.7 Following on from recommendation 1.19 in the Maas Committee report, the risk management function is specifically allocated to a member of the executive board who has no commercial responsibilities.
- 3.2.1 See Maas Committee 1.11. In the governance model that is usual in the Netherlands the interests of all stakeholders must be taken into account. Principle 3.2.1 expresses this approach in a balanced manner.
- 3.2.2 The Banking Code states that there must be a balanced consideration of the interests of the various stakeholders in addition to the fact that the client must always be treated with due care. - See also Maas Committee 1.11 –. This is a response to the recommendations in the Maas Committee report that are aimed at achieving a prominent position for the client in the consideration of all of the various stakeholders' interests, without this being to the detriment of the interests of the other stakeholders.
- 3.2.3 and 3.2.4 The wording of the declaration on moral and ethical conduct from the Maas report (Maas 1.13 and 1.15) was chosen as the minimum requirement for the moral and ethical conduct declaration in the Banking Code. This declaration is as follows:

  "I declare that I will perform my duties as a banker with integrity and care. I will carefully consider all the interests involved in the bank, i.e. those of the clients, the shareholders, the employees and the society in which the bank operates. I will give paramount importance to the client's interests and inform the client to the best of my ability. I will comply with the laws, regulations and codes of conduct applicable to me as a banker. I will observe secrecy in respect of matters entrusted to me. I will not abuse my banking knowledge. I will act in an open and assessable manner and I know my responsibility towards society. I will endeavour to maintain and promote confidence in the banking sector. In this way, I will uphold the reputation of the banking profession."

  Each individual bank is free to add to this declaration for its own executive board members to ensure that the declaration is in line with the specific nature and profile of the bank in question. The wording of the moral and ethical conduct declaration shall be disclosed to the public and the declaration shall be published on the bank's website. The declaration shall also act as guidelines for the actions of all of the bank's employees.
- 4.1 See Maas Committee 1.24
- 4.2 See Maas Committee 1.25 and 1.26
- 4.3 See Maas Committee 1.28
- 4.4 See Maas Committee 1.27
- 4.5 See Maas Committee 1.29

- 5.1 This principle is not based on the Maas report.
- 5.2 In addition to the Maas Committee's recommendations, the bank's system of governance must focus sufficiently on the internal auditing task.
- 5.3
- 5.4 See Maas Committee 1.21
- 5.5 See Maas Committee 1.10 and 1.22
- 5.6 See Maas Committee 1.23
- General note: as regards the section on remuneration, the supervisory board would have to exert itself to ensure that existing contracts comply with the Banking Code as soon as possible – Maas 2.13 –
- 6.1.1 This principle is not based on the Maas report.
- 6.2.1 See Maas Committee 2.2. and 2.3.The approval by the supervisory board of the principles of remuneration specifically includes those employees whose position may influence the bank's risk profile.
- 6.2.2 See Maas Committee 2.2. and 2.3.
- 6.3.1 See Maas Committee 2.1.As stated in the Maas Committee's report, setting the total income of the members of the executive board slightly below the median level means that their remuneration follows the market and is expressly prevented from overtaking the market.
- 6.3.2 See Maas Committee 2.6. This wording in the Banking Code is in agreement with the provisions of the corporate governance code with regard to severance pay.
- 6.3.3 See Maas Committee 2.10
- 6.3.4 See Maas 2.10. This wording in the Banking Code is in agreement with the provisions of the corporate governance code with regard to severance pay.
- 6.4.1 See Maas Committee 2.4.
- 6.4.2 See Maas Committee 2.11.
- 6.4.3 See Maas Committee 2.7.The intention behind this provision as regards employees in control positions and in similar positions (audit, compliance en human resources) is not to include the performance of the business unit for which these employees perform control activities.
- 6.4.4 See Maas Committee 2.8.It is recommended that the supervisory board determines the level and structure of the remuneration of executive board members partly on the basis of scenario analyses carried out and with due regard for the remuneration ratios within the company.
- 6.4.5 See Maas Committee part 2.10 and 2.11.The options available to the supervisory board include allowing members of the executive board to place a cap on the variable remuneration awarded in the form of shares.
- 6.4.6 See Maas Committee 2.9.

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