

- **Q&A Implementation of Future-Oriented Banking** for the introduction of the bankers' oath and disciplinary law

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I The introduction of the bankers' oath

1 Why is a bankers' oath being introduced?

The bankers' oath does not exist in a vacuum. It is part of a joint package "Future-Oriented Banking" of all banks and includes the introduction of: a Social Charter, the update of the Banking Code and the introduction of the bankers' oath (with the code of conduct and disciplinary law associated with it).

The banks – individually and collectively – use this to show society what they stand for and what they can be held accountable for. It is part of accountable banking.

2 What does the bankers' oath entail?

The bankers' oath is a so-called "moral ethics statement" that is given by all employees working at a bank with offices in the Netherlands, with the aim of being fully aware, keeping in mind their special role in society, that they must always carefully weigh the interests of all stakeholders, with the interests of the customer taking a central place.

The most important parts of the bankers' oath to be taken concern:

- Integrity and diligence.
- Careful weighing of interests with the customers' interests taking a central place.
- Compliance with laws, rules and code of conduct.
- Confidentiality and no abuse of knowledge.
- Transparency and responsibility.
- Preservation of trust in the financial industry.

3 What are the consequences of taking the bankers' oath and subjecting bank employees to disciplinary law?

By taking the bankers' oath, a bank employee confirms that he/she will abide by the code of conduct that the Dutch Banking Association (NVB) has drafted for all bank employees. The content of this code of conduct correspond with the text of the bankers' oath. In addition, the employee confirms that he/she will follow disciplinary law to promote compliance with the rules. If there is a violation of the code of conduct, a report regarding the relevant employee is submitted to an independent Bank Disciplinary Law Foundation (Stichting Tuchtrect Banken) specially set up for this purpose. The Bank Disciplinary Law Foundation carefully reviews whether there was a violation and whether it was serious enough to bring it to the Disciplinary Commission.

4 What are the consequences if employees indicate before or during the ceremony that they do not wish to take the bankers' oath?

If bank employees indicate before the ceremony that they do not wish to take the bankers' oath or do not take it during the ceremony, the bank is not in compliance with the law. Refusal to take the bankers' oath is therefore reason to terminate or not enter into an employment contract. The existing dismissal procedures of the bank apply.

5 Who has to take the bankers' oath?

- All employees working in the Netherlands with an employment contract with a bank having offices in the Netherlands. Employees who have already taken an oath by virtue of their job (lawyers, company physicians or accountants on the payroll) must take the bankers' oath. All external employees (temporary employees, temps, freelancers, consultants, etc.) who work in the Netherlands at a bank and who perform work that is part of or ensues from the operation of a banking business, or that are part of the essential business processes in support thereof (so not cleaners, catering, etc.).
- Directors and internal regulatory authorities/supervisory directors of the bank. See question 6 for further information about outside parties.

6 What external parties have to take the oath and are covered by disciplinary law?

The text of Article 3:17b, subsection 2 (b), plus the explanation used by the NVB of the passage under "responsibilities of a bank" serve as a starting point.

The scope includes:

- Natural persons carrying out work in the Netherlands that is part of or ensues from the operation of a bank business or is part of the essential business process in support thereof, AND
- Working at the bank (physical criterion), AND
- Those under the management and supervision of the bank, or who must follow the bank's instructions.

This excludes:

- Natural persons who perform outsourced activities. They do not work for the bank, and fall under the (primary) responsibility of the principal. The bank does indeed bear ultimate responsibility for outsourcing as a whole, but not for the employees of the principal.
- Facilities services that are performed at the bank. These services are not covered by the first criterion, because they are not considered activities that are banking business (or in support thereof).
- External employees working for less than three months. This is a pragmatic choice by the banks; the oath must be taken within three months after the start of the work. If an employee leaves within three months, the bank is not in violation if the oath has not yet been taken.
- External advisors who are performing a specific consulting assignment for the bank. They do sometimes work for some time at the bank, but not under the management and supervision of the bank. The management and supervision lies with the consultancy.

A reservation is made in respect of the above:

- 1 Banks have the leeway, for practical reasons, to add other external employees to this group.
- 2 External employees who would not fall under the above-mentioned cumulative criteria, but do have contact with customers, or who could fundamentally influence the bank's risk profile due to their activities, should have to take the oath. That seems a logical and desirable conclusion from the law and the parliamentary history.

7 How should an employee act if he/she believes that he/she cannot comply with the oath related to his/her position as well as the bankers' oath?

In this case the oath related to his/her position shall prevail.

8 Lawyers employed by a bank have already sworn an oath as a lawyer. How should they act if they believe that compliance with the bankers' oath will conflict with the rules of conduct of the Bar Association?

The rules of conduct for lawyers as well as those for bank employees are designed to ensure honest and meticulous conduct. Both sets of rules are not likely to be directly mutually conflicting. In the event a lawyer should be in a dilemma, then he/she may submit this to the dean of the Bar Association. Should no solution be found enabling the compliance with both sets of rules, then the lawyer employed by the bank shall have to follow the rules of conduct for lawyers. This is in line with the employment agreement between a bank and a lawyer employed by a bank, which always includes a proviso to the extent that the employer will respect the independent practice as a lawyer, and will promote the undisturbed compliance with the professional rules and the rules of conduct for lawyers.

II Method for taking the oath

1 How must the oath be taken?

The oath must be taken according to the requirements of the Ministerial Order and can vary from bank to bank within that framework. The oath or pledge must be taken in the presence of a person in a higher position. Specific requirements apply to those who help shape policy (directors/supervisory directors).

2 The Ministerial Order states that there must be a meaningful ceremony. What are the minimum requirements a ceremony must meet to be meaningful?

The Ministerial Order states that there must be a meaningful ceremony. This order indicates that:

- The oath must be taken in the presence of a person in a higher position.
- The oath is taken by reading aloud the text of the form after which the person who is taking the bankers' oath states the words: 'So help me God' or 'This I swear and promise'.
- Immediately after taking the oath or pledge, the person who has taken the oath or pledge, signs the form in the presence of the person in whose presence the oath or pledge was taken.

In addition, the following aspects could make the ceremony meaningful:

- Signing in team context/context of day to day work practices.
- Raising awareness in advance of what the pledge means, translated into specific work in the relevant position/department, and also what dilemmas can arise when weighing interests and how to deal with these.
- Presentation of a 'commemorative item' after the oath is taken as a reminder of its importance.
- Embedding in cultural programme.

3 Must the statement be signed on paper or can this also be done digitally?

No, this cannot be done digitally. Once the bankers' oath is taken, the employee must sign a form. The Ministerial Order says "Logically, the signing must occur in each other's presence and immediately following the time the oath or pledge is taken." Signing must be done by means of an actual signature. The company must document that the oath was taken and signed. This registration must occur in such a way that it is easily accessible to the regulatory authorities. For example, this may include adding the form to the personnel file of the person who has taken the oath or pledge. This requirement can also be met by a different form of registration, for example in a system in which the relevant person indicates that the oath or pledge has been taken and signed. In that case, it is not necessary to add the signed oath or pledge to the personnel file.

4 The text of the form may be more appealing to individual employees if it addresses a group of employees. Is a text for a group possible and/or desirable?

No, this is not desirable. The minimum elements the text of the oath must include are legally prescribed, also the entire text of the oath is included in the NVB document Future-Oriented Banking, to which all banks have committed.

There are three different texts of the bankers' oath:

- Text for Directors.
- Text for Supervisory Directors.
- Text for Employees.

5 How can the bankers' oath be taken?

There are two options available:

- The pledge ('This I swear and promise').
- The oath (religious promise) ('So help me God').

The oath can also be taken in English.

6 Does there have to be a witness to the signing?

There does not have to be a witness to the ceremony, according to the Ministerial Order. The banks are of course free to choose a witness to the ceremony.

7 The oath must be taken in the presence of a person in a higher position. Must this person have taken the oath first? And what is a higher position?

As part of the exemplary function of a person in a higher position and as an expert with experience, it is desirable that he/she has taken the oath before administering the oath to others. The job level must be at least one level higher than that of the person taking the oath. This is specified further for directors and regulatory authorities in Article 1, subsection 2 of the Ministerial Order.

III Disciplinary law in general

1 What is the legal basis of the disciplinary law? How are employees bound to the disciplinary law?

Article 3:17b of the Financial Supervision Act (WFT) has been amended and a new Article 3:17c has been added. The changes are effective 1 April 2015. The WFT subjects banking institutions to the obligations to have procedures and measures that ensure that the bank employees take the oath or pledge and that the standards of integrity and diligence (Code of Conduct) within the bank are assured in a disciplinary scheme to which employees are subject. The government does not impose this obligation directly on employees, but on the bank, who then imposes this on employees.

This is rendered binding because the bank employee declares that he/she is subject to disciplinary law. This can be by signing the disciplinary law statement form drafted by the NVB. That form is part of the form for the oath/pledge that must be signed after taking the bankers' oath. New employees can also sign an employment contract with a statement of that purport in it. The disciplinary law can also be rendered binding by making it part of the Collective Labour Agreement with the approval of the Works Council.

Each bank is responsible for this themselves.

2 What is the status of the disciplinary regulations?

The WFT stipulates that a disciplinary law scheme must exist (hereinafter referred to as a disciplinary scheme, see Art. 3:17c WFT). The disciplinary scheme is the framework for the procedure and other “rules of the game” for the handling of disciplinary incidents and determines the authorities of the reporter and the possible penalties. The disciplinary scheme is the “property” of the Bank Disciplinary Law Foundation, the foundation set up on the initiative of the NVB, but which acts independently of them. The Bank Disciplinary Law Foundation follows the disciplinary scheme, which is still being drafted. As soon as it has been finalised by the Bank Disciplinary Law Foundation, it will be available on the website of the Bank Disciplinary Law Foundation.

3 What is the Disciplinary Commission and how is it composed?

The disciplinary scheme determines that the Disciplinary Commission handles the complaints in the first instance. The Disciplinary Commission consists of at least four experts and one chairman. The chairman must meet the requirements for appointment as a judge in a court.

4 How is a disciplinary procedure started?

Step 1: Reports can be submitted to the Bank Disciplinary Law Foundation regarding conduct that is allegedly in violation with the code of conduct. An employee who does not comply with the code of conduct of the NVB thereby violates the bankers’ oath he or she took and can be punished under the disciplinary law for this. So this must concern personal conduct and not the decision or actions of the bank itself. Anyone (e.g. a customer, regulatory authority or one’s own employer) can submit a report to the Bank Disciplinary Law Foundation against an employee who, in his or her opinion, violates the rules.

Step 2: The Bank Disciplinary Law Foundation subsequently determines whether:

- The report is admissible (does the complaint pertain to an employee’s conduct or does it concern a business dispute with the bank?).
- The conduct justifies a disciplinary procedure (this depends on the severity of the infraction and on whether it was a one-off occurrence or systematic misconduct).

The general director of the Bank Disciplinary Law Foundation looks at each report and, based on that, decides whether he or she will institute an investigation into the matter. The general director can choose not to investigate if he or she thinks the report will clearly not lead to a sound complaint (Art. 2.1.3) or that the report concerns a dispute with the bank and the reporter must address it to a different agency such as the judge or the Financial Services Complaints Board (KIFID). The general director then determines whether he or she will bring a complaint to the Disciplinary Commission (see Art. 2.2 of the disciplinary scheme). The general director can decide not to file the complaint, for example if the reported conduct is not sufficiently serious. Complaints must be regarding personal conduct of an employee that violates the code of conduct, and not regarding a decision or action by the bank. No damages are paid to the complainant. The person the complaint is about will have to account for his or her conduct. Also see the case detailed by the Bank Disciplinary Law Foundation and www.tuchtrechtbanken.nl.

5 How does the disciplinary commission handle complaints?

The disciplinary procedure is described exactly in the disciplinary scheme and offers the requisite assurances for a careful procedure, such as the opportunity for both sides to be heard. If the matter goes to the Disciplinary Commission, a written round is held, and then a hearing is conducted.

Ultimately, the Disciplinary Commission hands down a ruling and may impose a penalty. This decision can be appealed before the Appeals Commission and in the second instance in the civil court. The reporter receives a notice of the ruling but cannot file an appeal.

6 Who can summon a bank employee to appear before The Disciplinary Commission?

Anyone can submit a report to the Bank Disciplinary Law Foundation. This is also possible if the employee no longer works at the bank anymore and the conduct occurred during the employment at the bank. The general director of the Bank Disciplinary Law Foundation evaluates in the first instance whether the report is eligible for handling, or whether it must be referred to a different authority, such as the KIFID. If the report does qualify for handling by the Disciplinary Commission, it is considered a complaint.

Only the general director can summon a bank employee to appear before the Disciplinary Commission. The general director is prosecutor and in that capacity is a party to the proceedings.

7 If a complaint is submitted to the Banking Disciplinary Law Foundation, does the employer (bank) see it as well?

If the general director institutes an investigation into a report received by the Bank Disciplinary Law Foundation, the bank involved is notified.

If the general director brings a complaint before the Disciplinary Commission (based on a report or independently), the bank involved is also notified.

8 What are the evaluation criteria for the disciplinary law?

The employee's conduct is reviewed based on the NVB code of conduct and general legislation and regulations. In the event of an alleged violation, the Disciplinary Commission will ultimately test compliance with these rules. In general, it must involve sufficient severity and/or chronic violation of the applicable code of conduct.

9 What penalties does the disciplinary law have?

The Disciplinary Commission can impose the following penalties:

- A measure in the form of training or mandatory education.
- A Reprimand.
- A Penalty to a maximum of 25,000 euros.
- An order to not work in a certain position in the banking industry for a maximum period of three years (general, temporary or for a position).
- In the case of severe infraction, publication in a partially anonymous basis is possible (subject to review by the Data Protection Authority).

10 Is the disciplinary law identical for all employees of a financial institution in the Netherlands?

Yes. In addition, an employee may also be subject to other disciplinary systems, such as the NBA, FFP or DSI (depending on registration) or those that apply to lawyers, medical personnel or accountants.

11 If a fine is imposed as a sanction, who should pay it?

The employee must pay a penalty him or herself if one is imposed.

12 Can someone be fired by the bank as a result of the penalty imposed by the Disciplinary Commission?

Having a penalty imposed is not reason in and of itself for dismissal. The circumstances that led to the penalty and the fact that a penalty has been imposed may possibly substantiate a dismissal case or individual penalty by the employer. This is for the individual bank to decide. In many cases when a penalty is imposed, the employer will have already imposed a penalty, which may or may not have included dismissal.

13 How is it prevented that an employee is punished twice for the same infraction?

The Bank Disciplinary Law Foundation and the bank must communicate with each other about the penalties imposed. It is possible that a bank employee is penalised by both his or her own employer and by the Disciplinary Commission. The Disciplinary Commission takes internal procedures and penalties already handed down into account in its sanctions.

The manner in which this is taken into account is detailed in a protocol that is to be agreed upon between the banks and the Bank Disciplinary Law Foundation.

It is not possible to submit a second complaint regarding a complaint already heard by the Disciplinary Commission. The defendant can raise this as a defence if a subsequent case is filed. That can be evaluated by the Disciplinary Commission.

14 Are the disciplinary registers consulted in the Pre-Employment Screening?

Yes, subject to reporting of the disciplinary scheme to the Data Protection Authority.

IV Enactment of disciplinary law

1 What is the role of the board of the Banking Disciplinary Law in the execution of the disciplinary law?

The board of the Banking Disciplinary Law is independent and is the owner of the disciplinary scheme. The board contracts out the execution of the disciplinary law out under its responsibility to DSI, who has experience with disciplinary law for investment consultants and asset managers. A service level agreement (SLA) has been agreed for this, which also includes managing the data. Any changes in the disciplinary scheme must be determined in consultation with the NVB. The board of the foundation can give instructions to the Disciplinary Commission. This foundation has been created independently in respect of the NVB.

2 Will there be a website for submitting reports under an independent label?

Yes, there is a website of the Bank Disciplinary Law Foundation. This website was launched on 4 January 2015. Reports can be submitted here from 1 April 2015, the day the legal obligation of the disciplinary law takes effect. These reports will be presented for evaluation immediately to the general director of the Bank Disciplinary Law Foundation.

3 What assurances exist that the privacy rules will not be violated by the information exchange with the Bank Disciplinary Law Foundation? Who monitors this and how?

The board of the Bank Disciplinary Law Foundation is responsible for compliance with the rules with respect to privacy and can be held accountable for this by the Data Protection Authority. A privacy scheme is also being drafted. This scheme can also be consulted via www.tuchtrechtbanken.nl.

4 Is there a duty to report employees to the Bank Disciplinary Law Foundation who have had an internal penalty imposed on them?

There is not a duty to report. It is for the bank to decide whether to report penalties to the Bank Disciplinary Law Foundation. It is evident from the clarification of the bill regarding disciplinary law for banks that the legislator assumes that, in the case of misconduct (or suspicions thereof) punishable under disciplinary law of one or more of its employees, a bank will indeed submit complaints under disciplinary law with the disciplinary law body or will alert the disciplinary law body. If a bank does not do this or does this insufficiently, DNB and AFM can hold the bank accountable for this.

5 Are employees who have had a penalty imposed included in a register?

The foundation will keep a register. This register, which is not public, will contain the sanction measures and the name of all offenders. This register can only be consulted by the banks and will be checked by the Data Protection Authority.

General disclaimer

The information in this Q & A is intended as a guideline for the implementation of the bankers' oath and the disciplinary law financial institutions are required to adhere to. This obligation ensues from the 2015 Financial Markets Amendment Act approved by the States General.

No rights can be inferred from this Q & A. It serves as a point of departure and mutual framework for banks in their individual implementation.

The individual banks can give shape as they see fit to the implementation and everything that is directly and indirectly connected with it. This Q&A is a document that is subject to change as updates and changing insights require.

In addition, changes may ensue from the process of reporting the disciplinary scheme to the Data Protection Authority (CBP).

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