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Act of 15 December 2021 to amend the Financial Supervision Act and the Bankruptcy Act in connection with the implementation of the Directive on the issuance of covered bonds and the governmental supervision of covered bonds (Implementation Act on the Covered Bonds Directive)

We Willem-Alexander, by the grace of God, King of the Netherlands, Prince of Orange-Nassau, etc. etc.

All, who shall see or hear these, salute: Whereas we have considered that for the purpose of implementing Directive (EU) 2019/2162 of the European Parliament and of the Council of 27 November 2019 on the issuance of covered bonds and the public oversight of covered bonds and amending Directives 2009/65/EC and 2014/59/EU (OJ 2019 L 328), it is necessary to lay down rules governing the issuance of covered bonds and the supervision of compliance with those rules;

Now therefore We, having heard the Advisory Division of the Council of State, and in consultation with the States-General, have approved and decreed as We hereby approve and decree:

ARTICLE I

The Financial Supervision Act shall be amended as follows:

A

Article 1:1 is amended as follows:

1. The definition of registered covered bond is deleted.

2. Four definitions are inserted in alphabetical order, read:

cover pool: a cover pool as referred to in Article 3(3) of the Covered Bonds Directive;

covered bond: a covered bond, as defined in the Covered Bonds Directive, issued by a bank and secured by cover assets, against which covered bond investors have priority of recourse as creditors;

covered bond programme: the structural features of a covered bond issue which are determined by statutory requirements and contractual conditions in accordance with Article 3:33a;

covered bonds directive: Directive (EU) 2019/2162 of the European Parliament and of the Council of 27 November on the issue of covered bonds and the public supervision of covered bonds and amending Directives 2009/65/EC and 2014/59/EU (OJ 2019 L 328);

B

In section 1:94, subsection 1, a subsection shall be inserted, reading from subsections c through h to d through i:

c. of a regulation laid down by or pursuant to article 3:33a, 3:33b or 3:33ba;

C

The following paragraph shall be added to Article 1:105:

3. Article 1:102, first to third paragraph, seventh paragraph, and Article 1:104, first paragraph, parts a to d, shall apply *mutatis mutandis* to the granting of permission as referred to in Article 3:33a, second paragraph.

D

In Article 1:107, third paragraph, parts q and r shall expire, and the semicolon at the end of part p shall be replaced by a point.

E

After article 1:108 the following article is inserted

Article 1:109

De Nederlandsche Bank publishes on its website:

a. the information referred to in Article 26(1)(a) of the Covered Bonds Directive;

b. A current list of banks authorised by the Dutch central bank to issue covered bonds under a programme; and

c. a current list of covered bonds eligible to use the label "European covered bond" and a current list of covered bonds eligible to use the label "European covered bond (premium)", as referred to in Article 27 of the Covered Bonds Directive.

F

Article 3:33a will read:

Article 3:33a

1. A bank with its registered office in the Netherlands is prohibited from issuing covered bonds without permission from the Dutch Central Bank.

2. Upon application, the Dutch Central Bank shall grant the permission referred to in the first paragraph if the bank demonstrates that it will comply with the rules laid down in or by virtue of the third and fourth paragraphs and the articles 3:33b and 3:33ba.

3. A bank operating a covered bond programme has:

- a. An adequate programme of operations describing the issuance of covered bonds;
 - b. adequate policies, processes and methodologies regarding the approval, amendment, renewal and refinancing of assets included in the cover pool;
 - c. senior management and staff responsible for the covered bond programme, having adequate qualifications and knowledge relating to the issuance of covered bonds and the administration of the covered bond programme; and
 - d. An adequate administrative structure of the cover pool and its monitoring.
4. Further rules may be laid down by or pursuant to General Administrative Order with regard to the conditions referred to in subsection 3.
5. The application for permission, as referred to in the first paragraph, shall be accompanied by details to be determined by or pursuant to a General Administrative Order.

G

Article 3:33b will read:

Article 3:33b

1. The obligations arising from covered bonds shall be covered by a cover pool with assets of which the principal amount and the accrued and future interest shall be applied in priority to repayment of the covered bond, if the issuing bank, as referred to in article 3:33a, paragraph 1, is declared bankrupt or is the subject of a resolution as referred to in article 2, paragraph 1, section 1, of the Directive on the recovery and resolution of banks and investment firms.
2. The obligations shall include at least:
 - a. the repayment obligations of the principal amount of outstanding covered bonds;
 - b. the obligations to pay any interest on outstanding covered bonds;
 - c. the payment obligations associated with derivative contracts in the cover pool; and
 - d. the expected costs related to maintenance and management for the phasing out of the covered bond programme.
3. Further rules may be laid down by or pursuant to General Administrative Order with regard to the obligations referred to in subsection 2, the cover pool and the assets to be included in the cover pool, as well as with regard to the expected costs referred to in section d.

H

After article 3:33b a section shall be inserted reading:

Article 3:33ba

1. A bank as referred to in Section 3:33a(1), which implements a covered bond programme, shall provide investors with sufficiently detailed information on that programme at least every quarter, including in any case the information referred to in Article 14(2) of the Covered Bonds Directive. This information shall also be published on the bank's website.

2. A bank as referred to in article 3:33a, first paragraph, which implements a covered bond programme shall periodically as well as on request provide the Dutch Central Bank with information enabling it to determine whether the issuing bank complies with the rules laid down in or pursuant to articles 3:33a, third and fourth paragraphs, 3:33b and 3:33ba.

3. Further rules may be laid down by or pursuant to General Administrative Order with regard to the information referred to in subsection 2 and the periodicity.

I

In Article 3A:1, in the definition of structured finance scheme, replace "registered covered bond" with "a covered bond".

J

Article 3A:57 is amended as follows:

1. The words "1." shall appear before the text. shall be placed in front of the text.

2. The following paragraph is added

2. The exercise of a power under this Chapter or under the Single Resolution Mechanism Regulation, or a decision of a resolution authority of another Member State or a third country recognised under Articles 3A:4 or 3A:5 respectively, or an event directly related thereto, in relation to a bank that has issued a covered bond shall not modify the rights of the holder of a covered bond vis-à-vis any third party in relation to that covered bond.

K

In Section 3A:60 and Section 3A:61, third and fifth paragraphs, the words "regulated covered bonds" shall be replaced by "covered bonds".

L

In the Annexes to Sections 1:79 and 1:80, in the list of Sections in the Part on Prudential Supervision of Financial Undertakings "3:33a, second paragraph" is replaced by "3:33a, first and third paragraphs" and "3:33b, first paragraph," and "3:33ba" are inserted in numerical order.

ARTICLE II

The Bankruptcy Act is amended as follows:

A

A section shall be added to section 212g, subsection 1, reading:
u. *covered bonds directive*: Directive (EU) 2019/2162 of the European Parliament and of the Council of 27 November on the issuance and public supervision of covered bonds and amending Directives 2009/65/EC and 2014/59/EU (OJ 2019 L 328).

B

After Article 212rd, an Article shall be inserted reading:

