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Determine scope of envisaged services

Kick-off & GAP analysis

Project plan

Create submission package

Submit application to regulator

Implement policies & procedures



How to Obtain a Financial License in The Netherlands

A Practical Guide for FinTech Companies

LICENSE APPLICATION MANUAL

If you need a license as a FinTech company, you want this to be arranged as quickly as possible and against predictable costs. A license application is a very costly and time-consuming process that costs the organization a lot of time and energy. As long as the license has not been granted, you cannot move on with your business. This concise manual explains how the licensing procedure works, what the most important steps are to be taken and what you can do as a FinTech company yourself to ensure that your license application runs as smoothly and efficiently as possible.

What do you achieve with a license?

You need a license for most financial services. In most cases, the license not only enables you to provide financial services in the Netherlands, but also allows you to offer these services in other EU countries.

From whom do you need a license?

The type of license depends on the financial services you want to provide. If you provide financial services in the Netherlands, you need a license from the Netherlands Authority for the Financial Markets (AFM) or the Dutch Central Bank (DNB).

Do you always need a license?

In some cases, no license is required, but you only need to obtain permission from the regulator. An example is offering securities to the public. This requires a prospectus that must be approved by the AFM. You can also sometimes obtain an exemption from the license requirement if you meet certain conditions.

How long does a license procedure take?

In general, a license application takes between 6 and 9 months, depending on the type of license and the quality of the documentation submitted. The license application usually consists of several rounds of questions from the regulator. With good preparation you can ensure that you keep the licensing procedure as short as possible.

The timelines for obtaining a license depend on many internal and external factors, such as:

- the type of license required:** different statutory timelines for review of the license application may apply and some licenses have stricter legal requirements than others
- the 'maturity' of the organisation** with respect to governance, policies and procedures, risk and compliance, AO/IC etc.
- the quality and completeness of the application form**
- the availability and experience of the regulation**



- **any specific questions or concerns of the regulator:** these may relate, for example, to the structure of the company, the organisation of business operations and risk management, and the expertise and reliability of the board members.

What are the steps in the licensing procedure?

The licensing procedure consists of the following steps, which will be further explained below.

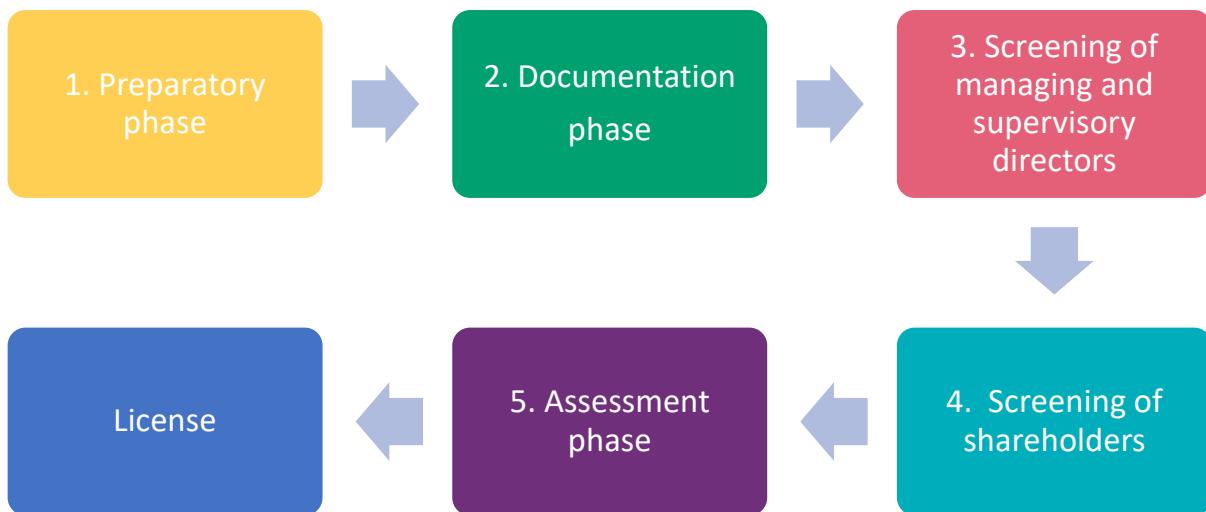


Figure 1: licensing procedure

1. Preparatory phase

In order for the license application to be successful, you must be well prepared. First of all, you must determine which products or services you want to offer and which license is required. Based on this legal analysis, you can make an overview of the legal documentation required for the license application. You can often find an application form and explanation on the website of the regulator, which can help you with this. On the basis of this overview, you can make a gap analysis based on the available documentation (policies and procedures) within the company, as well as an implementation plan with clearly defined actions and responsibilities.

What you can do in the preparatory phase:

- Determine which products or services you want to offer and which license is required for this (if necessary, you can obtain legal advice for this)
- Make an overview of the legal documentation required for the license application
- Make a gap analysis of the available documentation (policies and procedures)
- Make an implementation plan with clearly defined actions and responsibilities

2. Documentation phase

Which documentation you need depends on the type of license. Important areas of attention from the perspective of the regulator are generally the governance structure (including the composition of the managing and supervisory board), compliance and risk management, outsourcing and internal procedures.

The documentation must be tailored to the FinTech company and its organisation, so filling in standard templates for policy documents and procedures will not be sufficient. It is also important that the roles and responsibilities are clearly delineated within the company. The license documentation depends on the type of license, but generally consists of at least the following elements:

- ✓ a business plan
- ✓ governance arrangements, including a risk and compliance framework
- ✓ an integrity and operational risk analysis
- ✓ a description of the organisation and its structure
- ✓ business continuity policies and procedures
- ✓ customer due diligence policies and procedures
- ✓ complaint handling procedure
- ✓ a conflict of interest policy
- ✓ privacy policies and procedures
- ✓ employee screening policy
- ✓ incident management policy
- ✓ IT policies and procedures
- ✓ an organisational manual (containing internal business operations and procedures)
- ✓ outsourcing policies and procedures
- ✓ a recovery and exit plan
- ✓ a remuneration policy
- ✓ calculations and proof of required capital



What you can do in the documentation phase:

- Make sure you have the right expertise in-house: think for example of legal, risk and compliance, financial, operational and technical expertise. Make sure that your employees (are able to) make sufficient time for the preparation of documentation and, if necessary, hire external expertise.
- Make sure there is a good division of tasks, whereby tasks match responsibilities and everyone does what they are good at. The division of tasks obviously depends strongly on the structure and size of the company. For example, a distribution of tasks could be:
 - Management: business plan, description of organisational structure, recovery and exit plan
 - Legal: privacy, business continuity, customer due diligence, incident management, organisational manual, outsourcing, remuneration
 - Risk & compliance: governance, risk analysis, conflicts of interest, screening of employees
 - Financial: capital requirements
 - Operational: complaint handling, IT
- Create a dashboard to track the progress of the documentation, which is accessible to everyone
- Organise periodic meetings to discuss the progress of the documentation
- Organise workshops or brainstorming sessions to jointly discuss the documentation and problems/bottlenecks
- Think proactively about communication with the regulator. It may be useful to make informal contact with the regulator in advance to discuss the license application (and any bottlenecks or issues).

3. Screening of managing and supervisory directors

An important part of the license application is a screening of directors and supervisory directors for integrity and suitability. For the integrity investigation, the AFM and DNB assess on the basis of their antecedents whether the directors and supervisory directors are reliable to work in the financial markets. For the suitability assessment, the AFM and DNB assess whether the managing and supervisory directors have sufficient knowledge and skills to work as policymaker in the financial sector and whether they devote sufficient time to their position. It is important that the managing and supervisory directors complement each other and that the management board / supervisory board jointly has sufficient knowledge and experience.

The AFM and DNB may conduct screening interviews for the integrity and suitability screening. It is important that directors and supervisory directors are well prepared for this, so that they know what to expect and how to respond.



What you can do for the screening of managing and supervisory directors:

- Make an overview of the knowledge and experience required for the management board and the supervisory board (a so-called 'suitability matrix' is often available for this purpose). Based on this, you can analyse whether the individual directors and supervisory directors – and the management board and supervisory board as a whole – have the necessary knowledge and experience.
 - If this is not the case, see how the requirements can still be met. Consider, for example, following extra training courses or hiring external consultants who can (temporarily) act as managing or supervisory directors.
- Complete the necessary forms. This includes screening forms, a completed suitability matrix, the provision of references, etc.
- Collect the necessary information: for each of the managing directors and supervisory directors, for example, think of proof of identity, an explanation of the (proposed) appointment, an overview of availability (numbers of hours), a standardized CV, etc.
- If screening interviews take place with the regulator, make an inventory of the possible questions and/or concerns of the supervisor in advance, consider how you want to deal with these and organize "prep sessions" in preparation for the screening interviews (possibly together with an external specialist).

4. Screening of shareholders

A screening of the integrity of the company's shareholders (and their managing and supervisory directors) is also part of the licensing procedure, depending on the required license and the shareholder structure. As a rule, a declaration of no objection must be requested for each 'qualifying holding' in the company. A qualifying holding exists if another company directly or indirectly provides 10% or more of the capital interest or the voting rights in the company.

If the company has a complex shareholder structure (e.g. trust or private equity structures) this can be time consuming, as there is a lot of documentation and forms to be provided/completed.

What you can do for the screening of shareholders:

- Make an analysis of the group structure of the company and determine which companies in the group must be assessed by the regulator.
 - If you have doubts about which companies should be screened, consider contacting a specialist or the regulator itself
- Complete the application form for a declaration of no objection for each of the 'qualifying holdings'.



- Collect the requested information for each of the qualifying holdings, including (depending on the type of license) information on business plans, financial figures and forecasts, legal structure, governance structure, etc.
- Collect the requested information for each of the managing and supervisory directors of the qualifying holdings. This information often largely corresponds to the information that directors and supervisory directors of the company applying for a license must provide.

5. Assessment phase

After the license application has been submitted, the AFM or DNB assesses the documentation submitted. First of all, it is assessed whether the license application is complete, which may lead to requests for additional information.

Once the license application has been declared complete, statutory periods apply to the handling of the license application. The AFM or DNB will thoroughly assess the license documentation, which usually results in two or three question rounds. The questions from the regulator suspend the statutory periods for handling the license application. It is important that the answers to these questions are clear, complete and in accordance with the license documentation. The questions often lead to changes in the license documentation, whereby the regulator requires that the changes in the documentation are clearly communicated (by means of track changes).

What you can do in the assessment phase:

- Provide a clear point of contact for the supervisor within the organisation. This person is responsible for collecting input on questions from the regulator within the organisation and communication towards the regulator.
- Make a division of tasks with corresponding timelines for answering the questions. Make sure that the division of tasks matches the division of tasks within the organisation as much as possible.
- If the questions from the regulator are not clear, please contact the regulator in good time to obtain an explanation.
- Always make sure that you make clear agreements with the supervisor, show yourself from your best side and always keep to your promises. For example, if you need more time to answer the questions, ask the regulator in good time for an extension of the deadline. This way you can build up a good relationship with the regulator, which will benefit the speed and predictability of the licensing procedure.



Final words

Hopefully, this guide has given you a better understanding of the licensing procedure and the most important steps to take. Unfortunately, the course of the licensing procedure remains difficult to predict in advance, but if you follow the steps in this manual you increase the chance of a smooth and efficient licensing procedure.

Contact

Do you have any questions regarding this manual of the licensing procedure? Then please contact Arie van den Bergen. You will find his contact details below.



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