



*De Nederlandse samenleving is  
gediend met juridische en financiële  
dienstverleners en organisaties die  
betrouwbaar functioneren.*

## Introduction to the BFT

*Het Bureau Financieel Toezicht waakt,  
samen met zijn onder toezicht  
gestelden, over de integriteit van het  
financiële stelsel.*

Supervision on PEA's in  
the Netherlands.

A.C.J. Snoeren

4-10-2011



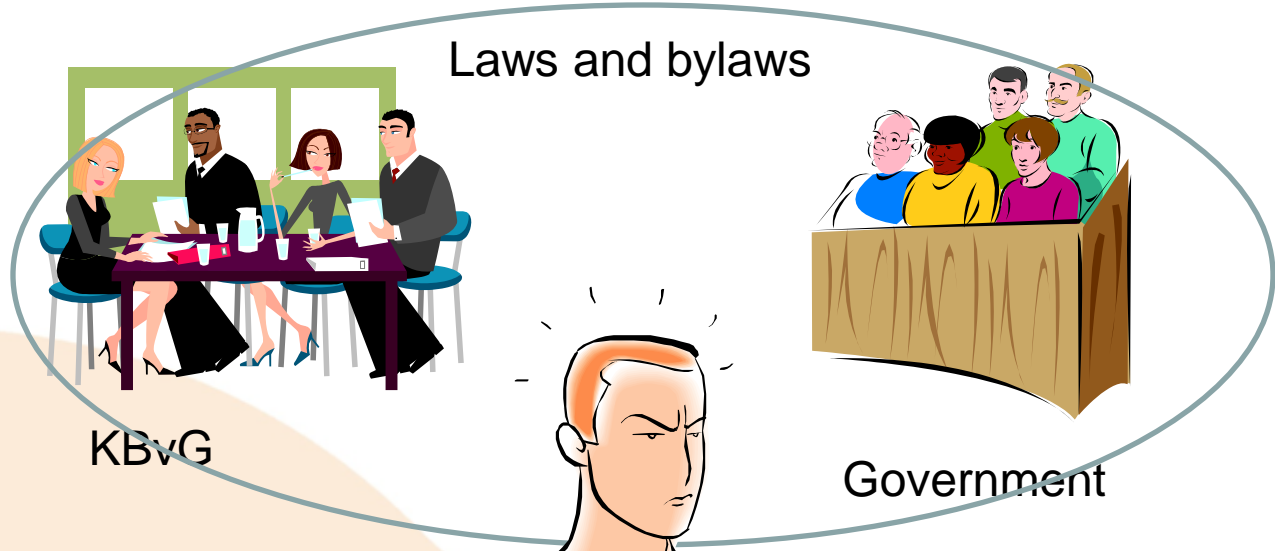
# AGENDA

- 1. INTRODUCTION**
2. ROLE AND RESPONSIBILITIES OF BFT
3. TASKS, PRINCIPLES AND PROBLEMS
4. FINANCIAL SUPERVISION
5. EXAMPLES
6. SANCTIONS: THE PROCESS



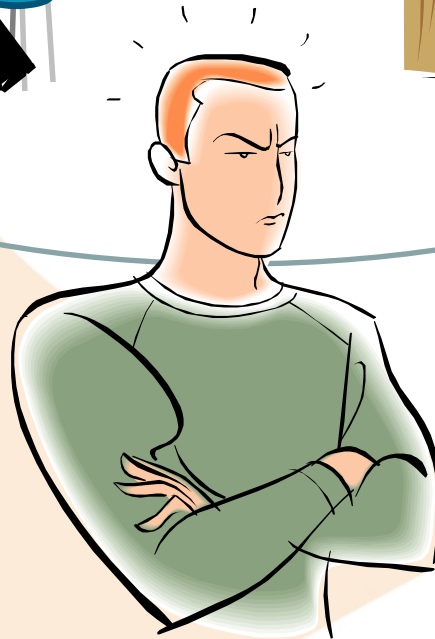
# Trias Politica

Introduction



KBvG

Government



Supervision / enforcement

Justice



Chamber for PEA



# Introduction to the BFT

## Introduction



*The Financial Supervision Office (Bureau Financieel Toezicht - BFT) came into being in 1999. It is a continuation of the former “Centraal Bureau van Bijstand” (Central Assistance Office), which was set up by the Ministry of Justice in 1933 to supervise the bookkeeping of civil-law notaries. This part of the BFT is subsidized by the Ministry of Justice.*

Supervision on: Notaries (approx. 1.500)  
PEA's (approx. 400)



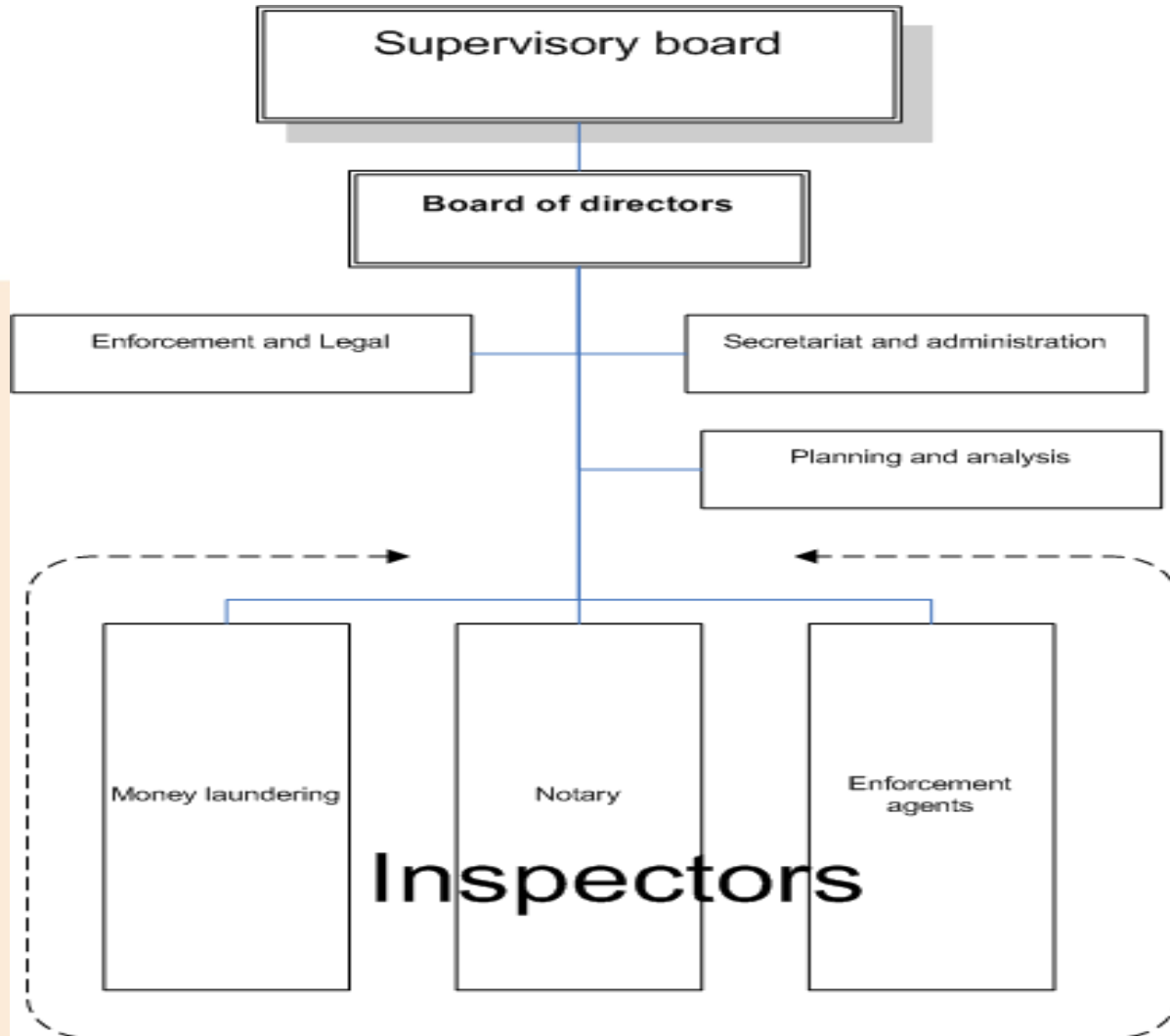
## Supervision on anti-money laundering activities

### Introduction

*Since 2003 the BFT has also been charged with supervising compliance with anti-money laundering activities. Compliance with them concerns the following professional groups: civil-law notaries, lawyers, auditors, tax advisers, economic advisers and independent legal advisers. The work in this connection is carried out by the WWFT sector. This part of the BFT is subsidized by the Ministry of Finance.*

*Estimated total: 42.000 professionals*

## Introduction





# Internal organization BFT

**BFT IS AN INDEPENDENT ORGANIZATION**

**AND IS**

**FINANCED BY THE GOVERNMENT**

Introduction

## **FUNDING BY**

- **Financial Supervision - Ministry of Justice**
- **Anti-money-laundering prevention - Ministry of Finance**
- **Total funding approx.: € 5.100.000 yearly**



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# Role and responsibilities of BFT

## Role and responsibilities of BFT

### Core tasks

#### Financial Supervision

- 1500 civil-law notaries
- 400 PEAs
- Assessment of 120 business plans

#### The Money Laundering and Terrorist Financing Prevention

Assesses compliance with specific Acts in the areas of money laundering and combating the financing of terrorism.



# Supervising Private Enforcement Agents

## Role and responsibilities of BFT

In practice the BFT uses - when exercising its supervisory duties - a so-called three-way approach:

- providing information in order to raise awareness of rules and regulations, and stimulating the understanding of the risks;
- encouraging compliance by making cooperative agreements with professional organizations and associations e.g. to start peer-reviews;
- instituting independent regular and risk-based investigations in order to ensure compliance with laws and regulations by professionals.



# Supervising Private Enforcement Agents

## Role and responsibilities of BFT

The three-way approach:

Does NOT ensure absolute security

But :

- Creates social confidence
- Creates safeguards for moneys entrusted
- Creates preventative measures against misconduct



### Responsibilities

Recorded in Private Enforcement Agents Act:

- Custody of third-party moneys (art. 19)
- Payment of interest (art. 19, section 7)
- Record-keeping (art. 17 and Record-keeping Regulations)
- Submission of complaints (art. 32, section 1)
- Inspections asked for by the Chamber for PEA (art. 32, section 2)

## Approach to financial supervision

- Broad interpretation of task
- Important place for risk analysis
- Allocation of limited manpower (supervision on PEA's: 4 fte)



### Risk analysis/risk profile

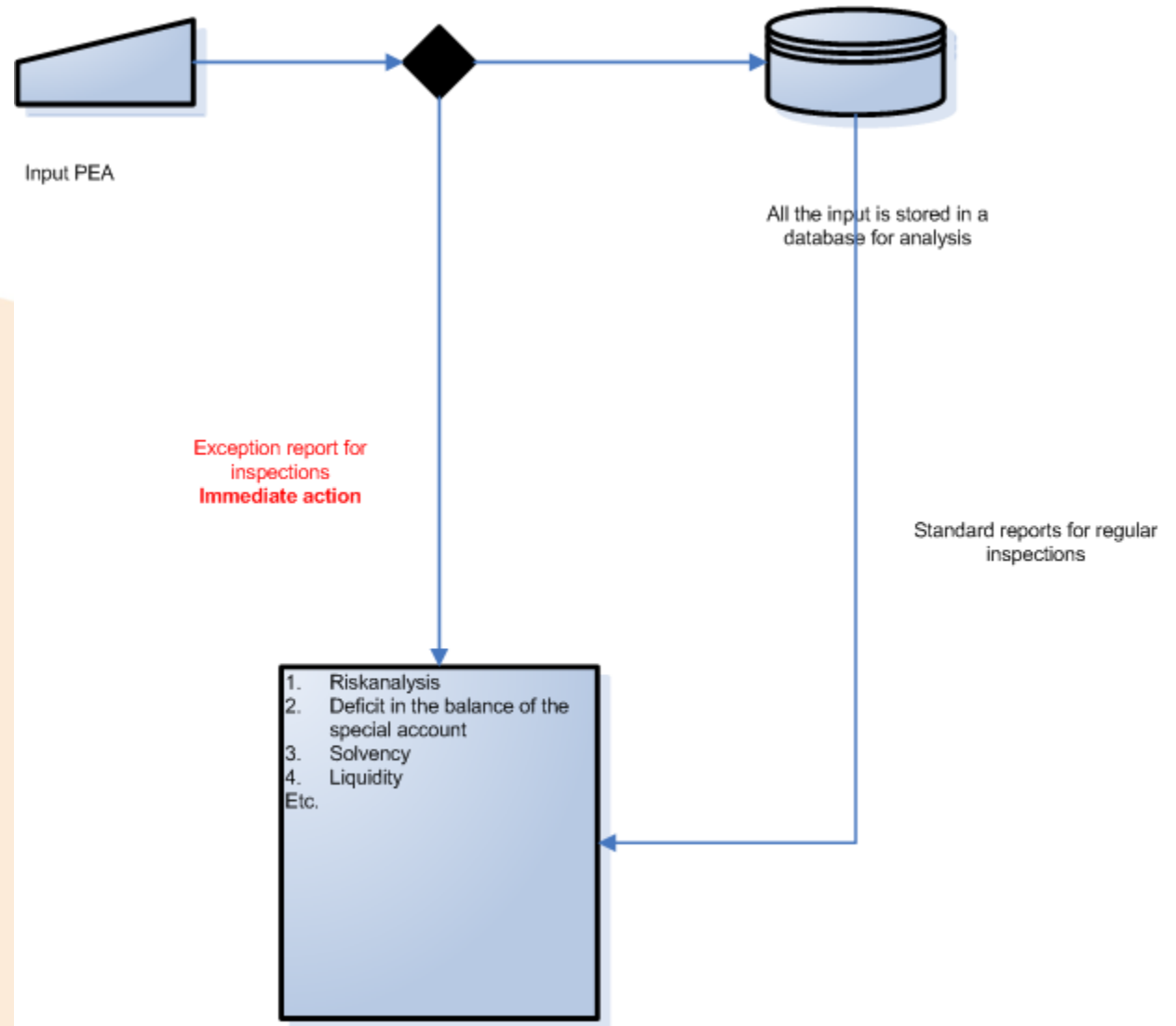
#### Sources:

- Reporting documents
  - \* annual financial reports (business and private)
  - \* quarterly financial reports (business)
  - \* quarterly return of financial obligations to clients
- Audit and report of factual findings on subregulation
- Investigations

#### Risk analysis and level of supervision:

- Normal
- Attentive
- Tightened

## Role and responsibilities of BFT





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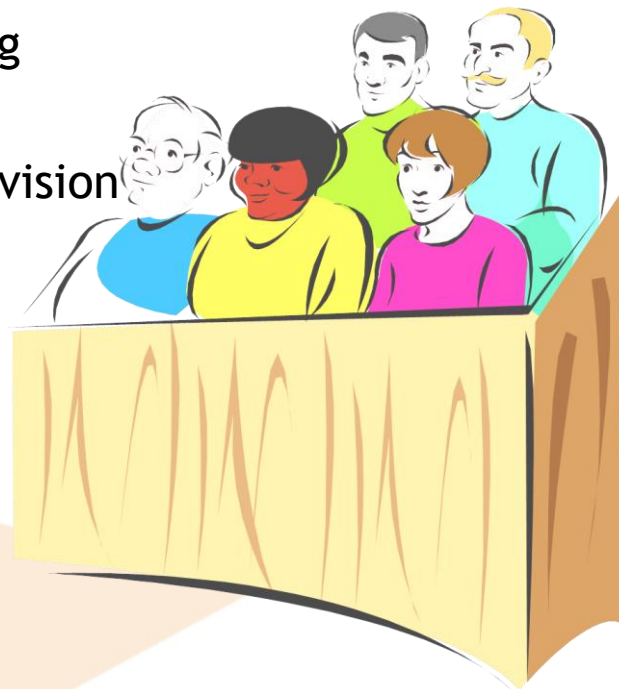


# Laws, bylaws and regulations

## Tasks, principles and problems

It's the government that has to provide the adequate basic regulations, including those concerning:

- Appointment criteria
- Financial bookkeeping and auditing
- Financial liability of the PEA
- Monitoring and independent supervision
- Sanctions



The professional chamber can provide additional regulations, bylaws



# Upholding the law

## Tasks, principles and problems

It's the task of the BFT and the Disciplinary Chamber to prevent and discipline misconduct.

The main task for the Bureau is preventing and reporting misconduct (complaints).

The main task for the Disciplinary Chamber is to ensure that complaints will receive a fair hearing and sanctions.





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## Detection

### Not during an investigation:

- Off-site activities
- Third party reporting
  - *Professional chamber*
  - *Clients and / or debtors*
  - *Competitors*
- Incident reporting
  - *By the PEA*
  - *By others*

Credibility and action

*First step: start an investigation*

### During or after an **Investigation**

Findings and recommendations as a result of the investigation

Investigator consults the internal policy on complaints regarding the findings

### Response mechanisms

- Immediate complaint
- Report and complaint
- Report and time to correct findings
- Report and no further actions until the next inspection



### In case of a complaint

Investigator and assessor agree that a complaint should be filed.

They present the case, including the draft of the complaint to the section enforcement.

Final decision lies with managing director, he/she signs and files the complaint.



### Policy on complaints

**Not every finding results in a complaint.** As a supervisory bureau you'll have to define a set of guidelines to help the investigator assess his findings and to help take the appropriate and fitting corrective measures.

Part of these guidelines will be public (the part dealing with complaints) and part will remain internal.

Guidelines help assess the investigation, the investigator and help assess the supervisory bureau. They also counteract biased complaints against PEAs.

### Colour of the complaint

If an investigation results in a complaint:

- There may or may not be mitigating circumstances.
- The PEA may or may not have reported the findings himself to the supervisory bureau
- The PEA may or may not have tried to conceal the evidence
- The PEA can be a first time offender or he can be a recidivist

The text of the complaint varies with every ‘may or may not’ answer to the previous remarks.

(as do the sanctions)



### **Other findings: not resulting in a complaint**

The PEA is given the opportunity to correct the finding.

The investigator should assess the correction. (This doesn't necessarily result in an investigation on-site)

If no corrective measures are taken by the PEA, there still may be a complaint.



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# Findings 1

Findings that result in a complaint to the chairman of the Chamber of Enforcement Agents.

(Complaint by virtue of art. 32.1 Dutch PEA-law)

## Examples

- Failing to present the annual accounts
- Failing to make up a deficit in the balance of the special account.
  - Small amounts, frequent deficit
  - Large amounts (> € 25.000 deficit)
- Internal organisation regarding accounts payable
- Other findings that are not corrected after reporting



# Findings 2

## Other findings

### Examples

- Inadequate internal reporting
- Misrepresentation of assets en debts (i.e. mostly regarding special accounts)
- Solvency
- Liquidity
- Covering personal debts or expenses, in relation to financial income
- Absence of a partnership agreement

## Recommendations that are most used in reports

### Examples

- Failing to meet de BFT standards on:
  - Third-party insurance
  - Back-up and recovery procedure
  - Safety measures
    - Fire
    - Burglary
    - Computer viruses
    - Violence against personnel
- Any of the other audited areas that can be improved



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# Sanctions: process

The PEA is asked to respond (by letter) to the investigation report.

In the case of a report likely to result in a complaint the response must usually be received within 10 days, in other cases the time to respond is usually a month.

In case of a possible complaint the response is taken into account before filing the complaint. (In one case there wasn't a complaint filed but a secondary investigation was carried out).





# Sanctions: process

The BFT does not, and does not want to, impose sanctions upon the PEA.

The Dutch PEA-law says:

“If in its surveillance the Bureau becomes aware of facts or circumstances that in its opinion constitute a reason to take disciplinary action, it will notify its findings, if necessary (in case of irregularities or breaches of the relevant regulatory legislation) in the form of a complaint, to the chairman of the Chamber of Enforcement Agents. “

You could say that the BFT works like a kind of public prosecutor.





# Sanctions: the Disciplinary Chamber

The Disciplinary Chamber is independent of the professional association, and is financed by the Ministry of Justice to maintain its independence from the profession. The majority of the members of the Chamber are members of the judiciary.

The Chamber is also independent of the BFT.

Being independent ensures that complaints will receive a fair hearing and that the public places trust in the disciplinary system.





# Sanctions: the Disciplinary Chamber

The Chamber of Enforcement Agents imposes disciplinary sanctions based on a complaint.

The Chamber may impose a wide range of sanctions, including reprimand, monetary fine, suspension or dismissal from the profession.

