

Management and Supervision Act Legal Entities 2021

(Wet bestuur en toezicht rechtspersonen 2021)

When? 1 July 2021

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What?

Pursuant to the Management and Supervision Act Legal Entities 2021 (the **Act**) a number of management and supervision rules will be unified and applied to all Dutch legal entities. The current rules that apply to the BV and NV serve as basis. To help you to get quickly up to speed, you can find a high level overview of the main changes for **the foundation, the association, the cooperative and the mutual insurance association** here:

	Foundation (stichting)	Association (vereniging), Cooperative (coöperatie) and the Mutual Insurance Association (onderlinge waarborgmaatschappij)
Supervision	The Act will implement a legal basis for all legal entities to establish a supervisory board or a one-tier board.	
Tasks & Duties	The Act will determine that management board members and supervisory board members "should act in the interest of the legal entity and the business or organization connected therewith".	
Liability	The Act will determine that management board members and supervisory board members of commercial foundations and associations, cooperatives, mutual insurance associations and semi-public entities will be presumed to be personal liable upon bankruptcy in the event that the annual accounts have not been published on time or in case of failure of recordkeeping.	
Conflict of Interest	<p>A management board or supervisory board member with a conflict of interest will no longer be able to take part in the deliberation and decision-making on the particular subject. If, as a result, the resolution cannot be adopted by the management board, a supervisory board (if any) may adopt the resolution.</p> <p>If a foundation does not have a supervisory board, the management board remains competent provided that the considerations in relation to the particular resolution are recorded in writing. Similar, a supervisory board with a conflict of interest remains competent as well.</p> <p>The articles of association may deviate from the above.</p> <p>Management board members with a conflict of interest are still authorized to represent the foundation.</p>	<p>A management board or supervisory board member with a conflict of interest will no longer be able to take part in the deliberation and decision-making on the particular subject. If, as a result, the resolution cannot be adopted by the management board, a supervisory board may adopt the resolution (if any), eventually escalating up to the general meeting. The articles of association may deviate from the above.</p> <p>Management board members with a conflict of interest are still authorized to represent the legal entity.</p>

	Foundation (stichting)	Association (vereniging), Cooperative (coöperatie) and the Mutual Insurance Association (onderlinge waarborgmaatschappij)
Inability to Act	The articles of association will have to include a provision for the situation that all management board members or all supervisory board members are unable to act.	
Multiple Voting Rights	Management board and supervisory board members will no longer be able to cast more votes than their co-board members jointly.	
Dismissal by the Court	The Court will have more discretion to dismiss a management board or supervisory board member upon the request of the Public Prosecutor's office or an interested party.	N/A
Entering into force & Transitional Law	The Act has immediate effect. However, if current articles of association do not include regulations for the inability to act, such must be included upon the next amendment of the articles of association. If current articles of association include multiple voting rights pursuant to which a board member may cast more votes than the co-board members jointly, such provision remains valid upon the earlier of (i) 5 years after the Act entered into force or (ii) the next amendment of the articles of association. Please consider that the new conflict of interest rules have immediate effect regardless of the contents of the articles of association.	

NV and BV

The Act also includes a few changes for the NV and the BV. One example is that pursuant to the Act the articles of association of an NV must include a provision for the situation that the supervisory board is unable to act. Currently this has not been implemented for the NV under Dutch law.

What to do?

Already take note of the changes that will be implemented by the Act. The articles of association of a new entity that will be incorporated before 1 July 2021 can already consider the implications of the Act. For existing legal entities, consider any required changes in the articles of association in connection with the inability to act of the board(s) and multiple voting rights, if applicable. Consider to update the conflict of interest rules in the articles of association as the Act will have immediate effect in this respect. Family offices, trust foundations (whether or not in connection with management and employee participations) and the semi-public sector may wish to review the current governance structure of their foundation or (form of) association.

More information?

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