

ENTRY INTO FORCE OF THE ACT ON MANAGEMENT AND SUPERVISION OF LEGAL ENTITIES

The Act on Management and Supervision of Legal Entities (MSLE Act; Wet Bestuur en Toezicht Rechtspersonen) will enter into force on 1 July 2021.

The aim of this new Act is to clarify the regulations for the management and supervision of associations (verenigingen), cooperatives (coöperaties), mutual insurance companies (onderlinge waarborgmaatschappijen) and foundations (stichtingen) and to bring these further in line with the existing rules that apply to the public company (NV) and the private limited liability company (BV).

The most important changes resulting from this new Act are as follows:

- **Legal basis for a supervisory board (raad van commissarissen)**

The MSLE Act provides a legal basis for all legal entities to establish a supervisory board. For associations and foundations it was possible to set up a supervisory board already (often referred to as 'raad van toezicht' or 'raad van advies'), but there was no legal basis for establishing the supervisory board.

The statutory task of the supervisory board is the same for all legal entities, i.e. to supervise the policy and course of affairs of the legal entity and to assist the management board with advice.

- **Legal basis for a one tier board**

The MSLE Act provides a legal basis for all legal entities to set up a one tier board, in which board the duties are divided between executive and non-executive directors (the supervisors).

- **A mandatory regulation in case of absence or inability to act (belet of ontstentenis)**

A mandatory statutory regulation regarding absence and inability to act will be introduced for management board members and supervisory board members of associations, cooperatives, mutual insurance companies and foundations. This mandatory regulation currently only applies to the NV and BV.

- **Standardisation of the regulation on conflicts of interest**

The MSLE Act provides for a regulation on conflicts of interest (tegenstrijdig belangregeling) that applies to management board members and supervisory board members of associations, cooperatives, mutual insurance companies and foundations.

This new regulation corresponds to the regulation applicable for the NV and BV since 1 January 2013.

- **Standardisation of the regulation on multiple voting rights**

Regulation is being introduced on the multiple voting rights for management board members and supervisory board members of associations, cooperatives, mutual insurance companies and foundations, which regulation (that already applies to the NV and BV) provides that one management board member or supervisory board member cannot cast more votes than the other management board members or supervisory board members jointly.

- **Standardisation of guidelines for the performance of duties by management board members and supervisory board members**

Following the regulation for the NV and BV, it will be legally established that management board members and supervisory board members of associations, cooperatives, mutual insurance companies and foundations in the performance of their duties must act according to the interests of the legal entity and its affiliated enterprises.

- **Expansion of grounds for dismissal of management board members and supervisory board members of foundations**

The courts will have more discretion to dismiss a management board member or supervisory board member of a foundation at the request of the Public Prosecution Department (*Openbaar Ministerie*) or an interested party.

With the introduction of the MSLE Act, the grounds for dismissal are extended to dismissal due to neglect of duties, fundamental changes in circumstances or other serious reasons.

▪ **Liability in case of bankruptcy**

Under current law it is possible to hold management board members and supervisory board members of the NV and BV, cooperative, mutual insurance company and the commercial (subject to corporate tax) foundation and association jointly and severally liable for improper performance of duties. With the introduction of the MSLE Act, the regulation for liability in case of bankruptcy due to improper performance of duties will apply to management board members and supervisory board members of *all* foundations and associations.

IS AN AMENDMENT OF THE ARTICLES OF ASSOCIATION REQUIRED?

With the entry into force of the MSLE Act on 1 July 2021, an amendment of the articles of association of existing foundations, associations, cooperatives and mutual insurance companies is recommended in certain cases. The MSLE Act enters into force with immediate effect as of 1 July 2021, although transitional law prevents the articles of association from having to be aligned with the new legislation immediately.

We would like to point out several important matters regarding the articles of association:

Conflicts of interest: provisions included in the articles of association under current law regarding conflicts of interest that are not aligned with the new legislation can no longer be invoked after the MSLE Act has entered into force. An amendment of the articles of association on this matter is not required but is still recommended, on the occasion of which the old provisions will be replaced by new ones.

Absence and inability to act: associations, cooperatives, mutual insurance companies and foundations not yet having included a provision regarding absence and inability to act in the articles of association, must amend the articles of association, in accordance with transitional law, no later than upon the next amendment of the articles of association after the MSLE Act has entered into force.

Multiple voting rights: if the articles of association of associations, cooperatives, mutual insurance companies and foundations contain a provision on the basis of which a management board member or supervisory board member can

cast more votes than all other management board members or supervisory board members jointly, this provision will remain valid for up to five years after the MSLE Act has entered into force, or until the next amendment of the articles of association after the MSLE Act has entered into force, depending on which moment occurs first.

Should you have further questions regarding the above, please do not hesitate to contact us.



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