

Main changes as of 1 July due to WBTR (Act on Management and Supervision of Legal Persons) for associations and foundations.

The reason for introducing this new Act is to improve the quality of management and supervision of foundations, associations (and cooperatives and mutual societies) and to equalise the regulations for all legal entities. The regulations already applied to the B.V. and the N.V. and the WBTR is thus aligned with the existing regulations for B.V. and N.V. in the Dutch Civil Code.

Directors and supervisory directors of foundations and associations will have to focus on the interests of the legal entity and its affiliated enterprise or organisation when performing their duties. The (joint and several) liability of board members of article 9 of Book 2 of the Civil Code (mismanagement) will therefore also apply to supervisory directors of associations and foundations.

In addition, the regulation for liability for improper performance of duties in case of bankruptcy (Section 138 Book 2 Civil Code) will also apply to managing directors and supervisory directors of all associations and foundations and the regulation for joint and several liability for damages due to misleading representation of the state of affairs of the legal person in the annual accounts will be extended.

(Sections 139 and 150 Book 2 Civil Code) also apply to semi-public associations and foundations outside of bankruptcy.

In addition to these liabilities that will apply, there are also a number of regulations that must be included in the articles of association.

In short, it comes down to the following:

- I. **Articles of association must contain a regulation for the absence or inability to act of all directors. So who is in charge or who will be in charge.**
- II. **In articles of association where one director has more voting rights than the other directors, this increased voting right of the director may not be more than the other directors combined.**
- III. **A different regulation will apply to conflicting interests. A managing director who has a direct or indirect personal interest that conflicts with the interest of the legal entity may not participate in the deliberations and decision-making with regard to that item. The other managing directors must then take the relevant decision. If there is no other board member or if all board members have a conflict of interest, the general meeting of members will take the decision (but the articles of association may deviate from this and provide that the board remains authorised to take decisions if all board members have a conflict of interest) and in the case of foundations, if there are no other board members, the decision will still be taken by the board, but with written record of the considerations underlying the decision (the articles of association may deviate from this as well, just as in the case of associations).**

There is a transition period for these requirements.

For the requirement under I., there is unlimited transitional law. This requirement must only be met with the next amendment of the articles of association.

In the case of requirement II, the transitional arrangement is such that it must be amended at the next amendment of the articles of association, but insofar as there is no amendment of the articles of association before 1 July 2026, the "old" provision may still apply until 1 July 2026. After that, the provision is deemed not to have been written. Requirement III has no transition period, so this requirement takes effect immediately. However, the articles of association of a foundation or association do not always include a conflict of interest provision, so the articles of association do not always have to be amended on this point.

Finally, by introducing the WBTR the legal position of the foundation's director-employee is aligned with that of a director of a B.V. or N.V. The foundation's director-employee loses the protection against dismissal that was available before. A dismissal permit from the UWV or dissolution of the employment contract by the court is therefore no longer necessary.