

Easy reference overview **MSLE Act**

This document contains an overview of the changes to Book 2 Dutch Civil Code in connection with the Act on Management and Supervision of Legal Entities (MSLE Act; *Wet bestuur en toezicht rechtspersonen*), which Act will enter into force on 1 July 2021.

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Easy reference overview

This document contains an overview of the changes to Book 2 Dutch Civil Code in connection with the Act on Management and Supervision of Legal Entities (MSLE Act; *Wet bestuur en toezicht rechtspersonen*), which Act will enter into force on 1 July 2021.

1. ASSOCIATION (<i>vereniging</i>)		
1a. Management board (<i>bestuur</i>)		
Appointment on binding nomination	<p>Current</p> <p>Appointment of management board members on the basis of a binding nomination (<i>bindende voordracht</i>) must be provided for in the articles of association</p>	2:37 par. 4
	<p>New</p> <p>As a consequence of the addition to par. 4, if only one candidate is nominated, the resolution regarding the nomination will result in the appointment of such candidate (aligned with BV/NV, see Section 2:133/2:243)</p>	2:37 par. 4 (last sentence)
Management	<p>Current</p> <p>Section 2:44 describes the management board's task</p>	2:44
Duties/guideline	<p>New</p> <p>In performing their duties the management board members shall act in accordance with the interests of the association and the enterprise or organisation connected with it (aligned with BV/NV, see Section 2:129 par. 5/2:239 par. 5)</p>	2:44 par. 3
Plural voting rights	<p>Articles of association can provide that more than one vote can be cast by a certain management board member, provided that such management board member cannot cast more votes than the other management board members jointly (aligned with BV/NV, see Section 2:129 par. 2/2:239 par. 2)</p>	2:44 par. 4
Inability (<i>belet</i>) and vacancy (<i>ontstentenis</i>) of all management board members	<ul style="list-style-type: none"> - A provision must be included in the articles of association covering the inability to act of <i>all</i> management board members or the situation in which <i>all</i> seats on the management board are vacant (which principle will also apply to BV/NV, see Section 2:134 par. 4/2:244 par. 4) - Articles of association can contain provisions regarding inability of one or more management board members or provisions applicable if one or more seats are vacant - Articles of association can further specify situations in which the rules on inability will also apply - Temporary management board member is considered equivalent to a regular management board member (in the context of duties, responsibilities and liabilities) 	2:44 par. 5
Conflict of interests	<ul style="list-style-type: none"> - A management board member shall not participate in deliberations and decision-making process in the event of an (in)direct personal conflict of interest between that management board member and the interests referred to in Section 2:44 par. 3 (aligned with BV/NV, see Section 2:129 par. 6/2:239 par. 6) - When no resolution can be adopted as a result: resolution is adopted by the supervisory board - When no supervisory board is established: resolution is adopted by the general meeting (unless the articles of association provide otherwise) - More legal certainty: the regime of current Section 2:47 (consequences for the authority to represent the legal entity) is abolished 	2:44 par. 6

Remuneration of management board members	The authority to establish a remuneration for management board members is vested in the general meeting (comparable to BV rule, see Section 2:245)	2:44 par. 7
Advisory vote	Mandatory provision requiring management board members to be called for general meetings and to be enabled to give advice in the general meetings (aligned with BV/NV, see Section 2:117 par. 4/2:227 par. 7)	2:44 par. 8
Liability for improper performance of duties in case of bankruptcy	<p>New</p> <p>Change to current Section 2:50a</p> <p>More onerous: the current limitation of liability of management board members to formal associations obliged to pay corporate tax will be abolished, as a result of which the rule (see Section 2:138 par. 1 and 3 through 10) applies to all associations</p> <p>The statutory evidentiary presumption and rules on liability in case of misleading financial reporting only apply to formal associations that are subject to corporate tax or to associations that must draw up a financial report equal or similar to annual accounts under Title 9 Book 2 of the Dutch Civil Code</p>	<p>2:50a par. 1</p> <p>2:50a par. 2</p>
1b. One tier board*		
Authority general meeting	<p>Current</p> <p>In principle, management board members are appointed by the general meeting</p> <p>New</p> <p>Addition: if an association establishes a one tier board (see Section 2:44a), the general meeting determines whether a management board member is appointed as executive or non-executive director</p>	<p>2:37 par. 2</p> <p>2:37 par. 2 (last sentence)</p>
One tier board	<p>New</p> <p>Section 2:44a contains a completely new set of rules governing the one tier board which is almost similar to the respective BV/NV rules (see Sections 2:129a/2:239a)</p>	2:44a
Establishment	Articles of association can stipulate that the association has a one tier board	2:44a par. 1
Allocation of duties	<ul style="list-style-type: none"> - Allocation of duties: non-executive directors cannot be deprived of their supervisory duties - (i) the chairmanship of the board, (ii) right to make nominations for appointment of board members and (iii) right to decide upon executive director's remuneration cannot be assigned to an executive director 	
Non-executive directors	Non-executive directors are natural persons	
Decision-making in accordance with allocation of duties	In or by virtue of the articles of association, it can be stipulated that one or more management board members can resolve upon matters that form part of their duties (e.g. in board regulations)	2:44a par. 2
Suspension executive director	The management board is at all times authorised to suspend an executive director (does not apply to BV/NV)	2:44a par. 3
Remuneration executive directors	Executive directors are not involved in decision-making on the remuneration of executive directors	2:44a par. 4

* The rules facilitating the legal basis of the one tier board model will come into force at a later date. Registration of this governance model requires registration of executive and non-executive directors for the relevant legal entities with the Dutch trade register - this requires an amendment to the Trade Register Decree 2008 (*Handelsregisterbesluit 2008*), which is being worked on. It is not yet clear when this amendment will be implemented. However, it is possible - despite the lack of a legal basis - to introduce a one tier board model in the articles of association of a foundation, association, cooperation or mutual insurance company.

1c. Supervisory board (*raad van commissarissen*)

	New	
Supervisory board	Section 2:47 contains a completely new set of rules governing the supervisory board	2:47
Establishment	<ul style="list-style-type: none"> - Articles of association can stipulate that the association has a supervisory board, but only if the association does not have a one tier board (cf. Section 2:44a par. 1) - Supervisory board can also be referred to as '<i>raad van toezicht</i>' instead of '<i>raad van commissarissen</i>' - Supervisory board members are natural persons 	2:47 par. 1
Duties/guideline	<ul style="list-style-type: none"> - The supervisory board shall have the duty to supervise the association and the enterprise or organisation connected with it and focuses on the interests thereof - The supervisory board assists the management board by giving advice - Aligned with BV/NV, see Sections 2:140 par. 2/2:250 par. 2 	2:47 par. 2
Right to suspend management board member	Unless the articles of association provide otherwise, the supervisory board is at all times authorised to suspend any management board member appointed by the general meeting. A suspension by the supervisory board may be discontinued at any time by the general meeting (aligned with BV/NV, see Sections 2:147/2:257)	2:47 par. 3
Plural voting rights	Articles of association can provide that more than one vote can be cast by a certain supervisory board member, provided that such supervisory board member cannot cast more votes than the other supervisory board members jointly (aligned with BV/NV, see Sections 2:140 par. 4/2:250 par. 4)	2:47 par. 4
Inability (<i>belet</i>) and vacancy (<i>ontstentenis</i>) of all supervisory board members	<ul style="list-style-type: none"> - A provision must be included in the articles of association covering the inability to act of <i>all</i> supervisory board members or the situation in which <i>all</i> seats on the supervisory board are vacant (which principle will also apply to BV/NV, see Section 2:142 par. 4/2:252 par. 4) - Articles of association can contain provisions regarding inability of one or more supervisory board members or provisions applicable if one or more seats are vacant - Articles of association can further specify situations in which the rules on inability will also apply - Temporary supervisory board member is considered equivalent to a regular supervisory board member (in the context of duties, responsibilities and liabilities) 	2:47 par. 5
Additional provisions re duties and task	Articles of association can include additional provisions regarding the duties and task of the supervisory board and its members (aligned with BV/NV, see Sections 2:140 par. 3/2:250 par. 3)	2:47 par. 6
Conflict of interests	<ul style="list-style-type: none"> - A supervisory board member shall not participate in deliberations and decision-making process in the event of an (in)direct personal conflict of interest between that supervisory board member and the interests referred to in Section 2:47 par. 2 (aligned with BV/NV, see Sections 2:140 par. 5/2:250 par. 5) - When no resolution can be adopted as a result: resolution is adopted by the general meeting (unless the articles of association provide otherwise) 	2:47 par. 7
Remuneration	The authority to establish a remuneration for supervisory board members is vested in the general meeting (comparable to provision for BV, see Section 2:255)	2:47 par. 8
Advisory vote	Unless supervisory board members have voting rights, supervisory board members have to be called for general meetings and be enabled to give advice in the general meetings (aligned with BV/NV, see Sections 2:117 par. 4/2:227 par. 7)	2:47 par. 9

Provision of data and periodic information	The management board timely provides the supervisory board with required information and informs the supervisory board in writing at least annually regarding the outlines of strategic policy, general and financial risks and the management- and control systems applied (aligned with BV/NV, see Sections 2:141/2:251)	2:47 par. 10 and par. 11
Appointment, suspension, dismissal	New Section 2:47a refers to the provision that applies to management board members with regard to appointment, suspension and dismissal of supervisory board members (see Section 2:37), unless the large company regime applies	2:47a par. 1
Information recommendation/nomination	Paragraph 2 sets out which information must be provided in the event of a recommendation or nomination for the appointment of a supervisory board member	2:47a par. 2
Liability for improper performance of duties in case of bankruptcy	New Provision referring to Section 2:50a par. 1 and 2 for the rules applicable to liability of supervisory board members (see chapter 1a; see Sections 2:138, 2:150 and 2:9)	2:50a par. 3
2. COOPERATION / MUTUAL INSURANCE COMPANY (OWM)		
2a. One tier board in large company regime (structuurregeling)*		
Application by analogy	New Large cooperation/OWM can establish a one tier board on the basis of Section 2:44a	2:63k par. 1
Approval	Resolutions within the meaning of Section 2:63j par. 1 require the approval of a majority of the non-executive directors	2:63k par. 2
No decision-making in accordance with allocation of duties	Section 2:44a does not apply to resolutions within the meaning of Section 2:63j	2:63k par. 3
2b. Supervisory board (raad van commissarissen)		
Rules governing association apply by analogy	New Sections 2:47/2:47a apply by analogy to the supervisory board of the cooperation/OWM by means of current Section 2:53a par. 1	2:47 2:47a 2:53a par. 1

* The rules facilitating the legal basis of the one tier board model will come into force at a later date. Registration of this governance model requires registration of executive and non-executive directors for the relevant legal entities with the Dutch trade register - this requires an amendment to the Trade Register Decree 2008 (*Handelsregisterbesluit 2008*), which is being worked on. It is not yet clear when this amendment will be implemented. However, it is possible - despite the lack of a legal basis - to introduce a one tier board model in the articles of association of a foundation, association, cooperation or mutual insurance company.

3. NV (naamloze vennootschap) / BV (besloten vennootschap met beperkte aansprakelijkheid)

3a. Management board (bestuur)

Inability (<i>belet</i>) and if a seat is vacant (<i>ontstentenis</i>)	Current <ul style="list-style-type: none">- A provision must be included in the articles of association covering the inability to act of (one or more) management board members or the situation in which (one or more) seats on the management board are vacant- Articles of association can include provisions in case of the inability of one or more management board members and if one or more seats are vacant on the management board	2:134 par. 4 2:244 par. 4
Inability (<i>belet</i>) and vacancy (<i>ontstentenis</i>) of all management board members	New <ul style="list-style-type: none">- A provision must be included in the articles of association covering the inability to act of <i>all</i> management board members or the situation in which <i>all</i> seats on the management board are vacant- New for NV: articles of association can further specify situations in which the rules on inability will also apply- Temporary management board member is considered equivalent to a regular management board member (in the context of duties, responsibilities and liabilities)	2:134 par. 4 2:244 par. 4
Liability for improper performance of duties in case of bankruptcy	New <p>A management board member cannot set off the company's claim regarding improper performance of duties with any claim against the company</p> <p>Claim regarding improper performance cannot be brought against a management board member appointed by the Enterprise Chamber (<i>Ondernemingskamer</i>) as referred to in 2:356 subsection c</p>	2:138 par. 6 2:248 par. 6 2:138 par. 7 2:248 par. 7

3b. Supervisory board (*raad van commissarissen*)

Inability (<i>belet</i>) and vacancy (<i>ontstentenis</i>) of one or more supervisory board members	Current <ul style="list-style-type: none">- A provision must be included in the articles of association of a BV covering the inability to act of one or more supervisory board members or the situation in which one or more seats in the supervisory board are vacant- No statutory rule for the NV yet	2:252 par. 4
Inability (<i>belet</i>) and vacancy (<i>ontstentenis</i>) of <i>all</i> supervisory board members	New <ul style="list-style-type: none">- A provision must be included in the articles of association covering the inability to act of <i>all</i> supervisory board members or the situation in which <i>all</i> seats on the supervisory board are vacant- Articles of association can include provisions in case of the inability of one or more supervisory board members and provisions applicable if one or more seats are vacant- New for NV: articles of association can further specify situations in which the rules on inability will also apply- Temporary supervisory board member is considered equivalent to a regular supervisory board member (in the context of duties, responsibilities and liabilities)	2:142 par. 4 2:252 par. 4

4. FOUNDATION (*stichting*)

4a. Management board (*bestuur*)

Management	Current Section 2:291 par. 1 and 2 describes the management board's tasks	2:291 par. 1 and par. 2
Duties/guideline	New In performing their duties the management board members shall act in accordance with the interests of the foundation and the enterprise or organisation connected with it (aligned with BV/NV, see Section 2:129 par. 5/2:239 par. 5)	2:291 par. 3
Plural voting rights	Articles of association can provide that more than one vote can be cast by a certain management board member, provided that such management board member cannot cast more votes than the other management board members jointly (aligned with BV/NV, see Section 2:129 par. 2/2:239 par. 2)	2:291 par. 4
Inability (<i>belet</i>) and vacancy (<i>ontstentenis</i>) of all management board members	<ul style="list-style-type: none">- A provision must be included in the articles of association covering the inability to act of <i>all</i> management board members or the situation in which <i>all</i> seats on the management board are vacant (which principle will also apply to BV/NV, see Section 2:134 par. 4/2:244 par. 4)- Articles of association can contain provisions regarding inability of one or more management board members or provisions applicable if one or more seats are vacant- Articles of association can further specify situations in which the rules on inability will also apply- Temporary management board member is considered equivalent to a regular management board member (in the context of duties, responsibilities and liabilities)	2:291 par. 5
Conflict of interests	<ul style="list-style-type: none">- A management board member shall not participate in deliberations and decision-making process in the event of an (in)direct personal conflict of interest between that management board member and the interests referred to in Section 2:291 par. 3 (aligned with BV/NV, see Section 2:129 par. 6/2:239 par. 6)- When no resolution can be adopted as a result: resolution is adopted by the supervisory board- When no supervisory board is established: management board adopts the resolution, setting out the considerations in writing (unless the articles of association provide otherwise)	2:291 par. 6
Remuneration	Articles of association can provide that management board members are granted a remuneration	2:291 par. 7
Removal management board member by the court	Current A management board member who (i) acts or fails to act in breach of the provisions of the law or the articles of association, (ii) is guilty of mismanagement or (iii) does not (properly) comply with an order to provide insight in the organisation and financial situation of the foundation, may be removed by the court upon the application of the Public Prosecution Service or of any interested party	2:298 par. 1
Director disqualification (<i>bestuursverbod</i>)	A management board member who was removed by the court cannot become a management board member of a foundation for five years as from such removal	2:298 par. 3

Removal management board member by the court	New Grounds for removal are extended: a management board member can be removed upon the application of the Public Prosecution Service or of any interested party for neglecting his duties, other serious reasons, fundamental changes in circumstances or failure to comply (properly) with orders to provide insight into the organisation and financial situation of the foundation	2:298 par. 1
Director disqualification; limitation	Addition: director disqualification applies, unless no serious accusations (<i>ernstig verwijt</i>) can be made against the respective management board member	2:298 par. 3
No restoration of employment contract by judge	New Judge cannot rule that employment contract between the foundation and a management board member must be restored (aligned with BV/NV, see Sections 2:134 par. 3/2:244 par. 3)	2:298a par. 1
Liability for improper performance of duties in case of bankruptcy	New More onerous: the current limitation of liability of management board members to foundations obliged to pay corporate tax will be abolished, as a result of which the rule (see Section 2:138 par. 1 and 3 through 10) applies to all foundations The statutory evidentiary presumption and rules on liability in case of misleading financial reporting only apply to foundations that are subject to corporate tax or to foundations that must draw up a financial report equal or similar to annual accounts under Title 9 Book 2 of the Dutch Civil Code	2:300a par. 1 2:300a par. 2
4b. One tier board*		
One tier board	New Section 2:291a contains a completely new set of rules governing the one tier board which is almost similar to the respective BV/NV rules (see Sections 2:129a/2:239a)	2:291a
Establishment	Articles of association can stipulate that the foundation has a one tier board	2:291a par. 1
Allocation of duties	<ul style="list-style-type: none"> - Allocation of duties: non-executive directors cannot be deprived of their supervisory duties - (i) the chairmanship of the board, (ii) right to make nominations for appointment of board members and (iii) right to decide upon executive director's remuneration cannot be assigned to an executive director 	
Non-executive director	Non-executive directors are natural persons	
Decision-making in accordance with allocation of duties	In or by virtue of the articles of association, it can be stipulated that one or more management board members can resolve upon matters that form part of their duties (e.g. in board regulations)	2:291a par. 2
Capacity stated at appointment	At his appointment, it is stated whether a management board member is appointed as executive or non-executive director	2:291a par. 3
Suspension executive director	The management board is at all times authorised to suspend an executive director (does not apply to BV/NV)	2:291a par. 4
Remuneration executive directors	Executive directors are not involved in decision-making on the remuneration of executive directors	2:291a par. 5

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4c. Supervisory board (*raad van commissarissen*)

<p>Prescribed statutory elements</p>	<p>Current</p> <p>Section 2:286 par. 4 determines which elements must be included in the articles of association of a foundation (e.g. name, objects, appointment and dismissal of board members)</p> <p>New</p> <p>Addition to subsection c: articles of association must contain a provision regarding appointment and dismissal of supervisory board members in case a supervisory board is established</p>	<p>2:286 par. 4</p> <p>2:286 par. 4 sub c</p>
<p>Supervisory board</p> <p>Establishment</p> <p>Duties/guideline</p> <p>Right to suspend management board member</p> <p>Plural voting rights</p> <p>Inability (<i>belet</i>) and vacancy (<i>ontstentenis</i>) re all supervisory board members</p>	<p>New</p> <p>Section 2:292a contains a completely new set of rules governing the supervisory board</p> <ul style="list-style-type: none"> - Articles of association can stipulate that the foundation has a supervisory board, but only if the foundation does not have a one tier board (cf. Section 2:291a par. 1) - Supervisory board can also be referred to as '<i>raad van toezicht</i>' instead of '<i>raad van commissarissen</i>' - Supervisory board members are natural persons <ul style="list-style-type: none"> - The supervisory board shall have the duty to supervise the foundation and the enterprise or organisation connected with it and focuses on the interests thereof - The supervisory board assists the management board by giving advice - Aligned with BV/NV, see Sections 2:140 par. 2/2:250 par. 2 <ul style="list-style-type: none"> - Unless the articles of association provide otherwise, the supervisory board is at all times authorised to suspend any management board member - The suspension can be lifted by the corporate body or person authorised to appoint <p>Articles of association can provide that more than one vote can be cast by a certain supervisory board member, provided that such supervisory board member cannot cast more votes than the other supervisory board members jointly (aligned with BV/NV, see Sections 2:140 par. 4/2:250 par. 4)</p> <ul style="list-style-type: none"> - A provision must be included in the articles of association covering the inability to act of <i>all</i> supervisory board members or the situation in which <i>all</i> seats on the supervisory board are vacant (which principle will also apply to BV/NV, see Section 2:142 par. 4/2:252 par. 4) - Articles of association can contain provisions regarding inability of one or more supervisory board members or provisions applicable if one or more seats are vacant - Articles of association can further specify situations in which the rules on inability will also apply - Temporary supervisory board member is considered equivalent to a regular supervisory board member (in the context of duties, responsibilities and liabilities) 	<p>2:292a</p> <p>2:292a par. 1</p> <p>2:292a par. 2</p> <p>2:292a par. 3</p> <p>2:292a par. 4</p> <p>2:292a par. 5</p>

Additional provisions re duties and task	Articles of association can include additional provisions regarding the duties and task of the supervisory board and its members (aligned with BV/NV, see Sections 2:140 par. 3/2:250 par. 3)	2:292a par. 6
Conflict of interests	<ul style="list-style-type: none"> - A supervisory board member shall not participate in deliberations and decision-making process in the event of an (in)direct personal conflict of interest between that supervisory board member and the interests referred to in Section 2:292a par. 2 (aligned with BV/NV, see Sections 2:140 par. 5/2:250 par. 5) - If, as a result, the supervisory board cannot adopt a resolution: the resolution is adopted by the supervisory board, setting out the considerations in writing (unless the articles of association provide otherwise) 	2:292a par. 7
Remuneration	Articles of association can provide that supervisory board members are granted a remuneration	2:292a par. 8
Information recommendation/nomination	This paragraph sets out which information must be provided in the event of a recommendation or nomination for the appointment of a supervisory board member	2:292a par. 9
Provision of data and periodic information	The management board timely provides the supervisory board with required information and informs the supervisory board in writing at least annually regarding the outlines of strategic policy, general and financial risks and the management- and control systems applied (aligned with BV/NV, see Sections 2:141/2:251)	2:292a par. 10 and par. 11
Removal supervisory board member by the court	New A supervisory board member who (i) acts or fails to act in breach of the provisions of the law or the articles of association, (ii) is guilty of mismanagement or (iii) does not (properly) comply with an order to provide insight in the organisation and financial situation of the foundation, may be removed by the court upon the application of the Public Prosecution Service or of any interested party	2:298 par. 4 in conjunction with par. 1
Interim provisions	Pending the investigation, the court may make interim provisions in the supervisory board and suspend the supervisory board member (comparable to rules applicable to the management board)	2:298 par. 4 in conjunction with par. 2
Director disqualification	Director disqualification (<i>bestuursverbod</i>) also applies to supervisory board member, unless no serious accusations (<i>ernstig verwijt</i>) can be made against the respective supervisory board member	2:298 par. 4 in conjunction with par. 3
No restoration of employment contract by judge	New Judge cannot rule that employment contract between the foundation and a supervisory board member must be restored (aligned with BV/NV, see Sections 2:144 par. 2/2:254 par. 2)	2:298a par. 2 in conjunction with par. 1
Liability for improper performance of duties in case of bankruptcy	New Provision referring to Section 2:300a par. 1 and 2 for the rules applicable to liability of supervisory board members (see chapter 4a)	2:300a par. 3

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