

## LEGAL UPDATE

### Enactment of the Management and Supervision of Legal Entities Act partially postponed

Date: 25 June 2021

The Management and Supervision of Legal Entities bill (“**WBTR**”) has recently been keeping foundations and associations quite busy, particularly as it is due to be enacted next week (1 July 2021). We have previously used several channels to keep you informed of the progress and content of this Act. For example see our previous Legal Updates on this topic dated [30 January 2020](#) (English translation) and [12 November 2020](#), (in Dutch only) the articles we published in *Fiscaal Tijdschrift Vermogen* ([ftV no. 2, February 2021](#)) and [Care Vision](#) (in Dutch only) as well as [episode 32 of Licht op Legal](#), our fortnightly podcast (in Dutch only).

Now, however, just a few days before the enactment date, a [decision](#) has been published amending the decree under which the Act is to enter into force. The effect of this decision is to delay the entry into force of a number of provisions until a date to be determined by royal decree.

This delay applies to the provisions facilitating the one-tier board model for associations, cooperatives, mutual insurance companies and foundations. According to the explanatory memorandum, those provisions will come into effect following the roll-out of technology that enables associations, cooperatives, mutual insurance companies and foundations to make an entry in the trade register indicating whether a director is executive or non-executive. As we noted earlier, this lack of legal basis for a one-tier board does not prevent it from being created under the articles. This governance model was in fact already (and still is) an available option, based on an internal division of responsibilities. This means that a one-tier governance model is actually quite common. The delayed enactment of these provisions will not change this, but it does mean that existing one-tier boards will be able to wait longer before having to comply with the new rules.

The second provision that has been delayed is the one that will require public limited companies to include in their articles of association a provision dealing with supervisory directors’ absence or inability to act, for example due to the resignation, dismissal or long-term illness of any or all of them. The reason for the delay to the enactment of this provision is the absence of transitional law requiring public limited companies to *immediately* add such provision to their articles of association once the WBTR has entered into force. In order to plug this gap, the Minister has issued a postponement decision announcing that a separate provision will be included in a collective Act, which is currently being drafted, to ensure that public limited companies - like all other legal entities - will only have to include a provision regulating their supervisory board members’ absence or inability to act when they next amend their articles of association. The above rules on supervisory directors’ absence and inability to act under the WBTR will apply once this amendment to the WBTR transitional law takes effect as part of the collective Act.

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