

LEGAL UPDATE

Governance & Supervision of Legal Entities Act makes it through Lower House of Parliament after four years

Date: 30 January 2020

The [legislative proposal for the 'Governance & Supervision of Legal Entities Act'](#) was adopted by the [Lower House of Parliament](#) on 28 January 2020. The legislative proposal meets the practical need for clear rules for governance and supervision in relation to associations, cooperatives, mutual insurance associations and foundations. The new and amended provisions are largely in line with the existing rules for public and private limited liability companies (the NV and BV). The legislative proposal therefore results in more uniformity in the law governing legal entities. The new law will most likely be introduced as early as 1 July 2020. The new law will be evaluated within five years of its entry into force.

Summary of a number of important changes as a result of the legislative proposal:

- There will be a legal basis for a one-tier board for associations and foundations. Within the board, a distinction can thus be made between executive and non-executive directors.
- There will be a legal basis for a supervisory board for all legal entities, which means legal provisions and powers will henceforth apply to every supervisory body at every legal entity, regardless of the name of the body.
- The conflict of interest regulation that already applies to managing and supervisory directors at NVs and BVs will also be included in the law for associations and foundations, on the understanding that in the absence of a supervisory board, the management board will still be authorised to take the decision itself if it records in writing the considerations on which the decision is based. The supervisory board is, in the event of a conflict of interest on the part of all of the members of that body, itself also authorised to take the decision provided it records in writing the considerations on which the decision is based.
- In the case of associations or foundations that are subject to corporation tax, or are semi-public and obliged to file financial statements pursuant to sectoral legislation and regulations, the regime for the liability of directors and supervisory officers in the event of bankruptcy is changing:
 - manifestly improper management or supervision is irrefutably established if the management has failed to comply with the obligation to keep records or if the financial statements have not been published on time; and
 - there is a presumption (refutable) that the improper performance of duties was an important cause of the bankruptcy.
- An extension of the grounds for dismissal of a foundation's directors and supervisory officers by the court. A director or supervisory officer of a foundation can be dismissed by the court at the request of an interested party or the public prosecutor for neglect of his duties, on account of a drastic change in circumstances which means it can no longer be tolerated for the person to remain in office or on account of other compelling reasons. This dismissal entails a five-year disqualification from serving as a director by operation of law.
- As a result of two amendments to the legislative proposal submitted earlier this month, associations and foundations must also comply with the following requirements as of their next amendment of the articles of association:
 - The restriction with regard to multiple voting rights as it already applies to directors of an NV and BV will also apply to all other legal entities. A supervisory board member or director of a legal entity cannot cast more votes in his/her company body than the other members combined.
 - Henceforth the articles of association of a foundation or association must, like the articles of association of an NV or BV, provide for an absence or impediment arrangement in the event of

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the absence or inability to act of all members of the management board or (if established) the supervisory board.

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