

Bill on management and supervision of legal entities – how it impacts NVs and BVs

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In November, the upper house of parliament passed this legislation as a formality, without debate. The bill will enter into force on 1 July 2021. In the coming months, the Dutch government will take an active role in communicating the bill's impact to existing associations, cooperatives, mutual insurance companies and foundations. To read more about this impact, see our previous [In context article](#).

The bill also has consequences for NVs and BVs, and we explain below how and when these companies may have to take action and amend their articles of association.

Managing directors

Current legislation requires the articles of association of NVs and BVs to include provisions on the management of the NV or BV if **one or more** managing director positions are vacant or one or more managing directors are unable to act.

The bill requires the articles of association of NVs and BVs to include provisions on the management of the NV or BV if **all** managing director positions are vacant or **all** managing directors are unable to act. Shareholders and other stakeholders should know by whom the company is managed if no managing director is in office or all managing directors are unable to act.

The bill also provides that the articles of association **may include** an arrangement on the management of the NV or BV if one or more (but not all) managing director positions are vacant or one or more (but not all) managing directors are unable to act.

Supervisory directors

For **BVs**, current legislation requires the articles of association to include provisions on the supervision of the BV if one or more supervisory director positions are vacant or one or more supervisory directors are unable to act. For **NVs**, current legislation does not include this requirement.

The bill introduces the requirement for **NVs** and **BVs** to include provisions in the articles of association on the supervision of the NV or BV if **all** supervisory director positions are vacant or **all** supervisory directors are unable to act.

The bill also provides that the articles of association **may include** an arrangement on the supervision of the NV or BV if one or more (but not all) supervisory director positions are vacant or one or more (but not all) supervisory directors are unable to act.

No transitional provision for NVs and BVs

The bill will enter into force on 1 July 2021. Unlike associations, cooperatives, mutual insurance companies and foundations, NVs and BVs do **not** benefit from a transitional provision setting out when they need to bring their articles of association in line with the new regime. A literal reading of the new legislation would require NVs and BVs to amend their articles of association at the latest when the bill enters into force. Associations, cooperatives, mutual insurance companies and foundations will have to include the new provisions when they next amend their articles of association.

We take the view that, for NVs and BVs, the bill's legislative background supports arguments in favour of a soft transitional regime. This would mean that the relevant provisions can be amended or introduced when these companies next amend their articles of association. The absence of a transitional provision for NVs and BVs seems to be an omission, and this should not in our view result in an immediate requirement to amend the articles of association at the time when the bill enters into force.

Previous versions of the bill contained a transitional provision for all legal entities, including NVs and BVs. The explanatory memorandum to the bill also states that the new requirements should not lead to new costs or an increase in administrative burden. In addition, the bill aims at uniform provisions for all legal entities, where possible, and this approach should also extend to the relevant transitional provisions.

Recommendation

We recommend that NVs and BVs check their articles of association to determine the extent of changes needed to comply with the new bill. If you are planning to amend the articles of association, either before or after 1 July 2021, the new rules should be included as part of that amendment.

In our view, NVs and BVs that do not have such plans can take the position that the relevant provisions of the articles of association on vacancies and inability to act only need to be updated when the articles of association are next amended. However, if you wish to avoid any discussion on this point, you would be served well by amending the articles of association ahead of 1 July 2021, when the new bill takes effect.

If you have any further questions about the bill, please do not hesitate to reach out to your De Brauw client team, or to one of our corporate advisory experts.

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