

Governance and Supervision of Legal Entities Act (WBTR)

This document is based on the [checklist of the Dutch Association of Volunteers \(NOV\)](#) and that of the [Network DAK](#).

What is the Governance and Supervision of Legal Entities Act (WBTR)?

The Governance and Supervision of Legal Entities Act (WBTR) is a new law that will apply from 1 July 2021. The law is intended to prevent mismanagement, irresponsible financial management, abuse of position and other undesirable activities within boards. Also, something is changing in the liability of board members.

Who must comply with the WBTR?

All associations and foundations registered at the Dutch Chamber of Commerce must comply with the law. A church that is registered as an association or foundation or that follows the Dutch Civil Code voluntarily (this will be stated in the statutes) must also comply with the law. Churches that are not registered as a foundation or association, but as an [ecclesiastical organization](#) do not have to comply with it.

When should it be arranged?

Organizations have until the end of 2021 to comply with the law. If it is necessary to amend the articles of association, this can be done at the next amendment of the articles of association at the notary, max. within 5 years.

What should be arranged?

1. Governance Model

Most international churches have executive and controlling tasks (supervision) present in one board, divided among different board members, as stated below:

- There should be a clear difference between executives and those who oversee. This is usually already laid down in the statutes through the positions of chairman, secretary and treasurer. They implement and the other board members monitor.
- All board members have an equal vote. Only in the event of an evenly split vote can the chairman have a casting vote. This is often already laid down in the statutes.

2. Liability

In case damage occurs because of improper management, the responsible board member can be held liable for that damage. We are then not talking about minor mistakes, but about serious culpable acts. For example, a board member who concludes a purchase contract for a church building while there is insufficient money, as a result of which the church has to pay a large fine because it cannot meet its obligations. In the event of bankruptcy, board members who are guilty of fraud or other forms of serious neglect of duties can be held jointly and severally liable. A board member can be dismissed by court for neglecting his duties. See in the appendix which precautionary measures you can take as an organisation.

3. Interests

- Board members must be able to make decisions in the interest of the organization and question each other critically about this.
- Board members with conflicts of interest should not participate in the relevant meeting or decision-making. If all board members have a conflict of interest, the rationale of the decision must be recorded in writing. The rules on conflict of interest must be included in the articles of association or internal regulations.

4. Voting rights

- Each board member preferably has one vote, this is stated in the articles of association. If the articles of association state that one board member can cast more votes than the other board members together, this must be adjusted within 5 years.

5. Board member lays down his/her function or is no longer allowed to perform a function (absence or impediment)

- In the absence of one board member, the other board members take care of the organisation. Provide a continuity committee that becomes active when there are no more board members. This must be included in the articles of association when you go to the notary for the next amendment. Until then, it can be included in the internal regulations. Example formulation:

“In the absence or inability of all board members to act, the governance of the organisation rests temporarily with the continuity committee or the persons to be designated by this committee. For the acts of governance performed during this period, the designated persons are equated with a board member.”

Roadmap:

- Check what is missing in your articles of association and way of working of the board
- Describe this in internal regulations or an appendix to the internal regulations. The internal regulations are a supplement to the articles of association. They can include agreements, rules and guidelines for the shorter term > [More information](#).
- Adopt this document in a board meeting and have two persons from the board sign (chairman, secretary)
- Attach the document to the articles of association, for example in case of fund applications
- Plan when the organization will change the articles of association (within 5 years at the latest)
- Act according to what has been agreed upon

More information?

- [Webinar WBTR voor verenigingsbestuurders](#)
- www.wbtr.nl
- For additional questions, please contact samany@skinkerken.nl

Appendix:

Recording financial agreements within the board:

- Limit cash traffic. Payments made by bank will be automatically registered. If your organization nevertheless has to work with cash, ensure that there are sound procedures in place. Such as:
 - Deposit all cash at the bank at the end of the year. This allows the audit committee to make a proper audit.
 - Limit the amount of money in cash and agree on a maximum amount. Always deposit money above this amount into the bank account immediately.
 - In the case of collections, etc. with an uncertain yield, always have money counted by two people who note the counted amounts and sign for them.
 - Do you have a canteen? Then work with a cash register, keep frequent inventories, have interim checks carried out by the cash committee.
 - When selling tickets, make sure you have numbered tickets. Establish a daily check between the number of tickets sold and the money received.
- Periodic control of all payments. For example, someone from the board (someone other than the treasurer) checks all payments from all bank accounts every month.
- Annual audit by an audit committee. Auditing by the cash committee is required by law for every association, and many foundations have this obligation in their articles of association.
- Make internal regulations on payments to board members. Record in writing whether and, if so, which fees board members may declare and within what period this must be done.
- Apply the four eyes principle: in addition to the treasurer, there is another board member who has an overview of the payments.
- Set a limit for the amount of payments per day.
- Request a reference or request a VOG for new board members and other persons who arrange the finances for the organization.
- For investments or other large expenses above a predetermined amount, always request a tender or proposal from various suppliers.
- Keep records of all assets and periodically make an inventory of whether all assets are still present.

Proper performance of board members:

- Board members are familiar with the articles of association of the organization.
- Board members do not enter into any (financial) obligations on behalf of the organization that the organization is known to be unable to fulfil.
- Board members take measures against foreseeable (financial) risks. For example, think of organizational facilities or insurance.
- Board members ensure that fellow board members can perform their duties and obligations and that the policy pursued by a fellow board member in his policy area does not lead to risks for your organization.
- Board members meet regularly and are mutually accountable for the performance of their duties.

- Board members are well informed about decisions that are taken, and record these decisions. If there is no agreement, the objections of board members are also written down (also in the minutes).
- Board members of organizations who are obliged to publish the balance sheet or other financial data with the Chamber of Commerce do so on time and in accordance with the rules.