

opkomen voor kwetsbare mensen

NETWERK
dak

WBTR in brief:



Wet Bestuur en Toezicht Rechtspersonen
(Act on Management and Supervision of Legal Entities)

for international and migrant churches in The Hague

Helma Hurkens and Pietermel Ermen

Netwerk DAK (Door Aandacht Kracht)

June, 21th, 2021

WBTR

1. Introduction: main points of Act M&S LE
2. Explanation adjustment of statutes
3. Insurances
4. Questions

WBTR – Main points Act (1)

In general:

- Commencing date law: 01-07-2021
- Period for adjusting statutes: till 01-07-2026
- Yes or no adjusting statutes: depends on own situation
- In case of trouble: the Act is superior to statutes

- Adjustment of statutes only via solicitor. Internal rules of Operation (IRO) to be drawn up, adopted and changed by the board.

WBTR – Main points Act (2)

Objective (purpose?) of the law

A) Counteract:

- misadministration
- irresponsibly financial management
- misuse of position
- other undesired activities within the Board

B) Enhance quality of governing boards

WBTR – Main points Act (3)

These objectives have consequences for foundations and associations:

- 1.1 Reconsider Choice of management model
- 1.2 Additional rules liability statements board members
- 1.3 Collective duty to prevent financial mismanagement
- 1.4 Tighten up description decent job accomplishment
- 1.5 Interest own organization first

WBTR – Main points Act (4)

1.1 Choice of managementmodel (of the Board)

The original choice (as stated in the statutes) may be reconsidered:

- The Board reaches decisions jointly: all board members have an equal vote
or:
- Board + Board of Trustees (BoT/RvT) or Board of Commissioners (BoC /RvC)
or:
- One-tier model (Board + BoT united = executive and supervising)

WBTR – Principal Points Act (5)

1.2 Liability statement board members

Each member is legally obliged to good jobperformance

In case of improper management (mismanagment) – which results in severe damage – the director may be hold personally accountable.

This is the case when there is talk of serious, culpable acting

WBTR – Main points Act (6)

1.3 Prevent financial mismanagement / malpractice

By making agreements about:

- Limiting cash traffic
- Conclusive procedures in regard to cashflows
- Periodic control of all payments
- Annual control by audit committee (associations and foundations)
- Payments to board members

WBTR – Hoofdpunten wet (6)

1.3 Prevent financial mismanagement / malpractice

By making agreements about :

- Two board members who approve invoices and payments
- Daily limit for payments
- VOG for new board members (Declaration of Conduct)
- Ask for multiple tenders in case of big investments
- Keeping records of all possessions
- Finish annual accounts in due time and publish if necessary (website , Chamber of Commerce, etc.)

WBTR – Mainpoints Act (7)

1.4 decent job performance board members

This implies (among other things):

- Familiar with the statutes
- No financial obligations that the organisation cannot meet
- Take measures against risks (organisational + insurances)
- Board members look out for each other
- Board meets regularly –is accountable for tasks
- Decisions are well recorded in the minutes
- Long-term sick board members are adequately replaced

WBTR – Main points Act (8)

1.5 Interest own organization first

This means:

- ✓ Board members and supervisors are obliged to focus on the interest of the organization when fulfilling their duties.
- ✓ They decide always in the interest of the organization and dare to ask each other critical questions

WBTR – Adjustment of statutes

WBTR: reason to adjust the statutes on various points:

1. Change of managementmodel (if applicable)
1. Addition conflicting interest regulation
2. Regulation restriction of multiple voting rights
3. Absence and incapacity regulation (ontstentenis en belet)

Plus: additional grounds for dismissal of directors by the court;

for associations only: role General Members Meeting (ALV) in case of binding nomination for new board member and regarding advisory vote directors

WBTR – Adjustment of statutes (1)

2.1 Conflicting interest regulation

A board member must always decide in the interest of the organization.

If a board member has a self-interest or conflicting interest, he or she doesn't participate in the deliberations and the decision-making about it.

- ✓ At an association can the General Members Meeting take over the decision-making process.
- ✓ In a foundation, the board always decides – therefore, carefully record considerations in the decision in writing!

WBTR – Adjustment of statutes (2)

2.2 Regulation restriction of multiple voting rights

New: a board member cannot cast more votes than the other board members combined.

This prevents one board member from pushing through his sentence.

This can also be about vetoing.

If this is stated differently in the statutes than intended here, they must be amended.

WBTR – Adjustment of statutes (3)

2.3 Absence and incapacity regulation

Absence: a board member is temporarily unable (or not allowed) to perform his function

Incapacity: a board member ceases to be a board member.

Purpose: continue the activities of the organization in case of absence of one or more board members.

If only one board member is left – or when all board members are gone – the remaining board member or the GMM appoint so-called continuity committee or a person who manages the organization.

WBTR – Adjustment of statutes or assition to House Rules

Binding nomination

- If only one candidate is available by board member vacancy, he is mostly appointed. The GMM *can* lift this .

Advisory vote

- Board members have an advisory vote – they may express their views on intended decisions. If they don't get a chance to do so, the decision can be revoked.

Dismissal board members of foundations

- The judge can dismiss board members for neglecting their duties or other serious reasons.

WBTR –Insurances– check!

Checklist verzekeringen

- Find out which risks you'r organization is running:
 - a) With high continuity risk (damage to buildings etc. & consequential damage)
 - b) With limited continuity risk (legal costs in case of dispute, canceled events and damage during travel)
 - c) Indirect and other (traffic damage, accident damage, mismanagement a.o.)
- Check with which insurance policies you cover these risks
- Check your own insurance portfolio – discuss it in the board
- Ask an insurance company expert if necessary / request multiple offers

WBTR – Insurances - overview!

The risks	The insurance
Aansprakelijkheidsrisico voor de stichting	Aansprakelijkheidsverzekering voor bedrijven (AVB)
Schade aan stichtingsgebouwen / inventaris	Brand-/ opstalverzekering
Gevolgschade na schadegebeurtenis	Bedrijfsschadeverzekering
Juridische kosten in verband met geschil	Rechtsbijstandsverzekering
Schade in verband met evenementen	Evenementenverzekering
Schade bij reizen	reisverzekering
Schade in verkeer met auto	Schade-inzittendenverzekering
Schade waarvoor bestuurders in privé aansprakelijk kunnen zijn	Bestuurdersaansprakelijkheidsverzekering
Schade door ongevallen	Ongevallenverzekering



WBTR in brief

Questions and discussion

Thanks for your attention and good luck!